

**BEFORE THE SELWYN DISTRICT COUNCIL**

**IN THE MATTER** of the Local Government Act 2002

**AND**

**IN THE MATTER** of a submission by Trents Road  
Developments Ltd on the draft Rural  
Residential Strategy 2013

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**Submissions on behalf of Trents Road Developments**

**10 APRIL 2014**

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**Summary of case for submitter**

1. Trents Road Development Limited (*TRD*) seeks the opportunity under the Selwyn District Rural Residential Strategy (*RRS*) to develop their land for Rural Residential (*RR*) purposes. *TRD*'s aim is to unlock some further development potential in the land for practical reasons including succession planning. *TRD* has no particular interest in developing the land to urban densities.
2. There is currently a risk that if such opportunities are not achievable through the *RRS* then the land will be fragmented to the extent allowed under the Selwyn District Plan (*the SDP*).
3. The proposed "future proofed" development represents best practice urban design and planning. It is not evidence of an expectation for full urban development on the part of the current owners but rather a means of protecting a possible future urban growth path that has been identified by the Selwyn District Council (*the Council*).
4. *TRD* accepts there can be no expectation of urban development if the land is zoned for *RR* purposes and such redevelopment has never been their goal. It is considered that denying the ability for *RR* development would be unreasonable in the circumstances and a lost opportunity.
5. Issues:
  - 5.1. Local Government Act context;
  - 5.2. Consistency with, and giving effect to, the Land Use Recovery Plan (*LURP*)/Canterbury Regional Policy Statement (*CRPS*);
    - including response to Council's legal opinion;

### 5.3. Responses to issues raised in or by officers report.

#### Overview

6. The consideration of land within the Selwyn District for rural residential rezoning can only occur in accordance with a rural residential development strategy adopted by the Council under the Local Government Act 2002 (*the LGA02*)<sup>1</sup>. The LURP directs the Council to prepare such a strategy to provide housing choice as part of the recovery of greater Christchurch.
7. Relevantly, the location must:
  - 7.1. be outside any greenfield priority areas for urban development and existing urban areas;
  - 7.2. be able to be economically provided with reticulated sewer and water supply and appropriate stormwater treatment and disposal;
  - 7.3. have legal and physical access to a road which is not a strategic or arterial road or state highway;
  - 7.4. avoid, not compromise, or support a number of assessment criteria, including, where adjacent or in close proximity to an existing urban or rural residential area, be able to be integrated into or consolidated with the settlement;
  - 7.5. be shown on an outline development plan (*ODP*) setting out an integrated design for subdivision and land use, and provides for the long term maintenance of rural residential character; and
  - 7.6. not be regarded as in transition to full urban development.
8. TRD say that its land and its proposed development for RR purposes (*the TRD proposal*) is consistent with these requirements, and the criteria and pre-requisites included in the RRS itself.
9. The TRD proposal includes "future proofing" elements. These has been included to recognise the Council's inclusion of the TRD land in a possible (or preferred) future growth path for Prebbleton. The future proofing elements of the TRD proposal does not represent an expectation that further development of the land to urban densities will occur. It simply ensures that such future development, if it should occur in the future, can be enabled without creating additional difficulties.
10. Rather than providing evidence of any expectation that the TRD proposal represents a transition to full urban development, future proofing represents best practice in the circumstances of this land. As the land lies in relatively close proximity to Prebbleton, it is required to integrate with it, and with whatever form the zoning of the intervening land may take. The design approach taken means that the ODP for the TRD land will not only provide for its long term

<sup>1</sup> Policy 6.3.9, Chapter 6, Canterbury Regional Policy Statement

maintenance as a rural residential development but will also be capable of enabling other forms of development, if they were to become an option for growth preferred by the Council in the future.

### **The TRD land, proposal and relief sought in submission**

11. The TRD land<sup>2</sup> is fully described in the planning evidence of Ms Anna McKenzie. That evidence also describes the proposal that TRD has prepared for the land. The TRD proposal, and its future proofing elements and their benefits, is also described in greater detail in the evidence of urban designer Ms Nicole Lauenstein.
12. The proposal, in brief, is to develop the land for rural residential uses but include design features to enable urban development should that ever become an option.
13. We record that the relief sought in the original TRD submission has been amended by deleting requests to change certain parts of the RRS and to proposed plan change 32 to the SDP. This further clarifies that TRD has no expectation that the proposal it has presented is intended to create an urban development in waiting. RR development is not in 'interim solution' for TRD<sup>3</sup>.
14. Accordingly, the relief now sought by TRD is:
  - 14.1. That the Council adopt the Draft RRS, subject to the inclusion of the Site as suitable for future proofed, rural residential area;
  - 14.2. Amend the RRS as shown in the schedule of changes included as Appendix 4 with Ms Mackenzie's evidence. These include a description of the Site and a statement of benefits and efficiencies of its inclusion as a RR site in the RRS, following the format and approach for the preliminary areas included in the Draft RRS; and amendment to the 'Rural residential form, function and criteria' to protect rather than avoid obvious residential growth paths, in order to be consistent with the LURP;
  - 14.3. Add an additional section to the RRS called 'Monitoring and Review' which refers to the CRPS monitoring and review requirement and states that the RRS will be reviewed regularly to reflect the findings of this work (or similar such wording);
  - 14.4. That in relation to Action 18 of the LURP, the Council recommend to the Minister of Earthquake Recovery that the land subject of this submission be rezoned Living 3 without any further public process; or a streamlined process be adopted which allows for public consultation on rural residential locations that were not included in the Draft RRS<sup>4</sup>; and

<sup>2</sup> 22.315ha of land, southwest of Prebbleton.

<sup>3</sup> As suggested by the Council's reporting officer.

<sup>4</sup> Ms McKenzie notes that this relief, while not strictly within the scope of the draft RRS, is included to suggest a means of facilitating the RRS in a timely fashion.

- 14.5. Any consequential relief to give effect to the intent of TRD's submission.

#### **Local Government Act context**

15. The RRS is being developed using the special consultative process under the LGA02 but as the officers report notes<sup>5</sup> it will have far reaching impacts on processes under the Resource Management Act regarding a persons right to apply to a local authority to develop their land, especially by way of a private plan change.
16. In this regard the following comments are considered relevant:
- 16.1. The changes to the Canterbury Regional Policy Statement (CRPS) and District Plans under the Land Use Recovery Plan (LURP) have been made under the Canterbury Earthquake recovery Act (CER Act) for the purpose of aiding the recovery of greater Christchurch following the Canterbury earthquakes. The effects of the changes, in particular to Chapter 6 to the CRPS, have been significant and their effect will clearly continue through the recovery period; though that period has not been defined with any great specificity<sup>6</sup>. However, after that period has passed it must be an overstatement to say that the planning environment that then exists will never change. Planning and development are dynamic processes and this will not change;
- 16.2. In other words, the changes to the CRPS by the LURP will be reviewed in time. While they are operative they must be given effect but that is as far as it goes: the policies that are now operative are not immutable, nor are they to be applied slavishly or in isolation; and
- 16.3. It is in this context that the concept of future proofing makes considerable sense. Future proofing does not mean that inconsistent development is being promoted that will not give effect to the relevant policies, remembering also that those policies are in RMA documents while the RRS is being considered under the LGA02. It is merely ensuring that, should the relevant policies change and allow for development that is currently inconsistent, that option is not foreclosed and can be enabled in practice with little difficulty<sup>7</sup>.
17. Under the LGA02 and the special consultative procedure, in respect of significant decision<sup>8</sup> like the RRS, the Council is required under Part 6 of the LGA02 to identify and assess all reasonably practicable options for the achievement of the objective of a decision<sup>9</sup>. Such decisions need to identify any "significant inconsistencies" with other relevant plans<sup>10</sup>. And where consultation is

<sup>5</sup> At paragraph 1.25, Officer's report on submissions to the [RRS] hearing panel (*officer's report*).

<sup>6</sup> The Canterbury Earthquake Recovery Act 2011, under which the LURP and the RRS are being developed, expires on 18 April 2016, though the LURP and CRPS have projected, for recovery purposes, to 2028.

<sup>7</sup> This does not mean that the process to change the policies themselves would be simple or straightforward, by that stage it seems likely that the First Schedule process would again be required.

<sup>8</sup> Section 76, LGA02.

<sup>9</sup> Section 77, LGA02.

<sup>10</sup> Section 80, LGA02, noting that the section appears to contemplate that inconsistencies can remain

undertaken, it must be undertaken in accordance with particular principles<sup>11</sup>, which include that views presented to the Council should be received with an open mind and given due consideration<sup>12</sup>.

18. Throughout the process of decision making the LGA02 reserves significant discretion to the Council to determine the nature of the process as it sees fit in accordance with the significance of the issues<sup>13</sup>. As with any discretion it must be exercised reasonably<sup>14</sup>.
19. The changes to the LGA02 in December 2012 are also noted. These made changes to the purpose of local government<sup>15</sup>, which includes meeting the current *and future* needs of communities for good quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost effective for households and businesses. With *good quality* meaning efficient, effective and appropriate infrastructure, services and performance for *present and anticipated future circumstances*.
20. Under the head of the LGA02 context TRD notes, and registers its disappointment, that in attempting to finalise its evidence for this hearing it has been unable to discuss issues and solutions with the Council's in-house experts or consultants. Further TRD understands that the reluctance to speak with their consultant was as a result of their instructions. This approach by the Council raises issues in terms of the LGA's requirements for consultation and arguably constitutes a possible ground for seeking judicial review of the Council's decisions. However, the most disappointing outcome is that it has not enabled the hearing panel to receive the best information relating to issues and solutions that might otherwise have been possible.
21. We note that in an opinion provided to the Council by its lawyers<sup>16</sup> on the appropriateness of (and jurisdiction for) allowing the TRD land into the RRS, one of the issues raised was the impact of section 77 and 80 of the LGA02. In our submission the issue raised does not arise as the inclusion of the land is consistent with and would "give effect to" the relevant policies in the CRPS as discussed next.

### **Consistency with the LURP/CRPS**

22. The LURP inserted Chapter 6 to the CRPS which governs residential and business development in a way that accords with the Recovery Strategy for Greater Christchurch and enabling of people and communities. Chapter 6 includes

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without to offended plan having to be amended. This accords with a principled approach to making the right decision to fit the circumstances.

<sup>11</sup> Section 82, LGA02.

<sup>12</sup> Section 82(1)(e), LGA02

<sup>13</sup> Section 79, LGA02, and in respect of other matters for which discretion is reserve, such as consultation under section 82.

<sup>14</sup> At least to the extent of avoiding acting unreasonably in a *Wednesbury* sense, though unless specifically required under the Act, it may not be to the higher standard discussed in *Canterbury Regional Council v Independent Fisheries* [201] NZCA 601 at paras [21] and [22].

<sup>15</sup> Section 10, LGA02

<sup>16</sup> Letter dated 2 April 2014 from Adderley Head, Paul Rogers. We note that opinions were also provided on behalf of TRD and the Dryden Trust. TRD records its agreement with and adoption of the further arguments raised on behalf of Dryden Trust in respect of this issue.

issues, objectives, policies and methods aimed at managing RR development. These include Issue 6.1.5, which recognises that unconstrained RR development *can* change rural character, create reverse sensitivity effects, disperse settlement patterns and result in inefficient forms of development and provision of services.

23. The explanation notes some issues that can arise from RR development including the *"...pressure for future urbanisation, which is difficult to achieve in an effective manner given that the land use pattern has been established for a different purpose"*.
24. Objective 6.2.2 relates to urban form and settlement patterns and implies that RR development occurs *"outside of existing urban and priority areas"*.

### **Policy 6.3.9**

25. Without diminishing the importance of considering and applying all the relevant policies in Chapter 6 of the CRPS in a holistic manner, and recognising that an activity may be supported by some policies but not others<sup>17</sup>, the aspects of policy 6.3.9 that have been focused on as being of particular relevance are sub-parts (6) and (7) which provide:
  - (6) An outline development plan is prepared which sets out an integrated design for subdivision and land use, and provides for the long term maintenance of rural residential character.
  - (7) A rural residential development area shall not be regarded as in transition to full urban development.
26. Taking each in turn, in respect of 6.3.9(6), the ODP that is proposed for the TRD land will provide for the long term maintenance of rural residential character, for as long as that character needs to be maintained. The use in the policy of the indeterminate temporal marker 'long term' is considered unhelpful, and the remainder of the policy and chapter give no clear indication of how long 'long term' might be. But in any event, the fact that the ODP can also include the future proofing aspects does not mean that long term rural residential character cannot or will not be maintained. There is no inconsistency.
27. Similarly for 6.3.9(7)<sup>18</sup>, the imperative is that rural residential development *shall not be regarded as in transition to full urban development*. The existence or otherwise of future proofing aspects does not change that imperative. TRD understands and accepts that situation, and have no expectation that urban densities of residential development will necessarily be provided for in the foreseeable future.

<sup>17</sup> With the decision makers duty being to provide a reasoned decision with consideration of all material factors: *Environmental Defence Society Incorporated & Anor v The NZ King Salmon Co Ltd* [2013] NZHC 1992 at para [150] Note: a Supreme Court appeal decision is pending in this matter.

<sup>18</sup> I understand that the panel already has a copy of the advice that we gave to TRD on our interpretation of this part of policy 6.3.9.

28. Nevertheless, TRD are prepared to include future proofing aspects to ensure that if change does come, it can be accommodated. In other words development to rural residential densities will not foreclose on options in the future. That such options may never arise is a risk that TRD are willing, and should be entitled, to take.
29. One of the reasons<sup>19</sup> for this approach is the fact that the TRD land happens to fall within an area that has been identified as a possible or preferred future growth path for Prebbleton. Ironically, while TRD has considered whether the future proofing aspects, which the Council's lawyer says are indicative of a goal that is inconsistent with 6.3.9(7), should be dropped, it is considered that to do so would simply risk the possibility of TRD's request being rejected on the basis that it would not protect the projected growth path, which the LURP also requires<sup>20</sup>. That is despite the growth path currently having no formal status<sup>21</sup> or providing any indication of when actual growth might be directed along that path, or what form it might eventually take.
30. It is for these reasons that TRD says that the legal opinion received by the Council proceeds from an erroneous assumption. The Council's lawyer concludes<sup>22</sup> that TRD's "ultimate goal" is an urban level of development. The reality is that, if such an ultimate goal exists, it is not TRD's but the Council's, which TRD is prepared to protect by way of future proofing.
31. In any event, even if full urban development was an ultimate goal of TRD, and their position is that it is not, that still wouldn't prevent the panel from considering the TRD land from inclusion in the RRS. Policy 6.3.9(7) speaks of RR development not being regarded as in transition. It speaks, as it must<sup>23</sup>, to existing RR developments. Therefore, in my submission, it does not constitute a gateway or threshold test and it cannot be a bar to the consideration of new RR land where that land otherwise fulfils the required criteria, in a strategy such as the Selwyn RRS. This cannot lead to "unconstrained" rural residential development<sup>24</sup> as the prerequisite is inclusion in such a strategy. Otherwise Policy 6.3.9 bars such RR development completely. And once included in a strategy applications to change the underlying zoning are still required under the RMA providing the opportunity for further scrutiny.
32. As properly understood policy 6.3.9 operates independently of any "ultimate goals" that might exist in the mind of the developer, which in any event is not the case here, and regardless of them. It is an imperative that shall be applied to any RR development area that is established in accordance with the criteria identified.

<sup>19</sup> Putting aside that it is considered best practice and sensible planning for a property in the situation of the TRD land.

<sup>20</sup> However, I am instructed that if the choice was between deleting future proofing to be included in the RRS and retaining the future proofing and missing out, TRD would opt for the former, despite its belief that it is an inferior outcome.

<sup>21</sup> That is, it is not a 'zone' with particular controls, apart from the LURP indication that they should be 'protected', a term which is also ill-defined. TRD says future proofing is a form of protection.

<sup>22</sup> At paragraphs 2. and 29.

<sup>23</sup> Because, as we are all aware, RR development already exists and a RR development plan (strategy) exists for the Waimakariri District.

<sup>24</sup> As suggested at paragraph 45 of Paul Rogers letter.

33. For these reasons the consideration of the meaning of the policy in the *Waikiwi* decision (Plan Change 10 to the Waimakariri District Plan is not irrelevant. It dealt with the same policy wording, in the context of Change 1, for which the time horizon was arguable clearer and more distant than under the LURP. In addition, while the Mandeville context is different to Prebbleton, the potential pressure for the right to develop to higher densities is not. This pressure will continue for peri-urban land, as at Prebbleton, (as noted by Ms Lauenstein<sup>25</sup>) absent of sustainable solutions that include future proofing.
34. In my submission, the point that can be taken from the discussion in *Waikiwi* is confirmation that despite the wording of the policy not being ideal<sup>26</sup> in terms of clarity, once land is provided for RR development, the effect of the policy is that the land cannot be regarded as in transition to full urban development. That is accepted by TRD and does not mean that future proofing is futile or inefficient.
35. TRD simply wants to secure a better development opportunity than currently exists for the land. There is a real possibility that, if the TRD land is not included in the RRS, that it will become fragmented into 4 ha blocks which TRD is entitled to do under the existing inner plains provisions. If that were to occur then there can be no guarantee that the issues that have arisen in Rolleston in terms of retrofitting urban development onto larger sections consented prior to rapid growth, will not be repeated at Prebbleton. The implications of such development are discussed by Ms Lauenstein<sup>27</sup> and include the inability to integrate well with the urban fabric of Prebbleton<sup>28</sup>.
36. In these circumstances it is difficult to see why the proposed future proofing is creating so much concern for the Council. It may even be arguable that, since the TRD is on the fringe of the preferred future growth path, that the inclusion of the TRD land as rural residential land should not be counted as part of the 'limited provision' for rural residential development in Selwyn District. This is an argument that TRD has chosen not to advance with the panel, since it too could be taken as a sign that TRD has expectations of further entitlement to higher density development. No such expectation exists.
37. Meanwhile, the existence of the preferred urban growth path must refute any suggestion that providing future proofed servicing might lead to inefficiencies. Clearly, additional capacity will be required in the future, if not for the TRD land then for the intervening land between it and the rest of Prebbleton.
38. The conclusion that the inclusion of the TRD land is consistent with policy 6.3.9(7) and can give effect to it is neither absurd<sup>29</sup> nor problematic for the Council. The status of the land will be established for the foreseeable future. But *if* it was to change, such change would be able to be accommodated. Further the situation in relation to the TRD land is relatively unique being a

<sup>25</sup> Paragraph 88, evidence of Nicole Lauenstein.

<sup>26</sup> The question was raised about whether it had could be given any meaning, though this probably reflected its reduced impact in a stand alone RR area rather than one in close proximity to an existing township, though similar pressures may exist.

<sup>27</sup> Paragraphs 25 et seq, and 66, evidence of Nicole Lauenstein.

<sup>28</sup> Paragraph 91, *ibid*.

<sup>29</sup> In the sense described in *Nanden v Wellington City Council* [2000] NZRMA 562 (HC).



reasonable sized land holding in single ownership within reasonable proximity to a township and seen as a path for possible growth in the future. It can also provide potential linkages between Trents Road and Hamptons Road in the near term. The outcome sought by TRD is practical, sensible and satisfies its limited goals while not foreclosing on what might happen in 20, 30 or 50 years time, or beyond.

*Other issues raised in the Council's legal opinion*

39. The Council's opinion concludes with a comment relating to how the Minister might act if the TRD land was included in the RRS. With respect, the Council's lawyers cannot speak for the Minister and therefore the comments must be regarded as speculation. In my submission, it is unhelpful to be suggesting that the panel should be second guessing what the Minister might or might not make of its decisions. The panel needs to be mindful of consistency but there should be clear evidence of significant inconsistency and an inability to give effect to the Recovery Strategy, LURP and CPRS before that should deprive a submitter of a consideration of their proposal on its merits. Such evidence is not present with the TRD proposal, which we say can otherwise tick the relevant boxes.
40. The need for certainty regarding alleged inconsistencies is also heightened by the fact that the decision to exclude from the strategy does have such absolute impacts in terms of the ability to exercise what is otherwise a statutory right: to apply to modify a plan (regardless of what the outcome of that process might be).

**The officers report**

41. As a general comment, and in light of the Council's responsibilities in decision making under the LGA, there is a concern that the officers report appears geared against allowing the inclusion of much more than the preliminary areas (that is the sites subject to plan change applications pre-strategy) in to the strategy, at this time. This is despite the continued demand for the range of housing choice that RR development enables and the opportunities that the RRS process provides to deal comprehensively with the issues surrounding peri-urban land in Selwyn. The concern is that the strategy, despite assurances otherwise, is implementing a pre-determined quota, rather than addressing the options raised by the submitters with an open mind. TRD are hopeful that the hearing process will dispel such concerns.
42. The officers report<sup>30</sup> contains a useful discussion about the issues raised by rural residential development and makes a cogent case for why such development should be regulated. This is consistent with the findings that supported the approach taken to rural residential development in the Regional Council's proposed Change 1 and has been replicated in the recovery documents promulgated under the CER Act following since the Canterbury earthquakes, including the draft RRS.

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<sup>30</sup> Which is to be "read in conjunction with the draft RRS13, Chapter 6 [CRPS] and the LURP": para 1.9 of the officer's report

43. One issue those recovery documents do not now specify however is just what 'limited provision' for RR development means in practice<sup>31</sup>. This has created the situation where, in addition to compliance with the criteria, there is uncertainty whether such compliance will be defeated by the application of an unspecified rationing approach. This may be amplified by the inclusion of the sites identified in the RRS as "preliminary sites" on the basis of having been the subject of private plan change requests prior to the RRS coming into being. As the officer's report notes the inclusion of those sites, is still dependent on the hearing panel's agreement with those outcomes and its recommendations.
44. A further aspect of the officer's report that warrants comment is in relation to the inner plains 4ha minimum lot size. The officer's report concludes that lots of 4ha are appropriate for the inner plains land. That conclusion is accepted as far as it goes<sup>32</sup>. However, the officer's report fails to properly provide for the fact that the subdivision of land within possible urban growth paths into to 4ha blocks can result in considerable difficulties when it comes to enabling growth within that path in the future. This has relevance for the TRD land in that even if a 5 year monitoring regime is implemented under the RRS<sup>33</sup> the window for TRD may not be open for that length of time. In other words, the risk of subdivision down to 4ha may not be ameliorated by any allowance for a 5 year review (though that approach is still supported).
45. In respect of the TRD land the officer's report raises several further issues. The first is the question of consistency with, and the ability to give effect to policy 6.3.9 and therefore the LURP/CRPS overall. The officer appears to have relied on similar advice to that contained in the Council's lawyer's letter, which is addressed above. Suffice to say TRD does not agree with the officer's conclusions for the reasons already given.
46. The next issues identified related to the compatibility with the criteria and pre-requisites identified in the RRS. These issues are discussed in the evidence of both Ms Lauenstein and Ms Mackenzie in terms of urban design and planning respectively. Their overall conclusions are that the TRD land and proposal are compatible with the relevant considerations.
47. In relation to design Ms Lauenstein concludes<sup>34</sup> in summary that:
  - 47.1. future proofing does not mean the land has to be developed to urban densities, just that it can if it has to, which represents urban design best practice providing certainty and flexibility;
  - 47.2. the inclusion of the TRD land in the future growth path signifies the ability to integrate and will not create an "isolated node". And, amongst other observations relating to land to the east of the TRD land,

<sup>31</sup> Para 3.60 of the officers report notes that "SDC does not have a maximum number of RR households that may be included in the strategy". For comparative purposes figures taken from Change 1 have been used to provide a benchmark in Ms MacKenzie's evidence.

<sup>32</sup> The issue of the appropriateness of that minimum lot size was considered outside the scope of the RRS in any event.

<sup>33</sup> And putting aside issues of costs and uncertainty for TRD in having to repeat this process in 5 years time if they cannot get their land included now.

<sup>34</sup> Paragraphs 81 – 88, evidence of Nicole Lauenstein.

she notes that preliminary area 3 is further from Prebbleton than the TRD land (with the implication that there appear to be no integration issues regarding that land);

- 47.3. the aims of the proposal include the maintenance of the semi-rural characteristics of the site. Peri-urban RR development would not undermine the rural amenity due to the integration of existing characteristics and protection of natural landscape values;
  - 47.4. the concern over the piecemeal approach to rural residential development to the west of Prebbleton is precisely the issue that the RRS and the planned RR development of the TRD site can assist in rectifying;
  - 47.5. the land supported for inclusion in the RRS (the preliminary areas) does not necessarily align better to the location criteria in the RRS. The TRD land should be included because it meets the relevant criteria and can be designed to integrate with and become part of the preferred form of the township;
  - 47.6. the inclusion of a 5 year review period is supported to allow for necessary adjustments but the need to repeat the current process again in 5 years could be avoided if the RRS dealt more comprehensively with the issue of the treatment of peri-urban land in the District;
  - 47.7. the approach of the RRS, which identifies a few parcels to be developed, will result in continued pressure on peri-urban land for urban development. By not considering further solutions for such land, including future proofing, an opportunity is missed to better address this tension.
48. Ms Lauenstein refers<sup>35</sup> to legal mechanisms required to provide for future proofing. These would include covenants and easements to ensure that designated areas, or routes, for the provision of services and access. These can be put in place and registered on titles without creating any expectation of development 'rights'. Covenants or consent notices would be utilised to reserve and protect spaces for future uses and provide that they be vested in the Council if required for service provision. They can also be used to identify building platforms to be utilised for rural residential development or if necessary for urban requirements. Easements in gross (in favour of the Council) can be used to provide for services, their installation, maintenance and upgrading. Using such mechanisms appropriately ensures both the future proofing and that potential purchasers are aware of the relevant constraints on their properties. Appendix 3 to Ms Mackenzie's evidence is a letter from TRD's property lawyers further detailing the possible legal mechanisms.
49. Moving to planning considerations Ms Mackenzie's evidence addresses the planning issues identified in RRS and the officer's report. Her conclusions are that:

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<sup>35</sup> Paragraph 74, Ibid.

- 49.1. the pre-requisite regarding economic servicing can be satisfied in accordance with the servicing report provided by Survus<sup>36</sup>;
  - 49.2. the future proofing of the proposal and its location will enable effective integration and will not prevent the consolidation of the Prebbleton urban form<sup>37</sup>;
  - 49.3. there are no known constraints to developing the site<sup>38</sup>;
  - 49.4. the landowners aspirations are consistent with the aims of the RRS<sup>39</sup>;
  - 49.5. the generic criteria in Chapter 6 of the CRPS will be met<sup>40</sup>;
  - 49.6. issues relating to residential form, function, character and landscape values will be adequately provided for by the TRD proposal<sup>41</sup>;
  - 49.7. the Prebbleton specific criteria: urban form and growth management; rural character and productivity; strategic infrastructure; natural hazards; and, environmental, cultural and heritage values, are all adequately dealt with by the TRD proposal<sup>42</sup>;
  - 49.8. the TRD proposal is consistent with the LURP and the CRPS<sup>43</sup>;
  - 49.9. the alleged disadvantages identified in the officers report<sup>44</sup> are of no moment;
  - 49.10. overall, the TRD site is appropriate for inclusion in the RRS, as are the future proofing aspects. It meets the RRS pre-requisites and can be adequately provided with services.
50. These findings are also effectively summarised in the proposed "Amendments to the Draft RRS to Give Effect to the Relief Sought for Trents Road Developments Limited" attached as Appendix 4 to Ms Mackenzie's evidence.

## Conclusions

- 51. The TRD land is in single ownership, satisfies the criteria identified in the draft RRS for inclusion as a RR development area and is consistent with the relevant recovery planning documents.
- 52. The TRD proposal includes future proofing which represents best practice and prevents the foreclosure of future development options should the growth of Prebbleton require different solutions. However, the provision of future proofing does not signify an expectation on the part of TRD that such different outcomes

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<sup>36</sup> Paragraph 41, evidence of Anna Mackenzie.

<sup>37</sup> Paragraph 42 et seq, Ibid.

<sup>38</sup> Paragraph 48, Ibid.

<sup>39</sup> Paragraph 49 et seq, Ibid.

<sup>40</sup> Paragraph 52, Ibid.

<sup>41</sup> Paragraph 54 et seq, Ibid.

<sup>42</sup> Paragraph 62 et seq, Ibid.

<sup>43</sup> Paragraphs 82 and 92, Ibid.

<sup>44</sup> Paragraph 95 et seq, Ibid.

will eventuate in the foreseeable future, it merely allows future growth paths to be protected as required under the LURP.

53. There is no justification for raising any jurisdictional bar to considering the TRD land as part of the RRS. The TRD proposal is consistent with the relevant policies, including 6.3.9(7) as there is an acceptance that significant changes to the planning framework would need to occur before there would be any possibility of change to the RR status of the land. All other issues, pre-requisites and criteria are or can be met.
54. The inclusion of the TRD land in the RRS represents a sensible and reasonable outcome, consistent with the aspirations of the land owners and the sustainable provision of RR living opportunities. The amendments sought to the RRS should be allowed.

A J Schulte  
Counsel for Trents Road Developments Limited  
10 April 2014