

**BEFORE THE HEARINGS COMMISSIONERS
APPOINTED BY THE CENTRAL OTAGO DISTRICT COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of a submission in a Plan Change under
clause 6 of Schedule 1 of the Act

BY **ONE FIVE FIVE DEVELOPMENTS LP**
Submitter

SUBMISSIONS FOR ONE FIVE FIVE DEVELOPMENTS LP

Dated: 19 May 2023

MAY IT PLEASE THE COMMISON:

Introduction

- [1] One Five Five Developments LP (**submitter**) has made a submission on the Central Otago District Council's (**Council**) Plan Change 19 (**PC 19**).
- [2] The submitter's submission seeks the rezoning of its land and adjoining properties at 131-155 Dunstan Road, Alexandra, to Low Density Residential Zone (**LRZ**). It also seeks the rezoning of land at 129 Gilligans Gully Road rezoned to Large Lot Residential Zone (**LLRZ**).
- [3] The submitter's case is the rezoning satisfies the relevant requirements of the Resource Management Act 1991 (**Act**), and it is appropriate for the relief sought in the submission to be granted.

Background

- [4] The subject site is zoned Rural Residential under the Central Otago Operative District Plan (**ODP**). The provisions of the Rural Residential Zone provide for subdivision down to lot sizes of 2ha.
- [5] Under PC 19, the majority of the subject site has been notified to be rezoned as LLRZ. The LLRZ provides for subdivision down to lot sizes of 2000m².
- [6] The portion of land at 129 Gilligans Gully Road was not notified as being rezoned under PC 19. It would accordingly remain zoned Rural Residential under the ODP zoning unless the zoning was changed through the submission process.

Relief sought

- [7] The original submission sought the rezoning of the entirety of the subject site to LRZ, or in the alternative, to Large Lot Residential Zone (P1), which allows for development to a minimum lot size of 1000m².
- [8] As noted, it is confirmed the relief now sought is the rezoning of the subject site to LRZ, with the exception of the 129 Gilligans Gully Road land, which is sought to be rezoned as LLRZ.

Scope/jurisdictional matters

- [9] It is acknowledged the block of land at 129 Gilligans Gully Road was not notified to be rezoned as part of PC 19.
- [10] Since PC 19 was notified, the submitter and the owners of the 129 Gilligans Gully Road land have entered into an agreement for the submitter to acquire the land and for a boundary adjustment so as to include the land within the balance of the subject site.
- [11] In order for the part of the submission seeking the rezoning of that area of land to be “on” the Plan Change, the rezoning of that block must meet the test set out by Kos J in *Motor Machinists Limited*, being an incidental or consequential extension to a zoning as notified.¹
- [12] The Council has not raised any issues as to jurisdiction for the zoning of this area of land. The Council planner, Ms White, agrees from a merits perspective that LLRZ is appropriate for this land.²
- [13] The submitter considers the rezoning of this land meets the *Motor Machinists* test given it is a discrete area of adjoining land which from a landform perspective reads more as forming part of the notified LLRZ than the adjacent Rural Residential Zone, and no substantial further s 32 analysis is required to inform affected persons of the merits of the rezoning of this land.³

Statutory considerations

- [14] In considering and making decisions on submissions, the Commission must act in accordance with s 10 of the Act. Section 10 relevantly provides:

10 Decisions on provisions and matters raised in submissions

- (1) A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.

¹ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

² Section 42A report, 1 May 2023 at [62].

³ At [81].

- (2) The decision—
 - (a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—
 - (i) the provisions of the proposed statement or plan to which they relate; or
 - (ii) the matters to which they relate; and
 - (ab) must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA; and
 - (b) ...
- ...
- (4) The local authority must—
 - (aaa) have particular regard to the further evaluation undertaken in accordance with subclause (2)(ab) when making its decision; and
- ...

[15] In determining submissions, the Commission must evaluate the relief sought through a submission pursuant to s 32AA of the Act. An evaluation under s 32AA must be undertaken in accordance with s 32. Section 32 relevantly provides:

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and

- (c) ...
- (2) ...
- (3) If the proposal (an amending proposal) will amend a standard, statement, national planning standard, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and
 - (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.

[16] In essence, the Commission must assess the effectiveness and efficiency of the rezoning proposal, and determine whether it is the most appropriate way to achieve the objectives of PC 19.

[17] In doing so, the Commission must also give effect or have regard to any statutory documents or planning instruments that are relevant to PC 19 and the rezoning proposal. In this case, these include:

- (a) giving effect to the National Policy Statement on Urban Development 2020 (NPS-UD); and
- (b) having regard to the Vincent Spatial Plan.

Issues for determination under s 32

[18] The matters that have been raised with respect to the merits of the rezoning proposal relate to:

- (a) the capacity of the infrastructure network, particularly in relation to wastewater, and whether it can service development of the sort enabled by the proposed LRZ on the subject site; and

- (b) whether LRZ is appropriate from a spatial planning perspective, having regard to the existing land use and character of the surrounding environment.

[19] Accordingly, the Commission must assess whether the rezoning proposal as compared with the notified zoning is the most appropriate way of achieving the relevant objectives of PC 19 relating to these matters, as well as any other matters it may consider to be relevant. This assessment involves a weighing of the evidence called in respect of such.

Wastewater capacity

[20] Ms Muir, the Council's engineer, has raised issues regarding the capacity of the existing wastewater infrastructure. She considers:⁴

... where submissions are requesting increased densities or areas at the extents of the networks to be serviced, then there will be difficulty in accommodating these until significant treatment and reticulation infrastructure upgrades are provided, noting that there is increased uncertainty regarding these due to uncertainty regarding water reform timelines.

[21] Ms White, Council planning officer, says on the basis of Ms Muir's opinion:⁵

Objective 6.3.4 of the CODC, which is not altered by PC19, seeks to promote the sustainable management of the District's urban infrastructure to meet the present and reasonably foreseeable needs of the District's communities. I do not consider that the rezoning at this time would be consistent with this outcome as it would allow for a level of development that at this time is not able to be appropriately serviced.

[22] The Council position raises three issues:

- (a) whether there are wastewater capacity constraints;

⁴ Section 42A report (Wastewater) at [73].

⁵ Section 42A report at [59].

- (b) if there are, should the existence of those constraints preclude the subject site from being rezoned; and
- (c) whether there are mechanisms that can be proposed alongside the rezoning to address those constraints.

Whether there are wastewater capacity constraints

- [23] The submitter acknowledges Ms Muir's comments with regard to the existing Alexandra wastewater infrastructure and the fact it is at capacity, with the "plant having a single process line which is nearing the end of its useful life" and the need for upgrades "being progressed as a high priority".⁶
- [24] However, the submitter does not accept Ms Muir's evidence that the existing wastewater network does not have capacity for the type of development enabled by way of the rezoning proposal.
- [25] The Council does not appear to have undertaken or commissioned any detailed study with respect to effects on wastewater capacity of rezoning and subsequent development on the subject site. To the extent any relevant assessment of infrastructure has been undertaken, Council has not disclosed this as part of the PC 19 process.
- [26] Mr Calder in his evidence has analysed what the submitter has identified as the most recent and applicable assessment prepared for the Council in respect of development in the vicinity of the subject site.⁷ That assessment was made in 2020 in respect of the Molyneux Lifestyle Village, and then updated for the notified PC 19.
- [27] Mr Calder has identified that particular infrastructure referred to in that report can in fact cater for more intensive development than what the report suggested.⁸ In his view, further intensification of the subject site is "achievable with an alternative connection to the existing wastewater network".⁹

⁶ Section 42A report (Wastewater) at [71].

⁷ Statement of evidence of Stuart Calder, 16 May 2023.

⁸ At [15].

⁹ At [20].

[28] Mr Calder acknowledges he has not undertaken detailed modelling to assess whether development on the subject site could be sufficiently serviced in terms of wastewater.¹⁰

[29] In light of Mr Calder's evidence, the submitter considers an appropriate and helpful option for the Commission, particularly if it remains concerned or seeks clarification in respect of wastewater capacity issues, would be for Mr Calder and Ms Muir to confer in respect of these matters prior to the Council's right of reply, and, if the Council still felt it necessary, seek further advice.

Whether wastewater constraints should preclude rezoning of the subject site

[30] Mr Barr points out with respect to the issue of wastewater capacity:¹¹

I understand from Ms Muir's evidence that the notified PC19 zoning has been promulgated despite known water and wastewater capacity constraints, and these constraints can only be resolved through investment through the Council's Long-Term Plan. Therefore, the constraints identified in relation to wastewater capacity already exist irrespective of the change in zoning sought by the Submitter.

[31] As he identifies, if Ms Muir's evidence is accepted, then the wastewater network is already at capacity, and lacking in critical redundancy. It follows that *any* further development, including development enabled by the proposed new residential zones notified under PC 19, would adversely affect the wastewater network's capacity and be contrary to Objective 6.3.4.

[32] Yet, there was no recognition of this when the Council notified land to be rezoned for residential development or in the associated s 32 reporting. It is only now, when other landowners are seeking such rezoning, that the Council has raised issues in terms of infrastructure constraints.

[33] That is not a reasonable nor fair manner in which to undertake a significant Plan Change that will materially affect urban development in Alexandra for possibly the next 20 years. If wastewater capacity meant

¹⁰ Ibid.

¹¹ Statement of evidence of Craig Barr at [69].

rezoning allowing further intensive development pending the required infrastructure upgrades was not tenable, this should have been identified and indeed highlighted in the s 32 report presumably as a reason for recommending the rezoning proposed by Council did not proceed. Landowners and the general public have a legitimate expectation when reviewing Plan Changes and making submissions that all relevant issues have been identified and assessed. If such issues are an impediment to rezoning in the manner now suggested, they should have been pointed out, and Council should have provided the necessary information or assessment of the issues to enable the public to understand them.

- [34] It is not appropriate for the Council having failed to advise the public through its s 32 reporting that wastewater capacity was an issue, to now seek to introduce it as such and use it as a basis on which to decline submissions seeking the rezoning of their land (particularly without, as noted above, having carried out the necessary studies with respect to issues of capacity as they relate to such land).
- [35] Further, the need to upgrade existing infrastructure is not in itself linked to and therefore a reason to decline rezonings of land. Whilst the increase in land available to be rezoned, and potential increase in consents for developers wishing to develop might place the Council under more pressure to implement the required infrastructure upgrades, the impact of this on the Council and its members in a resourcing capacity is not something the Commission may reasonably take into account. Its role as Commissioners must be treated entirely separate from any role as Councillors in that regard.

Whether options be proposed to address wastewater capacity issues

- [36] If it is accepted that wastewater constraints are a concern, Mr Barr by way of his evidence has proposed changes to the LRZ rules as they relate to the subject site that would avoid adverse effects of development on infrastructure capacity. His proposed new rule and policy ties future development on the subject site to future infrastructure upgrades as they

occur, and precludes development over the baseline established by the LLRZ¹² occurring pending such upgrades.¹³

[37] In light of Mr Calder's evidence regarding alternative wastewater solutions, as well as Mr Barr's proposed changes to the rule and/or policy framework to address issues of wastewater, even if it was accepted that such constraints could preclude rezoning, which for the reasons set out above the submitter does not accept, it would be as Mr Barr puts, a "missed opportunity" if land such as the subject site which is otherwise available for higher density residential development was not able to be used for such simply on the basis of perceived existing wastewater constraints.¹⁴

[38] Rather than preclude suitable land from being able to be developed and contribute to the issue of residential land supply until the next District Plan cycle, the Council should use this opportunity to work with the landowner to allow such rezoning and for the parties to work together to address any issues as to infrastructure capacity that may arise.

Spatial planning/existing character and land use of surrounding environment

[39] Objective LLRZ-03 of PC 19 provides for maintenance of the amenity and character resulting from existing or anticipated development in the precinct areas.

[40] Ms White does not consider the submitter's rezoning proposal achieves this objective or that development in accordance with LRZ will maintain existing or anticipated development. This is on the basis that:

- (a) whilst the character of the land on the western side of Dunstan Road opposite the subject site is anticipated to be high density development (on account of the notified Medium Density Residential Zoning (**MRZ**), which provides for subdivision of 200m²

¹² At [70].

¹³ At [73].

¹⁴ At [80].

lots), there is a separation in the form of Dunstan Road and the Rail Trail;

- (b) the land notified to be rezoned MRZ is a greenfield site, whereas the subject site is not; and
- (c) there is land to the south which is LRZ, but this is separated from the subject site by adjacent industrial activity.¹⁵

[41] The submitter does not consider any of these matters support a conclusion that LRZ on the subject site would not achieve the objective Ms White refers to.

[42] The submitter has engaged Mike Moore, landscape architect, to provide evidence with respect to the effects of the rezoning proposal on landscape and amenity grounds. Mr Moore points out the subject site has already been notified to be rezoned for residential purposes.¹⁶ Whether LLRZ or LRZ, the character of the environment will change from rural to urban. LRZ will “be similar to much of the urban area of Alexandra presently and will not appear at all incongruous or inappropriately dense opposite an area of MRZ proposed across Dunstan Road.”¹⁷

[43] The preference expressed relating to intensifying greenfield sites over infill areas is subjective and not supported by accepted good planning practices. Accordingly, the fact the subject site is not a greenfield site does not preclude higher density development from being appropriate. To the contrary, it is appropriate that infill sites should be targeted for development at the most intensive scale that good planning can support, and that greenfield sites are more appropriate for lower density development. This is because larger lots can be more efficiently organised on the blank canvas of a greenfield site, whereas large lots become highly inefficient on sites with small and varied existing title sizes and existing infrastructure. The result of applying large lot sizes to infill

¹⁵ Section 42A report at [60]-[62].

¹⁶ Statement of evidence of Mike Moore, 16 May 2023 at [29](b).

¹⁷ Ibid.

development is to reduce effective yield and essentially waste land by requiring irregular and oversized lots.

- [44] Nor is the existence of Dunstan Road or Rail Trail any reason to treat the subject site differently or see it as sufficiently distinct from the MRZ development on the other side of Dunstan Road. It is arbitrary to use roads or trails, as opposed to true landform or geomorphic features, to separate what are essentially two extremes in terms of development (200m² lots in the MRZ and 2000m² in the LLRZ).
- [45] Equally, it is not accepted that the adjoining industrial activity (noting the adjacent site, which is used for honey bee activity, is at most “light” industrial) provides a basis on which to treat that land as a boundary between LRZ and LLRZ. LRZ on the subject site would be seen as an appropriate continuation of the urban form to the south, irrespective of the intervening industrial activity.
- [46] The submitter again adopts Mr Moore’s view, which is that LDZ “will integrate well in this setting opposite the proposed MRZ across Dunstan Road”.¹⁸
- [47] Ms White’s comments referred to at [40](a)-(d) above with regard to the character of the receiving environment, whilst true insofar as they state the facts of what exists on those properties, are not genuine evidence of any adverse effects of the LRZ on that environment nor evidence it will not achieve the relevant objectives of PC 19 with regard to maintaining the amenity associated with the receiving environment.

Other matters

Traffic

- [48] Whilst not raised as an issue by Council in its s 42A report, the submitter has called evidence from Andy Carr, traffic engineer, who has found the traffic generated from additional residential activity on the subject site (in the order of 79 additional residences to what would be expected from

¹⁸ At [26].

the notified LLRZ) can be easily accommodated on the adjacent roading network.¹⁹

National Policy Statement on Urban Development 2020

[49] Pursuant to s 74 of the Act, the Council in preparing its Plan Change must do so in accordance with a National Policy Statement.

[50] The NPS-UD applies to:

- (a) all local authorities that have all or part of an urban environment within their district or region (ie, tier 1, 2 and 3 local authorities); and
- (b) planning decisions by any local authority that affect an urban environment.

[51] “Urban environment” is defined as any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) is, or is intended to be, predominantly urban in character; and
- (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.

[52] The Council’s s 32A report proceeds on the basis that PC 19 does not have to give effect to the NPS-UD.²⁰

[53] Mr Barr, in both his evidence in support of the rezoning proposal²¹ and earlier evidence with regard to the PC 19 provisions,²² explains why the CODC may be considered to be a tier 3 local authority, on the basis the Alexandra urban area is intended, during the life of the District Plan, to be part of a housing and labour market of at least 10,000 people. Accordingly, the NPS-UD is directly applicable to PC 19.

[54] In any event, even if the district was not deemed to be tier 1, 2, or 3 and the prescriptive objectives or policies relating to those districts did not

¹⁹ Statement of evidence of Andy Carr, 16 May 2023 at [22].

²⁰ Section 32 report at [24].

²¹ Statement of evidence of Craig Barr at [24]-[26].

²² Statement of evidence of Craig Barr, 11 April 2023 at [4.1]-[4.8].

apply, the other NPS-UD objectives and policies still apply generally and must be adhered to by any local authority.²³

- [55] Mr Barr has assessed the rezoning proposal against the provisions of the NPS-UD and has found it is the higher density LRZ that more appropriately gives effect to those provisions than the notified LLR zoning.²⁴

Vincent Spatial Plan

- [56] The s 32 report identifies the Vincent Spatial Plan as being the driver for the zoning of and under PC 19.²⁵

- [57] The Spatial Plan, as compared with the NPS-UD, is not a document that is required to be given effect to under the Act. However, it may be relevant as a “management plan prepared under other Acts”, to which a local authority shall have regard to, pursuant to s 74(2)(b) of the Act.

- [58] The Spatial Plan has identified the following elements:

- (a) environment;
- (b) character;
- (c) managed growth;
- (d) accessibility;
- (e) housing choice; and
- (f) infrastructure.

- [59] Mr Barr has assessed the rezoning proposal against the Vincent Spatial Plan and considers it is consistent with these principles.²⁶ The submitter adopts Mr Barr’s conclusions.

²³ Statement of evidence of Craig Barr, 16 May 2023 at Appendix 1.

²⁴ Statement of evidence of Craig Barr at [51]

²⁵ Section 32 report at [4].

²⁶ At [97]-[100].

Conclusion

[60] For the reasons set out above, and on the basis of the extensive evidence called in support of its rezoning proposal, the submitter considers the rezoning proposal is the most appropriate way of achieving the relevant objectives of PC 19, the higher order planning provisions, and the purpose of the Act.

[61] Accordingly, it seeks the relief sought in its submission is accepted.

Witnesses

[62] The following witnesses will be called:

- (a) Shanon Garden (submitter);
- (b) Andy Carr (traffic);
- (c) Mike Moore (landscape);
- (d) Stuart Calder (surveying); and
- (e) Craig Barr (planning).

Dated: 19 May 2023



.....
G M Todd / B B Gresson

Counsel for One Five Five Developments LP