

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

SUBMISSIONS ON BEHALF OF URBAN ESTATES LTD

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A handwritten signature in dark ink, reading "Anthony Harper". The signature is fluid and cursive, with the first name "Anthony" and the last name "Harper" clearly distinguishable.

1 INTRODUCTION

- 1.1 The Request before you seeks to provide plan enabled capacity of 750 new residential allotments in Rolleston.
- 1.2 The market context behind the Request is set out in the evidence filed on behalf of the Applicant. To summarise Mr. Sellars, Rolleston is a dysfunctional real estate market whereby the demand for allotments far outweighs supply. A direct and inevitable consequence of this imbalance has been a marked increase in housing unaffordability i.e. a disenabling of social and economic wellbeing.
- 1.3 The planning context has evolved within the last 16 months. The original impetus for lodgement of the Request was the enactment of the National Policy Statement on Urban Development 2020 (NPSUD 2020), in particular the objectives and policies mandating a responsive approach towards unanticipated applications which sought to provide significant additional capacity. PC78 was accepted for processing on the basis that it fulfilled that particular requirement.
- 1.4 More recently i.e. in July 2021, Chapter 6 of the Canterbury Regional Policy Statement (CRPS) was amended to identify Future Development Areas (FDA) in a number of locations, Rolleston included. The site is within an identified FDA; accordingly, its development for residential use is now specifically anticipated by the CRPS.
- 1.5 Identification of land within a FDA does not of course mean that it is plan enabled capacity, as that term is used in the NPS UD 2020; rather, the final step of rezoning the site under the District Plan is required.

2 STATUTORY FRAMEWORK

- 2.1 The *Long Bay/ Colonial Vineyards* framework which has been adopted and refined by the Courts over the years must be further amended as a consequence of the release of the NPS UD 2020.
- 2.2 That in mind, in summary, the issues to be determined are whether or not the provisions of PC78 will:
 - (i) assist the Council in carrying out its functions under s 31 of the Act, in particular the integrated management of effects and the requirement to ensure that there is sufficient housing capacity to meet the expected demands of the District ?;
 - (ii) give effect to the relevant objectives and policies of the NPS UD 2020?;
 - (iii) give effect to the relevant provisions of the Canterbury RPS, in particular the objectives and policies of Chapter 6 relating to Greater Christchurch?; and

- (iv) implement the relevant objectives and policies of the Operative District Plan?.

- 2.3 All of the above issues are addressed in full in the evidence presented both on behalf of the Applicant, and within the s 42A Report
- 2.4 Suffice to say, there is complete support from the experts for the approval of PC 78. In other words, the experts are all of the view that PC78 satisfies all the relevant statutory tests.

3 Outstanding issues

- 3.1 A Joint Officer Summary Statement (Joint Statement) has been prepared by Mr. Friedel and the other expert contributors to the s42A Report.
- 3.2 In her summary, Ms Harte will provide a response to the comments/recommendations made within the Joint Statement, and will attach a revised ODP for the site which incorporates all but one of the further amendments sought.
- 3.3 The sole exception is the request that the accompanying text to the ODP contains a reference to the potential for reverse sensitivity effects that may result as a consequence of the development of that part of the site which shares a boundary with the existing market garden operation on the corner of Lincoln Rolleston and Selwyn Road. The Joint Statement suggests that a range of responses to this potential effect could be implemented at the time of subdivision.
- 3.4 This issue was only recently raised in Ms Wolfer's Appendix 5 to the s 42A Report. The owner of the market garden operation was well aware of the Request, but has not identified, by way of submission, any potential reverse sensitivity effect.
- 3.5 Ms Harte's analysis of the market gardening operation is that it is very low key in terms of its effects and, as such, the possibility of reverse sensitive effects arising are negligible.
- 3.6 Reverse sensitivity is a well-established concept in RMA law, and has been defined as follows¹:

Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: If the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity

- 3.7 Whether reverse sensitivity is a relevant effect to address, by means of an assessment matter or otherwise, is therefore dependent on the following factors:

¹ Bruce Tardy & Janine Kerr: *Reverse sensitivity – the Common Law Giveth and the RMA Taketh Away*. New Zealand Journal of Environmental Law, Vol. 3, 1999: 93-107

- (a) There must be an existing established use which is causing an adverse environmental impact on adjoining land;
 - (b) There is an intended, benign use for this adjoining land; and
 - (c) This benign use may result in restrictions on the existing established use.
- 3.8 Examining the first factor above, there is no evidence of anything other than a very minor, and occasional, effect associated with spray drift from the market garden operation.
- 3.9 Given the negligible level of effects associated with the market garden operation, it follows that the consequences of establishing more intense residential development in proximity to its boundary is unlikely to result in complaints and, in turn, is unlikely to result in restrictions on the existing operation.
- 3.10 As noted above, the wider context of this Request is the obligation to provide sufficient residential development capacity within the Selwyn District, Rolleston included. To that end, the PC78 site and the market garden land have been identified as an FDA in the Regional Policy Statement. From a policy perspective therefore, there is an express intention that land within an FDA be developed for residential use so as to enable community wellbeing. In other words, there is an explicit policy preference for residential use over the incumbent or existing market garden use.
- 3.11 Overall, it is submitted therefore that intervention to manage any potential for reverse sensitivity effects cannot be justified on the evidence available, and having regard to the purpose of the FDA's.

4 EVIDENCE OF ROBIN SCHULZ ON BEHALF OF SELWYN 564 LIMITED.

- 4.1 Broadly speaking, it is acknowledged that the development of a site with multiple ownership can create issues as to timing and funding contributions. As Ms Harte will point out in her summary however, the Applicant now has effective ownership of the majority of the PC78 land, thereby reducing the potential for delay in development. Mr. Schulz's concerns are therefore likely to be overstated.
- 4.2 Mr Schulz seeks that you impose a requirement on a consent applicant to enter into a developer's agreement with all affected parties so as to facilitate matters such as cost sharing for infrastructure. Given his acknowledged experience, one would expect Mr. Schulz to know that the imposition of such a requirement would be unprecedented in the sense that the District Plan has never included a provision or regulation to that effect.
- 4.3 Further, it would be unprincipled to impose such a requirement in the sense that it would confer inappropriate commercial leverage on one or more landowners in any negotiations required between landowners.

5 WITNESSES

- 5.1 Gary Sellars – Real Estate
- 5.2 John Ballingall – Economics
- 5.3 Andrew Hall – Engineering
- 5.4 Dave Smith – transportation
- 5.5 David Compton-Moen – Urban Design
- 5.6 Patricia Harte– Planning.

Gerard Cleary

04 November 2021