

**BEFORE THE INDEPENDENT HEARING PANEL
APPOINTED BY UPPER HUTT CITY COUNCIL**

IN THE MATTER of the Resource Management
Act 1991 (**RMA**)

AND

IN THE MATTER of a request by **MAYMORN
DEVELOPMENTS LIMITED** for
Private Plan Change 55
(Gabites Block) to the Upper
Hutt District Plan under Part
2 of Schedule 1 to the RMA

**OPENING LEGAL SUBMISSIONS ON BEHALF OF
MAYMORN DEVELOPMENTS LIMITED
17 OCTOBER 2022**

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INTRODUCTION

1. Proposed Plan Change 55 (**PC55**) to the Upper Hutt District Plan is a carefully considered and well-founded plan change request by Maymorn Developments Limited (**MDL**) which would enable a range of rural-residential development options on a 74.5ha site known as the Gabites Block which will:
 - (a) respond appropriately to the existing environment and context;
 - (b) responsibly address the full range of identified physical and environmental constraints and issues;
 - (c) result in meaningful protection and enhancement of sensitive environments;
 - (d) be aligned with and give effect to higher order policy directions; and
 - (e) result in a better environmental outcome than would result from the existing or potentially anticipated planning frameworks.

2. PC55 seeks to rezone a site currently zoned General Rural and Rural Production to Settlement Zone with a “Gabites Block Development Area” overlay. It seeks to give effect to Upper Hutt City Council’s strategic position set out in the *Upper Hutt Land Use Strategy 2016-2043* (**LUS**) that the Gabites Block is appropriate for rural residential development.

3. PC55 seeks to achieve the following:
 - (a) enable additional low density and rural residential housing capacity;
 - (b) protect significant natural areas as “Gabites Block Natural Areas”;
 - (c) maintain the landscape values of the west-facing hillside and the main north-south ridgeline;
 - (d) maintain rural residential character;
 - (e) require hydraulic neutrality and water sensitive design; and
 - (f) manage flood hazards.

4. Should PC55 be approved, resource consents will be required from both Upper Hutt City Council (**UHCC**) and Greater Wellington Regional Council (**GWRC**) to develop the Gabites Block. It is submitted however that PC55, as currently advanced by

MDL, comprehensively and responsibly addresses all relevant resource management issues and provides a high level of certainty about anticipated environmental outcomes.

5. In addition to the comprehensive information provided by MDL as part of the PC55 request, MDL has submitted five statements of expert evidence for this hearing which respond to issues identified through the public process by UHCC, key stakeholders and submitters.
6. The evidence for MDL is generally well-aligned with the assessment made by UHCC and its expert team, as represented in the UHCC section 42A report. It is submitted that this is indicative of the quality of expert assessments and plan drafting which has been undertaken by MDL's team. It is understood that, following further engagement after the filing of the MDL evidence, there are now no areas where the UHCC and MDL positions are not aligned.
7. The evidence for MDL demonstrates that PC55 meets all relevant legal tests, is aligned with and gives effect to relevant higher order directions, and will result in a superior planning outcome for the site compared to other options. There are no material reasons, either individually or collectively, for PC55 to be declined. This position is reflected in the section 42A report and recommendations, the absence of submissions in opposition from environmental NGOs, and the absence of any opposition or expert evidence from any key stakeholders.

STRUCTURE OF LEGAL SUBMISSIONS AND OVERVIEW OF KEY CONSIDERATIONS

8. These submissions are intended to assist the Panel in assessing PC55 and making its recommendations to UHCC. The submissions cover the following matters:
 - (a) the statutory framework for PC55; and
 - (b) consideration of relevant effects and expert evidence.
9. The legal framework for district plan changes is set out in sections 72 to 76 of the Resource Management Act 1991 (**RMA**), which incorporate, by reference, sections 31 and 32.

10. The Environment Court summarised the mandatory requirements for district plans in *Long Bay-Okura Great Park Society Incorporated & Others v North Shore City Council* (Long Bay)¹. Subsequent cases have updated the *Long Bay* summary following amendments to the RMA, including the Environment Court in *Colonial Vineyard Limited v Marlborough District Council* (Colonial Vineyard)². A summary of the statutory functions and legal tests for plan changes is set out in Appendix 1 of these submissions.
11. For the purposes of PC55, the statutory considerations for the Hearing Panel are:
- (a) whether PC55 accords with and assists UHCC to carry out its functions to achieve the purpose of the RMA;
 - (b) whether PC55 gives effect to any national policy statement, national planning standard, and the Regional Policy Statement;
 - (c) whether PC55 is consistent with any regional plan;
 - (d) whether PC55 has regard to any management plans and strategies;
 - (e) a district plan assessment of the extent to which each objective is the most appropriate way to achieve the purpose of the RMA;
 - (f) whether the provisions of PC55 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 for achieving the objectives; and
 - (g) whether the rules have regard to the actual or potential effects on the environment.

PURPOSE OF THE RMA

12. Section 5 of the RMA sets out its sustainable management purpose. Applying section 5 of the RMA involves an overall broad judgment of whether a proposal will promote sustainable management. Exercising this judgment allows for the

¹ EnvC Auckland AO78/08, 16 July 2008 at [34]

² [2014] NZEnvC 55

balancing of conflicting considerations in terms of their overall relative significance or proportion in the final outcome.

13. Under section 6, identified matters of national importance must be protected from inappropriate use and development. What is “inappropriate” should be assessed by what is sought to be protected and will be heavily influenced by context. Particular regard is to be had to the “other matters” listed in section 7, which include efficiency, amenity values, and enhancement of the quality of the environment. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
14. The question of weight as between the higher order planning instruments and Part 2 of the RMA is a matter for the Panel's discretion, bearing in mind *Colonial Vineyard*, and how directive the wording used in relevant higher order provisions is. It is however accepted that the purpose of the RMA will largely be embedded within the relevant operative planning documents which apply in this instance.

NATIONAL POLICY STATEMENTS

15. The obligation in section 75(3) of the RMA is for a district plan, including a change, to give effect to a national policy statement (**NPS**).
16. “Give effect to” simply means “implement”. The Courts have held that the requirement to “give effect to” higher level planning provisions, when considering new planning provisions proposed in relation to lower-level documents, is intended to constrain decision makers from resorting to Part 2 of the RMA to overcome clear policy directions³.
17. National policy direction has been an area of considerable development in recent years, and has imposed a series of overlapping, and sometimes inconsistent or competing requirements and directions for local authorities to address and achieve in their planning documents.

³ *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38

- 18.** It is submitted that the following national policy statements are relevant to the proposal:
- (a) National Policy Statement – Urban Development 2020 (**NPS-UD**);
 - (b) National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
and
 - (c) National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**),
noting that this came into effect after the notification of PC55⁴.
- 19.** While it is not an operative instrument, for present purposes MDL is content for the Panel to have regard to the Exposure Draft National Policy Statement - Indigenous Biodiversity 2022 even though the RMA does not make any express provision in the statutory framework for its consideration. This will be addressed later in these submissions when addressing ecological issues and evidence.

NPS-UD

- 20.** The evidence of Mr Cumming and the section 42A report thoroughly address the relevance and effect of the NPS-UD.
- 21.** It is submitted that the NPS-UD has some relevance to PC55, because Upper Hutt is within the Wellington Tier 1 urban environment. This imposes obligations on UHCC to provide sufficient development capacity to meet expected demand for housing and for business land over the short, medium, and long term. The Upper Hutt District Plan must include sufficient zoned land to enable feasible development capacity for the short term (3 years) and medium term (10 years).
- 22.** In turn, UHCC is required to prepare a Housing and Business Development Capacity Assessment (**HBA**), the content and effect of which Mr Cumming discusses in his evidence⁵.

⁴ Therefore the PC55 s32 report considered the Proposed NPSHPL 2019

⁵ Cumming evidence, paras 22 – 24 and 47 - 49

- 23.** The latest HBA⁶ updates the 2019 version that was assessed at the time of the s32 report for PC55. Projected population growth in Upper Hutt now exceeds the high growth population projections of the HBA 2019. According to the current HBA, population growth is expected to generate demand for an additional 10,458 dwellings over the period 2021-2051, nearly 5,000 more than estimated in the previous HBA. With the NPS-UD competitiveness margin added, the adjusted demand figure is 12,223 dwellings required in Upper Hutt over the 30 year period.
- 24.** The question of whether PC55 involves urban development is not entirely clear in terms of relevant definitions. For example, proposed Change 1 to the Wellington Regional Policy Statement (**RPS**) confirms that its urban development provisions apply to urban zones and proposals to extend urban zones. “Rural area” is defined as rural zones as identified in district plans (p225), which include the Settlement Zone. In addition, the National Planning Standards⁷ list a Settlement Zone, which PC55 seeks, as a rural zone. Change 1 provides further clarification to avoid doubt by explicitly excluding Settlement Zone from the definition of ‘Relevant Residential Zone’ (p224).
- 25.** The evidence of Mr Cumming⁸ is that the proposed Gabites Block Development Area overlay modifies the underlying Settlement Zone to be “more rural” in some sub-areas and “more urban” in other sub-areas, and he therefore considers Change 1’s guidance for both rural development and urban development is relevant to PC55, including in particular for the management of freshwater.
- 26.** Irrespective of classification of the nature of development to be enabled by PC55, it will as a matter of fact make a useful contribution to Upper Hutt’s demand for new residential dwellings. In addition, it is sensibly located directly adjacent to existing residential development, convenient to an established rail link, and will provide a suitable and carefully considered transition to other rural-residential development in Maymorn, as outlined in the evidence of Mr Hudson.

⁶ <https://wrlc.org.nz/regional-housing-business-development-capacity-assessment-2022>

⁷ National Planning Standards p16

⁸ Cumming evidence, para 67

27. Finally, the Gabites Block has been identified by UHCC for development since at least the *Upper Hutt Growth Strategy 2007*⁹ and confirmed in the LUS as being appropriate for “Edge Expansion” to complement “Urban Infill” and high density “Intensification” in specific locations, consistent with the Wellington Regional Growth Framework¹⁰. This position is also clearly reflected in UHCC’s draft PC50 which is currently scheduled for notification early in 2023.
28. It is submitted therefore that PC55 will give effect to the NPS-UD. The question of the appropriateness of this location and the use of the currently zoned rural land resource for this type of development will be addressed below with regard to the RPS.

NPS-FM

29. The NPS-FM primarily places obligations on regional councils. However, in Part 3: implementation clause 3.5 relevantly states:

3.5 Integrated Management

- (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:
- (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and
 - (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
 - (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
 - (d) encourage the co-ordination and sequencing of regional or urban growth.

...

⁹ <https://www.upperhuttcity.com/files/assets/public/yourcouncil/strategies/urban-growth-strategy.pdf>

¹⁰ <https://wrgf.co.nz/wp-content/uploads/2021/08/1320-Wellington-Regional-Growth-Framework-Report-JULY-2021-FINAL-LR.pdf>

- (3) In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment must cooperate in the integrated management of the effects of land use and development on freshwater.
- (4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.
- 30.** In developing PC55, MDL has been cognisant of the importance of taking an integrated approach to the management of the development of the Gabites Block (as is proposed to be enabled by PC55), and the interaction between the intended development of the land with earthworks, flood hazard, stormwater and water quality matters. This approach is discussed in the evidence of Messrs Cumming and Blyde, and it is submitted that PC55 actively meets the direction in Policy 3.5(4) of the NPS-FM while enabling UHCC to comply with its obligations in clause (1) of that policy.
- 31.** The evidence of Mr Cumming¹¹ also notes that the operative district plan includes natural character and earthworks provisions which relate to water quality, sedimentation and contaminant issues contribute to giving effect to the NPS-FM. PC55 advances provisions which will align with and achieve those existing plan directions for the purposes of the rezoning and development of the Gabites Block.

NPS-HPL

- 32.** This NPS has only very recently been approved and comes into force today (17 October 2022). It has yet to be the subject of detailed consideration by local authorities throughout New Zealand and there is limited commentary about its effect or interpretation.
- 33.** On its face the NPS-HPL adopts a very rigid approach to management and use of highly productive land, including its interim effect prior to local authorities undertaking planning exercises to give effect to its requirements.

¹¹ Cumming evidence, paras 51 and 52

- 34.** It is submitted however that the NPS-HPL does not provide a barrier to PC55 in this instance.
- 35.** MDL engaged Landsystems to consider the site in the context of the proposed NPS-HPL (which was released for public consultation in August 2019), as well as the RPS for the Wellington Region. The Landsystems report was included in the PC55 request and section 32 report, and concluded that the site’s potential areas of productive soils have undergone extensive modification over the years and any productive areas are small and fragmented.
- 36.** It is submitted that while the Landsystems report identifies the flat land within the Gabites Block as nominally containing LUC 3 soils, a finer-grained analysis shows that these are not uniform nor predominant across this part of the Block. Further it shows that these soils are both fragmented within the Block and have been compromised by past uses and other factors.
- 37.** Accordingly, while the mapping exercise required by clause 3.4 of the NPS-HPL has not yet commenced, it is submitted that this land would be excluded from such mapping because it is not predominantly LUC3 land and does not form a large and geographically cohesive area¹². In addition, such mapping would be likely to exclude the flat land in the Gabites Block because “... *small, discrete areas of LUC 1, 2, or 3 land need not be included if they are separated from any large and geographically cohesive area of LUC 1, 2, or 3 land*”¹³.
- 38.** In addition, it is also likely that the land would be excluded from mapping¹⁴ on the basis that it is land that “ ... *at the commencement date, is identified for future urban development*” and “*must not be mapped as highly productive land*”. The definition of land identified for future urban development¹⁵ includes land identified “*in a strategic planning document as an area suitable for commencing urban*

¹² NPS-HPL, clause 3.4(1)

¹³ Ibid, clause 3.4(5)

¹⁴ Ibid, clause 3.4(2)

¹⁵ Ibid, clause 1.3

development over the next 10 years and at a level of detail that makes the boundaries of the area identifiable in practice”.

39. In turn, it is submitted that:
- (a) the LUS is a strategic planning document¹⁶ for the purposes of the NPS-HPL; and
 - (b) both the LUS and draft PC50 intend for the nature of development on the flats, to be within a settlement and/or low-density residential zone within the next 10 years, which the NPS-HPL defines as “urban”¹⁷.
40. It is therefore submitted that PC55 is not, as a consequence, subject to clause 3.6 of the NPS-HPL which restricts urban rezoning of highly productive land and/or is otherwise enabled under clause 3.10. The Landsystems report identifies that the flat land is fundamentally compromised and in terms of its size, soil types, and fragmentation, and could not usefully be economically viable for highly productive uses¹⁸.
41. It is submitted therefore that the Panel can reasonably conclude that PC55 would give effect to the NPS-HPL.

REGIONAL POLICY STATEMENT

42. Under section 75(3) of the RMA, the RPS must also be given effect to by PC55. The section 32 assessment accompanying the PC55 request, the section 42A report, and the evidence of Mr Cumming all conclude that PC55 would give effect to the operative RPS. Change 1 to the RPS, which is a *proposed* RPS, is a matter to which regard is to be had under section 74(2) of the RMA. This will be discussed in further detail below.

¹⁶ A **strategic planning document** means any non-statutory growth plan or strategy adopted by local authority resolution

¹⁷ NPS-HPL, clause 1.3

¹⁸ Landsystems report, 1 October 2021, pages 13-14

NATIONAL PLANNING STANDARDS

- 43.** Section 75(3)(ba) requires that PC55 must give effect to a national planning standard. The evidence of Mr Cumming identifies¹⁹ that, because UHCC had migrated its district plan to a format consistent with National Planning Standards, he was readily able to identify a suitable zoning and associated mechanisms for the Gabites Block that had regard to various important site-specific factors and were fully compliant with the National Planning Standards.

REGIONAL PLANS

- 44.** Section 75(4) requires that PC55 must not be inconsistent with a regional plan. This is a less stringent test than that in section 75(3), and is comfortably met in this instance.
- 45.** The section 32 report, section 42A report and Mr Cumming's evidence do not identify any material inconsistencies with regional plans, and Mr Cumming's evidence identifies²⁰ that, following discussions with Greater Wellington Regional Council (**GWRC**), a range of amendments were made to PC55 to achieve better alignment with regional planning documents.

PROPOSED RPS – CHANGE 1

- 46.** As noted earlier, a proposed RPS – such as Change 1 – is a matter to which regard must be had.
- 47.** In terms of the content of Change 1, it is significant in terms of the matters it covers and the direction that it takes. This can be summarised as addressing the:
- lack of urban development capacity and implementation of the NPS-UD and Wellington Regional Growth Framework;
 - degradation of freshwater and partial implementation of the NPS-FM;

¹⁹ Cumming evidence, paras 28-29

²⁰ Cumming evidence, para 90

- loss and degradation of indigenous biodiversity including regional policy to implement central government strategy and draft RMA national policy direction; and
- impacts of climate change including regional policy to complement central government policy direction.

48. A number of these matters have been addressed earlier with regard to the alignment of PC55 with NPS'. It is also noted that Change 1 was only recently notified in August 2022, and is therefore at a very early stage in the RMA process with the possibility of significant change to its detail and effect through that process. In having regard to Change 1, and in terms of an orthodox approach to weighting, the Panel would be entitled to give Change 1 reduced weight given its relative infancy. Nevertheless, the evidence of Mr Cumming considers PC55 against the detail of Change 1, as if Change 1 was operative within the RPS in its current form.

49. In summary, based on that analysis, it is submitted that:

- (a) PC55 responds appropriately to the increased emphasis on the importance of spatial planning to determine appropriate areas for urbanisation through careful consideration of:
- (i) Consistency with the Wellington Regional Growth Framework and the LUS;
 - (ii) The requirements of the NPS-HPL;
 - (iii) Aesthetic and open space values;
 - (iv) Demand for non-renewable energy; and
 - (v) Pressure on public services and infrastructure.
- (b) PC55 addresses Change 1's focus on freshwater management by including provisions for the management of *water quantity*, by requiring hydraulic neutrality and management of flood hazards, and *water quality*, with water sensitive design (to regional standards) including working appropriately with natural stormwater systems, avoiding zinc and copper contamination from house roofs and treating road runoff. There are

complementary provisions around setbacks from waterbodies and erosion and sediment controls for earthworks.

- (c) The biodiversity provisions of Change 1 are reflected in the assessment of and controls on ecological matters proposed in PC55. PC55 would establish and protect six Gabites Block Natural Areas (**GNBAs**) comprising approximately 10% of the site. The provisions include an effects-management hierarchy incorporating best practice approaches to biodiversity offsetting and biodiversity compensation. Customary harvesting practices are provided for. Biodiversity would also be enhanced by the stream naturalisation associated with the stream capacity upgrade of the main-stream channel on the flats, by setbacks from waterbodies in general, and by buffer vegetation areas.
- (d) Appropriate and proportional responses to climate change are incorporated into PC55. This includes promoting increased use of public transport through a dedicated link to the Maymorn rail station for existing and future residents, the establishment of GBNAs which will result in protected native forest that will sequester carbon in perpetuity, and protection of natural systems through the setbacks from waterbodies and water sensitive design protects (noting also that the impacts of climate change have been accounted for in the flood modelling undertaken for the site so that future houses would not face unacceptable risks of flooding).

50. Finally, while there has been little direct input to date from tangata whenua (notwithstanding the efforts to consult and engage described in Mr Cumming's evidence²¹), PC55 will not preclude consideration of Te Ao Māori or mana whenua/tangata whenua decision making in future, given that resource consents will be required from both GWRC and UHCC. These processes will likely require ongoing engagement and work with mana whenua for specific development proposals on the site.

²¹ See paras 30 -44

OTHER PLANS AND STRATEGIES

- 51.** There is no issue of alignment of PC55 with the remainder of the Upper Hutt district plan, nor any dispute as to whether it would give effect to relevant objectives and policies. It is also intended to align with future plan changes to be initiated by UHCC, including PC47 Natural Hazards and draft PC50 Rural Chapter review, which proposes to implement the LUS as far as the Gabites Block is concerned.
- 52.** It is acknowledged that a number of submitters have raised concerns that PC55 effectively “jumps the gun” in terms of its place in relevant planning processes. While that concern is understood, it should carry very little (if any weight) in the Panel’s deliberations. MDL is following an available RMA process and UHCC has accepted PC55 for consideration on its merits. In terms of the substance of PC55, it is a bespoke and well-crafted plan change which responds to the specific issues of the Gabites Block and, as such, will provide for a superior planning and environmental outcome for this land than draft PC50.
- 53.** The relevance of PC50 is also discussed in the section 42A report (at page 41) and this analysis is submitted to be sound.
- 54.** There are no cross-boundary issues that arise with regard to other district plans. There are no relevant iwi management plans that require consideration.

Non-RMA plans and strategies

- 55.** Some of these have been addressed earlier, including the LUS. The evidence of Mr Cumming addresses the Wellington Regional Growth Framework which is a spatial plan prepared through collaboration involving all councils in the Wellington Region and central government. The Growth Framework identifies housing growth in Upper Hutt that is aligned with the LUS.
- 56.** In summary, there are no statutory barriers that prevent the Panel recommending PC55 be approved. Indeed, it is submitted that it positively achieves and implements large parts of the relevant planning frameworks.

SPECIFIC ISSUES AND EFFECTS

- 57.** A wide range of issues have been raised with regard to PC55, which essentially fall into five main categories and accord with the expertise of the independent expert witnesses for MDL.
- 58.** The expert evidence that has been submitted for MDL is from the following experts and disciplines:
- (a) Jamie Whittaker – traffic and transportation;
 - (b) Alan Blyde – infrastructure and civil engineering matters (including flood hazards and stormwater);
 - (c) John Hudson – landscape and character;
 - (d) Annabelle Coates – ecology and biodiversity; and
 - (e) Andrew Cumming - planning.
- 59.** All of the witnesses have been involved in PC55 since the early stages and have participated in preparation of expert reports and assessments that accompanied the PC55 request. It is proposed that the MDL witnesses will be called and give their evidence to the Panel in the order set out above.
- 60.** Each of the areas that the witnesses cover will be addressed below.

Traffic and transportation

- 61.** Traffic and transportation matters were raised by a high proportion of submitters who asserted a range of concerns, issues and possible problems. The expert evidence of Mr Whittaker has addressed the full range of these matters, including:
- (a) Traffic volumes;
 - (b) Traffic safety at intersections;
 - (c) Walking and cycling connections (including to Maymorn Station);
 - (d) EV charging;
 - (e) Internal footpaths and roading networks; and
 - (f) Fire appliance access.

- 62.** Mr Whittaker's expert assessment, backed up by the most up-to-date data, is that all traffic and transportation matters can and will be appropriately managed by PC55, without the creation of adverse safety or transportation effects for motorists, residents, schools, cyclists, or pedestrians. This assessment has been peer-reviewed by UHCC's independent expert Mr Wignall in the section 42A report, and he has identified no areas of concern or disagreement with Mr Whittaker's analysis.
- 63.** Mr Cumming's section 32 analysis identifies that the traffic and transportation provisions of PC55 are the most appropriate, and will be efficient and effective. It is submitted that there are no traffic or transportation reasons for PC55 to be declined.

Infrastructure and civil engineering, including flood hazards and stormwater

- 64.** Based on MDL's understanding of the position, while this was the main area of contention with regard to the UHCC section 42A report, differences of view have now been resolved such that UHCC's reporting officer and engineering expert are satisfied with the proposed PC55 framework and content (subject to minor modifications).
- 65.** MDL engaged Mr Alan Blyde and his company, Envelope Engineering, to undertake a full range of infrastructure and civil engineering assessments. Mr Blyde's evidence provides a thorough summary of the work that he and his company have undertaken, and his response to the various issues raised which include:
- (a) Telecoms and power supply;
 - (b) Earthworks;
 - (c) Wastewater;
 - (d) Water supply and firefighting capacity;
 - (e) Stormwater; and
 - (f) Flood hazards.
- 66.** Having considered all of the issues raised, Mr Blyde has recommended a number of changes to PC55 provisions including:

- (a) A new objective and policy regarding water sensitive design;
- (b) Requirements for hydraulic neutrality;
- (c) Stormwater quality and quantity management for impervious surfaces and the road corridor;
- (d) A requirement for a stormwater management plan to be prepared and submitted as part of the first subdivision consent application;
- (e) Updates to design standards;
- (f) Increases in minimum capacity of water supply tanks; and
- (g) Requirements for sprinklers in dwellings.

67. It is noted that Mr Cumming in his evidence²² has identified that there is value in mapping existing stream corridors across the Gabites Block in light of their importance in conveying flood waters and given that their location is unlikely to change materially. There are also setback requirements elsewhere in PC55 that they would have relevance and value for. This stream corridor mapping has been done and is included in the revised Structure Plan.

68. In terms of flood hazard issues, the key difference of opinion was with regard to the outputs of the two different models which have been run. These are a Wellington Water (**WWL**) model based on LIDAR data, and a model commissioned by Envelope which is based on more accurate survey data. It is understood that the concern of UHCC's expert was whether there was a sufficient level of certainty that downstream effects can be effectively managed.

69. Mr Blyde is satisfied, based on the two model outputs, that there is a sufficient level of information, precision and certainty that there will not be flooding effects downstream of the site, provided that on-site works are appropriately undertaken. He is also satisfied that PC55 contains sufficiently clear and thorough provisions to ensure that these outcomes will be achieved through the detailed design and consenting processes.

²² Cumming evidence, para 185

- 70.** In considering these issues, it is understood that both the WWL and Envelope flood hazard models have produced relatively similar results in terms of the assessment of current flood hazards. Neither model nor assessment appears to regard the site to be subject to unusually high or unmanageable flood risks, bearing in mind the nature of intended development, as well as the well-understood and feasible methods of addressing such matters.
- 71.** In that regard, there is now acceptance that flood hazards can be effectively managed through relatively orthodox and well-understood on-site engineering approaches, which will also be entirely consistent with relevant higher order and regional directions regarding downstream risk, sedimentation, and water quality outcomes (noting of course that much of that will be subject to regional council consents and decision-making).
- 72.** It also needs to be borne in mind that PC55, while it contains a number of sub-areas based on the combined assessments of different expert inputs, does not and has not proposed a detailed subdivision design or structure plan at this stage.
- 73.** This is an entirely common approach and is also understandable given the various more further assessments that will need to be undertaken as part of developing detailed design for subdivisions, including ecological, landscape, engineering, and earthworks assessments. None of these assessments will be undertaken in a vacuum and any one of them could have a material influence on detailed design considerations, and the on-site solutions which will need to satisfactorily manage stormwater and flood hazards and achieve hydraulic neutrality for the site. It is not necessary for such matters to be completed to a level of precise detail at this stage of a plan change process.
- 74.** The approach advanced by MDL is to address flood risk via the Stormwater Management Plan (**SMP**) proposed in the section 42A Report, subject to clarification and amendment as outlined in Mr Cumming's evidence²³. The SMP would enable post-development flood hazards to be managed on a site-specific

²³ Mr Cumming will provide an update in his written summary of evidence to be presented today.

basis through relevant issues being included in consent notices, as well as overland flowpaths being managed by the most appropriate management method (eg. consent notices, easements, vesting of reserves).

- 75.** In any event, given the proposed provisions in PC55 regarding stormwater and flood hazard matters, it is unrealistic to expect that a development proposal which created additional downstream flood risks and/or did not achieve hydraulic neutrality would be consented.
- 76.** It is submitted that the evidence for MDL demonstrates that section 6(h) of the RMA (the management of significant risks from natural hazards) has been met, through geotechnical assessment requirements for development, the high slope hazard overlay and flood management provisions, and that the requirement to have particular regard to section 7(i) of the RMA (the effects of climate change) has also been satisfied through flood hazard management provisions that allow for climate change impacts.
- 77.** Based on the expert evidence of Mr Blyde and Mr Cumming, and the acceptance of this position by UHCC, it is submitted that there are no infrastructure or civil engineering reasons why PC55 as advanced by MDL should not be approved.

Landscape and character

- 78.** A detailed and fine-grained landscape, character and visual effects analysis has been carried out by Mr John Hudson, a highly experienced independent expert landscape specialist.
- 79.** Mr Hudson's advice and assessment has been central to some of the key structural elements to PC55 including that:
- (a) sub-areas of the site have different characteristics and different capacity to accept built development, and that a sub-area approach to setting density would lead to better environmental outcomes than a blanket 2000m² allotment approach; and

(b) the west-facing hillside is a visually important local landscape and any development located there needs to be carefully managed to avoid unacceptable adverse landscape effects.

80. There is no question that PC55 would enable a significant change to the Gabites Block, and particularly the range of landscape elements that can be viewed from outside the plan change area. It would transition from a largely rural character to rural residential and low density residential, however this transition has been clearly signalled in the LUS and draft PC50 and therefore can reasonably be anticipated.

81. In any event, perceptions of the Gabites Block and adjacent areas as displaying rural character and amenity need to be tempered somewhat when the nature of development to the north and south of the Gabites Block is considered. To the north and west is the established residential and urban/industrial area of Te Marua and the Plateau, while to the south and west is an area of largely rural-residential development and character. As Mr Hudson quite reasonably concludes in his evidence²⁴, the Gabites Block is an area of transition and has a character of transition, such that the nature of development that would be enabled by PC55 and the UHCC draft PC50 can be anticipated.

82. It is submitted that Mr Hudson's evidence that the site has the capacity to absorb the density proposed by PC55, provided it is managed in specific areas of the site by the development area overlay and planning provisions managing visual impacts and rural residential character, is both reasonable and justified.

83. Mr Hudson has also engaged in constructive discussions with the UHCC landscape expert, Ms Annan, which have identified some omissions in the provisions intended to protect rural character. Mr Hudson therefore recommends some amendments of the PC55 provisions relating primarily to the ridgeline, hillside and hilltops provisions which clarify that:

²⁴ Hudson evidence, paras 19 - 21

- (a) objectives should reflect that the main ridgeline is in the Hilltops Area as well as the Hillside Area;
- (b) the landscape assessment required as part of the Hillside Area subdivision process should also be required in the Hilltops Area;
- (c) the landscape assessment requirements do not (and should) specifically address the ridgeline; and
- (d) a landscape assessment should be required as part of land use proposals as well as subdivision proposals.

84. These matters have been agreed by Mr Hudson and he has recommended changes to strengthen the protection of rural character, which are recorded in the evidence of Mr Cumming. Mr Hudson has also identified that controls on lighting emissions, which respond to a concern identified by submitters, should appropriately be included in PC55. This approach is submitted to be consistent with section 7(c) of the RMA, relating to the maintenance and enhancement of amenity values.

Ecology and biodiversity

85. From the early stages of PC55, the expert advice of Bioresearches has been that the site contains six significant natural areas and potentially also requires management of bats, lizards and nesting indigenous birds.

86. The evidence of Ms Coates has built on this early assessment and responded to issues raised by both submitters and UHCC. As noted earlier in these submissions, the draft NPS-IB does not have specific statutory status nor relevance, but the substance of this draft instrument has been addressed in Ms Coates' evidence and is otherwise reflected in other relevant RMA instruments (such as Change 1 to the RPS).

87. In a manner entirely consistent with the draft NPS-IB, the PC55 approach to indigenous biodiversity has been to:

- (a) identify significant natural areas as GBNAs and protect them through objectives, policies and rules; and

(b) require the first subdivision to provide an Ecological Plan that deals with bats, lizards and nesting indigenous birds.

- 88.** In response to the section 42A report, Ms Coates has also recommended a suitable approach to bats, lizards and nesting indigenous birds. This approach, in addition to what was originally proposed in PC55, is submitted to be far superior to the ecology and biodiversity outcomes that would result from the existing rural zoning of the site, and well in excess of what would have resulted from the UHCC proposed PC48 (which has been put on hold by UHCC to await the coming into force of the NPS-IB).
- 89.** Ms Coates has also given consideration to issues including management of and setbacks from watercourses, and has recommended other substantive measures, prior to the development of the site, to address the likely presence of bats and lizards, which are submitted to be entirely appropriate for the context and circumstances of PC55.
- 90.** While there were some remaining areas of disagreement between Ms Coates and the UHCC ecological expert following the filing of Ms Coates evidence, it is understood that further discussions between the experts have occurred prior to the hearing and there is no longer any disagreement regarding ecological and biodiversity matters.
- 91.** It is submitted that the GBNA provisions of PC55 are both necessary and appropriate to give effect to section 6 RMA obligations for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. They would also give effect to the Change 1 of the RPS, which has been discussed earlier in these submissions.
- 92.** It is submitted that there are no ecological or biodiversity reasons why PC55 should not be approved.

Planning matters

- 93.** These issues have been thoroughly addressed in the evidence of Mr Cumming and relevant statutory issues have been address earlier in these submissions. No further comment is required at this time.

SUMMARY AND CONCLUSION

- 94.** PC55 reflects and sensible and responsible approach to enabling the development of the Gabites Block, which is itself entirely suitably located for the form of development which is envisaged.
- 95.** Its merits are submitted to be evident from both a statutory and evidential perspective, and it is well-aligned with the existing and likely future planning frameworks.
- 96.** It is submitted that there are numerous reasons why PC55 should be approved, whereas there are few (if any) reasons why it could reasonably be declined.

DATED this 17th day of October 2022



James Winchester
Counsel for Maymorn Developments Limited

APPENDIX 1

RELEVANT STATUTORY CONSIDERATIONS, LEGAL TESTS, COUNCIL FUNCTIONS

1. The legal framework for plan changes is set out in sections 31, 32 and 72-76 of the RMA. The matters that need to be addressed were comprehensively set out by the Environment Court in *Colonial Vineyard Limited v Marlborough District Council* (as replicated below)²⁵.
2. Section 5 sets out the sustainable management purpose of the RMA. Applying section 5 of the RMA involves an overall broad judgment of whether a proposal will promote sustainable management. Exercising this judgment allows for the balancing of conflicting considerations in terms of their overall relative significance or proportion in the final outcome.
3. Under section 6, identified matters of national importance must be protected from inappropriate use and development. What is "inappropriate" should be assessed by what is sought to be protected and will be heavily influenced by the context. Particular regard is to be had to the "other matters" listed in section 7, which include efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.
4. Pursuant to section 74(ea), a territorial authority must prepare and change its district plan in accordance with –
 - (ea) *a national policy statement, a New Zealand coastal policy statement, and a national planning standard; and 136.*
5. The planning standards were introduced as part of the 2017 amendments to the RMA, with the purpose of improving consistency in plan and policy statement structure, format, and content. The Minister for the Environment and the Minister of Conservation released the first set of national planning standards on 5 April 2019, and they came into force on 3 May 2019.
6. The question of weight as between the higher order planning instruments, and Part 2 of the RMA is a matter for the Panel's discretion, bearing in mind *Colonial Vineyards*, and the directiveness of the wording used in relevant provisions.
7. The RMA requires that there shall at all times be one district plan for each district prepared by a territorial authority in the manner set out in Schedule 1 of the RMA²⁶. The purpose of the preparation, implementation and administration of a district plan is to assist a territorial authority to carry out its functions in order to achieve the purpose of the RMA²⁷.

²⁵ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55, more recently summarised in *A & A King Family Trust v Hamilton City Council* [2016] NZEnvC 229

²⁶ Section 73(1) RMA

²⁷ Section 72 RMA

Colonial Vineyard Limited v Marlborough District Council

A. General requirements

1. A district plan (change) should be designed to accord with²⁸ - and assist the territorial authority to carry out – its functions²⁹ so as to achieve the purpose of the Act³⁰.
2. The district plan (change) must also be prepared in accordance with any regulation³¹ and any direction given by the Minister for the Environment³².
3. When preparing its district plan (change) the territorial authority must give effect to³³ any national policy statement.
4. When preparing its district plan (change) the territorial authority shall:
 - a. Have regard to any proposed regional policy statement³⁴;
 - b. Give effect to any operative regional policy statement³⁵.
 - c. Give effect to national planning standards³⁶.
5. In relation to regional plans:
 - a. The district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order³⁷; and
 - b. Must have regard to any proposed regional plan on any matter of regional significance etc³⁸.
6. When preparing its district plan (change) the territorial authority must also:
 - Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations³⁹ to the extent that their context has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities⁴⁰
 - Take into account any relevant planning document recognised by an iwi authority⁴¹; and
 - Not have regard to trade competition⁴² or the effects of trade competition.

28 Section 74(1)

29 See section 31

30 Sections 72 and 74(1)

31 Section 74(1)

32 Ibid

33 Section 75(3)

34 Section 74(2)(a)(ii)

35 Section 75(3)

36 Section 75(3)(ba)

37 Section 75(4)

38 Section 74(2)(a)(ii)

39 Section 74(2)(b)

40 Section 74(2)(c)

41 Section 74(2A)

42 Section 74(3)

7. The formal requirement that a district plan (change) must⁴³ also state its objectives, policies and the rules (if any) and may⁴⁴ state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act⁴⁵.

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies⁴⁶.

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives⁴⁷ of the district plan taking into account:

- i. The benefits and costs of the proposed policies and methods (including rules); and
- ii. The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods⁴⁸; and
- iii. If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances⁴⁹.

D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment⁵⁰.

12. Rules have the force of regulations⁵¹.

13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁵² than those under the Building Act 2004.

14. There are special provisions for rules about contaminated land⁵³.

15. There must be no blanket rules about felling of trees in any urban environment⁵⁴.

⁴³ Section 75(1)
⁴⁴ Section 75(2)
⁴⁵ Section 74(1), section 32(3)(a)
⁴⁶ Section 75(1)(b) and (c)
⁴⁷ Section 32(3)(b)
⁴⁸ Section 32(4)
⁴⁹ Section 32(3A)
⁵⁰ Section 76(3)
⁵¹ Section 76(2)
⁵² Section 76(2A)
⁵³ Section 76(5)
⁵⁴ Section 76(4A) – (4D)

E. Other statutes:

16. Finally territorial authorities may be required to comply with other statutes.

The Colonial Vineyard decision predated the 2013 amendment to the Act coming into effect. Accordingly, the tests poised by the Environment Court need to be read subject to the effect of that Amendment Act, specifically:

Points A1 and 2 need to be read subject to the amended section 74(1) of the Act which states:

“A territorial authority must prepare and change its District Plan in accordance with –

- a. Its functions under section 31; and*
- b. The provisions of Part 2; and c. A direction given under section 25A(2) [by the Minister for the Environment]; and*
- d. Its obligation (if any) to prepare an evaluation report in accordance with section 32; and*
- e. Its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and*
- f. Any regulations”.*

Point C10 needs to be read subject to the amended section 32 including in particular:

“(1) An evaluation report required under this Act must - ...

- a. 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*

...

(2) An assessment under subsection (1)(b)(ii) must –

- a. identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –*
 - i. Economic growth that are anticipated to be provided or reduced; and*
 - ii. Employment that are anticipated to be provided or reduced; and*
- b. If practicable, quantify the benefits and costs referred to in paragraph (a); and*
- c. Assess the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions*

....

(4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified the circumstances of each region or district in which the prohibition or restriction would have effect.”