

Before the Hearing Panel
Appointed by Waimakariri District Council

Under the Resource Management Act 1991

In the matter of Private Plan Change 30 to the Waimakariri District Plan

Legal submissions in reply on behalf of Ravenswood Developments Limited

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May it please the Commissioners

- 1 These submissions in reply are made on behalf of Ravenswood Developments Limited (**RDL**), the Proponent for proposed private Plan Change 30 (**PC30**) to the Waimakariri District Plan (**District Plan**).
- 2 These submissions address a number of specific issues raised during the course of the hearing, namely:
 - (a) Key Activity Centre (**KAC**) status for Ravenswood;
 - (b) Ravenswood KAC scale;
 - (c) Retail distribution effects and retail staging rules; and
 - (d) Concept masterplan approach and revised PC30 provisions.

Key Activity Centre status

- 3 The Canterbury Regional Policy Statement (**CRPS**) defines KACs as:¹

Key existing and proposed commercial centres identified as focal points for employment, community activities, and the transport network; and which are suitable for more intensive mixed-use development.

The following centres shown on Map A are the existing KACs within Greater Christchurch:

- Papanui
- Shirley
-
- Kaiapoi
- Rangiora
- Woodend /Pegasus
- Lincoln
- Rolleston
- (our emphasis)

- 4 Accordingly, the CRPS definition provides that Woodend/Pegasus (identified on Map A in the location of Ravenswood) is an **existing KAC** for the purposes of the CRPS provisions.

¹ CRPS, Definitions for Greater Christchurch, pages 247-248

- 5 Ravenswood is not currently identified as a KAC in the Waimakariri District Plan (**WDP**). In determining PC30, the Council must give effect to the CRPS, as required by s75(3) Resource Management Act 1991 (**RMA**). CRPS Policy 6.3.1(2) is to give effect to the urban form identified in Map A "by identifying the location and extent of the indicated Key Activity Centres". Associated Method 3 directs that territorial authorities will include in district plans objectives, policies and rules (if any) to give effect to the policy; while Method 4 provides that they will investigate and implement methods in district plans for promoting development and enhancement of KACs.
- 6 Identification of Ravenswood as a KAC is required to give effect to the CRPS Policy 6.3.1(2) and associated Methods 3 and 4, having regard to² the direction of the WDDS³ as to the location of the Woodend/Pegasus KAC and the limitations on alternative locations for this KAC. All planning witnesses agree that Ravenswood should be identified as a KAC in the WDP through PC30.⁴
- 7 During the hearing the Commissioners queried whether an assessment of trade impacts was required, given RDL's position that the site must be identified as a KAC. In our submission that evidence is necessary to determine whether there is likely to be significant retail distribution effects, and if so, consider the most appropriate management of those effects to achieve the policy directives. It does not undermine the requirement to give effect to the CRPS through identification of Ravenswood as a KAC.

Ravenswood KAC – scale

- 8 The witnesses are agreed that KACs are broadly defined in the CRPS so as to fulfil a wide range of centre-based functions, however the CRPS is not directive as to the scale and form.⁵ The CRPS recognises that KACs are not homogeneous, particularly within Christchurch City. Mr Haines⁶ and Mr Munro⁷ note that KAC's are not solely key retail centres and that less constrained greenfields sites, particularly when held in single ownership, are more likely to have a range of other commercial activities and therefore better align with the broad, all-encompassing definition of a KAC.

² As required by s 74(2)(b) Resource Management Act 1991

³ Waimakariri District Development Strategy 2048, page 29

⁴ Joint Witness Statement (Planning), at [5]

⁵ Evidence of Matthew Bonis - summary and response, at [7], CRPS Policy 6.2.5

⁶ Evidence of David Haines at [9], and Summary statement of David Haines at [8]

⁷ In response to questions from Commissioner Mountfort

- 9 PC30 proposes a KAC that is intended to do more than meet the local retail needs of the Ravenswood, Pegasus and Woodend community. A greater scale of centre is proposed in order to fulfil the wider range of centres-based functions, and address in part the significant retail leakage out of the Waimakariri District.⁸ In the absence of an effects or policy based reason (discussed further below), limiting the scale of the KAC/Business 1 zone to meet only a localised function is an unnecessary impediment to the centre delivering the broader range of functions anticipated by the KAC classification.
- 10 The question of scale was put to Ms Shona Powell, speaking for the only submitter to appear, the Woodend-Sefton Community Board. Ms Powell was asked whether, given the choice, she would prefer a local centre or one which also served the district. Ms Powell responded that it must be both, noting that a larger centre would provide employment that supports the community. Ms Powell also commented that KACs are not isolated bubbles, that Ravenswood would offer something that Waimakariri had not previously had, and that the three KACs would complement each other.
- 11 The WDDS proposes that Ravenswood have a scale of 5ha and 14,000m² of core retail. While the WDDS is a document to be had regard to, on closer scrutiny the level of development proposed for the Ravenswood KAC is flawed.⁹ All witnesses, including the s42A reporting officers, agree that it is appropriate to move beyond that scale,¹⁰ with the planning witnesses agreeing that identification of the entire area sought by PC30 as a KAC is appropriate. In my submission the WDDS direction as to the specific scale of the Ravenswood KAC should be given little, if any, weight.

A compact centre?

- 12 The Commissioners queried whether accepting the full extent of the KAC sought would result in a compact centre. In this regard, it is noted that the distance from the entrance of the New World Supermarket and new retail development in the southwestern corner of Lot 203 is approximately 400m, being within a 5-minute “ped-shed”. The Ravenswood KAC is a compact centre in terms of this recognised walkability criterion. Density of built form and commercial activity will increase over time.

⁸ Evidence of Fraser Colegrave at [157]

⁹ Evidence of Fraser Colegrave at [28]; Evidence of David Haines at [42]

¹⁰ Joint Witness Statement (Planning) at [22]; Joint Witness Statement (Economics) at page 3

Provision for high density housing?

- 13 The s42A officers proposed that provision be made for high density residential activity on the western edge of the KAC. The evidence of Mr Croft confirms there is presently no demand for vacant allotments at Ravenswood that are less than 400m² in area. Furthermore, the Business 1 zone permits residential activities above ground level, enabling such provision to be made in response to market demand. Additionally, as all witnesses agree that 13.4ha¹¹ is an appropriate quantum of Business 1 zone land at Ravenswood, it would be inappropriate to diminish the area of an RPS-mandated KAC in favour of residential activities which can be more readily located in many other locations within the District. Similar reasoning also applies to provision of more Business 2 land at Ravenswood for industrial activities.

Retail distribution effects and retail staging

The law

- 14 As detailed in opening submissions, the effects of trade competition are not a matter which can be had regard to when determining a change to a district plan.¹² Any effects considered must go beyond trade competition and become an effect on people and communities, on their social, economic and cultural wellbeing, on amenity values and on the environment,¹³ commonly referred to as retail distribution effects. These effects must be "significant" before they can be properly regarded as beyond the effects ordinarily associated with trade competition.¹⁴
- 15 The statutory direction to disregard the effects of trade competition applies to both the effects and policy assessments. A two stage legal test applies as follows:¹⁵
- (a) Determine whether there are significant effects beyond those caused by trade competition.
 - (b) Consider those effects against the requirements of the relevant planning objectives.

¹¹ Noting that this includes the open space provision, so the extent of Business 1 activity will be 12.8ha, as is referred to in a number of documents.

¹² Section 74(3) Resource Management Act 1991

¹³ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59, at [87]

¹⁴ *Discount Brands v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597 (SC), per Blanchard J at [120]

¹⁵ *Discount Brands v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597 (SC); *General Distributors Ltd v Waipa District Council* [2009] NZRMA 481

The evidence

- 16 Mr Colegrave has undertaken comprehensive modelling of trade impacts utilising the most recent data available, and estimates that trade impacts to 2028 will be a reduction in retail turnover of 5.1% at Rangiora and 2.7% at Kaiapoi. Those estimates are highly conservative, as they assume that the RCA would be completely developed by 2028, notwithstanding that PC30 is only now being heard in mid-2021 and it is estimated that full development of the RCA will take 10-15 years.
- 17 In response to a Request for Further Information from the Panel, Mr Colegrave has provided further information by way of clarification around the modelling process. Mr Colegrave has also rerun the models for Tables 9-12 in his evidence, starting from a zero-base for Ravenswood. While the impacts on Rangiora and Kaiapoi were slightly higher, Mr Colegrave still found that the potential effects were well below the significance threshold. The further modelling undertaken demonstrates that the modelled retail distribution for the Ravenswood KAC is robust and consistent with the distributions for other Waimakariri KACs.¹⁶
- 18 The evidence of both Mr Colegrave¹⁷ and Mr Foy¹⁸ is that retail development enabled by PC30 **will not result in significant retail distribution effects**. There is no evidence before the Panel that distribution effects will meet the significance threshold. The trade impacts identified are trade competition effects, which must be disregarded.
- 19 In our submission that should be the end of the matter. However Mr Foy's evidence is that there would be significant opportunity costs to Rangiora and Kaiapoi if Ravenswood was to fully develop within the next 10 years,¹⁹ and both Mr Foy and Mr Bonis find that the imposition of retail staging rules is the most appropriate way to give effect to the CRPS, achieve the objectives of the WDP, and have regard to the WDDS. We address those matters below.

Opportunity costs

- 20 Commissioner Fletcher queried²⁰ whether opportunity costs, or stagnation of a centre, could be considered a significant distribution effect.

¹⁶ Response to request for further information – Fraser Colegrave, refer concluding remarks (Tab 6)

¹⁷ Evidence of Fraser Colegrave at [12], [22]

¹⁸ In response to questions of Commissioner Rogers

¹⁹ Summary statement of evidence of Derek Foy, at [2.3(e)]

²⁰ Question to Ms Eveleigh during presentation of opening submissions for the Applicant

- 21 We have not identified any case law specifically dealing with consideration of opportunity costs in the context of retail distribution effects. However, opportunity costs are clearly effects of trade competition and so the resulting distribution effects must be *significant* before they can properly be regarded as beyond the effects ordinarily associated with trade competition.²¹
- 22 In terms of what constitute "significant effects", the following points are made.
- (a) Justice Randerson in the seminal High Court decision *Northcote Mainstreet Incorporated*²² stated that there must be a "serious threat to the viability of a centre" as a whole that will result in significant adverse social and economic effects on people and communities served by that centre. The "serious threat" test has since been adjusted to allow a consent authority to consider all significant effects of retailing on the ability of people and communities to provide for their social and economic wellbeing that have a greater impact than would be caused simply by trade competition. But regardless of whether this test is expressed as either a "serious threat to viability" or "significant", it is clear that a high threshold must be reached in order to establish material consequential effects on the community.
 - (b) There are very few cases where the Court has accepted that a proposal would give rise to significant retail distribution effects. Examples include:
 - (i) *Westfield New Zealand Limited v Upper Hutt City Council*,²³ where the Environment Court concluded that the proposal would have serious and irreversible detrimental effects on the Upper Hutt CBD, to the point of severely affecting its functional cohesion.
 - (ii) More recently, in *Pohutakawa Coast Community Association Auckland Council*,²⁴ the Environment Court found that if the plan change was approved this would have a significant adverse effect on the Beachlands community as it currently existed, and would be an adverse effect beyond trade competition. It was found that the new development would attract a large number of existing businesses to relocate from Beachlands to the new centre, before the population increase anticipated by the plan change occurred. If there were to be a large number of empty shops which were unable to be re-tenanted

²¹ *General Distributors Ltd v Waipa District Council* [2009] NZCA 213, [2009] NZRMA 481

²² *Northcote Mainstreet Incorporated v North Shore City Council* (2004) 10 ELRNZ 146 at [62]; adopted by the Supreme Court in *Westfield (New Zealand) Limited v North Shore City Council* [2005] NZSC 17 at [120].

²³ *Westfield New Zealand Limited v Upper Hutt City Council* W44/01

²⁴ *Pohutakawa Coast Community Association Auckland Council* [2013] NZEnvC 104 at [71]

relatively promptly then this could affect community investment in infrastructure at the Beachlands centre and the social/community function they provide. The Court nevertheless approved the plan change, but determined that it was appropriate to remove the requirement to build the Main Street of the new centre in the first stage of development, so that development of the Main Street would be in response to market demand rather than being prescribed by the plan²⁵.

- (c) In *Progressive Enterprises Ltd v Palmerston North City Council*²⁶ the hypothesis was floated of a rapid development of large format retailing having a significant trade competition effect on an existing commercial area. The Court found this proposition to be "unrealistic and unlikely" and considered that any adverse trade competition effects on CBD core businesses would be spread over a period during which the health of the business core would adjust; and there would not be consequential effects on the social function of the CBD of a scale and significance that could not be expected in the normal course of trade competition. In other words, the timing of growth or adjustment of the market was found to be simply a trade competition matter.
- (d) In response to questions from the Commissioners as to what constitutes a significant retail distribution effect, Mr Colegrave, Mr Foy and Mr Haines gave examples including: lots of empty shops, few people about, a lack of vibrancy, a sense of emptiness, plenty of vacant car parks, built form and public realm looking old/tired and not showing signs of investment.

23 In relation to whether the opportunity costs anticipated by Mr Foy would amount to significant distribution effects:

- (a) Mr Foy speculates that the Rangiora and Kaiapoi KACs may "develop more slowly"²⁷ than they would if the Ravenswood KAC developed in closer proportion to its catchment growth. He then went on to suggest that those centres "will take longer to generate a critical mass of economic activity"²⁸ that will support new retailers to the District. There is no compelling evidence before you to enable such a conclusion to be reached in this case.

²⁵ See [127]

²⁶ *Progressive Enterprises Ltd v Palmerston North City Council* W089/2007

²⁷ Evidence of Derek Foy at [9.5]

²⁸ Evidence of Derek Foy at [9.5]

- (b) It is the evidence of Mr Colegrave and Mr Croft that many of the retailers anticipated to establish in Ravenswood would not, in the absence of Ravenswood, choose to locate in Rangiora or Kaiapoi.²⁹ In terms of "generating a critical mass of economic activity" Kaiapoi and Rangiora are already established centres. In the opinion of Mr Colegrave and Mr Foy,³⁰ the centres are in good health, although earthquake recovery is not complete in areas of Kaiapoi. Any consideration of the opportunity costs should be cognisant of these factors.
- (c) In any event, the "significant opportunity costs" anticipated by Mr Foy do not equate to significant retail distribution effects which go beyond trade competition effects. That conclusion is clear from consideration of the case law, the descriptions of significant retail distribution effects provided by Mr Foy and Mr Colegrave, and the agreement of Mr Colegrave and Mr Foy that retail distribution effects will not be significant.

24 Just as business competition is considered to be beneficial, and in the public interest under the Commerce Act 1986, these provisions of the RMA reflect a statutory policy that the RMA is not to be used as a means of licensing or regulating competition.³¹ In this context, opportunity costs are speculative future consequences that relate purely to trade competition. The timing of growth or adjustment of the market is not a relevant or lawful consideration in this case. To accept "opportunity cost" as a relevant consideration in this case would open the door to trade competition being a factor in your deliberations. That would be unlawful.

Policy direction for KACs and whether retail staging provisions are the "most appropriate"

- 25 Mr Bonis advances the view that a retail staging threshold is "more appropriate in giving effect to the RPS, achieving respective policies of the ODP, and having appropriate regard to the DDS".³²
- 26 The CRPS direction is to maintain the "existing **network of centres**" as focal points for activity (not to maintain existing centres);³³ avoid adverse effects on the function

²⁹ Evidence of Fraser Colegrave at [171]; Evidence of Paul Croft at [22]

³⁰ In response to questions from the Panel

³¹ Randerson J in *Northcote Mainstreet Incorporated v North Shore City Council* (2004) 10 ELRNZ 146 at [52]

³² Evidence of Matthew Bonis at [225]; Evidence of Matthew Bonis – summary and response at [15]

³³ CRPS Objective 6.2.5

and viability of, or public investment in, KACs;³⁴ and to provide for business activity in a manner which reinforces the role of KACs.³⁵

- 27 The WDP seeks to recognise the role of the KACs in a way that strengthens the Business 1 zones of Rangiora and Kaiapoi as the primary employment and civic destinations.³⁶ It is noted that this objective is not consistent with, and does not give effect to, the RPS direction for recognition of a third district KAC at Woodend/Pegasus. Other WDP policies seek to encourage the establishment of business activities that avoid adverse effects on the function and viability of KACs, taking into account the potential for significant distributional effects;³⁷ and avoid or mitigate significant adverse effects on the form and function of the Business 1 Zones.³⁸
- 28 The assessment of PC30 against those provisions must be undertaken disregarding the effects of trade competition. In the same way that trade competition effects cannot be considered under the guise of a policy assessment, they cannot be reintroduced through a section 32 assessment as to which option is "most appropriate". The section 32 assessment must be undertaken within the context of effects which are relevant under the law, which clearly does exclude trade competition effects.
- 29 In my submission the section 42A officers' approach is inconsistent with the two step test endorsed by the Court of Appeal in *General Distributors*³⁹. Unless the distributional effects are of sufficient magnitude to be beyond those ordinarily associated with trade competition, these trade competition effects should not be considered when assessing the proposal against objectives and policies. RDL's position is that there are no distributional effects of sufficient quantum to be considered under s74(3), and therefore no basis on which to conclude that imposition of staging rules is necessary to address those effects, either in their own right or as relevant to the policy assessment.
- 30 When read in context, the CRPS and WDP policies reinforce a centres-based approach and seek to avoid significant adverse effects on the form and function of KACs and Business 1 zones as community focal points. Considering the specific direction in the provisions, the evidence does not support a conclusion that development in accordance with PC30 (absent any staging rules) will result in

³⁴ CRPS Policy 6.3.1(8)

³⁵ CRPS Policy 6.3.6(3)

³⁶ WDP Objective 15.1.2(a)

³⁷ WDP Policy 16.1.1.2

³⁸ WDP Policy 18.1.1.1(i)

³⁹ *General Distributors Ltd v Waipa District Council* [2009] NZRMA 481

adverse effects of a magnitude that would offend the policy provisions. The evidence demonstrates that the effects of PC30 development on Rangiora and Kaiapoi are not at a level that would be to the detriment of the form, function, viability or role of those centres.

- 31 While neither the CRPS nor the WDP assign a hierarchy of KACs or afford primacy to Rangiora,⁴⁰ the WDDS⁴¹ does identify Rangiora as having primacy in the centres hierarchy. PC30 does not challenge that primacy, for the reasons addressed in the evidence of Mr Haines.⁴² The existing scale of Rangiora⁴³ and the attractions of this centre, including complementary services which will not be replicated at Ravenswood, ensure that its primacy will be retained in the short term, and will be reinforced by long term growth.⁴⁴

Proposed retail rules

- 32 With respect to the retail staging rules proposed by the s42A officers, Mr Bonis states that "the proposed regulation is set at a level where impacts of sufficient scale may occur (rather than suggesting they will occur)".⁴⁵
- 33 That position is not supported by the evidence. The threshold now proposed by the s42A officers relates to development of more than 25,000m² before 2033. However the unequivocal evidence of both Mr Colegrave and Mr Foy is that PC30 will not have significant retail distribution effects, that assessment being made on the basis of full development of the centre (35,500m² core retail) by 2028. Mr Foy has proposed retail thresholds to manage opportunity costs which are below the required threshold of significance. Those are trade competition effects, and consideration of those effects and the imposition of thresholds to address them is contrary to law. As such, they cannot be the most appropriate.
- 34 During the hearing the Commissioners queried whether retail development within the Ravenswood KAC could exceed that anticipated and assessed by PC30. While RDL considers that possibility is remote given its development knowledge and experience, it has prepared a rule that imposes a cap on total retail floorspace

⁴⁰ Evidence of Matthew Bonis - summary and response at [10]. Commissioner Fletcher queried whether a centres hierarchy should be introduced through PC30. This is not considered appropriate or within scope of the site specific PC30. If the Council considers there should be a "centres hierarchy" for Waimakariri, 2GP provides a district-wide framework for such a proposal to be considered.

⁴¹ WDDS at page 30

⁴² Evidence of David Haines at [45]-[47]

⁴³ Mr Foy identifies that Rangiora has existing retail and services of 47,400m²

⁴⁴ Evidence of David Haines at [45]-[47]

⁴⁵ Evidence of Matthew Bonis – summary and response at [20]

within the KAC which could be imposed if the Commissioners consider this necessary.

- 35 The retail rule was originally drafted as permitted activity condition rule 31.23.1.12. On final review of the provisions (following caucusing) Mr Browne has identified that the rule would better align with the structure of the WDP if it were drafted as a discretionary activity rule. The redrafted rule is now included as 31.25.5 in RDL's final set of provisions sought, attached as **Appendix A**.

Concept masterplan approach

- 36 The RPS (policy 6.3.3) provides a choice between an ODP or other rules for the area. RDL has elected to use the "other rules for the area" option available under the CRPS, with the s42A officers accepting that this approach is both valid and workable.
- 37 However, there is a tension between the approach promoted by RDL and the level of detail and control sought by the s42A officers. There has been a lot of discussion around the words needed to deliver good urban design outcomes for the KAC, with WDC witnesses seeking highly prescriptive provisions and a statutory discretion to consider (influence, amend or refuse) the Concept Plan. RDL's approach is to identify the sought outcomes while providing matters for discretion and assessment criteria that guide and enable the Council to secure good urban design outcomes.
- 38 Mr Haines, in his evidence, cautions against an approach which merely replaces an ostensibly directive ODP with an equally prescriptive set of words, which undermines the need for flexibility.⁴⁶ Design flexibility is a key consideration when dealing with commercial and retail activities, which are inherently dynamic in nature. That is consistent with the "enablement" approach of the RMA.
- 39 In our submission the Panel should remain cognisant of the comparative level of detail prescribed, and control afforded, by the more conventional ODP approach, and should not be drawn to prescribing a level of detail which is beyond that appropriate for a plan change.

Revised provisions – an overview of changes following hearing

- 40 Following the hearing, a final round of caucusing between the planners has resulted in a revised set of provisions. These were circulated by Mr Bonis on 25 June 2021, and are referred to as Version L.
- 41 To further assist the Commissioners, a "clean" version of the provisions showing only the final changes to the WDP text sought by RDL is attached as **Appendix A**.

⁴⁶ Evidence of David Haines - Summary at [19]

The numbering of these provisions has also been updated to align with the current WDP text,⁴⁷ with previous numbering recorded in square brackets. For ease of reference and comparison with the circulated evidence and reports for PC30, these submissions in reply continue to refer to the numbering as it appears in Version L.

- 42 A summary of the changes made following hearing is provided below.
- 43 Policy 18.1.1.12 has been redrafted. The intent of the redraft is to emphasise the role of the concept master plan in guiding future development and to provide greater specificity about the particular elements to be provided through the concept master plan. Sub-clause (e) relates to the concept master plan and reflects the matters listed in paragraph 12 of the Urban Design JWS. The revised policy also opens with more prescriptive wording, and incorporates the majority of drafting from the version that Mr Bonis provided with the planning JWS. The drafting of Policy 18.1.1.12 is largely agreed, with matters of disagreement addressed below.
- 44 Amendments have been made to Rule 31.23.4 (now 31.25.4) assessment matter (a). The relevant matter is "the extent to which the proposal demonstrates integration with existing and future development and will enable the outcomes set out in Policy 18.1.1.12 to be achieved". The outcomes in Policy 18.1.1.12 include development in accordance with a concept master plan to provide the identified elements. This is the link to enable consideration of the concept master plan, as explained further below.
- 45 Revised Policy 18.1.1.12, together with Rule 31.23.4, will enable Council to consider the concept master plan with each resource consent application for development. Where Council is not satisfied that the concept master plan delivers the specified outcomes, and achieving those outcomes may be precluded by the development to which the application relates, it can decline consent or impose conditions. Where Council is not satisfied that the concept master plan delivers the specified outcomes, but achievement of those outcomes is not affected by the development under consideration, we anticipate that Council would provide this feedback for consideration during preparation of the next application / revised concept masterplan.
- 46 The potential for subdivision and multiple ownership is addressed by a consequential amendment to the subdivision assessment matters in Rule 32.1.3. The intent of this change is to ensure any subdivision also considers the relevant matters listed under rule 31.23.4 and requires provision of a concept master plan. It is anticipated that key elements of the concept masterplan (where these are not

⁴⁷ The numbering of several provisions in the WDP has been updated subsequent to PC30 being drafted

already in existence) would be secured by way of conditions of consent and consent notices.

Areas of disagreement

- 47 Following the final round of expert conferencing between the planners, there is now a large degree of agreement as to the drafting of provisions. Key areas of disagreement are addressed below:
- 48 Policy 18.1.1.12 – To "require" or "provide for" development.
- (a) RDL considers the drafting "Provide for development... that" is sufficiently prescriptive, the inference being that development which does not accord with the matters set out in the policy is not provided for. The drafting is also consistent with that found elsewhere in the WDP, with the majority of policy provisions "providing for" particular activities or outcomes.
- 49 Policy 18.1.1.12 – reference to development "at a rate" (sub-clause (a)) and "to meet the long term needs of the Ravenswood, Pegasus and Woodend communities" (sub-clause (b)).
- (a) These additions to the policy are inconsistent with RDL's position that there should not be staging of development, and that the function of the KAC (as enabled by its scale) is broader than a local retail function and will address retail leakage from Waimakariri.
- 50 Policy 18.1.1.12(d)(vi) – low speed transport environment.
- (a) It is premature to require that the entirety of the KAC provide a low speed transport environment. The evidence referenced relates to low speed environments in specific parts of the development, particularly the retail main street (which is accepted by RDL and referred to in the policy as a pedestrian focused environment, see (d)(i)).
- 51 Rule 31.23.4(A)(h) and (B)(iii) – a requirement for a civic square.
- (a) Mr Munroe's evidence is that a civic square is not essential to the KAC. RDL notes that a civic square as proposed is not a common feature of established KACs, including Rangiora and Kaiapoi.
- (b) Policy 18.1.1.12 requires "open spaces which provide for a range of community functions and interaction, and enhance connectivity". That is considered to provide for open spaces consistent with the function of a KAC while being sufficiently flexible to meet the needs of the community, and reinforce the character and enhance the amenity of Ravenswood. RDL does

not wish to be committed to a "square" that may not achieve the same benefits as other open spaces.

52 Rule 31.23.4 – Ngai Tūāhuriri design elements

- (a) While RDL is not opposed in principle to inclusion of reference to Ngai Tūāhuriri design elements, it considers the proposed drafting is significantly more prescriptive than the CRPS policy⁴⁸ relied on, and has some concern that it has been developed without consultation with Ngai Tūāhuriri Rūnanga. Inclusion of such a provision was not raised by Rūnanga during consultation. RDL considers this matter would be better addressed on a district-wide basis as part of the 2GP process.

53 Rule 31.23.4(B)(v) – Concept master plan to identify locations and connections for the provision of community spaces, civic facilities and infrastructure (including library, civic square and public transport infrastructure).

- (a) RDL opposes this inclusion. The provision of such infrastructure is not certain, and is dependent on Council both determining that it is warranted and committing funding. If and when Council confirms that infrastructure is to be provided it can be shown on the concept master plan, however the proposed drafting suggests a requirement to set aside land for this purpose at the outset.

54 Rule 31.23.4 – Notification

- (a) The Planning JWS records that the planners were agreed as to the inclusion of a non-notification clause for applications under Rule 31.23.4, however Mr Bonis has now resiled in part from that position, recommending notification of the Concept Plan which amends connections, access or structuring elements.⁴⁹
- (b) This issue will only arise where the land is subdivided and sold to other landowners. As discussed above, additional assessment matters have been added for subdivision in the Ravenswood KAC, and it is anticipated that this would result in key structuring elements being fixed through the subdivision consent process. This will provide a certainty of development form consistent with that which would more commonly be provided by an ODP.

⁴⁸ CRPS Policy 6.3.2

⁴⁹ Matthew Bonis Response to Minute 2, at [4.3]

- (c) We address below whether the concept master plan is an 'activity' which may be subject to notification.

Questions posed by Mr Bonis regarding the concept master plan mechanism

- 55 In his response to Minute 2, Mr Bonis posed a series of questions regarding the concept master plan approach which he considered were best addressed in counsel's reply. Those questions are set out below, together with our responses.
- 56 Question (a) – The Concept Masterplan is neither 'a use of land' for the purpose of s9 of the Act, nor is it defined as 'development' for the application of proposed Rule 31.23.4. Accordingly, it is unclear as to whether the Concept Plan has a statutory purpose as a rule pursuant to s76 of the Act. There is accordant uncertainty (for both any subsequent Applicant or the Council) in terms of addressing disputes associated with: the provision of information within a Concept Plan; applicant(s) producing multiple or overlapping Concept Plans; or where there are unimplemented resource consents that would be superseded through an amended Concept Plan(s).
- 57 Response -
- (a) Rule 31.23.4 applies to development as defined. The Concept Plan is an informational requirement for applications under this rule, which enables Council to assess whether the development sought will integrate with existing and future development within the Business 1 zone and achieve the outcomes in Policy 18.1.1.12. These matters are identified in assessment matter (a) of Rule 31.23.4(A).
- (b) Where the Council considers insufficient information is provided in respect of the Concept Plan, it may request further information. Differences of opinion already arise between applicants and councils as to whether further information is required in the processing of resource consents, and mechanisms to resolve those differences of opinion are provided by the RMA.⁵⁰ RDL considers that the level of prescription in 31.23.4(B) as to the concept master plan information requirements is likely to limit disputes as to further information.
- (c) Unimplemented resource consents cannot be "superseded" by an amended Concept Plan. Unimplemented consents will form part of the existing environment. The purpose of the Concept Plan information is to demonstrate how the development which is the subject of the application will be integrated with existing development and achieve the outcomes in Policy 18.1.1.12. An

⁵⁰ Sections 92, 92A, 92B and 95C

application for development which provides concept master plan information that is inconsistent with consented activity would not demonstrate the required integration or policy outcomes, and Council has discretion to decline it on this basis.

58 Question (b) – The Concept Plan is not 'an activity' for the purposes of s95D or s95E(1) of the Act in terms of a determination of a decision as to whether effects are likely to be more than minor of if a person is an affected person respectively. This would preclude parties from being able to be notified where changes to the Concept Plan amends future connections.

59 Response –

(a) The concept master plan is not an activity for the purposes of notification. The activity is the particular development for which consent is sought. The concept master plan is only fixed to the extent that it forms part of the development application seeking consent. Subsequent applications may amend the concept master plan, but will still need to demonstrate how the proposal will integrate with existing and future development. If, for example, the proposal amends a connection relied on by another consented development, the application could be declined on the basis that it does not integrate with the existing development.

(b) Again, it is noted that the issue only arises if the land is subdivided and sold to multiple parties. As discussed above, following inclusion of additional assessment matters for subdivision within the Ravenswood KAC, it is anticipated that key structuring elements would be secured through subdivision.

60 Question (c) – There is no requirement in Proposed Rule 31.23.4[A] Assessment Matters to adhere to, follow or implement any aspect of [B] the Concept Plan. Accordingly, the purpose of the Concept Plan seems to be untethered for an assessment of an individual application.

61 Response –

(a) This is provided for through assessment matter (a), which relates to whether development will enable the outcomes in Policy 18.1.1.12 to be achieved. Those outcomes include development in accordance with the concept master plan, and identify the elements that are to form part of that plan.

Conclusion

62 PC30 provides for the development of a modern, high-quality, integrated town centre and KAC, through application of design principles and consent

requirements. The location of Ravenswood is highly accessible, can be accommodated by the existing roading network and is readily serviced.

- 63 Identification of Ravenswood as a KAC is required to give effect to the CRPS. The Planning JWS records agreement that the KAC notation and Business 1 zoning should apply to the full 13.4ha sought. The proposed scale of the KAC contributes towards meeting projected demand for business land in Waimakariri as required by the National Policy Statement for Urban Development. In doing so it provides for greater self-sufficiency and reduced leakage from the Waimakariri District, in relation to both retail and employment provision.
- 64 Importantly, Ravenswood town centre will be of a scale that will not result in significant retail distribution effects on Rangiora and Kaiapoi. Disregarding trade competition effects, there is no basis on which to impose retail staging.
- 65 The concept master plan mechanism will ensure that sequential development of the site is integrated and delivers the identified urban design outcomes.
- 66 For these reasons, and having regard to the wider assessments addressed in opening submissions, evidence for RDL and the section 42A report, it is submitted that PC30 is the most appropriate option and should be approved.

Dated this 23rd day of July 2021



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