

BEFORE THE WAIMAKARIRI DISTRICT PLAN REVIEW HEARINGS PANEL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF the hearing of submissions and further submissions on the Proposed Waimakariri District Plan

AND

hearing of submissions and further submissions on Variations 1 and 2 to the Proposed Waimakariri District Plan

**Hearing Stream 12E (A) and (B):
Rezoning Requests**

**LEGAL SUBMISSIONS ON BEHALF OF RICHARD AND GEOFF SPARK
(PDP Submitter 183 / Variation 1 Submitter 61)**

Dated 9 August 2024

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MAY IT PLEASE THE PANEL

Introduction

1. These legal submissions are presented on behalf of Richard and Geoff Spark (Submitter 183) (the **Submitters/Spark**). The Submitters made submissions and further submissions on both the Proposed Waimakariri District Plan (**PDP**) and on Variation 1 to the same.
2. The Spark submissions both seek rezoning of the land from rural lifestyle to residential, amongst other changes.
3. The land over which the rezoning is sought comprises approximately 57.5 hectares of land (the **site**). It is located in South East Rangiora.
4. Part of the site, being approximately 25.7 hectares, is north of Boys Road and is within the South East Rangiora Development Area (**DEV-SER / SERDP**).
5. The submission on the PDP seeks the rezoning of all of the land north of Boys Road and within the South East Rangiora Development Area to GRZ with the provision for additional areas of medium density housing adjacent to the stormwater reserve and west of the principle north-south road, and to reposition the local centre as shown on an amended proposed ODP (Block A). The submission notes that the land to be rezoned is part of the Spark Dairy Farm located at 197 Boys Road, and at 234 Boys Road, and also includes Rossburn and Northbrook Museum (17 Spark Lane and 19 Spark Lane).
6. The submission on the PDP also seeks, amongst other matters, the rezoning of all of the land to the west of the proposed Eastern Link Road (**REL**) from rural lifestyle to general residential and medium density, or alternatively, rezone it to GRZ, MDR, BIZ, Format Retail/Mixed Use or a mix of GRZ, MDR, BIZ, and/or Format Retail/Mixed Use zones (Block B/C).
7. The submission on Variation 1 seeks, amongst other things, that the entire site (including that within the SERDP) be rezoned. It expressly seeks amendment to the PDP planning maps by:
 1. *Rezoning all land north and south of Boys Road outlined in red on Figure 1 below ('the Site') Medium Density Residential Zone (MDRZ). With respect to the land south of Boys Road and west of the eastern bypass, in the alternative, rezone this land to MDRZ, BIZ, Format Retail/Mixed Use or a mix of these zones.*

8. The submission on Variation 1 identifies the land to be rezoned in the same manner identifying that the land to be rezoned is part of the Spark Dairy Farm, located at 197 Boys Road and at 234 Boys Road, and again includes the Rossburn and Northbrook Museum (17 Spark Lane and 19 Spark Lane).
9. The Variation seeks amendments to the South East Rangiora Outline Development Plan to identify all residential areas as Medium Density Residential.
10. It is submitted that residential zoning of the site overall, whether under the PDP, or as amended by Variation 1, would better give effect to the National Policy Statement for Urban Development 2020 (**NPS-UD**), the other statutory documents, the PDP, and Variation 1 as notified.

The Proposal

11. As identified, the land subject to the rezoning submissions on the PDP and Variation 1 is approximately 57 hectares.¹
12. The bulk of that land presently forms part of the Spark farm. That farm has been developed and managed on an intergenerational basis. The Submitters have a real connection to the land and to the environment. The Spark family have been stewards of the land and waterways.
13. A comprehensive ODP has been developed. What is proposed for the land is a carefully designed and carefully assessed proposal. This is the result of many months of work by a team of experts and the Spark family. It has taken a land-based approach to the proposal. Its aim is to create a development that responds sympathetically to the site and to the local landscape.
14. The proposal has been developed by reference to the three blocks. Block A is within the DEV-SER as provided in Part 3 of the PDP and is a future development area identified on Map A of the Canterbury Regional Policy Statement (**CRPS**).
15. Block B is the land between Boys Road and Marshes Road. That land is not identified on Map A.
16. Block C is an area of land within an odour constraint area identified by the Submitters' air quality expert. While not suitable for residential development as a result of potential odour issues and associated reverse sensitivity effects, it does have a range of possible business/light industrial uses.² The ultimate use for Block C has not been

¹ Subject to the ultimate alignment of the REL

² First Statement of Evidence of Catherine Elizabeth Nieuwenhuijsen dated 4 March 2024 at para [49]

confirmed, nor fully assessed. Mr Thomson³ and Mr Wilson⁴ agree that this area should be identified for future urban development.

Evidence

17. The Submitters have provided significant evidence in support of its submissions. I do not intend to purport to summarise all of the evidence. The evidence is comprehensive. Evidence is provided by:

- (a) Geoffrey Spark – Submitters;
(Statement 9 August 2024)
- (b) Nicole Lauenstein – Urban Design;
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024);
- (c) Matthew Lester – Landscape and Visual Assessment;
(First Statement 4 March 2024)
- (d) Lisa Williams – Transport;
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024)
- (e) Amir Montakhab – Flood Modelling;
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024)
- (f) Mason Reed – Geotechnical Engineering
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024);
- (g) Stuart Ford – Soil Productivity;
(First Statement 4 March 2024)
- (h) Mark Taylor – Ecology;
(First Statement 4 March 2024)
- (i) Sean Finnigan – Contamination;
(First Statement 4 March 2024)
- (j) Alastair McNabb – Infrastructure and Servicing;
(First Statement 5 March 2024 / Supplementary Statement 2 August 2024)
- (k) Fraser Colegrave – Economics;
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024)
- (l) Catherine Nieuwenhuijsen – Odour;
(First Statement 4 March 2024)
- (m) Ivan Thomson – Planning.
(First Statement 4 March 2024 / Supplementary Statement 2 August 2024)

³ Supplementary Evidence of Ivan Thomson dated 2 August 2024 at para [16]

⁴ Officer Report at para [648]

Officers Report

18. In his s42A Report of 22 July 2024, Mr Wilson's recommendations are:
- (a) To rezone Block A PDP Medium Density Residential with addition to the ODP including a prohibition on access points to the REL, final determination of commercial node, access over the Northbrook Stream remains;⁵
 - (b) In terms of Block B:
 - (i) The officer report records that Block B rezoning in the context of NPS-UD Objective 6 integrates with the Rangiora Eastern Bypass for the purposes of infrastructure planning, and is strategic over the medium term, by aligning the Rangiora urban boundary with the REL in that location;
 - (ii) It provides significant development capacity in the form of an additional 230 to 280 dwellings, and contributes to a well-functioning urban environment primarily by infilling a parcel of rural land that is cut off from the surrounding farm by a new transport link;
 - (c) Again, subject to those points, the officer recommends rezoning of Block B to PDP Medium Density Residential;⁶
 - (d) For Block C, the officer report considers that there is not have enough information to rezone that land at the moment and recommends that the development area extends over that to signal its future potential.⁷
19. The Variation 1 Rezoning Report does not assess the merits of the proposal, but focuses on scope, and this is addressed in the Appendix to these submissions.
20. There is, in my submission, little in contention between the Submitters and the reporting officer. The matters that do remain in contention relate primarily to matters of detail and design. The Submitters' experts have considered the matters raised and comment on those in so far as they relate to their relevant areas of expertise in their supplementary evidence. The Submitters are also endeavouring to engage with the reporting officer to discuss issues identified, particularly relating to access points to the REL in Block A. Direct access points are precluded to the REL from Block B. The ngā tūranga tupuna cultural landscape has been incorporated into the design.

⁵ Officer Report at para [632]

⁶ Officer Report at para [658]

⁷ Officer Report at para [649]

Statutory Framework for Proposed Plan Decisions

21. The Panel will have received a number of submissions on the legal framework that applies when it considers and makes its recommendation on the PDP, including on rezoning requests.
22. The Environment Court in *Colonial Vineyard Ltd v Marlborough District Council*⁸ provided a comprehensive summary of the mandatory requirements for district plans. The more recent decision of the Environment Court in *Middle Hill Limited v Auckland Council*⁹ in essence endorses the *Colonial Vineyard* approach and in my submission provides a helpful summary (original footnotes omitted):

[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;*
- (f) whether they accord with Part 2 of the RMA;*
- (g) whether they give effect to the regional policy statement;*
- (h) whether they give effect to a national policy statement;*
- (i) whether they have regard to [relevant strategies prepared under another Act]; and*
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effect.*

[30] Under s32 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; and*
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:*
 - 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; and*
 - employment that are anticipated to be provided or reduced; and*

⁸ *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55, at para [17]

⁹ *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162, at para [29]

- ii. *if practicable, quantifying the benefits and costs; and*
- iii. *assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

Statutory Documents

23. Mr Thomson identifies and assesses the relevant statutory documents that must be given effect to, or had regard to.

NPS-UD Urban Environment

24. Before addressing the NPS-UD and its role, it applies of course to urban environments.

25. The NPS-UD defines urban environment as:

means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) is, or is intended to be, predominantly urban in character; and*
- (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.*

26. There has been some debate as to what is the relevant urban environment. It is my understanding that at least the majority of planners identify the Greater Christchurch (as depicted on Map A of the CRPS) as the relevant urban environment for the purposes of the NPS-UD. Mr Wilson's report attaches legal advice from Mr Carranceja. Mr Carranceja addresses the issue of who determines what the urban environment is in the context of an FDS or similar. He also addresses what the urban environment is for the purposes of Policy 8 of the NPS-UD. The Panel will be familiar with it.

27. In my submission the Greater Christchurch Area as depicted on Map A is the relevant urban environment. As noted, I understand this is the view of the majority of planners. Ultimately this is not an issue which the Submitters need to have resolved. Given the nature of this site, its location, the identification of Block A for future development, and the clear intention of the Submitters, it is clearly intended to be predominantly urban in character and part of a housing and labour market of at least 10,000 people.

NPS-UD

28. Again, as the Panel will be aware, national policy statements sit at the top of the hierarchy of planning documents.¹⁰ A district plan must give effect to national policy statements.¹¹ “Give effect to” is a strong directive.¹²
29. The *broad objective* of the NPS-UD was summarised in the *Middle Hill* decision as follows:
- [33] *The National Policy Statement on Urban Development 2020 (NPS-UD) is a document to which the plan change must give effect. The NPS-UD has the broad objective of ensuring that New Zealand’s towns and cities are well-functioning urban environments that meet the changing needs of New Zealand’s diverse communities. Its emphasis is to direct local authorities to enable greater land supply and ensure that planning is responsive to changes in demand, while seeking to ensure that new development capacity enabled by councils is of a form and in locations that meet the diverse needs of communities and encourage well-functioning, liveable urban environments.*
30. In my submission that is a helpful summary of the broad objective. It neatly encapsulates that key broad objective and records the emphasis on the enabling of greater land supply, responsiveness to demand, while seeking to ensure that capacity is of a form and in locations that meet diverse needs and encouraging well-functioning liveable urban environments.
31. Mr Thomson assesses the proposal against the relevant provisions of the NPS-UD. From a planning perspective, he considers Objective 1, along with Objective 2, Policies 1 and 2 and the implementation of these policies, are the key matters in relation to the submission.¹³ He considers that providing at least sufficient development capacity to meet short, medium and long term needs is a key policy of the NPS-UD, without which a well-functioning urban environment is unlikely to occur. He expands on that stating that the land market will not operate in a competitive manner, and without adequate land supply, house prices are likely to increase, affecting affordability.¹⁴
32. The following is very much a summary of the objectives.
33. Objective 1 provides:

¹⁰ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38

¹¹ Section 75(3)(a) RMA

¹² *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at para [77]

¹³ First Statement of Evidence of Ivan Thomson dated 4 March 2024 at para [35]

¹⁴ First Statement of Evidence of Ivan Thomson dated 4 March 2024 at para [36]

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

34. In my submission, based on all of the evidence, the rezoning clearly contributes to meeting that objective.

35. Objective 2 provides:

Planning decisions improve housing affordability by supporting competitive land and development markets.

36. In terms of Objective 2, and noting the NPS-UD provides a focus on housing affordability by supporting competitive land and development markets, this proposal clearly contributes to that.

37. In terms of Objective 3, this area is and/or near a centre zone with many employment opportunities, is, on the evidence, is or can be well serviced by public transport, and there is a high demand for housing in Rangiora.

38. Objective 4 recognises that environments develop and change in response to the diverse and changing needs of people, communities and future generations. This is done by providing for a range of typologies.

39. In relation to Objective 5, the Treaty of Waitangi is a matter which needs to be taken into account in the proposed rezoning. The issue raised in relation to the overlay has been addressed and the evidence notes that the proposal was developed conscious of iwi issues and those identified in the CIA have been addressed.

40. In terms of Objective 6, it is submitted that the housing development enabled by the rezoning will be integrated with planning and funding decisions, strategic and responsive, in the sense that infrastructural needs can be met from existing and planned resources. As addressed subsequently, it will supply significant development capacity. Mr Wilson considered it is well integrated with planning and funding decisions, in terms of the REL. That must be correct.

41. In terms of Objective 7, the Council decision will be better informed by the information provided.

42. In terms of Objective 8, it supports reductions in greenhouse gas emissions and is resilient to the current and future effects of climate change. This is largely a product of its location, and its contribution to the compact urban form of Rangiora. It encourages walking and cycling by design.

Policy 1

43. Policy 1 provides:

... well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

(i) meet the needs, in terms of type, price, and location, of different households; and

(ii) enable Māori to express their cultural traditions and norms;

44. Mr Thomson in his Appendix 6 assesses the proposal against Policy 1. He concludes the proposal is to have up to approximately 600 additional lots with a mix of medium residential housing typologies consistent with the variation to the PDP ... (c) it has good accessibility for all people between housing, jobs, community services, natural spaces, open spaces, including by way of public or active transport.

45. Mr Thomson's assessment records that it is within a convenient distance of the existing employment areas (South Belt in particular) and the Southbrook School on the western side of the railway line, and the PaknSave supermarket.

46. He considers this enables a choice of transport modes including active and micro personal transport (e.g. e—bikes, e-scooters) to be used along with private cars. He identifies that the site is will located to take advantage of any future rail-based mass transit service and it also has access to existing bus services. He considers the subject site is well located to existing urban areas and travel distances to key facilities are unlikely to be noticeably higher than those from the South East Rangiora Development Areas.¹⁵

Policy 2

47. Policy 2 of the NPS-UD reads:

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.

48. Short term, medium term, and long term, are defined:

Short term means within the next 3 years

¹⁵ First Statement of Evidence of Ivan Thomson dated 4 March 2024, Appendix 6 (page 84)

medium term means between 3 and 10 year

Long term means between 10 and 30 years

49. “At all times” must be taken as meaning what it says. That is, the duty on local authorities must be through, at least, the life of the plan.
50. Policy 2 is not about “just enough”. There is nothing in the NPS-UD that would support such an interpretation. Mr Wilson, in his paragraphs [83] and [84] of his report, seems to take a different approach to “at least sufficient”. If I understand what he is saying, his view is that if the capacity provided is above sufficient capacity, the bare minimum should be the amount required to meet a need or a purpose.
51. Mr Yeoman and Mr Colegrave appear to agree that the NPS-UD sufficiency criteria are minima and not targets.¹⁶
52. The agreement between Mr Yeoman and Mr Colegrave reflects the correct position. The wording itself illustrates that this is clear. It is not about providing just enough. That is clear from its wording “at all times, provide at least sufficient development capacity” to meet expected demand for housing and for business land over the short term, the medium term, and long term.

Policy 8

53. Policy 8 is the key terms of Block B. It provides:

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.*

54. The contribution to development capacity is undoubtedly significant. In Mr Colegrave’s First Statement he concludes that the proposal represents a significant boost in dwelling capacity, which will help keep pace with demand while also helping to meet NPS-UD requirements.¹⁷ In his Supplementary Evidence Mr Colegrave carries out a further analysis. He has derived “rules of thumb” for assessing the significance of development. He identifies that:

¹⁶ Statement of Evidence of Rodney George Yeoman 21 July 2024 at paras [2.29] and [8.2]; Supplementary Statement of Evidence of Fraser Colegrave dated 2 August 2024 at para [10]

¹⁷ First Statement of Evidence of Fraser James Colegrave dated 4 March 2024 at para [107], and paras [88] and [89]

- (a) 15 to 30 lots represent a significant increase in capacity;
 - (b) 30 to 100 lots represent highly significant increases; and
 - (c) More than 100 lots represent extremely significant increases.¹⁸
55. Applying those rules of thumb he notes that it follows that the Spark rezoning submission is an extremely significant increase in development capacity for the purposes of the NPS-UD.¹⁹
56. The policies, in so far as they are relevant, are again better met.
57. In summary, the rezoning implements the objectives and policies of the NPS-UD. The rezoning proposal would contribute to well-functioning urban environments. The type, price, location and different households are addressed, noting it enables Māori to express their cultural traditions and norms through recognition. It contributes to sites for different business sectors (ultimately); it has good accessibility between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport. By the significant capacity enabled, it supports and limits the competitive operation of land and development markets. Again the reduction of greenhouse gases has been discussed and as has climate change.
58. Overall, in my submission, the rezonings sought, better implement the NPS-UD than leaving it RLZ.

NPS-HPL

59. The NPS-HPL does not apply to this land by virtue of s3.5.7(b)(i). I consider that is clear and at the least generally accepted.
60. For completeness, Mr Thomson addresses this issue in his First Statement of Evidence dated 4 March 2024.²⁰ Evidence has also been provided by Mr Ford in relation to the productive capacity.²¹

CRPS

61. In terms of Block A, the land is identified in Map A and it is within the infrastructure boundary. Block B and C are not.

¹⁸ Supplementary Statement of Evidence of Fraser James Colegrave dated 2 August 2024 at para [15]

¹⁹ Supplementary Statement of Evidence of Fraser James Colegrave dated 2 August 2024 at para [16]

²⁰ First Statement of Evidence of Ivan Thomson dated 4 March 2024 at para [44]

²¹ First Statement of Evidence of Stuart John Ford dated 4 March 2024

62. In my submission, the avoidance provisions in the CRPS (6.2.1(3)) are not the impediment to rezoning that they once were. I say this for two reasons:
- (a) The *King Salmon* approach of what means ‘avoid’ is now subject to, in my submission, a more subtle assessment. This arises from the Court of Appeal decision in *Port Otago Limited v Environmental Defence Society Incorporated*.²² The Court considered that concepts of mitigation and remedy may serve to meet the ‘avoid’ standard by bringing the level of harm down to a level so that material harm is avoided.²³ In my submission, the *Port Otago* decision provides for an interpretation of the CRPS that the word ‘avoid’ in Objective 6.2.1(3) should be interpreted as avoid material harm. In my submission there is no material harm in the rezoning of this land; and
 - (b) The restrictive provisions of the CRPS do not give effect to the NPS-UD. Change 1 has identified additional areas, including Block A, but it was not intended to, and did not, fully give effect to the NPS-UD. The CRPS is of some age. The NPS-UD, being the higher order and later in time document, must prevail or the CRPS must be read down in light of the NPS-UD.
63. The responsive planning provisions of the NPS-UD clearly provide a pathway and the submissions can be assessed and approved on their merits.
64. Mr Thomson provides a full assessment against the CRPS in his First Statement of Evidence dated 4 March 2024 at paragraphs [59] – [64] and Appendix 5.
65. Mr Wilson, in his overall consideration of Blocks B and C, notes that the land is outside the shaded areas in Map A, CRPS, and, as such, “*I must consider them under the responsive planning provisions in Objective 6 and Policy 8*”. He records that Block B integrates with the Rangiora Eastern Bypass for the purposes of infrastructure planning and is strategic over the medium term, by aligning the Rangiora boundary with the REL in this location.²⁴
66. He accepts it provides significant development capacity in the form of an additional 230 – 280 dwellings as stated by the Submitters, and contributes to a well-functioning urban environment primarily by infilling a parcel of rural land that is cut off from the surrounding farm by the new transport link and would lack other productive uses.²⁵

²² *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112

²³ *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112 at para [65]

²⁴ Officer Report at para [649]

²⁵ Officer Report at para [649]

67. Mr Wilson also assesses CRPS 6.3.11(5). He considers that:²⁶

- Infrastructure is in place, or able to be provided economically and efficiently;
- Provision has been made for a safe and convenient access to community, social, and commercial facilities;
- Urban consolidation is achieved, and the proposal assists with this, by avoiding an otherwise orphaned parcel of rural land cut off by the REL;
- The future urban land use does not contaminate any drinking water sources;
- Sufficient rural land is retained to maintain the open space character either between or surrounding the areas of urban activity within Greater Christchurch;
- The operational capacity of strategic infrastructure is not compromised, particularly if any ODP changes remove the connections to the REL.

68. I record again, that there are no direct connections to the REL proposed in Block B.

Merits / Costs/Benefits / Effects

69. In this section of the submissions I have taken the approach of, in essence, “bundling up” the evidence to address the merits, including the costs/benefits and effects by taking an evidenced based approach.

70. Significant evidence has been filed. I do not propose to simply repeat all of that evidence in these legal submissions but of course all of the evidence is relevant to your consideration of actual and potential effects, and your overall assessment as to its appropriateness. As identified earlier in these submissions, this proposal is a product of a team of experts working collaboratively to achieve an integrated outcome. There has been significant engagement with Council in relation to various elements of the proposal.

71. The ODP is founded on several technical reports including ecological assessment of the waterways by Mr Taylor, visual and landscape assessment as part of the landscape peer review by Mr Lester, stormwater and flood management, traffic design, and odour constraints.

72. Ms Lauenstein confirms that specific aspects of these technical reports have informed the urban design strategy and key design drivers for the site which underpin the

²⁶ Officer Report at para [650]

overall ODP for the proposal. She identifies the overarching design strategy for the entire proposal is guided by a “land based” design approach where specifics of the underlying land become the primary drivers and create the overall structure for the development in the form of a blue and green network that is highly responsive to the natural characteristics of the site.²⁷

73. The people drivers are based on creating a community around a strong local narrative, showcasing the history of the site and area by expressing the natural history and Māori connection to the site and wider landscape as well as the local farming history.²⁸
74. The Northbrook and Middlebrook are integral to the site and its development. The ecological values of these waterways provide cultural and social amenity, and character and visual amenity, which in turn promotes further care for their ecology.²⁹
75. Ms Lauenstein notes Northbrook and reserve form the northern and western boundary of Block A in the form of a 20m wide ecological space either side of the brook’s edge with riparian planting, a promenade walkway that allows interaction with the space.³⁰
76. The extension of riparian planting which already exists around the Northbrook will be expanded on with the introduction of the 20m esplanade and biodiversity area proposed in Block C.³¹
77. In terms of stormwater management, while recognising their main function is stormwater collection, retention and treatment, they provide key amenity values as well.³²
78. The ecological linkages and riparian planting were informed by Mr Taylor and they are consistent with the Canterbury Regional Council Riparian Zone Guidelines 2011.³³
79. Ms Lauenstein advises that in response to the recommendations, a 20m esplanade has been proposed on each side of the brooks which includes a 15m ecological zone dominated by native planting to ensure the sensitive aquatic environment and to act as biofilter and habitat zone. The remaining 5m is for pedestrian and cycle corridors to keep those separated from the ecological zone as much as possible.³⁴

²⁷ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [33]

²⁸ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [37]

²⁹ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [42]

³⁰ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [42]

³¹ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [43]

³² First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [48]

³³ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [53]

³⁴ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [54]

80. There is an interconnected green network proposed and placemaking around open spaces. Interfacings are managed and mitigated and again this is detailed in Ms Lauenstein's evidence.³⁵
81. In terms of the movement network the hierarchy of movement corridors is identified by Ms Lauenstein from an urban design perspective. She addresses accessibility, noting that the distance to the town centre of between 2 – 2.5km for pedestrians using the Northbrook Trail and the main road, making for an approximate 30 minute walk. She also notes that for the day-to-day convenience shops and supermarket in south of Rangiora/Southbrook are 1 – 1.5km along the REL which features a shared cycle/walkway. Rangiora High School is 2 – 2.5km north of the site and access to recreational areas are excellent.³⁶
82. Access is addressed and the internal roads and non-vehicular links are designed to encourage walking and cycling.³⁷
83. Ms Lauenstein addresses density, noting that the proposal originally sought a density of 12+hh/ha but that it can potentially be intensified to 15hh/ha subject to development constraints that reduce density and the careful selection of areas of residential intensification.³⁸
84. She discusses the Northbrook/Cam River Trail which Mr Spark also addresses in his evidence.³⁹
85. In my submission this is a carefully designed, comprehensive and appropriate proposal which has significant benefits in the wider sense, and little, if any, adverse effects.
86. Mr Lester identifies the potential visual and landscape effects as being the visibility of the proposal when seen from Boys Road, the change in character from existing rural to residential, and the protection and enhancement of the existing landscape values. He correctly notes that the assessment of those effects must be considered in context including the SERDP and the rezoning of the southern part to RLZ, together with the effect the proposed REL will have on existing landscape values.⁴⁰
87. Mr Lester undertook a thorough analysis and concludes that the visual and landscape effects are in line with the existing WDC ODP or are well mitigated in Block A and

³⁵ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at page 17

³⁶ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at paras [72] – [74]

³⁷ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [89]

³⁸ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [103]

³⁹ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [128]

⁴⁰ First Statement of Evidence of Matthew Neil Charles Lester dated 4 March 2024 at para [56]

makes a number of recommendations in relation to boundary conditions, arborist report being provided in relation to the trees along the North Brook, cultural liaison to continue, and the streetscape to be developed for the major roads to confirm the surrounding landscape and infrastructure and their landscape effects.⁴¹

88. Again, in terms of landscape effects, there are limited costs and considerable benefits with any potential effects being well mitigated.
89. Mark Taylor's ecological evidence addresses the ecological values and particularly in relation to aquatic matters. He notes the importance of a high standard of stormwater treatment will be required.⁴²
90. He discusses the development setbacks and the mitigation methods.
91. He notes that he and Ms Lauenstein have deliberated together to ensure that ecological objectives are integrated into the development plan ensuring ecological values are high.⁴³ He has liaised with Mr Lester in relation to riparian plants that may be beneficial.⁴⁴
92. He concludes that while design detail has not been undertaken, the development has significant ecological potential by linking the proposed enhanced ecological corridor of the North Brook to an existing planted wetland area of significant size (i.e. the Northbrook wetlands on Cotter Lane) and likewise the Middle Brook has significant potential to be enhanced and promote ecological links and that the waterways will have setbacks which will facilitate ecological dispersal and linkage to adjoining habitats.⁴⁵
93. Again, in my submission, this identifies the potential benefits of the proposal.
94. Dr Finnigan has provided evidence following on from the Fraser Thomas 30 November 2023 PSI report which was provided. He considers the site is suitable to be rezoned for future residential development, provided potential/actual localised contamination issues identified are appropriately investigated and managed through appropriate remediation or controls.⁴⁶
95. Again there are no risks or adverse effects arising from contamination issues provided they are appropriately investigated and managed.

⁴¹ First Statement of Evidence of Matthew Neil Charles Lester dated 4 March 2024 at paras [73] and [74]

⁴² First Statement of Evidence of Mark Taylor dated 4 March 2024 at para [54]

⁴³ First Statement of Evidence of Mark Taylor dated 4 March 2024 at para [61]

⁴⁴ First Statement of Evidence of Mark Taylor dated 4 March 2024 at para [63]

⁴⁵ First Statement of Evidence of Mark Taylor dated 4 March 2024 at para [86]

⁴⁶ First Statement of Evidence of Dr Sean Finnigan dated 4 March 2024 at para [24]

96. Mr Reed, in his First Statement of Evidence, attaches a detailed geotechnical report.⁴⁷ Overall he concludes that the site is suitable for its intended use subject to recommendations. Notes that there are some special considerations as a result of peat soils underlying some parts of the site and that the recommendations to mitigate that, his opinion is that the geotechnical report includes recommendations which will appropriately avoid, remedy or mitigate potential geotechnical hazards in accordance with the provisions of s106 of the RMA.
97. Mr McNabb in his evidence addresses his report. In my submission, his evidence clearly illustrates the degree of engagement there has been with the Waimakariri District Council and CRC.
98. His report identifies “planned water network upgrades” (at pages 21 and 22) and confirmation that there is sufficient water to supply Block A. In that assessment, current and planned future water supply capacity increases and network extensions are likely to be sufficient and available to service the site.
99. In my submission there are no infrastructural issues which indicate any risk in the rezoning.
100. Again a comprehensive flood modelling assessment has been undertaken by Dr Montakhab and he concludes that from a flood hazard perspective, the site is suitable for rezoning for urban development. He acknowledges that further modelling will be required once outflows from the site have been defined and the site plan finalised and that will be required during the resource consent stage.
101. In my submission the risks and actual and potential effects have been fully assessed and the rezoning has significant benefits and few risks. Any risks that there are can be appropriately mitigated.
102. Ms Williams has provided a First Statement of Evidence of 4 March 2024 which attached a full ITA in relation to Blocks A and B.⁴⁸ She reaches a number of key conclusions including that the residential zones are well located for access to all destinations and to encourage use of active and micro mobility modes. She concludes that existing public transport routes and park and ride services offer a viable option to public transport use. She considers the residential development can be staged to coordinate with relevant upgrades to transport infrastructure and this can be readily managed through the normal subdivision process.⁴⁹

⁴⁷ First Statement of Evidence of Mason Vout Reed dated 4 March 2024, Appendix A

⁴⁸ First Statement of Evidence of Lisa Marie Williams dated 4 Marh 2024

⁴⁹ First Statement of Evidence of Lisa Marie Williams dated 4 Marh 2024 at para [35]

103. Mr Fraser's evidence addresses the economic costs and benefits of the proposal in some detail.⁵⁰ He concludes overall that the proposal will generate a wide range of enduring economic benefits and avoid any material economic costs. Mr Yeoman agrees that from an economic perspective the site is a relatively good option for providing more residential land when considering the NPS-UD policies, and agrees in terms of the significance of the development.⁵¹ While not agreeing with Mr Colegrave's quantification of the costs and benefits, he agrees that it is likely that the benefits of live-zoning Block A may well outweigh the costs and would support the FDA overlay site being live-zoned if the Commissioners were of a mind to provide more capacity in the short – medium term.⁵²
104. In terms of Block B, again he supports Block B being either live-zoned for residential or an FDA overlay if the Commissioners were of a mind to provide more capacity in the short – medium term or long term.
105. Overall, you have been provided with detailed, comprehensive and compelling evidence which illustrates, in my submission, that the benefits of this proposal are considerable, the costs minimal and any risks fully addressed.

Amendments Sought By Reporting Officer

106. As identified earlier in these submissions, the Submitters' experts have considered matters raised in the supporting expert advice provided as part of Mr Wilson's report.
107. Mr Reed provides a response to comments from Mr Aramowicz. He concurs with Mr Aramowicz's summary statement that the subdivision design and construction will need to be undertaken in a way that minimises the risks posed by the surficial peat soils to the stability of future roads, underground services and building foundations. He considers that the "inherent uncertainties" involved in predicting soil compressibility coefficients for organic soils can be addressed by undertaking appropriate preload test pad construction and monitoring, prior to any bulk earthworks.⁵³
108. The risks and potential costs in a geotechnical sense, have been properly identified together with methods to minimise those risks.

⁵⁰ First Statement of Evidence of Fraser Colegrave dated 4 March 2024 at paras [84] – [106]

⁵¹ Statement of Evidence of Rodney George Yeoman 21 July 2024 at paras [3.26]

⁵² Statement of Evidence of Rodney George Yeoman 21 July 2024 at paras [3.27]

⁵³ Supplementary Statement of Mason Vout Reed dated 2 August 2024 at para [22]

109. While Mr Aramowicz considers there are no infrastructural constraints, Mr McNabb provided a supplementary statement⁵⁴ responding to issues identified by Mr Aramowicz to provide more information that Mr Aramowicz had considered was not available.
110. Finally Dr Montakhab provided a supplementary statement⁵⁵ addressing matters raised by Mr Aramowicz regarding post-development impact on Silverstream/West Kaiapoi area, concluding that while the flood model for the study did not extend to the Silverstream/West Kaiapoi area, the results indicate that there is no post-development impact on the stream flood levels at the confluence of Northbrook, Middlebrook and Southbrook, based on a 50-year on-site attenuation device included in the model for the 200-year storm event with climate change.

Commercial Zone

111. Mr Gregory's evidence is attached to the s42A Report for Hearing Stream 12E. From a transportation perspective Ms Williams addresses an addition for a commercial node in the northeast corner of Block B.
112. Ms Williams can support that location on the basis of it providing pedestrian/cycle access to Boys Road and REL road with vehicular access via local roads. She is confident that such a commercial node could be accommodated in Block B to meet the intent of the changes suggested by Mr Gregory and Mr Wilson.⁵⁶
113. Ms Lauenstein agrees that a local centre further south of Boys Road might be warranted with Block B being added to the urban form.⁵⁷ She discusses the proposed potential commercial centre now added in relation to the ODP to Block B. She considers this to be strategically positioned south of Boys Road in proximity to the REL/Boys Road intersection north-south and east-west walking and cycling corridors, to provide ease of access.⁵⁸ Ms Lauenstein notes that to provide guidance on scale and size, access, road frontage interfaces and general built form matters, further detail has been added to the ODP narrative.⁵⁹
114. The words added are:

⁵⁴ Supplementary Statement of Alastair McNabb dated 2 August 2024

⁵⁵ Supplementary Statement of Dr Amir Montakhab dated 2 August 2024

⁵⁶ Supplementary Statement of Lisa Williams dated 2 August 2024 at para [13]

⁵⁷ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [14]

⁵⁸ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [15]

⁵⁹ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [16]

Future Local Commercial Centre Block B

A potential commercial centre has been identified on the ODP in Block B to provide a range of local shops and services within walking and cycling distance of residents should this be needed.

If required, this indicative local commercial centre on Boys Road could be of a similar scale and nature as that proposed on Northbrook Road. The indicative location is in a strategic position with north-south and east-west walking and cycling corridors to provide easy accessibility.

Second Access over Northbrook

115. Again Ms Lauenstein addresses this from an urban design perspective in her supplementary evidence. She notes that the proposal does allow for a future crossing point in such a location which may not have been clearly identified enough. The ODP has added a green link north of the main SMA in Block A to provide at a minimum a cycling and walking connection across the Northbrook for future development in the east. She states that the proposed green link is wide enough to include a future road reserve – so a road connection can be established if the development east of the Northbrook requires such a connection.⁶⁰
116. She identifies several reasons why the second crossing was considered undesirable including:
- (a) Ecological reasons to protect the waterway margins and avoid disturbing waterflows and habitat within the waterway;
 - (b) Keep the amenity of the esplanade and larger green space in this delicate area
 - (c) To keep the amenity of the Northbrook intact;
 - (d) To avoid a rat-run type shortcut through Block A; and
 - (a) To prioritise walking and cycling over vehicular movements between the neighbourhoods.⁶¹
117. She identifies that the REL has shifted eastward from its original location and it is her view that having a second vehicular crossing in such proximity to the REL was counterintuitive.⁶² She notes the ODP provides several walking and cycling connections over the Northbrook to facilitate a fine grain of connectivity.⁶³

⁶⁰ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [27]

⁶¹ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [28]

⁶² Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [28]

⁶³ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [31]

118. Ms Williams addresses this in her supplementary evidence. She identifies the reasons for it not being included in the ODP. In terms of transportation, she identifies that a pedestrian/cycle bridge is proposed to maintain local movement and this can be provided within a reserve that provides space for a road bridge if that can be achieved at a later date.⁶⁴
119. She considers the connection is not necessary noting again the realignment of the REL, and that Boys Road and Northbrook Road provide good east-west connections, there is ample space for local roads to service the residential properties either side of the Northbrook without that connection.⁶⁵
120. Overall, she considers there is little loss in terms of connectivity for vehicle trips if the bridge is not provided, and no loss of connectivity for pedestrian and cycle trips.

Local Roads and Property Access

121. In terms of local roads and property access, Ms Lauenstein addresses this from an urban design perspective in her supplementary evidence. She considers the prohibition on access points to the REL in Block A is to be not a good approach and goes against best urban design practice. She notes a road that goes through residential development should be integrated and be treated as a residential street with direct access points to properties otherwise the development will turn its back on this road with fencing and tall vegetation thus negating the sense of community. She also notes that treating the REL as a bypass would split the development in two.⁶⁶
122. She states that providing access to private properties creates a finer grain and a rhythm within the streetscape that is better suited to a residential environment.⁶⁷
123. She addresses this further in terms of Block A and the REL being an integral part of the character of the residential neighbourhood which in her opinion needs to be very carefully integrated with people in mind first. She advises that streetscape can be designed in detail for both the key aspects, residential character as well as distribution and through traffic.⁶⁸ She also identifies that the nature of the REL in Block A as proposed will result in a mix of directly accessed properties as well as several properties that will require access from local roads due to the roundabout, several intersections and the crossing of the Northbrook waterway. Again she considers this

⁶⁴ Supplementary Statement of Lisa Williams dated 2 August 2024 at para [23(b)]

⁶⁵ Supplementary Statement of Lisa Williams dated 2 August 2024 at para [23]

⁶⁶ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [7]

⁶⁷ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [8]

⁶⁸ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [9]

will provide sufficient residential character while retaining the added function of through traffic.⁶⁹

124. Ms Lauenstein's evidence confirms that in Block B the REL runs along the side of the proposed development and no driveways from the REL onto private properties have been considered. They will all be serviced from internal roads.
125. Again Ms Williams addresses this in supplementary evidence. She identifies that the ODP indicates key road connections but not all local roads and the location and design of those roads, including whether they are through roads, crescents or short cul-de-sacs, is best considered at subdivision stage. She states that Mr Wilson's suggestion that there be no property access with the REL to Block A does not align with "our understanding of the design intent for Block A".
126. She identifies this section will likely have a 50km/h speed environment and its width is likely to be constrained by the future Northbrook bridge, and cycle lanes and kerb side parking are anticipated based on the indicative cross sections for the designation. She notes it is intended to be the primary road for the ODP which suggests it should be integrated with the development including appropriate transport environments for integration of pedestrians and cyclists and property access.
127. She identifies transport rules which include property access controls to ensure that this can be managed safely. Overall, while she considered the subdivision design could service those dwellings off other roads, she considered that to be unnecessary.

Tangata Whenua Issue/Cultural Landscape

128. Mr Wilson identified the tangata whenua issue/cultural landscape in relation to Block B.
129. Ms Lauenstein identified secondary 'people' based drivers being: creating a community around a strong local narrative, showcasing the history of the site and area by expressing the natural history and Māori connections to the site and wider landscape, as well as the local farming history, in the design of all public spaces, including but not limited to the naming of streets and places, plant selection, signage, design details and materiality.⁷⁰

⁶⁹ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [10]

⁷⁰ First Statement of Evidence of Nicole Lauenstein dated 4 March 2024 at para [37]

130. In her Supplementary Evidence, she addresses the Officers Report recommendation that the Ngā Tūranga Tupuna cultural landscape, which represents the former extent of a podocarp forest centred on Rangiora, is incorporated into the design.⁷¹

131. Ms Lauenstein's evidence is that to recognise this, native tree species are intended to be used in the public spaces as key landscape character elements, using the native plant communities that reflect natural plant communities and specific plant communities that support specific cultural practices. The aim being to focus on strengthening or recreating indigenous fauna habitats. She identifies that podocarps are obvious tree species choices, including totara, miro and kahikatea which would all provide strong character and associative values.⁷²

Conclusion

132. In terms of the evidence and the issues identified in the Officers Report, they have all been carefully considered and responded to. As noted, further engagement with Council is proposed.

Scope Issue

133. The scope issue submissions for Variation 1 are attached as an Appendix to these submissions.

134. The Panel, in its questions, asked Mr Wilson, in essence, whether there was scope to rezone the whole of Block A to PDP medium density zone. I understand the question is not querying whether there is scope to incorporate some medium density but rather the whole of that site.

135. As will be familiar to the Panel, in *Royal Forest & Bird Protection Society Inc*⁷³ Panckhurst J applied the *Countdown Properties*⁷⁴ test and went on to comment as follows:

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

136. Again in *Shaw v Selwyn District Council*⁷⁵ at [31] the Court noted that the whole relief package detailed in submissions must be considered when determining whether or

⁷¹ Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [37]

⁷² Supplementary Statement of Nicole Lauenstein dated 2 August 2024 at para [38]

⁷³ *Royal Forest and Bird Protection Society Inc v Southland District Council* [1997] NZRMA 467

⁷⁴ *Countdown Properties (Northlands) Limited v Dunedin City Council* 1B ELRNZ 150

⁷⁵ *Shaw v Selwyn District Council* [2001] 2 NZLR 277

not the relief sought is reasonably and fairly raised in the submission. Again, from very early days, in *Countdown Properties*, the Court formulated the test at [166] as:

The local authority or tribunal must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change ... and will usually be a question of degree to be judged by the terms of the proposed change and the content of the submissions.

137. In my submission, when looked at as a whole and approaching it in a realistic and workable fashion, the submission provides scope for rezoning of the whole of Block A to PDP medium density zone. The submission clearly identifies medium density is sought. It is clear from the submission that both general and medium density were “on the table”. It is clear that a range of densities were anticipated and sought. The PDP medium density provisions provide for that. The conclusion to the submission clearly identifies this. It states:

To rezone that part of the Spark Dairy Farm and Rossburn within the South East Rangiora Development Area GRZ and MDZ; ...

138. If the Panel does not accept that submission, it is, in my view, beyond doubt that both general and medium density were “on the table”. It is clear that a range of densities from GRZ to MDZ were available.

Conclusion

139. In my submission, the rezoning gives effect to the NPS-UD, the relevant plan policies and the other statutory documents addressed and assessed by Mr Thomson. The rezoning has clear benefits and little if any risk. In my submission, based on the evidence which has been provided, the rezoning sought is the most appropriate way to achieve the statutory documents and the objectives of the PDP and ultimately will achieve the purpose of the Act.

Dated: 9 August 2024



David Caldwell
Counsel for Richard and Geoff Spark

**APPENDIX ADDRESSING SPECIFIC MATTERS RAISED IN THE OFFICER'S
REPORT: VARIATION 1 REZONINGS DATED 22 JULY 2024, AND IN PARTICULAR
SCOPE ISSUES**

140. Mr Wilson addresses the scope of Variation 1 in the context of the rezoning in section 331 of his report. He considers that the Variation 1 rezonings, in the overall context of the PDP, stand alone from any recommendations on the PDP rezonings, as the processes are different in scope. He provides Mr Carranceja's advice. In my submission the position taken is incorrect.
141. This part of the legal submissions relate to Variation 1. There is no issue in relation to scope raised in terms of the PDP (other than a query regarding Block A).⁷⁶
142. Unfortunately the reporting officer has, at best, provided a limited assessment of the merits of the rezoning on Variation 1 is out of scope.
143. For example s77G(8) provides that the requirements to incorporate the MDRS into relevant residential zones prevails over the requirement to give effect to a regional policy statement, in the event of any inconsistency. Other additional matters are in relation to qualifying matters but as a general principle the approach remains the same.
144. The bipartite test for assessing whether a request is "on" a plan change is well settled⁷⁷:
- (a) A submission can only fairly be regarded as being "on" a plan change or variation if it is addressed to the extent to which the plan change or variation changes the pre-existing status quo; and
 - (b) If the effect of regarding a submission as being "on" a plan change or variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that is a powerful consideration against finding the submission to be "on" the change.
145. In my submission, while this two-fold test has the appearance of simplicity, it is often complex to apply. This is evident from the number of cases relating to whether a requested rezoning (or other request) is "on" the relevant plan change. Case law has

⁷⁶ Questions from the Hearing Panel regarding s42A Report

⁷⁷ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [24] citing *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [59]

continued to evolve in the eight years that have passed since the *Motor Machinists*⁷⁸ decision was issued:

Because plan changes are usually circumscribed – often very carefully – by the party promoting them, a specific jurisprudence has sprung up about when a submission is ‘on’ a plan change.⁷⁹

Ascertaining the extent to which a plan change alters the status quo and whether a submission addresses that breadth

146. General principles as to the first of the *Clearwater* tests include:

- (a) The questions posed in *Motor Machinists* need to be answered in a way that is not unduly narrow⁸⁰;
- (b) *In the end, the jurisdiction issue comes down to a question of degree and, perhaps, even of impression.⁸¹*
- (c) Each case needs to be assessed within the context it arises. Relevant contextual considerations could include⁸²:
 - (i) Whether the submission seeks to substantially alter or add to the relevant objective(s) of the plan change, or whether it only proposes an alternative policy or method to achieve any relevant objective in a way that is not radically different from what could be contemplated as resulting from the notified plan change:

... submissions seeking some major alteration to the objectives of a proposed plan change would likely not be “on” that proposal, while alterations to policies and methods within the framework of the objectives may be within the scope of the proposal.⁸³

- (ii) Whether the s32 Report should have covered the issues raised in a submission:

...The extent and quality of an evaluation report under section 32 of the Act depends very much on the approach taken by the relevant regional or district council in preparing it.⁸⁴

⁷⁸ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290

⁷⁹ *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [53]

⁸⁰ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [36]

⁸¹ *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [88]; citing with approval *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [32]

⁸² *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [89] and [90]; citing with approval *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [37] and [38]

⁸³ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [37]

⁸⁴ Above at [34]

...

...Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s32 evaluation report and whether the issue raised in the submissions addresses one of those matters. The inquiry cannot simply be whether the s32 evaluation report did or did not address the issue raised in the submissions. Such an approach would enable a planning authority to ignore a relevant matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal with robust, notified and informed public participation.⁸⁵

- (iii) Whether there are statutory obligations, national or regional policy provisions or other operative plan provisions which bear on the issue raised in the submission.

147. Despite an apparent trend for local authorities to “tell” people what is and is not within scope, the authorities have consistently rejected taking a literal approach – *in terms of which anything which is expressed in the variation is open for challenge*⁸⁶ - to the issue. The High Court has determined this would leave:

... too much to the idiosyncrasies of the draftsman of the variation. Such an approach might unduly expand the scope of challenge, or it might be too restrictive, depending on the specific wording.⁸⁷

148. Consistent with this, the Environment Court has noted the fact a rezoning request does not fall within the area of a proposed plan change does not, in and of itself, make the submission out of scope⁸⁸. *Motor Machinists* held that *incidental or consequential changes* are permissible in any event. The Environment Court has observed that an example of a permissible, consequential change could be the rezoning of land adjacent to land proposed to be rezoned by a plan change⁸⁹.

149. The *Motor Machinist* finding about incidental or consequential changes was qualified to the following extent:

... provided that no substantial further s32 analysis is required to inform affected persons of the comparative merits of that change.⁹⁰

⁸⁵ Above at [39]

⁸⁶ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [49] citing *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [59]

⁸⁷ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [51]

⁸⁸ *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 214 at [24]

⁸⁹ *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [76]

⁹⁰ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [81]

150. The Environment Court has determined that *some care needs to be taken in assessing the validity of a submission* by reference to the coverage of a s32 report⁹¹. In light of this authority, I submit it is appropriate to read the *Motor Machinists'* qualifier through a lens of what the s32 report *should have* analysed, as opposed to only what it did. This avoids a potential difficulty identified in an earlier Environment Court decision⁹²:

It seems potentially unfair that the right of submitters to be heard should be strictly circumscribed by the proponents of a plan change if [use of] those resource possibly should be one of the other reasonably practicable options which should have been considered under section 32 RMA ...

Fairness to other parties

151. Whether a submission falls within the ambit of a plan change does not, alone, answer the *Clearwater* tests. An assessment of whether a planning instrument might be *appreciably amended without real opportunity for participation by those potentially affected* is required. This does not mean any and every unnotified change will create fairness issues.

152. As to how the risk of unfairness might be mitigated, the High Court in *Motor Machinists* noted⁹³:

Plainly, there is less risk of offending the second limb in the event that the further zoning change is merely consequential or incidental, and adequately assessed in the existing s32 analysis. Nor if the submitter takes the initiative and ensures the direct notification of those directly affected by the further changes submitted.

153. Consistent with the sentiment in this statement and its recognition of the importance of adjoining landowners, a later Environment Court decision noted⁹⁴:

Fair treatment of third parties and the public could be further enhanced by ensuring that neighbours of the site are expressly notified of TRL's proposed change in zoning when public notice of the relevant stage of the PDP dealing with industrial land in general and the site in particular is given.

154. The variation, while not of course as broad as the PDP, is, nevertheless, reasonably wide-ranging. The public notice dated 13 August 2022 advised submissions on Variation 1 noting it is in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. It records that the Amendment Act

⁹¹ *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [34]

⁹² *Well Smart Investment Holding (NZQN) Ltd v Queenstown Lakes District Council* [2015] NZEnvC 214 at [41]

⁹³ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [83]

⁹⁴ *Tussock Rise Ltd v Queenstown Lakes District Council* [2019] NZEnvC 111 at [86]

seeks to improve the housing supply in five of the largest urban areas in New Zealand and requires certain councils to adopt medium density residential standards (MDRS) in relevant residential areas.

155. The public notice identifies that in the Waimakariri District, these areas include Rangiora, Kaiapoi, Woodend (including Ravenswood) and Pegasus. It states within these areas, the general residential zone must be zoned to medium density residential zone.
156. The s32 report identified the variation is also seeking to rezone 86 hectares of land from the north east (65 hectares) and the south west (21 hectares) development areas from a development area in the PDP to medium density residential zone (MRZ). It purports to limit itself to just the relevant zones.
157. In my submission, the Independent Hearing Panel has scope to consider the merits of the rezoning for the reasons provided in the principal legal submissions.