BEFORE THE SELWYN DISTRICT COUNCIL

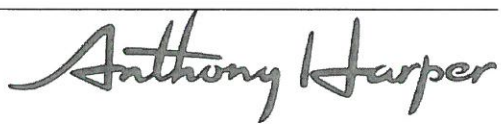
UNDER the Resource Management Act 1991

AND

IN THE MATTER Of a request to change the Operative Selwyn District Plan – Plan Change 78

MEMORANDUM ON BEHALF OF URBAN ESTATES LTD

Anthony Harper
Solicitor Acting: Gerard Cleary
Level 9, Anthony Harper Tower
62 Worcester Boulevard,
PO Box 2646, Christchurch
Tel +64 3 379 0920
Fax +64 3 366 9277
Email



1 INTRODUCTION

1.1 This Memorandum is filed on behalf of Urban Estates Limited, the proponents of Plan Change 78. It responds to Commissioner Caldwell's Minute of 16 December 2021 in respect of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill. Royal assent was given to the Bill on 20 December 2021.

1.2 The Commissioner states at paragraph 3:

3. The Bill in its now final form raises, in my mind, some issues in relation to the housing capacity demand matters which were the subject of considerable evidence. This is particular so in relation to PC73, but is also relevant, in my preliminary view, to PC75, 76 and 78. The hearings were all closed on 29 November 2021.

4. The intensification provisions also raise potential issues around infrastructure.

5. The issue I seek the parties' views on is whether I can, and if so should, re-open the hearings to enable the parties to provide submissions, or potentially evidence, on the Bill and its ramifications, or whether I must continue my deliberations on the evidence and submissions before me.

Can a Closed Hearing be Re-opened?

1.3 The provisions of the Act which govern the conduct of a hearing do not include an express statutory power to reopen a closed hearing. That said, Section 41 of the Act must be considered:

41 Provisions relating to hearings

(1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing conducted by a local authority, a consent authority, or a person given authority to conduct hearings under section 33, 34, [34A], 117, [149], or 202:

(a) ...

(b) Section 4B, which relates to evidence.

1.4 Section 4B(1) of the Commissions of Inquiry Act provides:

(1) The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.

1.5 Section 4B(1) is similar in wording and effect to section s276 (1) of the RMA. This provides the Environment Court with a discretion to receive anything in evidence

that it considers appropriate to receive and which it considers will assist it to make a decision or recommendation.

1.6 An example of where the Court's power to accept new evidence after a hearing is concluded and judgement reserved is *Wood v Selwyn District Council* C015/94. There the Planning Tribunal referred with approval to earlier authorities which supported the proposition that the discretion to admit new evidence should be exercised sparingly and only in exceptional cases. This reflected the long-standing maxim that there should be an end to litigation. The Tribunal also noted the distinction between private civil disputes and public law proceedings, citing authorities in support of more readily exercising the discretion to allow new evidence in the public law context.

1.7 In summary, while there is no express statutory authority to reopen the hearings it appears such a course of action is at the discretion of the Commissioner.

Should the Hearing Be Reopened?

1.8 In respect of PC78, to the extent that there may be a discretion to reopen the hearing, it is submitted that there would be no particular value in receiving any further evidence on the issues of supply/demand and infrastructure. This is for a number of reasons:

(a) First, the Amendment Bill (now Act) imposes a requirement (Schedule 3 - section 33 (2)) on the Council to notify a variation to its Proposed District Plan to incorporate the MDRS and give effect to the NPS-UD prior to 20 August 2022. Bearing in mind the need to consider "*qualifying matters*" (Clause 77G), it cannot be assumed that MDRS will apply in a blanket manner to all residential zones in the Selwyn District. It is submitted as premature to assume what the content of this variation would be as the process of developing this particular planning instrument has yet to be commenced. As such, evidence as to the impact of the variation on supply and indeed the likely level of demand for MDRS in Rolleston must necessarily be both theoretical and speculative and of little, if any, probative value. The relevant witnesses for PC78 (Mr. Sellars & Mr. Ballingall) do not view the Amendment Bill as changing their opinion as to the need to provide additional supply in order to meet unprecedented levels of demand.

(b) Second, PC78 has the full support of the Selwyn District Council, its officers accepting that approval is necessary to meet the medium term demand for residential allotments as identified in the July 2021 Housing and Business Capacity Analysis, and as provided for in the Canterbury Regional Policy Statement. There is no assertion, for example, that the supply of land enabled by approval of PC78 will have any negative consequences in terms of either the overarching framework for

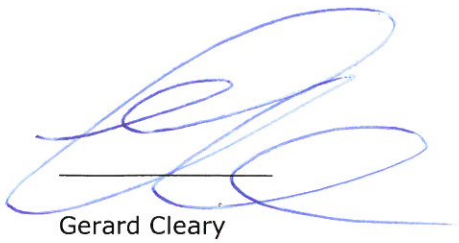
development in Greater Christchurch or planned infrastructure. Nor is there any dispute between the experts that PC78 gives effect to the provisions of the NPS-UD.

(c) Third, PC 78 is within an identified Future Development Area and, accordingly, is anticipated by Policy 6.3.12 of the CRPS. Further evidence either on supply/demand and or impacts on infrastructure is unlikely to have any particular bearing on considerations listed in Policy 6.3.12.

(d) Fourth, as acknowledged in the Commissioner's Minute, the Bill contemplates a process whereby plan change applications can continue. Section 34 (2) of Schedule 3 requires the Council to notify a variation to the plan change at the same time as it notifies the variation to its Proposed District Plan. Section 36 (1) (b) also states that there remains a right of appeal against a decision on underlying plan changes. Taken together, there is no support in the Bill for deferring a recommendation on individual plan changes in order to hear evidence on how the Amendment Bill might work in practice through the form of a planning instrument that is not yet under way.

1.9 Overall therefore, it is submitted that reopening the hearing on Plan Change 78 is likely to result in further, unnecessary, delay to a recommendation on the Application. The extent of delay is difficult to predict, but should evidence be required, it is unlikely that a reconvened hearing on PC78 and indeed the other plan changes could be completed for a number of months. This in turn will delay decisions at a time when there is unchallenged evidence from, amongst others, Mr. Sellars of a dysfunctional housing market in Selwyn, Rolleston included.

1.10 Finally, Counsel has had the benefit of reviewing a draft of the response on behalf of Rolleston West Residential Limited. The conclusions reached on the legal position in that response are supported.



Gerard Cleary

21 December 2021