

**BEFORE THE HEARING PANEL
APPOINTED BY THE TIMARU DISTRICT COUNCIL**

UNDER	the Resource Management Act 1991
IN THE MATTER	of a submission to the Timaru Proposed District Plan
BY	WILLOWRIDGE DEVELOPMENTS LIMITED

SUBMISSIONS FOR WILLOWRIDGE DEVELOPMENTS LIMITED

Dated: 18 July 2024

MAY IT PLEASE THE PANEL:

Introduction

- [1] Willowridge Developments Limited (**Willowridge**) has made a submission on Timaru District Council's Proposed District Plan (**PDP**). The submission relates to the zoning of land owned by its sister company Home Centre Properties Limited at 192 to 196, 204 to 208 Evans Street and 4 Grants Road, Timaru (**submission land**).
- [2] Willowridge's original submission sought the rezoning of the submission land from General Residential Zone and Neighbourhood Centre Zone (**NCZ**) to Local Centre Zone (**LCZ**), or alternative relief of similar effect.
- [3] Willowridge's revised relief seeks either:¹
- (a) the rezoning of the submission land to LCZ, together with a slight amendment to the gross floor area standards (it is accepted there is scope only for these to apply to the submission land and not the LCZ generally), and amended wording as to the objectives of the LCZ; or
 - (b) in the alternative, the rezoning of all the submission land to NCZ, with amendments to the gross floor area standards for the NZC (again in relation to the submission land only) and amended wording as to the objectives of the NZC.
- [4] Willowridge says both rezoning options satisfy the relevant requirements of the Resource Management Act 1991 (**Act**), being the most appropriate way to achieve the objectives of the PDP and the purpose of the Act. It is therefore appropriate for the relief sought in the submission to be granted.

Evidence in support of the submission

- [5] The submission is supported by expert planning evidence of Mark Geddes. Mr Geddes opinion is the rezoning proposal and the

¹ Statement of evidence of Mark Geddes, 5 July 2024 at paragraph 12.

development sought to be enabled through the rezoning is appropriate and recommends the primary relief (or the alternative relief) is granted.²

- [6] The submission is also supported by evidence of Alison Devlin, Willowridge's planning manager, who sets out Willowridge's development history and its plans for the submission land, as well as the ownership and acquisition of the submission land by Home Centre Properties Limited.³

Statutory considerations

- [7] In considering and making decisions on submissions, the Panel 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.
- (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

² At paragraph 31.

³ Statement of evidence of Alison Devlin, 5 July 2024.

- [8] In determining submissions, the Panel 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.

[9] The Environment Court has comprehensively summarised the principles applicable to plan changes and reviews in a number of cases.⁴ The applicable general principles are:

- (a) Proposed objectives are to be evaluated as to whether they are the most appropriate way to achieve the purpose of the Act. Policies are to implement objectives. The proposed rules are to implement the policies.
- (b) Each proposed policy, rule and method is to be examined as to whether it is the most appropriate method of achieving the objective, having regard to efficiency and effectiveness.
- (c) In undertaking the assessment of the efficiency and effectiveness of provisions, the local authority must identify and assess the benefits and costs anticipated from the implementation of the provisions and assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (d) New rules must be evaluated with regard to the actual or potential effect on the environment of the activities that they would enable, in particular any adverse effects.

[10] In essence, the Panel must assess the effectiveness and efficiency of the rezoning relief and determine whether it is the most appropriate way to achieve the objectives of the PDP.

[11] In doing so, the Panel must also give effect to certain statutory documents or planning instruments that are relevant to the PDP and the rezoning proposal.⁵ In this case, this includes the National Policy Statement on Urban Development 2020 (**NPS-UD 2020**) and the Canterbury Regional Policy Statement (**RPS**).

⁴ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17], *Cabra Rural Developments Ltd v Auckland Council* [2018] NZEnvC 90 at [279], *Edens v Thames Coromandel District Council* [2020] NZEnvC 13 at [11].

⁵ Resource Management Act 1991, s 75.

Analysis of the relief sought under s 32AA of the Act

[12] Willowridge says its primary rezoning relief is the most efficient and effective way of achieving the objectives of the PDP, and is the most appropriate in terms of s 32.

[13] The objectives of the PDP relating to the LCZ are as follows:

Strategic Direction

- (a) SD-01 – sufficient residential development capacity in existing and proposed urban areas.
- (b) SD-06 – business and economic prosperity in the District is enabled in appropriate locations.

Urban Form and Development

- (c) UFD-01 – a consolidated and integrated settlement pattern.

Local Centre Zone

- (d) LCZ-01 – provide for a range of commercial activities which primarily support the daily and weekly goods and services needs of the surrounding residential areas, and do not undermine the purpose, function and amenity values of the City Centre Zone.
- (e) LCZ-02 – accommodate large volumes of people, contain attractive and functional buildings of a moderate scale and density, integrate with public spaces and reflect good design principles, and are compatible with amenity values of adjoining residential properties.

[14] The key intention of these objectives is to provide for commercial activity in urban zones that complements the nearby residential activity without compromising such activity nor undermine the role of the city centre.

[15] Willowridge says the relief sought will be the most efficient and effective way of achieving this intention and giving effect to the objectives. As set out in Ms Devlin's evidence, Willowridge intends to establish fast food

restaurants on the submission land.⁶ It is not understood to be disputed that fast food restaurants are in high demand in residential areas and serve an important role in urban environments (and the food and beverage market in particular). The proposed fast food restaurant activity will support the surrounding urban areas without undermining them or the role of the City Centre Zone. It will help to enable business and economic prosperity by providing for increased commercial activity and competition within the food and beverage market. It is unlikely to adversely affect residential development capacity given the nature of the site, being adjacent to commercial properties and the state highway.

[16] The rezoning will achieve the relevant objectives in an efficient manner. “Efficient” is the production of the required result with little or no wastage.⁷ The rezoning relief will achieve the required result – providing and meeting demand for commercial activity – with little wastage given the availability of other land for residential activity and different types of commercial activity.

[17] Nor will the rezoning relief cause any inappropriate adverse effects or compromise the existing character of the submission land or adjoining land. As set out in the evidence of Mr Geddes:⁸

- (a) the PDP zones most of the site NCZ which enables commercial activities;
- (b) commercial activities (including a fish and chip shop) have long been established on most of the site and therefore commercial activities are an anticipated part of the environment;
- (c) the site adjoins State Highway 1, which provides good visibility to and efficient access for motorists;
- (d) the Grants Road and Evans Street intersection is now controlled via traffic lights which will enable efficient and safe access via Grants Road; and

⁶ Evidence of Alison Devlin at [13]-[15].

⁷ *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [85]

⁸ Evidence of Mark Geddes at paragraph 19.

- (e) there are no other restaurants that serve the residential area immediately to the west of the site or the employment activities in the area.

[18] Willowridge says any adverse effects of a rezoning of the submission land to LCZ will be minor and largely inconsequential given most of the land is zoned NCZ, and given the similarities between the NCZ and LCZ.

[19] Mr Geddes in his evidence has set out a section 32AA analysis of the rezoning relief in more detail.⁹

Whether the type or scale of the submission land is appropriate for LCZ

[20] Ms White, planning officer for the Timaru District Council, says in her s 42A report:¹⁰

I note that while the other properties [within the submission land] are proposed to be zoned NCZ, 192 and 194 Evans Street are proposed to be zoned GRZ. These sites do not contain commercial activities, nor have resource consents been sought for this. The LCZ is proposed to be applied to shopping areas, and is anticipated to provide for a range of commercial activities and community facilities, including supermarkets, to provide for daily and weekly good and service needs of surrounding residential areas. This is reflected not only in the rule framework applying within the zone, but also the scale of areas where the zoning applies – with those areas with a proposed LCZ zoning being larger than the submitter's properties (even when including 192 and 194 Evans Street). In my view, the size of these properties does not lend itself to these properties being zoned LCZ, as even with redevelopment, I do not consider they would fully achieve what is intended under the LCZ. I therefore support retention of NCZ for these properties.

[21] Ms White's view in opposition to the submission land being zoned LCZ appears to be twofold:

⁹ At paragraph 31.
¹⁰ Section 42A report at 6.39.4.

- (a) parts of the submission land are not used nor consented for commercial activity, and are therefore more appropriately zoned residential; and
- (b) the properties within the submission land are too small to be zoned LCZ, which typically entails and therefore anticipates larger sites.

[22] In respect of the first point, whilst some of properties within the submission land do not currently contain commercial activities, the issue is not whether they currently contain such activities, but whether they are an appropriate location for them to occur. Willowridge says they are, for the reasons identified. A district plan, by its nature, is intended to be forward-looking and to endure an approximate 10-year timeframe. It would undermine the purpose and intent of the Council's planning functions if a next generation district plan could only include zoning to accommodate what had already been carried out or consented on land.

[23] As to the second point, being the properties not lending themselves to the types of activities anticipated by the LCZ based on their size, this in itself cannot be a basis on which to reject the proposed zoning. As Mr Geddes notes, the LCZ provisions does not set out to impose any sort of size requirement to the types of activities it anticipates.¹¹ Nor do the objectives or policies of that zone seek to provide for any specific size or scale.¹² It is therefore largely irrelevant whether as a matter of fact other LCZ sites might be larger or different in some way to the submission land. If the difference was material or something that needed to be maintained, the zone provisions would have provided for it. If they do not, they cannot (in s 32 terms) be a relevant objective which the proposed rezoning has to achieve in order to be appropriate.

Giving effect to higher order planning instruments

NPS-UD 2020

[24] Timaru District is a tier 3 urban environment under the NPS-UD 2020.

¹¹ Evidence of Mark Geddes at paragraphs 14-15.

¹² LCZ-02 refers to "large volumes of people", which Willowridge says the submission land can accommodate. It does not require the sites themselves to be large or of a particular scale.

[25] The following objectives and policies of the NPS-UD 2020 are relevant to tier 3 urban environments:

- (a) Policy 1 – Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:
 - (i) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
 - (ii) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets.

(Some parts omitted)

- (b) Policy 2 – provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.

[26] Willowridge says the rezoning will properly give effect to these policies. As with the objectives of the PDP, the intention of the NPS-UD 2020 is to enable commercial activity in urban areas in a coherent and logical way, and in a way that meets the demand for such activity. As set out by Mr Geddes, the proposal aligns with this intention by enabling a variety of sites suitable for a range of business sectors.¹³

Canterbury RPS

[27] There are no provisions of the RPS that are specific to this proposal. Relevant district-wide provisions of the RPS include objective 5.2.1 – location, design and function of development, which seeks to ensure urban growth and development occurs in a sustainable manner, and encourage business opportunities of a character and form that supports urban consolidation.

[28] Willowridge says this objective aligns with those in the PDP and the NPS-UD 2020. Accordingly, it says the rezoning will achieve the objective for the reasons set out.

¹³ Evidence of Mark Geddes at paragraph 31.

Conclusion

[29] For the reasons set out above and on the basis of the evidence of Ms Devlin and Mr Geddes, Willowridge says the rezoning proposal is the most appropriate way of achieving the relevant objectives of the plan, higher order planning instruments and national direction and the purpose of the Act. Any adverse effects of development sought to be enabled through the rezoning can be controlled through the proposed rule framework.

[30] Accordingly, Willowridge seeks the relief sought in its submission as accepted.

Witnesses

[31] The following witnesses will be called:

- (a) Alison Devlin (planning manager); and
- (b) Mark Geddes (planner).

Dated: 18 July 2024



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B B Gresson
Counsel for Willowridge Developments Limited