

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER AT
SELWYN**

IN THE MATTER OF

Clause 21 of the First Schedule of the
Resource Management Act 1991
(Plan Change 67)

IN THE MATTER OF

Proposed Plan Change 67, being a
request by **GW WILFIELD
LIMITED** (Applicant) to rezone
approximately 33.4ha of land from
Rural Inner Plains to Living West
Melton South in Wilfield, West
Melton.

MEMORANDUM OF COUNSEL

Dated: 21 December 2021

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MAY IT PLEASE THE COMMISSIONER

1 INTRODUCTION

- 1.1 We refer to the Commissioner's minute dated 16 December 2021, which requests submissions from the Applicant on whether the hearing for that matter should be reopened in light of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**).
- 1.2 In summary, it is our strong position that the Amendment Act does not preclude the Commissioner from issuing a decision on this plan change. We go further in saying that, to do so would undermine the intention behind the transitional provisions included in the Amendment Act, which:
- (a) seek to ensure that the Act does not prevent or otherwise delay plan changes which could increase housing supply;
 - (b) impose specific obligations on relevant territorial authorities to align planning documents (including plan changes) with the requirements of the Amendment Act, as part of a wider, bespoke process.

2 THE AMENDMENT ACT

- 2.1 Selwyn District Council is identified as a *tier 1 territorial authority* in the Amendment Act.¹ Consequently, all residential zones with the Selwyn district (other than those areas subject to specific exclusions²) will therefore be shortly subject to the Medium Density Residential Standards (**MDRS**) (and various other specific provisions) prescribed in the Amendment Act. In general terms, the Act requires relevant territorial authorities to assemble those provisions into an "Intensification Planning Instrument" (or **IPI**), and to incorporate the IPI into relevant district plans via a bespoke process under the

¹ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 4.

² Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 4. Refer definition of *relevant residential zone*, means all residential zones; but does not include: (i) a large lot residential zone: (ii) an area predominantly urban in character that the 2018 census recorded as having a residential population less than 5,000, unless a local authority intends the area to become part of an urban environment....

Amendment Act called an Intensification Streamlined Planning Process (**ISPP**).

- 2.2 The Amendment Act includes various transitional provisions which prescribe how the IPI and/or MDRS are to be incorporated into planning processes which are at various stages of completion. The overarching intent of these provisions is to ensure that the Amendment Act requirements do not inadvertently delay or prevent the delivery of additional housing supply which could be enabled through these 'live' planning processes, while also providing a pathway to align them with the requirements of the Amendment Act as part of the broader ISPP workstream.
- 2.3 In that context, Schedule 3 of the Amendment Act provides that where, prior to the commencement date (being today, 21 December 2021), a plan change has been notified but a decision has not been issued, the relevant territorial authority must notify a variation to that plan change at the same time it notifies the IPI to incorporate the MDRS into the relevant plan.³ In the case of Selwyn, the "relevant plan" is the Proposed District Plan (**PDP**), and that IPI has to be notified on or before 20 August 2022.⁴
- 2.4 The variation to the plan change must incorporate the MDRS into all areas within the scope of the plan change that are a relevant residential zone, or a new residential zone.⁵ Although it does not "merge" with the IPI (in the sense of it being within the same proposal), that variation must be processed at the same time as the IPI is notified, and must use the ISPP.⁶

3 PLAN CHANGE 67

- 3.1 PC67 seeks the imposition of a new residential zone over what is currently a rural zoned area.⁷ It was notified prior to the commencement

³ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, schedule 3, clause 34(1) – (2).

⁴ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, schedule 3, clause 33; section 80F(1).

⁵ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, schedule 3, clause 34(4).

⁶ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, schedule 3, clause 34(3).

⁷ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 4, definition of *relevant residential zones*.

date, and a decision has not yet been issued. None of the PC67 area would fall within any of the specific exclusions from the application of the Amendment Act provisions.⁸

- 3.2 As such, the Amendment Act applies to PC67.
- 3.3 Critically, there is nothing within that Act or its transitional provisions which prevents the Commissioner from issuing a decision on PC67 prior to the notification of the IPI for the PDP. In fact, as set out above, the intent behind the transitional provisions was to avoid any risks to the supply of housing in the short term by ensuring that...*plan changes (including private plan changes) that are already in train at the time of enactment should be able to proceed...*⁹
- 3.4 In that context, we consider that the appropriate course of action is for the Commissioner to proceed to issue decisions on PC67, and allow the Amendment Act to operate as intended; namely:
 - (a) At the time Selwyn District Council notifies the IPI for the PDP, it will also notify a variation to the operative Selwyn District Plan, incorporating the MDRS (or a "less enabling" version of it) into PC67 and the other plan changes (as applicable).
 - (b) As part of preparing the variation and/or the IPI, the Council will consider whether any "qualifying matters" apply in specific areas, such that a "less enabling" version of the MDRS may be appropriate.¹⁰
 - (c) "Qualifying matters" include:
 - (i) A matter of national importance under section 6 of the RMA.¹¹
 - (ii) A matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure.¹²

⁸ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, schedule 3, clause 34.

⁹ Ministry for the Environment and Ministry for Housing and Urban Development, *Departmental Report on the Resource Management (Enabling Housing Supply and Other Matters) Bill 2021*, page 68.

¹⁰ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 77G(6).

¹¹ Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 77I(a).

¹² Resource Management (Enabling Housing Supply and Other Matters) Act 2021, section 77I(e).

- (iii) "Any other matter that makes higher density, as provided for by the MDRS..." inappropriate in an area, but only where that matter satisfies detailed evaluation requirements set out in the Amendment Act.¹³
 - (d) The ISPP proceedings will provide the opportunity for detailed submissions and evidence on the variation and IPI, including the application of these qualifying matters to areas throughout the Selwyn district. The Amendment Act also establishes a specific decision-making framework for that assessment, which applies to both the conduct of the relevant territorial authority, the recommendations of the Independent Hearings Panel (established to oversee the ISPP process), and the decisions of the Minister.¹⁴
- 3.5 In summary, the implementation of the Amendment Act in the Selwyn district will require careful, thorough assessment of an extensive range of matters both at a site specific level, and for the wider district. The pathway for undertaking that assessment is established by the Amendment Act, and will contemporaneously capture, where relevant, operative planning documents and those that are 'live' (including private plan changes, and proposed district plans). The outcome of that process may result in wide-spread, plan-enabled intensification in the Selwyn district, or it may be that "qualifying matters" result in a significantly "less enabling" outcome (compared to the "default" incorporation of the MDRS across all relevant residential zones). Until there is greater clarity on these matters, the position of the experts in relation to this plan change (including Mr Sellars and Mr Colegrave) must remain unchanged.
- 3.6 Critically, the Amendment Act directs a coordinated approach to determining these matters, and in our submission, it is neither appropriate nor consistent with that direction to undertake that assessment independently of that bespoke process.
- 3.7 To that end, until that coordinated process commences and all those matters can be interrogated, the Amendment Act is clear that private plan changes such as PC67 should be able to proceed, such that any

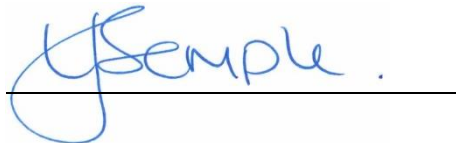
¹³ Refer Resource Management (Enabling Housing Supply and Other Matters) Act 2021, sections 77I(j), 77L.

¹⁴ Refer Resource Management (Enabling Housing Supply and Other Matters) Act 2021, sections 80N, and 16.

increase in housing supply which would be provided by those changes can be realised in a timely manner.

- 3.8 For that reason, the Applicant considers that the Amendment Act has, in effect, no bearing on, or relevance to, the Commissioner's decision on PC67 or any other 'live' Selwyn plan change that is captured by the transitional provisions. As such, although the Applicant is happy to address any further queries that the Commissioner may have, we do not consider that the hearing needs to be reopened to address the content of this memorandum.
- 3.9 Finally, subsequent to completing this memorandum but prior to filing, we have had the benefit of reviewing a draft of the memorandum prepared by Chapman Tripp on behalf of Rolleston West Residential Limited. We confirm our general agreement with the legal position set out in that memorandum.

DATED this 21st day of December 2021



L J Semple

Counsel for the Applicant