SUMMARY OF LEGAL SUBMISSIONS
REGARDING HEARING STREAM 12E(B): PROCEDURAL ISSUES

INTRODUCTION

1. This summary of submissions is presented on behalf of Momentum Land Limited (**Momentum** or **MLL**), Mike Greer Homes NZ Limited (**Mike Greer Homes**), Bellgrove Rangiora Limited (**Bellgrove**) and Doncaster Developments Limited (**Doncaster**) – collectively the **Submitters**.

2. My submissions are confined to the procedural issue raised by Officer Report on Variation 1 (**Officer Report B**), namely whether the Submitters' submissions are within scope of Variation 1 to the WPDP. The matters discussed below elaborate on matters discussed within my Memorandum of Counsel filed for the Momentum in June 2023 in response to Minute 2 which addressed the scope of Variation 1.[1] Note that where this summary refers to "Momentum" that should be read as "the Submitters" unless the context indicates otherwise.

3. The Submitters seek Medium Density Zone (**MDZ**) pursuant to their respective submissions on Variation 1 because this zoning is more enabling of higher density residential development on their land. MDZ pursuant to Variation 1 is a more efficient way to achieve this outcome compared to the alternative methods of a subdivision consent application or a plan change process.

SUMMARY OF LEGAL SUBMISSIONS FOR MOMENTUM

Council legal opinion

Hierarchy of factors

4. There are several shortcomings with the guidance provided by the Council legal opinion on the question of scope dated 30 May 2023 (**Council legal opinion**).

5. First, the guidance provided by the Council legal opinion is significantly more conservative than expressed by caselaw authorities. A key reason for this is the way in which the Council legal opinion has arrange the various factors that bear on the question of scope into a hierarchy (see extract from paragraph 20 of the Council legal opinion at **Appendix A**). The matters listed (i)-(vi) are identified as "factors relevant to consider when making the precautionary

[1] Memorandum of Counsel for Momentum Land Limited in response to Minute 2: Procedural Issues dated 30 June 2023

assessment" of whether a submission can be construed as an "incidental or consequential extension of zoning changes". This approach is approach is not evidence from caselaw authority.

6. Instead case-law authorities identify the factors at (i)-(vi) in the Council legal opinion as matters that may assist the decision-maker to evaluate whether a submission is "on" the plan change or variation in question alongside the question of whether the change proposed by a submission is "incidental or consequential extension of zoning changes".

7. This point is illustrated in *In Option 5 Incorporated v Marlborough District Council*.[2] There is no suggestion in *Option 5* that the factors relating to the policy behind the variation, or the purpose of the variation, should be limited to assessing whether the submission can be construed as an "incidental or consequential extension of zoning changes". These factors are instead directed more generally towards establishing whether a submission is "on" the variation.

Relevance of section 32 report

8. The Council legal opinion includes the following assessment factor regarding the s32 evaluation: [3]

> *(iii) whether the request raises matters that should have been addressed in the s32 evaluation and report;*

9. However, the High Court in *Albany North Landowners v Auckland City Council*[4] did not accept that a submission would be out of scope if the relief raised is not specifically addressed in the original section 32 report.

10. Similarly, in *Bluehaven Management Ltd v Western Bay of Plenty District Council*[5] the Environment Court expressed reservations about reference to the s32 report as a determinative factor in assessing whether a submission is within scope of a plan change.

11. Given the contextual factors present in this case, the approach proposed in *Bluehaven* should be adopted to amend the s32 assessment factor identified by the Council legal opinion, as follows:

---

[2] *In Option 5 Incorporated v Marlborough District Council* (2009) 16 ELRNZ 1 (HC) at [27]-[29]
[3] Buddle Finlay opinion at [20]
[4] *Albany North Landowners v Auckland City Council* (2016) NZHC 138 at [130]-[132]
[5] *Bluehaven Management Ltd v Western Bay of Plenty District Council* (2016) NZEnvC 191 at [34]-[38]

(iii) whether the s32 evaluation prepared for the plan change addresses, or should have addressed, the matter raised in the submission; ~~request raises matters that should have been addressed in the s32 evaluation and report;~~

Variation 1 contextually different

12. Variation 1 is contextually very different to the circumstances of the case law discussed in the Council legal opinion for the following reasons:

(a) The Variation stems from the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**) which directs specified territorial authorities, including the Council, to notify an Intensification Planning Instrument (**IPI**). This contextual setting is highly relevant to identifying whether a submission falls within the ambit of the variation;

(b) Most of the caselaw authorities address relatively narrow plan changes and variations.[6] In this case, the breadth of the alteration to the status quo entailed by Variation 1 is informed by both the words used in Variation 1, and the purpose of the Amendment Act and the mandatory and non-mandatory directives it contains regarding preparation of an IPI[7]; and

(c) In particular, the Amendment Act expressly provides that a specified territorial authority may, when preparing an IPI, create new residential zones.[8] The key point here is that the empowering legislation provides Council a discretion to create new residential zones via an IPI.

13. Further, the decision by Council to include two new residential zones in Variation 1 at north east and south west Rangiora, is a key consideration in the assessment of scope and whether a submission is "on" the variation.

---

[6] See for example *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council* v *Motor Machinists Limited* [2013] NZHC 1290; *Option 5 Inc v Marlborough District Council* (2009) 16 ELRNZ 1 (HC); *Re Palmerston North Industrial and Residential Developments Ltd* [2014] NZEnvC 17

[7] Refer section 80E(1)(a) and 80E(1)(b) RMA for mandatory directives and discretionary directives.

[8] RMA s77G(4)

14. Section 86BA(1)(c)(i) provides that a rule in an IPI does not have immediate legal effect in an area of a new residential zone. This indicates that such zones are intended to be contestable through the Schedule 1 submission process and a submitter on an IPI such as Variation 1 may support or oppose the new zone, or propose a new residential zone either in addition to or in place of the zone proposed by the IPI.

Assessment of MLL submission against the relevant factors

Is the MLL land adjacent to land rezoned MRZ by Variation 1

15. The Momentum land is located immediately adjacent to land that is rezoned from General Residential Zone to MRZ by Variation 1 and therefore the MLL submission satisfies this assessment factor.

The policy behind Variation 1

16. In the present case, the Council has been directed by the Amendment Act to make changes to the Proposed Plan and the legislation contains highly directive provisions that provides; what must, and may, be included in the variation,[9] that the Council must notify the variation by a specific date,[10] and what functions need to be performed when undertaking the variation.[11]

17. The Cabinet Paper to the Cabinet Legislation Committee dated 30 September 2021 provides insight into the policy intent of the Amendment Act. It seeks approval to introduce the Resource Management (Enabling Housing Supply And Other Matters) Amendment Bill (the Bill) to rapidly accelerate housing supply where the demand for housing is high[12] and improve housing affordability in New Zealand's major urban areas.

18. These outcomes are entirely consistent with key objectives and policies of the NPS-UD that seek the same outcomes. This is important because NPS-UD provides the national policy framework that guides and informs implementation of the Amendment Act.

The purpose of the Variation 1

19. Given the directive nature of the Amendment Act, it follows that the purpose of Variation 1 is to implement the Amendment Act at the district level by

[9] RMA section 77G and Schedule 3, clause 33(3)(d)
[10] RMA Schedule 3, clause 33(2)(b)
[11] Supra at clause 33(3)(c)
[12] Cabinet paper at paragraph 1

accelerating housing supply and improving housing affordability in areas within the Waimakariri District where the demand for housing is high.

20. The discretion to create new residential zones via Variation 1 is not unfettered and instead is informed by whether the proposal achieves the objectives of the Proposed Plan[13] and whether the proposal gives effect to a national policy statement.[14]

21. The relevant policy statement in this case is the NPS-UD. With respect to creation of new residential zones, the purpose of Variation 1 is to implement the relevant provisions of the NPS-UD[15] by (among other matters) creating sufficient new residential zones incorporating MDRS to provide at least sufficient development capacity to meet expected demand for housing over the timeframes required by Policy 2.

22. The economic evidence for MLL is that additional residential zoned land is urgently required at Kaiapoi (and Rangiora). The MLL submission on Variation 1 seeks to address this issue by the creation of a new residential zone at Kaiapoi. On this basis the MLL submission is comfortably within the ambit of the policy intent and purpose of Variation 1.

<u>Whether the s32 evaluation prepared for the plan change addresses, or should have addressed, the matter raised in the submission</u>

23. Neither the s32 Intensification report or the separate section 32 Report for Variation 1 – Housing Intensification (Rezoning land in North East and South West Rangiora) (**s32 Rezoning Report**) contain an evaluation of the need for additional residential activity at Kaiapoi (or other relevant residential areas within the District).

24. MLL approached Council officers to include the MLL land in the notified IPI and was advised in July 2022 that time has run out for Council to include any more land into the Variation.[16] Whilst this is understandable in the circumstances, lack of resources within Council should not determine the scope of permissible submissions on Variation 1.

25. The case for MLL on Variation 1 is that:[17]

---

[13] RMA s32(1)(b)
[14] RMA s75(3)(a)
[15] NPS-UD Objective 1, Objective 2 and Objective 6 and Policy 2.
[16] Email communication between MLL and Council officers
[17] Refer to economic evidence and supplementary evidence of Fraser Colegrave for MLL

(a) there is a lack of available residential zoned land in and around Kaiapoi to meet ongoing demand caused by current and projected fast growth in the district's population;

(b) the new MDRS are unlikely to have much impact on district dwelling capacity, at least in the short-to-medium term; and

(c) additional supply like the Momentum land needs to be enabled for residential activity to meet NPS-UD obligations and to ensure that market supply keeps pace with demand at Kaiapoi; and

(d) the Momentum rezoning submission is an extremely significant increase in development capacity for the purposes of the NPS-UD.

26. In my view the circumstances of this case are akin to those discussed in the *Bluehaven* decision and the issue of housing supply at Kaiapoi should have been included in the s32 report for Variation 1.

<u>The scale and degree of difference between the submission request and the Variation</u>

27. The difference between MLL's submission request and variation 1 notified can be assessed by reference to land area, anticipated yield and the contribution that the Momentum land makes towards meeting projected housing demand within the District. Relevant circumstances include:

(a) the MLL request is on par with the land area proposed to be rezoned at Rangiora;

(b) the MLL request is on par with the anticipated yield (1000 new dwellings) from the land at Rangiora proposed to be rezoned; and

(c) the 720 dwellings supplied by the Momentum land equates to approximately 1.7 years' worth of the projected demand of 450 new dwellings per annum required to meet the Councils long-term growth projections.

28. The difference between MLL's rezoning request and Variation 1 as notified is considered modest and in keeping with the scale and degree of Variation 1.

<u>Whether the request gives rise to a real risk that persons potentially affected by changes sought have been denied an effective opportunity to participate in the decision-making process</u>

29. Kaiapoi sits alongside Rangiora as the largest urban area in the Waimakariri District. It is generally well-known that the population of the district has grown rapidly over the past 5-10 years.

30. The Momentum land presents features very similar to the greenfield land at Rangiora proposed for rezoning by Variation 1 and is identified for future residential growth in the WDDS 2048, the CRPS and the Proposed Plan.

31. In these circumstances a reasonably informed member of the public would understand that the Momentum land is an obvious candidate for rezoning to provide additional greenfields residential land at Kaiapoi. It is very unlikely that persons potentially affected by the rezoning sought by MLL's submission on Variation 1 have been denied an effective opportunity to participate in the decision-making process.

32. Finally, the absence of further submissions on both MLL's submissions (apart from CIAL) supports a finding that no persons in the community will be disenfranchised by the MLL submission on Variation 1.

Overall summary of relevant factors

33. In summary to this point, it is submitted that the MLL submission satisfies each of the various factors requiring assessment and it should therefore be considered as comfortably falling within the permissible scope of submissions on Variation 1.

REPLY TO SPEAKING NOTES FILED BY COUNSEL FOR THE COUNCIL ON SCOPE OF VARIATION 1

34. The Speaking Notes filed by Counsel for the Council of scope of Variation 1 (**Speaking Notes**) argue that the Panel can obtain useful guidance (albeit non-binding) from the recently released IHP recommendations on Christchurch City Council Plan Change 14 (**PC14**). The PC14 IHP concluded that it is outside of scope for submitters to request to rezone land that is not a relevant residential zone or urban non-residential zone.[18]

35. I disagree with that approach. In my view the recommendations by the Selwyn IHP on the issue of scope in respect of submissions on Variation 1 to the Selwyn Proposed District Plan (**SPDP**) are more relevant and applicable to the present case than the IHP recommendations on PC14.

36. PC14 is an IPI separate from a wider review of the Christchurch District Plan. Further, PC14 related only to mandatory requirements under the Enabling

[18] Refer Speaking Notes at [2.16]

Housing Supply legislation. PC14 did not contain any non-mandatory changes and accordingly does not include any new residential zones.

37. By comparison, Variation 1 to the WPDP is part of a wider District Plan Review process, albeit with the particular requirements of being an IPI. Further, Variation 1 includes non-mandatory changes, namely the proposed rezoning of RLZ land at Rolleston to MDZ.

Selwyn IHP recommendations on scope of submission on Variation 1 to the SPDP

38. Submissions on Variation 1 to the SPDP seeking to rezone land in and around Rolleston were addressed in the following report*; IHP Recommendation Report: V1 Part A Hearing 7: Rezoning Requests – Rolleston*.[19] A submitter named Yoursection sought to rezone 24 ha of land at 148-178 Lincoln Rolleston Road from GRUZ to MRZ. The Selwyn IHP report noted legal submissions by Yoursection that addressed the issue of scope and adopted the conclusions of those submissions, namely that the proposed rezoning request was 'in scope' because:[20]

> *(a) the submission reasonably falls within the ambit of Variation 1; and*
>
> *(b) the process of publicly notifying Variation 1 and the summary of submissions was such that would-be submitters have not been denied the opportunity to participate in the Variation 1 process; and*
>
> *(c) there is a direct relationship between any related provisions and the two mandatory requirements of RMA-EHS section 80E. Any related provisions must tie in with the MDRS or Policy 3 which is the case for the Yoursection rezoning request;*
>
> (d) *the purpose of the RMA-EHS is an important consideration in the interpretation of its provisions. As the RMA-EHS has no 'purpose' clause, the purpose is best derived from section 80E which relates to incorporating the MDRS and to give effect to NPS-UD Policy 3*.

39. The Selwyn IHP concluded that given the circumstances of the Yoursection rezoning request it did not find it to be 'out of scope'. The IHP recommended

[19] IHP Recommendation Report - V1 Part A Hearing 7: Rezoning Requests – Rolleston (Here)
[20] Supra at [35]

that the 24 ha of land subject to the Yoursection submission on Variation 1 be accepted and rezoned as MRZ.

Yoursection legal submission on issue of scope

40. Given that the legal submissions on scope by Yoursection were fundamental to the Selwyn IHP decision I have attached a copy of those submissions as **Appendix B**.

41. After discussing caselaw authorities, the Yoursection submissions place the legal principles into the context of Variation 1 and then they make the following important points:[21]

    (a) It is clear that the Variation is part of a wider District Plan review process albeit with the particular requirements of being an IPI;

    (b) Variation 1 is more akin to the circumstances of *Albany/ Tussock* than *Clearwater/ Motor Machinist* so in terms of what is "on" the plan change is broader and more flexible than the *Clearwater/ Motor Machinist* principles;

    (c) Given the above matters and given the scale and context of Variation 1, there is an obvious direct connection between the requested rezoning and the Variation. This is apparent from the Variation's public notice and the fact that the land is next to one of the proposed medium density zones proposed by the Variation;

    (d) Lack of Section 32 assessment at the time of the Variation's public notification is not a jurisdictional bar to the rezoning request;

    (e) There is little risk that people affected by the submission if accepted have been denied an opportunity to participate in the Variation process as:

        (i) the Public Notice for the Variation states that new medium density zones in Rolleston are proposed; and

        (ii) the Yoursection submission states that a MRZ is proposed for the land; and

[21] Opening Legal Submissions on behalf of Yoursection (V1-0025) at [43]-[49]

(iii) the Yoursection submission was correctly summarised by the Council including a link to the submission that also attached a location map.

(f) Therefore in these circumstances it could not reasonably be said that the rezoning request amounts to a *submissional side-wind* or "*out of left-field*" and therefore unfair to would-be submitters. There was in fact "*fair notice*" to the public of the Yoursection submission and of course further submissions were made on the rezoning request; and

(g) Finally in terms of fairness to Yoursection as the submitter, it would be unfair to refuse to consider the submission in these circumstances. There will be only IPI for the District and now is the appropriate time for Yoursection's rezoning request to be considered and in doing so further the aims of the NPS-UD by incorporating the MDRS on the land.

42. Overall, in my view the circumstances of Variation 1 to the WPDP are akin to those addressed by the Selwyn IHP recommendation report on Rolleston rezoning discussed above and therefore the Yoursection submissions on the issue of scope are directly applicable to the present case.

APPLICATION TO MOMENTUM, MIKE GREER HOMES, BELLGROVE AND DONCASTER

Momentum and Mike Greer Homes

43. Momentum and Mike Greer Homes filed submissions on the WPDP seeking MDZ for land at north and South Kaiapoi respectively. They each filed submissions on Variation 1 relating to the same land seeking MDZ.

Doncaster

44. Doncaster sought GRZ and MDZ for land at northwest Rangiora by submission on the WPDP. Doncaster submitted on Variation 1 and sought among other matters that the land be considered within scope of Variation 1 as if its submission on the WPDP has been accepted.

Bellgrove

45. Bellgrove filed a submission on the WPDP seeking MDZ for the land at Bellgrove North and Bellgrove South. Bellgrove submitted on Variation 1 in

support of MDZ for Bellgrove North (as notified in Variation 1) but did not expressly request MDZ for Bellgrove South. The primary reason for this is because Bellgrove supported the certification mechanism in the notified WPDP and considered that this would provide an appropriate and efficient pathway to achieve MDZ for South Bellgrove.

46. This point is noted in the email from Mark Allan dated 8 August 2024 attached at **Appendix C**. Mr Allan also highlights the consequential relief sought by Bellgrove and the references to MDZ throughout Bellgrove's Variation 1 submission relating to Bellgrove South.

47. In my view Mr Allan's email states a good case for rezoning Bellgrove South to MRZ under Variation 1 as a consequential amendment that addresses the matters raised by Bellgrove's submission on Variation 1.

48. If the Panel is concerned that the Bellgrove submission on Variation 1 does not provide adequate scope to rezone Bellgrove South to MDZ then in my submission the matters noted by Mr Allan nonetheless support the exercise of your powers under clause 99(2)(b) of Schedule 1 of the RMA.

49. This section provides that the recommendations made by an IHP to a specified territorial authority on the IPI "*are not limited to being within the scope of submissions made on the IPI.*"

50. I note that the Selwyn IHP used clause 99(2)(b) of Schedule 1 to rezone land at Springs Road, near Lincoln, to MDZ under Variation 1 in circumstances where the PDP hearing Panel had determined that residential land use is appropriate (the land was rezoned from GIZ to GRZ under the PWP). The Panel considered this approach was an efficient means of dealing with land that it considered should be enabled for residential use but which had not been zoned MRZ through Variation 1.[22]

Chris Fowler
22 August 2024

[22] IHP Recommendation Report - V1 Part A: Residential at [166]-[167] (Here)

APPENDIX A

Council legal opinion at [20]

In summary, and for the reasons given above, we consider that if a rezoning request relates to land that has not had its management regime (e.g. zoning) altered by Variation 1, then:

(a) If that land is not adjacent to land that has had its management regime (e.g. zoning) altered by Variation 1, then it will fall outside the scope of Variation 1.

(b) If that land is adjacent to land that has had its management regime (e.g. zoning) altered by Variation 1, then it can be considered as falling within the scope of Variation 1 only if, on a precautionary assessment of fact, circumstances, scale and degree, it can be considered as an "incidental or consequential extension of zoning changes" proposed by Variation 1. Factors relevant to consider when making the precautionary assessment include:

- *(i) the policy behind a variation;*
- *(ii) the purpose of the variation;*
- *(iii) whether the request raises matters that should have been addressed in the s32 evaluation and report;*
- *(iv) the scale and degree of difference between the submission request and the variation;*
- *(iv) whether the request gives rise to a real risk that persons potentially affected by changes sought have been denied an effective opportunity to participate in the decision-making process.*

Before the Independent Hearings Panel appointed by Selwyn District Council

In the Matter	of the Resource Management Act 1991 (**Act**)
And	
In the Matter	of Variation 1 to the Selwyn District Council District Plan Review

Opening Legal Submissions on behalf of Yoursection Limited (V1-0025)

Amanda Dewar | Barrister

Address | PO Box 7, Christchurch 8140

Email | amanda@amandadewar.com

Phone | 021 242 9175

INTRODUCTION/ BACKGROUND

1. These legal submissions are provided on behalf of Yoursection Limited, a submitter and further submitter on Variation 1 to the District Plan Review and in particular on Yoursection's submission to rezone land at 148- 178 Lincoln Rolleston Road from GRUZ to MDZ.

2. The land is zoned General Rural in the notified PDP and in Variation 1 but is subject to the Urban Growth Overlay. That Overlay gives effect to the CRPS, which identifies the Site as Future Development Area.

3. The land adjoins an area (to the immediate west across the road) which is proposed to be zoned Medium Density Residential under Variation 1. That area was zoned as General Rural with an Urban Growth Overlay in the notified PDP. Its proposed rezoning under Variation 1 reflects the recent decision on a private plan change request to rezone the area for residential purposes under the operative Selwyn District Plan (PC 75).

4. The Council's Section 42A report recommends that the rezoning submission is accepted together with some suggested amendments to the Yoursection provisions. Yoursection's witnesses discuss and respond to these suggested amendments in their evidence.

5. Other legal submissions have set out the general principles associated with the with preparing and changing a district plan. Given the level of agreement as between the Council Officers and Yoursection's witnesses I do not repeat those.

6. My legal submissions focus on the issue of scope as I understand there has been some suggestion that new rezoning requests (i.e. those not expressly included as part of the Variation) may not be able to be considered "on" Variation 1.

VARIATION 1

7. Variation 1 is the Councils Intensification Planning Instrument (**IPI**) that as a Tier 1 authority, it is required to prepare and notify in accordance with the RMA as amended by the Resource Management (Enabling Housing Supply & Other Matters) Amendment Act 2021 (**Amendment Act**).

8. Only Part A of the Variation is relevant to the Yoursection submission for which the Public Notice heading stated:

> "PROPOSED SELWYN DISTRICT PLAN VARIATION 1 INCORPORATING HOUSING INTENSIFICATION AND POLICY 3 AND TO CREATE NEW RESIDENTIAL ZONES BY REZONING OF LAND IN ROLLESTON, LINCOLN AND PREBBLETON FROM GENERAL RURAL ZONE (GRUZ) TO MEDIUM DENSITY RESIDENTIAL ZONE (MRZ)"

9. Then further in the body of the Public Notice:

> "The Council also proposes to create further new residential zones by rezoning the Housing Accords and Special Housing Area and COVID-19 Recovery areas in Rolleston, together with 47.2 hectares of land (comprising six different sites within the Future Development Area that are in between existing urban or private plan change areas) from GRUZ to MRZ. In addition, the Prebbleton Local Centre Zone is proposed to be rezoned to Town Centre Zone. The inclusion of these new residential zones will best give effect to the Amendment Act, including MDRS, the RMA and the NPS-UD by establishing well–functioning urban environments and providing for a variety of housing types."

AMENDMENT ACT

10. The Amendment Act does not include a purpose which is central to understanding any statute so that must be gleaned from other sources including the Amendment Act itself.

11. In terms of considering unclear or ambiguous legislation, in *Commerce Commission v Fonterra Co-operative Group Ltd*, Tipping J for the Supreme Court said[1]:

> *[22] … The meaning of an enactment must be ascertained from its text and in the light of its purpose. Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross-checked against purpose ... In determining purpose the Court must obviously have regard to both the immediate and the general legislative context. of relevance too may be the social, commercial or other objective of the enactment.*
>
> *…*
>
> *[24] Where, as here, the meaning is not clear on the face of the legislation, the Court will regard context and purpose as essential guides to meaning.*

12. The Explanatory Note to the Amendment Bill starts with the following (emphasis added):[2]

[1] Commerce Commission v Fonterra Co-operative Group Ltd, [2007] NZSC 36, [2007] 3 NZLR 767.
[2] page 7.

This Bill, which amends the Resource Management Act 1991 (the RMA), ***seeks to rapidly accelerate the supply of housing where the demand for housing is high****. This will help to address some of the issues with housing choice and affordability that Aotearoa New Zealand currently faces in its largest cities.*

This Bill requires territorial authorities in Aotearoa New Zealand's major cities to set more permissive land use regulations ***that will enable greater intensification in urban areas*** *by bringing forward and strengthening the National Policy Statement on Urban Development (the NPS-UD).*

13. "Urban environment" is defined to include land that is intended to be predominantly urban in character.

14. Section 77G imposes a duty on territorial authorities to incorporate the MDRS into every relevant residential zone, and to give effect to policy 3 or 5 (as applicable) in every residential zone in an urban environment. This section can be described as providing the starting point for the Council's IPI.

15. "Relevant residential zone" is defined as:

(a) means all residential zones; but

(b) does not include—

(i) a large lot residential zone:

(ii) an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment:

(iii) an offshore island:

(iv) to avoid doubt, a settlement zone;

16. "Residential zone" is defined as meaning *all residential zones listed in standard 8 of the National Planning Standard or an equivalent zone*.

17. Section 77G (4) provides that "*when carrying out its functions under this section, a specified territorial authority may create new residential zones or amend existing residential zones*".

18. "New residential zone" is defined as "*an area proposed to become a relevant residential zone that is not shown in a district plan as a residential zone*".

19. "Every residential zone" and "all residential zones" are not separately defined.

20. The purpose of the Amendment Act is then reflected in section 80E, through:

    (a) specifying mandatory requirements that must be included in an IPI namely:

        (i) to incorporate the MDRS; and

        (ii) give effect to the relevant policies from the NPS-UD and in this case Policy 3.

    (b) allowing for non-mandatory related provisions including objectives, policies, rules, standards, and zones, that support or are consequential on the MDRS or the applicable policies of the NPS-UD; and

    (c) further defining related provisions as:

        "…. also includes provisions that relate to any of the following, without limitation:

        (a) district-wide matters:

        (b) earthworks:

        (c) fencing:

        (d) infrastructure:

        (e) qualifying matters identified in accordance with section 771 or 770:

        (f) storm water management (including permeability and hydraulic neutrality):

        (g) subdivision of land"

        [my emphasis]

21. Notably Section 80E does not restrict the IPI to all residential zones or relevant residential zones rather the key considerations are that the provision must incorporate the MDRS and gives effect to the relevant NPS-UD policies in relation to the urban environment.

22. Section 80G(1)(b) precludes a territorial authority from using the IPI other than the uses specified in section 80E which together limits the content of an IPI.

23. Section 99 provides that your recommendations to the Council must relate to a matter identified during the hearing but is not limited to being within the scope of submissions made on the IPI.

SCOPE – WHAT IS "ON" THE VARIATION?

24. There are two elements of scope at play here. Firstly the usual general principles associated with scope that stem from well-known cases such as *Motor Machinists* and *Albany* v *Auckland Council* discussed in more detail below. Then secondly more focussed principles associated with the Amendment Act and in particular Section 80E which effectively set the parameters of what can be included in an IPI and therefore what can be sought by way of submission.

General Principles

25. The starting point for deciding whether a submission is "on" can be found in *Clearwater Resort Ltd v Christchurch City Council*[3]

26. *Clearwater* concerned a narrow variation to a proposed Christchurch district plan in relation to discrete airport noise policy matters following decisions on wider airport matters but prior to the district plan becoming operative. Put simply, the submission sought to challenge two of the noise contours (i.e. methods not policy) for the airport which had already been the subject of hearing and decision.

27. The Court's decision set out a two limbed test:

    (a) A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.

    (b) If the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is

[3] HC Christchurch AP34/03, 14 March 2003

a powerful consideration against any argument that the submission is truly "on" the variation.

28. This was further refined in *Palmerston North City Council v Motor Machinists Ltd*[4] where the Court held that:

(a) As to the first limb, what is required is a direct connection between the submission and the degree of notified change proposed to the plan i.e. the submission must reasonably fall within the ambit of the plan change.

(b) As to the second limb, the question is whether there is a real risk that persons potentially directly affected by the changes proposed in the submission have been denied an effective response to those changes.

29. In *Motor Machinists* the plan change in question concerned amendments to the Inner and Outer business zones in Palmerston North and was not part of a district plan review. The submission in question requested a business zone for 2 properties that were not connected to any newly zoned land subject to the plan change.

30. The Court found that *"given the manner in which PPC1 has been promulgated, and its focus on main road rezoning, the inclusion of a rezoning of two isolated lots in a side street can indeed be said to "come from left field".*

31. However, it is important to acknowledge that even *Motor Machinists* includes an exception stating that "*the Clearwater approach does not exclude altogether zoning extension by submission*" and that incidental or consequential extension of zoning changes may be permissible[5].

32. In *Albany* v *Auckland Council*[6]*,* the High Court was considering an appeal from the Proposed Auckland Unitary Plan review process (**PAUP**). This was undertaken under special legislation but with links back to the RMA 1st Schedule process. Here the Court made the distinction between a variation (as it was referring to the *Clearwater* decision) and a full plan review.

[4] [2013] NZRMA 519
[5] Ibid Para [81]
[6] [2016] NZHC 138

33. The Court found that the PAUP planning process was far removed from the "*relatively discrete variations or plan changes under examination in Clearwater, Option 5 and Motor Machinists"* and that *"presumptively every aspect of the status quo in planning terms was address by the PAUP"* and further that the *"scope for a coherent submission to be "on" the PAUP in the sense used by William Young J was therefore very wide"*[7].

34. Importantly the High Court in *Albany* did not accept that a submission on the PAUP would be out of scope if the relief raised in the submission was not specifically addressed in the original s 32 report doubting that this could apply to a full district plan review[8] noting *"that Section 32 does not purport to fix the final frame of the instrument as a whole or an individual provision. The section 32 report is amenable to submissional challenge and there is no presumption that the provisions of the proposed plan are correct or appropriate on notification"*[9].

35. In *Bluehaven Management Ltd v Western Bay of Plenty District Council*[10] the Court held that where a s32 evaluation should have been considered for the appellants land "*the fact that it didn't was not a jurisdictional bar to finding that the appellant's submission was beyond scope*[11]".

36. In *Tussock Rise Ltd v Queenstown Lakes District Council*[12], the Environment Court considered a strike out application on the basis that the submission was not "on" the stage 1 Plan Change of the District Plan review.

37. The *Tussock Rise* decision points to the apparent difference in assessing scope as between "*the strict rules of engagement prescribed by the High Court for submissions on plan changes and the much looser rules for submissions on new (replacement) plans*" and notes that much of the difference can be understood in the context of specific plan changes[13].

38. In reaching its conclusions the Court considered the issue of fairness. In relation to the submitter, the Court found that excluding the submission would not be fair to the submitter. Further the Court held it was no answer

[7] Ibid [129]
[8] Ibid [130]
[9] Ibid [132]
[10] [2016] NZEnvC 191
[11] Ibid para [59]
[12] [2019] NZENC 111
[13] Ibid para [62]

for the Council to say that the zone in question would be the subject of a later stage noting that the difficulty with this is that crucial arguments as to allocation of land may have been resolved at the first stage[14].

39. In relation to persons not before the Court, the Court accepted that this is the dominant consideration acknowledging in particular *Motor Machinists* where the Court opined that *"to override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources"*.[15]

40. However I note that in *Albany* the Court cautioned that the submissional side-wind issue *"must be considered alongside the equally important consideration of enabling people and communities to provide for their wellbeing in the context of a 30 year region-wide plan, via the submission process*[16].

41. The Court in *Tussock Hills* found that because the submissions, summary of submissions (and appeal) were clear that the submitter sought a new zone for the property in question that there was fair notice to the public of the issues raised by the submitter.

42. Overall the Court took a broader approach considering the scale and context of the Council's staged review process and the particular plan change together with the fact that the land was next to one of the newly proposed residential zones. The Court held that the submission was within scope.

43. So putting these principles and later refinements into the context of Variation 1, is clear that Part A of the Variation is part of a wider district plan review process albeit with the particular requirements of being an IPI (discussed in more detail below).

44. In my submission Variation 1 is more akin to the circumstances of *Albany/ Tussock* than *Clearwater/ Motor Machinist* so in terms of what is "on" the plan change is broader and more flexible than the *Clearwater/ Motor Machinist* principles. This is perhaps also reflected in Section 99 discussed

[14] Tussock para [78]
[15] Ibid para [79]
[16] Albany para [133]

above which extends the Panels scope for its recommendations as a result of submissions.

45. Given the above matters and given the scale and context of Variation 1, in my submission there is an obvious direct connection between the requested rezoning and the Variation. This is apparent from the Variation's public notice and the fact that the land is next to one of the proposed medium density zones proposed by the Variation.

46. Further lack of Section 32 assessment at the time of the Variation's public notification is not a jurisdictional bar to the rezoning request because:

    (a) the *Albany* approach is more appropriate in the particular circumstances of Variation 1;

    (b) the land is already identified as being appropriate for urban development in the PDP and CRPS and therefore the fundamental merits of rezoning the land for residential purposes have arguably already been confirmed;

    (c) Yoursection has provided a comprehensive Section 32 analysis that has cured any perceived lack of assessment in any event.

47. Further there is little risk that people affected by the submission if accepted have been denied an opportunity to participate in the Variation process as:

    (a) the Public Notice for the Variation states that new medium density zones in Rolleston are proposed; and

    (b) the Submission states that a MRZ is proposed for the land; and

    (c) the submission was correctly summarised by the Council including a link to the submission that also attached a location map.

48. Therefore in these circumstances it could not reasonably be said that the rezoning request amounts to a *submissional side-wind* or "*out of left-field*" and therefore unfair to would-be submitters. There was in fact "*fair notice*" to the public of the Yoursection submission and of course further submissions were made on the rezoning request.

49. Finally in terms of fairness to Yoursection as the submitter, it would be unfair to refuse to consider the submission in these circumstances. There will be only IPI for the District and now is the appropriate time for Yoursection's rezoning request to be considered and in doing so further the aims of the NPS-UD by incorporating the MDRS on the land.

Additional Amendment Act Principles

50. As discussed above, the scope of an IPI and hence what can be considered to be "on" the IPI is ultimately established by Section 80E. It is also clear that this may include new zones which support or are consequential on the MDRS and (relevantly) policies 3 and 4 of the NPS-UD.

51. Hence the key requirement in these particular circumstances is whether the provisions sought as part of the Yoursection rezoning request are "*related provisions…that support or are consequential on…the MDRS…*".

52. This has recently been addressed in a decision of the Environment Court in *Waikanae Land Company Limited v Kapiti Coast District Council*[17] and while quite factually distinct provides some guiding principles:

    (a) because the IPI process has limited rights of appeal a "*very careful interpretation of the statutory provisions in light of their text and purpose*" is required especially when taking away development rights[18];

    (b) "*as wide as territorial authorities' powers may seem to be in undertaking the IPI process it is apparent that they are not open ended. They are confined to the matters identified in a number of relevant provisions.*"[19];

    (c) "*there is in fact an inherent limitation in the matters which fall within the related matters category, that is apparent on reading s80E(1)(b)(iii) …*"[20];

[17] [2023] NZEnvC 056
[18] Ibid Para 21
[19] Ibid Para 23
[20] Ibid Para 28

(d) The related provisions must refer back to the overarching gateway in s80E(1)(b) so that the related provisions may only be included in an IPI if they support or are consequential on the MDRS[21]

53. I note that as far as I am aware this is the only Environment Court decision on s80E to date.

54. So in my submission bearing in mind these additional principles the rezoning request can also be considered to be "on" Variation 1 because the related provisions support or are consequential on the MDRS for the following reasons:

(a) they seek to incorporate the MDRS standards on the land subject to the submission;

(b) the land is part of the urban environment as that term in defined in the Amendment Act as well as being part of an FDA and Urban Growth Overlay in the proposed District Plan and CRPS;

(c) the land adjoins, and would represent a small extension to, one of the FDAs already proposed to be rezoned Medium Density Residential through Variation 1 (**next door FDA**);

(d) the Section 32 assessment undertaken by Yoursection has concluded the rezoning would give effect to the same key outcomes as the next door FDA;

(e) the related provisions meet the objectives and policies of the MDRS (which reflect the NPS-UD) including Objective 1 that seeks "*a well-functioning urban environment that enables people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and into the future*";

(f) the relief sought is indistinguishable from those other FDA areas and can be approved on the same basis i.e.. The rezoning would support the MDRS and the broader objectives of the NPS-UD and this is apparent from the evidence of Mr Colegrave.

[21] Ibid Para 30

CONCLUSION

55. It is clear that in terms of scope:

    (a) the submission must reasonably fall within the ambit of the Variation; and

    (b) the process of publicly notifying the Variation and the summary of submissions must have been such that would-be submitters have not been denied the opportunity to participate in the Variation process; and

    (c) there must be a direct relationship between any related provisions and the two mandatory requirements of section 80E. Thus any related provisions must tie in with the MDRS or Policy 3;

    (d) the purpose of the Amendment Act is an important consideration in the interpretation of its provisions.

56. In my submission, and for the reasons explained in detail above, the rezoning request is within the scope of Part A of Variation 1 and can properly be considered by the Hearings Panel.

57. Ms Seaton's planning evidence sets out how the rezoning request meets the statutory tests and explains what changes have been made in response to the Section 42A Report. In the few instances where those suggested changes have not been supported, she sets out why the further amendments have been proposed that will be the most appropriate and effective way to achieve the purpose of the RMA as modified by the Amendment Act.

Amanda Dewar

Counsel for Yoursection Limited

12 May 2023

Chris Fowler | SAUNDERS & CO

From: Mark Allan <Mark.Allan@aurecongroup.com>
Sent: Thursday, 8 August 2024 2:46 pm
To: Michelle Ruske-Anderson; Gabi Newman | SAUNDERS & CO
Cc: Chris Fowler | SAUNDERS & CO
Subject: RE: s42A report question + Re: Evidence filed with WDC and hearing preparation - Stream 12E - Bellgrove Rangiora Limited

Document Id: 6801741
Document Name: RE: s42A report question + Re: Evidence filed with WDC and hearing preparation - Stream 12E - Bellgrove Rangiora Limited
Filed: 126120.5

The V1 submission was prepared at a time when we didn't have sufficient technical evidence re. Bellgrove South and were comfortable the certification mechanism would provide an appropriate / efficient pathway to achieve the same result. So no, the submission didn't seek rezoning of Bellgrove South. That position has obviously since changed with certification coming under attack and falling out of favour. The submission does include the 'catch-all'...

Relief sought

25. BRL seeks the following decision:

(a) That Variation 1 be amended to reflect the matters raised in this submission; and/or

(b) Such further or other consequential relief as may be required to give effect to this submission, including consequential amendments to the PWDP that address the matters raised by BRL

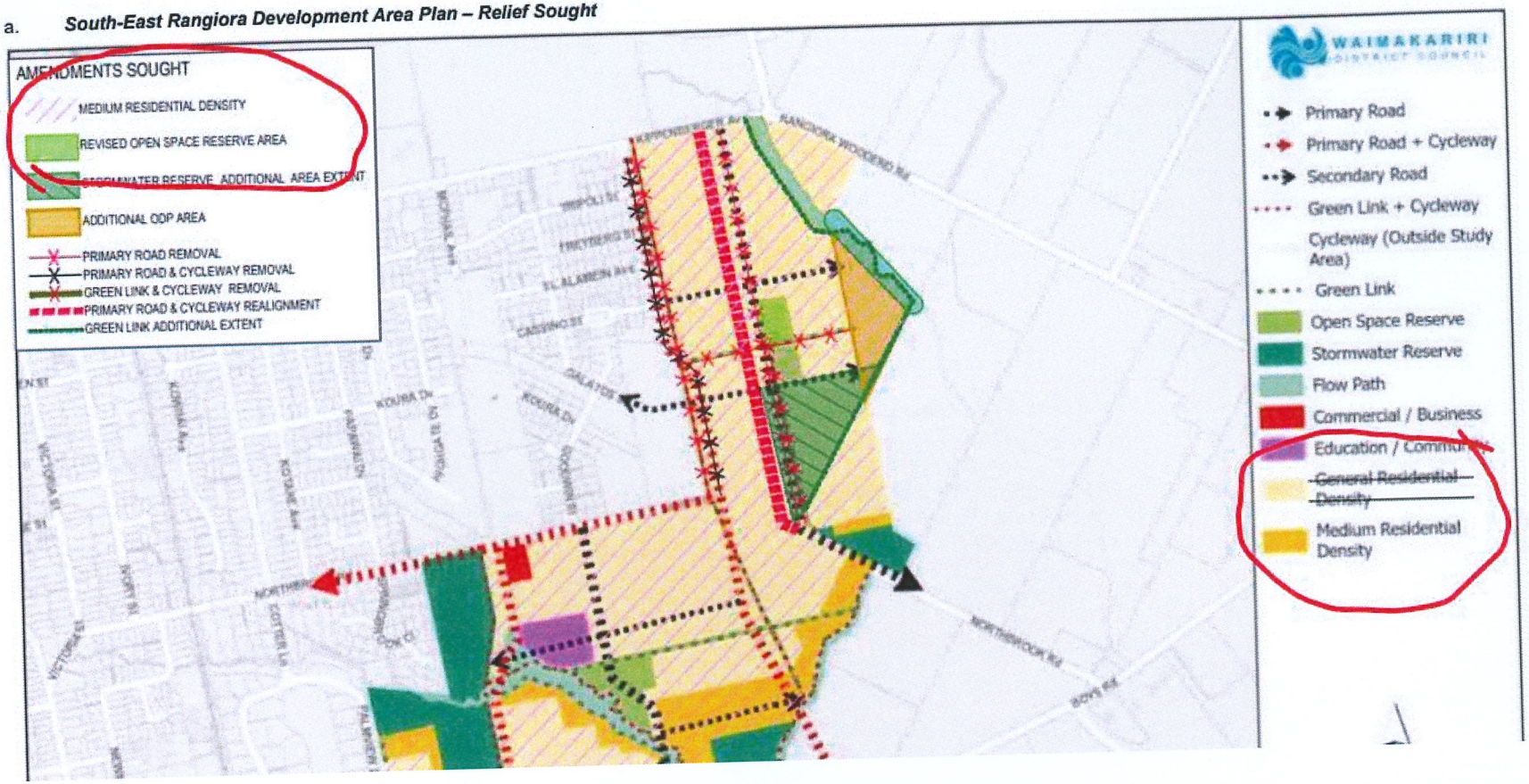
The submission (Attachment 4: Submission Table) supports certification on the basis that it would enable the Bellgrove South land to assume MRZ.

			Zone Built Form Standards.
South – East Rangiora Development Area			
Policy DEV-SER-P2 Subdivision and Activites	*Only allow subdivision and activities where:* 1. *after certification by the District Council's Chief Executive Officer or their delegate, it is in accordance with the objectives, policies and rules of the ~~General~~ **Medium Density** Residential Zone, Local Centre Zone and the relevant District wide provisions; and* 2. *prior to certification by the District Council's Chief Executive Officer or their delegate, it will not undermine or inhibit the future development of the Development Area as per the South East Rangiora Outline Development Plan.*	**Support** The amendment is consistent with the EHS Act and will enable following certification the Bellgrove South land to assume MRZ.	Retain as notified.
Activity Rules - if certification has been approved	*Variation 1 proposes to remove the activity rules related to the General Residential Zone.*	**Support** The amendment is consistent with the EHS Act and will enable following certification the Bellgrove South land to assume MRZ.	Retain as notified.
DEV-SER-R1	**Activity status: RDIS**	**Oppose**	Amend wording:

And changes were sought to the SER-ODP to reflect the area would assume MRZ...

	11. MRZ-R~~298~~ to MRZ-R~~4039~~; and *12. all Medium Density Residential Zone Built Form Standards.*		
South-East Rangiora Area Objectives and Policies, Standards, and Outline Development Plan	*No changes notified to Appendix DEV-SER-APP1 - South East Rangiora Outline Development Plan as part of Variation 1.*	**Oppose** The South-East Rangiora Development Area chapter needs to be updated to reflect the ODP area will assume MRZ following certification.	Amend Appendix DEV-SER-APP1 to r 1. Land within the SER ODP will assu (refer Attachment 6) following certi 2. Remove the wording for the SER-((Land Use Plan) which contains re the General Residential Zone and reference to this zone from the Lar ODP; 3. Remove reference to a 200m² min size for the MRZ given this contrac proposed Subdivision Standard S1 4. Amend the Overall Development P Use Plan, Movement Network Plar Space and Stormwater Reserve Pl Water and Wastewater Network Pl **Attachment 6.**

a. ***South-East Rangiora Development Area Plan – Relief Sought***



A case for "other consequential relief / amendments to the PWDP" to give effect to the submission?

Mark Allan BREP (Hons)
Director, Environment and Planning, Aurecon
M +64 21 936 468

From: Michelle Ruske-Anderson <Michelle.Ruske@aurecongroup.com>
Sent: Thursday, August 8, 2024 1:53 PM
To: Gabi Newman | SAUNDERS & CO <Gabi.Newman@saunders.co.nz>; Mark Allan <Mark.Allan@aurecongroup.com>