

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 5 DATED 4 JULY 2023 / COUNCIL MEMO 18 AUGUST 2023

Dated 1 September 2023

David Caldwell, Barrister
Bridgeside Chambers
PO Box 3180, Christchurch
Ph: 021 221 4113
Email: dcc@bridgeside.co.nz

MAY IT PLEASE THE COMMISSIONERS:

1. This Memorandum is filed on behalf of Richard and Geoff Spark (the **Submitters**). The Submitters filed submissions on both the Proposed Plan and Variation 1 and have been allocated ID numbers 183 and 61 respectively.
2. This Memorandum is filed in accordance with the Commissioners' Minute 5 dated 4 July 2023 and responds to the "Memo to Hearing Panel" prepared by Peter Wilson dated 18 August 2023 (the **Memo**).

Rezoning requests and the interface of the Proposed Plan and Variation

3. As previously advised, both of the Sparks' submissions seek the rezoning of land from Rural Lifestyle to residential for approximately 57.5 hectares of land situated in south-east Rangiora.¹ Included in the land to be rezoned is an area north of Boys Road, Rangiora, within the Southeast Rangiora Development Area.
4. As noted in the Submitters' earlier Memorandum, the Panel sought advice on the interface between Variation 1 submissions and PDP submissions. Neither the original Wilson Report, nor the legal advice annexed to it, addressed whether or why or how a Variation 1 scope issue for rezonings matters if the submitter has sought residential zonings on both instruments.²
5. In the earlier Memorandum, it was suggested that it was in all parties' interests if the Council's position on this was made clear, before the Submitters are put to the expense of filing their substantive response on the question of jurisdiction to grant rezonings requested on Variation 1.³
6. The Memo records the Council officer's view that a preliminary hearing on scope is not a good use of the Panel's, the Council's or submitters' resources. It records further that the questions of scope should be considered and determined after hearing all of the evidence on both the PDP and/or Variation 1 submissions.⁴
7. It does not appear, from the Memo, that the issue of whether or why or how, in the Council officer's opinion, the Variation 1 scope issues (for rezonings) matter if the submitter has sought a residential zoning on both instruments. The issue of the interface between the submissions does not appear to have been addressed. While the hearing of the PDP and Variation 1 matters in the same stream will enable the issue to be addressed at hearing, a response to that issue would still be helpful.

¹ Memorandum of Counsel for Richard and Geoff Spark 28 June 2023 at [2]

² Memorandum of Counsel for Richard and Geoff Spark 28 June 2023 at [7]

³ Memorandum of Counsel for Richard and Geoff Spark 28 June 2023 at [8]

⁴ Memo at [9.e.]

Hearing of rezoning requests

8. The Memo records that the s42A report authors consider it would be appropriate to hear all (original emphasis) rezonings in hearing stream 12, including where there is also a Variation 1 outcome sought. No further detail is provided as to how it is proposed that will be managed other than recording that there will still be separate s42A reports for the PDP matters and for the IPI matters.
9. As the Panel is of course very aware, there are differences in procedure, and particularly in appeal rights. I note in Minute 1 (as at 23 May 2023) the Panel recorded that where a hearing stream combines ISPP topics and non-ISPP topics, application to cross-examine can only be made in respect of the ISPP topics.⁵
10. Overall, it is acknowledged that there are benefits in having “combined” hearings in terms of efficiency, and that will enable full submissions and consideration on the issue of the interface, it will need to be carefully managed.
11. The grouping of the rezoning request in Table 1 is appropriate.

Summary

12. Largely the position taken by the Council officer appears to be to leave the scope issue to be addressed at the hearing stage. While as a general proposition that is appropriate and supported, it is noted that on the substantial rezonings the timetabling directions require the submitter to file evidence prior to the s42A reports, and it would be beneficial to submitters, and ultimately the Panel, if there is some clarity around the reporting officer’s position prior to the filing of the submitters’ evidence. No specific direction is sought in that regard.

Dated: 1 September 2023



David Caldwell
Counsel for Richard and Geoff Spark

⁵ Minute 1 – Hearing Procedures (as at 23 May 2023) at [115]