

## Submission on Proposed Waimakariri District Plan

*Under Clause 6 of the First Schedule, Resource Management Act 1991*

To: Waimakariri District Council  
By email: developmentplanning@wmk.govt.nz

Submitter: [REDACTED] (M & J Schluter)

Postal address: c/- Anderson Lloyd,  
Level 3, 70 Gloucester Street  
Christchurch 8141

Email: sarah.eveleigh@al.nz

Telephone: 03 335 1217

- 1 This is a submission on the Proposed Waimakariri District Plan (**PWDP**).
- 2 M & J Schluter could not gain a trade competition advantage through this submission.
- 3 This submission relates to all provisions applying to 237 Johns Road, Rangiora, including but not limited to zoning and proposed provisions for the West Rangiora Development Area.

### Background

- 4 M & J Schluter own land located 237 Johns Road, Rangiora (the **Property**), legally described as Lot 3 DP 341829.
- 5 The PWDP proposes that the Property is zoned Rural Lifestyle Zone (**RLZ**) and identified within the West Rangiora Development Area. The Property is shown outlined in the black and white dashed line below:



## Submission summary

M & J Schluter generally support the identification of the site for future residential development in accordance with the proposed Outline Development Plan (**ODP**). In respect of the provisions to enable that development, M & J Schluter:

- (a) Conditionally support the West Rangiora Development Area provisions and proposed certification process, subject to amendments being made to the requirements for and process of certification; or
- (b) As alternative relief, seek that the Property be rezoned through the PWDP, consistent with the proposed ODP.

## West Rangiora Development Area

- 6 M & J Schluter are conditionally supportive of the Future Development Area approach, which relies on certification by the District Council's Chief Executive in order to enable urban development.
- 7 However, a number of issues arise as to the criteria for and process of certification prescribed in the certification standard DEV-WR-S1. If these issues are not addressed, the certification standard will be uncertain, potentially unworkable, and unlawful. The issues identified are addressed in further detail below.
- 8 It is noted in the section 32 assessment for Development Areas that the proposed provisions are similar to those contained in the Dunedin City Council Second Generation Plan (**DCC 2GP**) Chapter 12. Further reference is made to those provisions as relevant to the issues identified below.

### *Discretion to certify*

- 9 A particular concern with the current drafting of DEV-WR-S1 is the extent to which it does not properly provide a certification clause, but retains discretion for the Chief Executive. This occurs in two ways.
- 10 First, the current drafting of the provision does not require certification where the criteria are met. This submission seeks amendment to DEV-WR-S1 to provide that the Chief Executive must certify the release of land for development where the listed criteria are met. It is noted that this drafting is consistent with the decisions version of comparable provisions in the DCC 2GP.
- 11 Second, the criteria themselves contain a number of elements which are subjective and uncertain, and therefore *ultra vires*. As a general submission, amendments to these provisions are required to ensure that criteria for certification are clear and do not require subjective or discretionary judgement to be made as to whether they are satisfied. Without limiting the generality of this submission, further comment is made on specific provisions below.

### *Criterion for residential capacity*

- 12 The current criterion (a) is that:

the development will provide additional residential capacity to help achieve or exceed the projected total residential demand as identified in UFD-O1 (for the medium term) as indicated by the most recent analysis undertaken by Council in accordance with the NPSUD and published on the District Council website

- 13 Any new development will "provide additional residential capacity to *help achieve or exceed* the projected total residential demand" (our *emphasis*). As phrased, this criterion does not require that a shortfall in residential capacity be identified in order for land to be released for development. It is therefore unclear why it would be necessary to refer to the most recent residential capacity analysis undertaken by Council. However, the introductory text to the WR provisions states that, for the four future development areas, provisions are included which provide for their transition from the underlying Rural Lifestyle Zone to development "if and when they are required due to a demonstrated sufficiency shortage of land available in existing residential zones".
- 14 The Greater Christchurch Housing Development Capacity Assessment, July 2021, confirms an existing medium term residential capacity shortfall in Waimakariri District. Future Development Areas (**FDAs**), including the West Rangiora Development Area, have been identified through Change 1 to the Canterbury Regional Policy Statement (**CRPS**) to meet this shortfall. In excess of half of the identified FDAs are required to meet the medium term shortfall in Waimakariri District, and release of all FDAs are required to meet current projections for long term capacity requirements.
- 15 In addition, changes to the National Policy Statement for Urban Development (**NPSUD**) place an increased emphasis on the requirement for planning decisions to improve housing affordability by supporting competitive land and development markets.
- 16 In these circumstances, there should be no concern about the need to manage the release of FDAs identified in the CRPS for residential supply reasons, particularly as other criteria address the integration of this change in land use with infrastructure provision.
- 17 For these reasons, this submission seeks that criterion (a) be deleted from the certification requirements in DEV-WR-S1.

*Criteria for geotechnical, flood, stormwater and transport assessments*

- 18 The following criteria relate to provision of technical assessments:
  - (c) a geotechnical assessment and flood assessment for the area has been prepared for this area and any identified risks contained within the assessments can be mitigated as part of subdivision design and consent;
  - (e) a stormwater assessment has been developed for this area and any recommendation contained within the assessment is agreed by Council;
  - (f) a transport assessment has been developed for this area and any recommendation contained within the assessment can be mitigated as part of the subdivision design and consent;
- 19 In each case, the criteria do not provide a clear standard for certification, and enable the exercise of discretion by the Chief Executive as to whether the assessments, and the proposed mitigations or recommendations, are sufficient. As such, the provisions create uncertainty, and are likely on occasion to result in the certification process becoming unworkable and the source of disputes. The retention of such discretion outside of a district plan or resource consent process is also likely to be unlawful.
- 20 Considering the matters raised in each of the clauses:
  - (a) In relation to geotechnical and flood risks assessments, Council should have been satisfied that these matters will not create an impediment to the development of the land for

residential use prior to the identification of the land as a FDA in the CRPS or PWDP.  
Appropriate mitigation of any identified risk can be addressed at subdivision consent stage.

- (b) In relation to stormwater management, the ODP for the West Rangiora Development Area includes significant areas of land identified as stormwater reserve.
  - (c) The drafting of the criterion for transport is considered unclear, as it appears to require mitigation of a recommendation. Having regard to issues that regularly arise in plan change proceedings, it is considered that the transport assessment criterion has particular potential to result in dispute as to the recommendations and any mitigation required. As currently drafted this appears to retain discretion to the Chief Executive to be satisfied on these matters. To the extent that infrastructure upgrades are required to support the development, this is addressed through criterion (h).
- 21 As indicated by the drafting of these criteria, they essentially relate to matters of detailed design for the management of geotechnical and flood risk, stormwater and transportation. These are matters that can be addressed at subdivision consent stage and do not require further assessment for certification.
- 22 For these reasons, this submission seeks the criteria (c), (e), and (f) are deleted from the certification requirements in DEV-WR-S1.

#### *Staging plans*

- 23 Reference to staging plans occurs in DEV-WR-S1 certification criterion (g), Advice note DEV-WR-AN1, and Appendix DEV-WR-APP1.
- 24 The requirement for a staging plan in criterion (g) may be acceptable, on the understanding that this staging plan relates only to the development which is the subject of the application for certification. This is currently stated in sub-clause (i), but would be better articulated in clause (g) itself.
- 25 The Advice note addresses the wider staging of land certification where more areas of land are requested to be released than can meet the certification criteria. It refers to land being released in accordance with the staging plan, but we understand that this relates to a staging plan for the entirety of the Development Area, not the staging plan referred to in criterion (g).
- 26 No staging plan for the purposes of the Advice note is provided with the provisions. The Appendix states that:
- For water, wastewater and stormwater servicing reasons, staging of development from the south to the north is preferable, except where initial development can be serviced through a temporary commitment of existing infrastructure capacity.
- 27 Where staging is necessary, M & J Schluter support the proposed staging of development from the south to the north. Amendments to the Advice note DEV-WR-AN1 are sought to clarify that this is the approach to staging for the West Rangiora Development Area, and to remove the potential that the reference to a staging plan is interpreted as relating to staging plans required under criterion (g).

#### **General Residential and Medium Density Residential Zoning**

- 28 As an alternative to the Development Area approach, M & J Schluter seek rezoning of the Property through the PWDP, to General Residential and Medium Density Residential zoning as depicted on the proposed ODP.

- 29 As discussed above (paragraphs 14 - 15), the FDAs are necessary to meet housing development capacity shortfall in the Waimakariri District. The NPSUD directs that Council improve housing affordability by supporting competitive land and development markets. It also requires that Council provide, at all times, at least sufficient development capacity for the district to meet demand for housing the in short, medium and long term. In order to meet the requirement for sufficient development capacity, land must be plan-enabled. For short and medium term demand, plan-enabled requires that land is zoned for housing in the proposed district plan.
- 30 For these reasons it is not necessary to hold back the release of FDAs to manage release of residential development capacity, and rezoning the land now better gives effect to the NPSUD. To the extent that there are any infrastructure capacity reasons that the Property or the wider West Rangiora Development Area cannot be developed now, that can be addressed through a staging rule in the PWDP.
- 31 The section 32 assessment for the Development Areas identifies the significant time and cost associated with release of land by way of plan change, and proposes the Development Area approach to simplify land release. That intent is supported, however rezoning the land now would more efficiently and effectively address this issue and provide necessary housing development capacity.

### **Reasons**

- 32 In addition to the reasons provided above, the proposed amendments to provisions or rezoning sought will:
- (a) assist the Council in carrying out its statutory duties under the Resource Management Act 1991 (**RMA**) including the integrated management of the effects of the use and development of land;
  - (b) give effect to the NPSUD;
  - (c) give effect to the CRPS;
  - (d) meet the requirements of section 32 of the RMA; and
  - (e) promote the sustainable management of natural and physical resources in accordance with Part 2 of the RMA.

### **Decision Sought**

- 33 M & J Schluter seek the following decision from the Waimakariri District Council:
- (a) Amendments to the WR provisions, to address the matters raised in this submission. Without limiting the generality of that relief, particular amendments are sought to the following WR provisions:
    - (i) Introduction;
    - (ii) DEV-WR-S1; and
    - (iii) DEV-WR-AN1;
  - (b) Alternatively, rezoning of the Property, consistent with the zoning identified on the proposed ODP; and

- (c) Such other relief as may be required to give effect to this submission, including alternative, further or consequential amendments to objectives, policies, rules and definitions of the PWDP that address the matters raised by M & J Schluter.

- 34 M & J Schluter wish to be heard in support of its submission, and will consider presenting a joint case with others presenting similar submissions.

A handwritten signature in black ink, appearing to read 'S Eveleigh', with a stylized, flowing script.

**M & J Schluter**

Signed by their duly authorised agents

Anderson Lloyd

Per: **Sarah Eveleigh**

26 November 2021