

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF hearing of submissions and further submissions on the Proposed Waimakariri District Plan

AND hearing of submissions and further submissions on Variations 1 and 2 to the Proposed Waimakariri District Plan

**MEMORANDUM OF COUNSEL ON BEHALF OF RICHARD AND GEOFF SPARK
(PDP Submitter 183 / Variation 1 Submitter 61)**

RESPONSE TO MINUTE 2 13 APRIL 2023 / COUNCIL MEMO 1 JUNE 2023

Dated 28 June 2023

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MAY IT PLEASE THE COMMISSIONERS:

1. This Memorandum is filed on behalf of Richard and Geoff Spark (**Submitters**). The Submitters have filed submissions on both the Proposed Plan and Variation 1 to the same. Their Submitter ID numbers are 183 and 61 respectively.
2. Relevantly and amongst other things, both of the Sparks' submissions seek the rezoning of land from Rural Lifestyle to residential. The land over which rezoning is sought comprises approximately 57.5 hectares and is located in south-east Rangiora.
3. This Memorandum is filed in response to:
 - (a) The Commissioners' Minute 2 (dated 13 April 2023); and
 - (b) The "Memo to Hearing Panel" prepared by Peter Wilson (dated 1 June 2023 – **Wilson Memo**).

Matters addressed in this Memorandum

4. This Memorandum is concerned with whether and to what extent rezonings requested on Variation 1, can be granted. It does not enter the fray on the applicability of Clause 16B of Part 1 of Schedule 1. Pragmatically, this is because:
 - (a) The Submitters have made materially the same submission points on both the Proposed Plan and Variation 1; and
 - (b) As identified in the Buddle Findlay advice, any legal hurdles to 'transferring' submissions from the Proposed Plan process to the Variation 1 process can be overcome by the Panel accepting original submission points as late submissions on Variation 1. The Submitters endorse this as a fair approach and one in keeping with the spirit of the Act in terms of how district plans and land use controls are formulated.

Rezoning requests and the interface of the Proposed Plan and Variation 1

5. As noted at paragraph 2 above, the Submitters have sought that the same area of land be rezoned for residential purposes on both the Proposed Plan and Variation 1. From a review of Appendices 4 and 5 of the Wilson Report, it appears this is true for almost all of the rezoning requests on Variation 1.
6. This is of some moment because it may mean:
 - (a) The issue of whether the Panel can or cannot grant rezoning requests made in submissions on Variation 1, is a relatively minor issue in the context of the Waimakariri District and/or affects only a small group of submitters (or a small area of land); and

- (b) Submitters who have sought rezoning in both processes may not have to expend resource (time and money) arguing about the Panel’s jurisdiction to grant rezoning requests in the Variation 1 process.
7. In Minute 2¹, the Panel sought advice on *the interface between Variation 1 submissions and PDP submissions*. However, neither the Wilson Report nor the legal advice annexed to it, address whether or why or how the Variation 1 “scope issue” (for rezonings) matters, if a submitter has sought residential rezoning on both instruments.
 8. It is respectfully suggested it is in all parties’ interests if Council’s position on this is also made clear at this point in time and, particularly, before submitters are put to the expense of filing a substantive response on the question of jurisdiction to grant rezonings requested on Variation 1. This is because the vexed question of whether requested rezonings can be granted on Variation 1 has the potential to be of academic interest only, where a submitter is seeking rezoning on both instruments.
 9. It is also respectfully suggested the Panel and submitters would benefit from some additional “number crunching”, to assist in understanding the practical implications of the Wilson Report and legal advice it relies upon. These practical implications are highly relevant to:
 - (a) The impact of Council’s position on scope, on housing supply in the District;
 - (b) *The policy behind Variation 1*²; and
 - (c) *The purpose of Variation 1*³.
 10. The information that would be useful includes:
 - (a) How many hectares of additional residential rezoning is sought via submissions on the Proposed Plan (noting some of the columns in Appendix 4 headed “Submission Point Summary” and/or “Relief Sought Summary” include a number, but most do not);
 - (b) How many hectares of additional residential rezoning is sought via submissions on Variation 1 (noting some of the columns in Appendix 5 headed “Submission Point Summary” and/or “Relief Sought Summary” include a number, but most do not);
 - (c) How many submissions request additional residential rezoning on Variation 1 only; and
 - (d) Related to the above, within those submissions how many hectares of additional residential rezoning is sought via submissions on Variation 1 only.
 11. Finally, it is noted Appendix 5 does not refer to the Sparks’ submission – but it should. Counsel has contacted the Council’s legal advisors and sought clarification of this omission. Counsel

¹ At [19(b)].

² Opined to be a relevant consideration by Council’s legal advisors (see paragraphs 16(a), 18(a), 20(b)(i)).

³ Opined to be a relevant consideration by Council’s legal advisors (see paragraphs 16(b), 18(a), 20(b)(ii)).

also notes the existence of some entries that do not appear to be rezoning requests⁴. If the Directions sought below are granted, any errors or omissions like this would no doubt be rectified.

Directions sought

12. For the reasons explained above, it is respectfully requested that the Panel's directions in Minute 2 are amended such that:
- (a) The existing direction at paragraph 21 of Minute 2 is suspended for those submitters who have sought residential rezonings over the same area of land in submissions on both the Proposed Plan and Variation 1.
 - (b) Council is to advise its position on the interface between Variation 1 submissions and Proposed Plan submissions in the specific instance where a submitter has sought residential rezoning over the same area of land in both processes.
 - (c) As part of the advice requested in (b) above, Council is to:
 - (i) Advise how many hectares of additional residential rezoning is sought via submissions on the Proposed Plan (noting some of the columns in Appendix 4 headed "Submission Point Summary" and/or "Relief Sought Summary" include a number, but most do not);
 - (ii) Advise how many hectares of additional residential rezoning is sought via submissions on Variation 1 (noting some of the columns in Appendix 5 headed "Submission Point Summary" and/or "Relief Sought Summary" include a number, but most do not);
 - (iii) Advise how many submissions request additional residential rezoning on Variation 1 only (and identify those submissions); and
 - (iv) Advise how many hectares of additional residential rezoning is sought via submissions on Variation 1 only.
 - (d) Affected submitters (being only those who have sought residential rezonings over the same area of land in submissions on both the Proposed Plan and Variation 1) have 15 working days to respond to Council's advice.

Dated: 28 June 2023



David Caldwell
Counsel for Richard and Geoff Spark

⁴ For example, the first two entries on page 1 and the Eliot Sinclair entry on page 5.