

Before the Independent Commissioner
Appointed by the Selwyn District Council

Under	the Resource Management Act 1991
In the matter of	a hearing on Plan Change 79 to the Operative Selwyn District Plan
Between	Birchs Village Limited
	Proponent

Memorandum of Counsel for Birchs Village Limited

07 June 2023

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May it please the Commissioner:

- 1 This right of reply addresses matters arising from Minute 3 dated 18 May 2023, and the timetable for legal reply in Minute 4 dated 31 May 2023.
- 2 I have read the:
 - (a) legal submissions on behalf of Selwyn District Council in response to Minute 3 dated 29 May 2023; and
 - (b) response to Minute Number 3 of Commissioner Thomas addressing questions for Mr Hugh Nicolson on behalf of Selwyn District Council – Urban Design and Landscape dated 24 May 2023. Mr Nicholson considers the "Area in red" can meet the requirements of a well-functioning urban environment.
- 3 The Proponent's position has not changed in relation to the "Area in red" (if the Commissioner finds that the NPS-HPL applies):
 - (a) PC79 is a unique culturally focused development and market, not being provided (and not able to be provided) by another developer in Prebbleton;
 - (b) There is a short fall of feasible development in the short term, such that the Council needs to zone more capacity in the OSDP;
 - (c) The business case from Ngāi Tahu Property has been approved (based on the density/numbers over the Site), funding is available and it is feasible and is expected to be realised;
 - (d) The evidence (including economic evidence) considered there are no sites large enough to accommodate the proposed development in Prebbleton.¹ This evidence continues to be relevant;
 - (e) A developer seeking to "plan enable" development in the PSDP, is not the same as development being feasible and reasonably expected to be realised, considering the current economic conditions addressed by the economists during the hearing and in their evidence. Even if the "Area in red" could be considered plan-enabled, infrastructure ready, feasible and reasonably expected to be realised (of which there is no evidence), its capacity is still much less than the

¹ Mr Colegrave, [107].

shortfall², and it is unlikely to be developed all at once based on the evidence provided during the hearing around the reality of development occurring over staged lead times³.

- 4 It is also noted for completeness that the matters raised by Mr Nicholson in support of the accessibility of the "Area in red" (which received a *moderate-high* rating from Mr Nicholson) would equally apply to the PC79 Site (which received a *low-moderate* rating by Mr Nicholson). The inclusion of a Neighbourhood centre provides walkability to a centre, there is a large interface with the Kakaha Park.⁴ Further, the "Area in red" does not have a bus route or the rail trail pass it, like PC79 does.

Dated this 7th day of June 2023



Alex Booker
Counsel for Birchs Village Limited

² The ODP attached to Mr Nicholson's evidence shows approximately 2ha of the Site being used for stormwater, and 12 h/h is sought. This would equate to 174 households (which is much less than the 247 suggested by the Officer's Report).

³ Refer to the positions of Mr Geddes, Mr Marshall and Mr Colegrave at [53] of legal submissions: https://www.selwyn.govt.nz/__data/assets/pdf_file/0009/1811727/Legal-submissions-27-April-2023-Birchs-Village.pdf

⁴ Half of the (much smaller) 120m interface with the Prebbleton reserve contains a pre-school and road access, and the remainder contains established vegetation (which provides limited passive surveillance).