

SUPPLEMENTARY EXPERT STATEMENT

IN THE MATTER OF: RESOURCE CONSENT SP/0179/20

3MS of Cambridge Limited Partnership

1863, 1865, 1871 and 1881 Cambridge Road

STATEMENT OF: Mark Batchelor, Consultant Planner

DATE: 21 May 2021

Introduction

- 1 This report provides a supplementary expert statement on the above application.
- 2 I have read the planning evidence from Mr. Chrisp for the applicant and David Phizacklea for the submitters.
- 3 There are a number of matters of difference of opinion or that have been given further consideration in light of that evidence. These are described and discussed below.

SIGNIFICANCE OF EFFECTS

- 4 The nature and scale of the facilities and services removed and not replaced in another location results in effects being significant. Even if not determined to be significant, the effects are certainly 'more than minor'. Removal of these infrastructure components from the structure plan entirely removes the means by which the structure plans are proposed to be developed and removes a significant part of their purpose. The change is a change of such an extent to be an effective change to the district plan.
- 5 At paragraph 6 Mr. Chrisp advises he does not agree with advice provided in my evidence that absence of various features from those shown in the structure plan as

located on the applicant site to have significant effects. Mr. Chrisp further advises no adverse effects are caused if there is an alternative site for them.

- 6 At paragraph 80 Mr. Chrisp notes his disagreement with my opinion that removal of the collector road, storm water corridor and sports fields is a significant effect. He advises that there is no adverse effects if alternative sitting is provided. Put another way, , if alternative sitting is not provided, then it must be the case that this results in adverse effects. At paragraph 82 Mr. Chrisp refers to a 400m wide corridor being identified on adjacent land, but not part of the application. I note Mr. Chrisp's evidence does not refer to proposed reduction and relocation of the community commercial centre relative to the C2 cell and resulting removal of access to it via the relocated collector road. Paragraph 81 refers to Messrs. McCaffrey and Smith confirming the alternative location will result in a better outcome. Such a better outcome will need to be experienced by the wider community of structure plan area proposed to be served by these facilities as well as a better outcome for the application site.
- 7 The 'features' referred to are a north south storm water and collector road corridor and sports fields. These are provided within the structure plan to service the requirements of this and adjacent structure plan areas. Reference is made to them being proposed to be relocated. They are not being relocated; they have not been provided with alternative sitting. They have been removed from the C2 structure plan and not replaced or provided with an alternative location.
- 8 The application does not provide an alternative site for these either in their land or adjacent land. The site they are shown to be moved to is not referred to or included in the application site identified in the application. The applicant's consultants have advised in discussion that the alternative location shown in the application plans is not part of the proposal. The strategic importance of these facilities, as noted by Mr. Bax, makes the effects of their removal and non-replacement a significant effect, in my opinion.

- 9 If alternative sites for these are provided and they provide the same or similar service for the C2 and other growth cells and in the case of the sports fields to the wider community, the effects of their removal will have will be successfully mitigated. No feasible alternative has been found yet or provided or secured by the applicant or the Council at the date of preparation this evidence.
- 10 Of particular note, the position of these facilities was established by way of a plan change (Plan Change 7) process by which the structure plans (C1, C2 and C3) were established, becoming operative on 14 March 2019. This process included the applicant's involvement as submitters and after PC7 the applicant and Council worked together extensively as set out in the evidence of Mr. Bax. My understanding is the applicant requested changes, including changes to layout of the C2 structure plan, but not the infrastructure components. I note that David Phizacklea has also commented on the applicant's involvement in Plan Change 7 in his evidence for the submitters.
- 11 Mr. Crisp's evidence advises (paragraph 7) that the assets are to be moved '*slightly to the west*' and that this is still in general accord with the structure plan. This advice is contrary to the advice in the application, and from the applicants' consultants, that has been to the effect they are removed and not do not provide part of the application. I discuss the point around whether the proposal is in 'general accord with' the structure plan further below.
- 12 In summary, my opinion remains that if no alternative location is secured or is able to be established or obtained, their removal is significant. Without them the development of this area (the structure planned area) is constrained if not stopped.

PROPOSED CHANGE 13 – EXPECTATION OF LOCATION

- 13 Change 13 is not operative and the outcome is not certain, particularly when considered with regard to the difficulties the Council is experiencing with this proposal, consideration of the proposed change may include responses to resolve these.

- 14 At paragraph 51 Mr. Chrisp advises he does not agree with the proposition provided in the S42A report that showing the location of the facilities provides a reasonable expectation they will be provided.
- 15 If there was no reasonable explanation for them to be provided, the facilities would not have been shown on the structure plan maps. Further in this regard, the location they are shown in is the result of a plan change process by which the structure plans were formulated and included as part of the plans policy. This included working with the applicant as a participant within the Plan Change 7 process that provided this location.
- 16 Paragraph 52 provides advice that any 'plan change' is subject to a full notification and submission process that has the ability to substantially change details. This proposal is not a change in details, it is a significant change in structure and operational outcome as a result of no alternative location being clearly provided at this stage.
- 17 This proposal is not a plan change but does result in what is effectively a plan change. Removal of the infrastructure and facilities is a significant change that would, like its provision as a structure plan, be an effective change to the district plan.
- 18 Reference to the applicant's submission to the Plan Change 13 as support for the proposal is of no relevance. The submission period has only recently closed, submissions have not been heard and decisions have not been made.

WAIKATO REGIONAL POLICY STATEMENT – INTEGRATION

- 19 Advice that the proposal is integrated is not supported by other advice provided in this regard that the development is largely independent.
- 20 Paragraph 93 of Mr. Chrisp's evidence advises disagreement with my advice that removal of the road and storm water corridor may be contrary to the requirement of clause (c) of Objective 3.12 of the Waikato Regional Policy Statement that seeks to ensure land use and infrastructure is integrated.

- 21 Advice is provided in paragraph 96 that the evidence of Messrs. McCaffrey and Apeldoorn confirm infrastructure will integrate with the wider area.
- 22 I agree with this, but subject to locational and operational efficiency being achieved and infrastructure being established. This proposal is removing the infrastructure entirely and not providing an alternative. An alternative is not just an alternative for the application site, but for all the land planned to be serviced by the assets. The condition to my agreement with the proposal is therefore not met.
- 23 To the contrary of this however, Mr. Chrisp disagrees that the proposal is inconsistent with the objectives and policies of the district plan related to the infrastructure corridor. His reason for this is the site is designed to be '*largely independent of*'. The proposal is therefore not being integrated.
- 24 The question arising from this is whether the proposal achieves an integrated outcome and the effect this will have on the wider infrastructure network and its need for integrated design. Advice from Mr. Chrisp that the proposal makes the site practically independent is not integration.

ACTIVITY CLASSIFICATION

- 25 The proposal is a Non-complying Activity. Mr. Chrisp's advice it is a Discretionary Activity is not correct. He has relied on finding no provisions prescribing Non-complying classification for departure from being 'in general accordance with' the structure plan.
- 26 Paragraph 124 of Mr. Chrisp's evidence advises that "the *Rural Zone rules 14 do not apply to subdivision in the Deferred Residential Zone*". He advises the subdivision rules of Section 15 are specific to subdivision in a deferred zone. I agree, and as set out below, this makes the application non-complying under rule 15.4.4.1(w).
- 27 At paragraph 126, Mr. Chrisp advises the structure plan rules of the district plan (15.4.2.69) relating to subdivision provide for variations from the structure plan so long as they remain in "general accordance" with it (the structure plan). He contends

if it is not in “general accordance” with the structure plan, then it is a discretionary activity. While this is also correct, the “higher activity status” of non-complying applies. Mr. Phizacklea for the submitters concurs with my assessment, that under the hierarchy of planning rules:

- a The zoning is rural, and subdivision therefore can only be a non-complying activity under rule 15.4.4.1(w).
- b The discretionary activity classification under rule 15.4.2.69 (as contended by Mr. Chrisp) cannot therefore be applied. While I accept that the structure plan has been approved in accordance with this rule, it is the rural zone rules which have primacy.

28 Mr. Chrisp’s evidence refers to Rule 15.4.2.69. The evidence advises that Rule 15.4.2.69 provides for consideration of subdivision proposals not *‘in general accordance with’* a structure plan to be considered as a Discretionary Activity.

29 Rule 15.4.2.69 requires finding that the proposal is designed to be *‘in general accordance with the requirements of that structure plan’*. This rule is copied below.

15.4.2.69 All development and subdivision within an area subject to an approved structure plan, development plan or concept plan shall be designed in general accordance with the requirements of that structure plan, concept plan or development plan. For the avoidance of doubt, the following areas are subject to concept plans, development plans and/or structure plans:

30 This results from Rule 15.4.1.1 (w) (copied below) specifically prescribing in the *‘Deferred Zone – Specific activity status rules’* that *‘any activity that is not a boundary relocation’* is a Non-complying Activity.

15.4.1.1	Activity	Residential Zone	Commercial Zone	Industrial Zone / Airport Business Zone	Reserve Zone	Large Lot Residential Zone	Rural Zone & any other zone not listed in this table	Deferred Zones
	plan.							
Deferred Zones - Specific activity status rules								
(w)	Any subdivision that is not a boundary adjustment or boundary relocation.	NA	NA	NA	NA	NA	NA	NC

- 31 My opinion remains that the application is a Non-complying activity under rule 15.4.1.1(w).
- 32 I note at this point, that whether the classification selected is Non-complying or Discretionary, the background rules, objectives and policy related to the structure plan and the matter of *'in general accordance with'* are still required to be considered. This is discussed in the following with regard to the matters of certainty of structure plans and what is *'in general accordance'* in the context of this matter may mean as discussed in paragraphs 106 to 109 and paragraphs 128 to 149 of Mr. Chrisp's evidence.

'IN GENERAL ACCORDANCE' AND CERTAINTY OF STRUCTURE PLANS

- 33 The proposal is not in general accordance with the structure plan. Particularly as it removes significant components from it and does not provide alternative locations in mitigation of this. The structure plan also provides certainty of outcome and requirement and have regulatory status in this instance and are recent and reliably reflect existing conditions and were contributed to by the applicant.
- 34 Structure plans are most commonly established as either (i) guidance documents 'sitting outside' district plans, this having little regulatory effect, being in the form of *'other matters'* ; or (ii) as in this case, are part of the district plan and therefore part of the regulatory framework.

35 The extent of flexibility in applying structure plans is described in sections 14 of the District Plan (Deferred Zone, Land Use Rules) and its reference to Appendix S19 (Cambridge C1 and C2/C3 Structure plans) and Section 15 (Infrastructure, Hazards, Development and Subdivision). While this is not a land use application, the principles under the land use rules of section 14 of the District Plan provide helpful guidance on applying “generally in accordance with” in respect of the structure plan.

36 The overall principles from these provisions are listed below.

c Flexibility.

d variations in flexibility depending on the position within a structure plan and the particular component subject to consideration.

e less flexibility close to the boundaries of a structure plan area within increasing flexibility within the structure plan area as distance from the boundaries increases.

f less flexibility related to major inter-structure plan infrastructure than local intra-structure plan components, specific guidelines applied to specific components including (not exclusively) locational guidelines.

g ensuring integrated outcomes that provide for the interconnections between structure plan areas.

37 I have referred to these and provides a summary description of the principles these present to design of subdivisions in the S42A report.

38 Mr. Chrisp’s evidence introduces reference to Section 15 of the district plan with regard to structure plans. Reference in this section to Section 15.2.1 (c) – Infrastructure provision is particularly helpful. Clause (c) describes the importance and requirement for integration and should be referred to.

39 My opinion is there is an overall requirement for infrastructure to be in accordance with the structure plan, whether in the position shown or not, but located and of a form that will result in the same or similar many outcomes each component of it is

identified in the structure plan as intended to provide. There is no provision for it to be removed from the structure plan. My opinion is consistent with that of Mr. Phizacklea for the submitters.

40 Further the structure plan provisions specify that the collector roading is “generally fixed” in position. To me this means flexibility is limited to minor adjustments of say metres, not complete movement to another site or as proposed in this application, removal all together. I interpret Mr. Phizacklea’s evidence as arriving at the same conclusion.

41 That is the difference between this proposal and the structure plan provisions in the district plan. The application at face value shows the infrastructure identified in the structure plan is proposed to be removed. The effect of this application is that the infrastructure is removed from the structure plan. The applicant has advised that the indicative relocated is not part of the application, and in further correspondence advised the amended structure plans were for “illustrative purposes” only. This does not reconcile with the effect of the application, being to propose a layout which is a substantial departure from the operative structure plan

42 As noted above, this is an outcome that is effectively a de facto change to the district plan and so significant that the wider community might conclude that the structure plans have no practical application.

43 At this point it is useful to compare this outcome with the two gateway provisions of the RMA related to non-complying activities. Significant or at least more than minor effects and removal of the infrastructure being contrary to objectives and policies is contrary to both these.

44 Mr. Chrisp makes the observation in paragraph 107, that *‘it can be years between Structure Plan preparation and any resulting developments.* Therefore, flexibility or departure from structure plans can be significant. I expect this is relying on decisions referring to the age of structure plans and them not being part of the district plan.

- 45 In the alternative, as described in Mr. Crisp's evidence, the structure plans for the Waipa District Plan are part of the district plan, have been introduced as part of the regulatory regime of the district plan, have rules, objectives and policies, have plans showing the location of the features they address, were established by a change to the district plan and this was a recent process and included involvement of the applicant. The structure plan therefore has merit and currency and a regulatory position.
- 46 The structure plan also has specificity by identifying the location of various components in its maps, that are essentially part of the district plan planning maps. This provides a reasonable level of predictability and expectation compared with a structure plan without maps and just description being provided, which would provide sufficient uncertainty of location to give a basis for supporting un-restricted flexibility other than for the prescribed outcome to be achieved. The proposed removal of the infrastructure from the 3MS site does not achieve this certainty. The way it is portrayed in the district plan however provides certainty.
- 47 Recognition and relative stability in implementation of structure plans is particularly important. This is illustrated by advice in submissions and is also important to the wider community.
- 48 Structure plans are an important part of being able to make decisions and investment in the future and facilitating longer term planning and assurance of there being adequate facilities for the community. This is an essential part of efficient provisions of residential land and planning certainty for landowners, the Council (infrastructure planning and investment) and the community.
- 49 The effects of disrupting this, as proposed, is also contrary to facilitating the Council's compliance with the National Policy Statement on Urban Development. Removal of these facilities from the structure plan removes the components providing compliance with the requirements of this policy for the land to be serviced and ready for development.

50 Juxtaposition of the commercial centre and access to the collector road is also a matter for consideration from the perspective of servicing the C2 cell and the wider structure plan scenario.

51 Mr. Chrisp refers to a number of instances where the structure plan was varied. These are presented as a basis of the argument that variation from the structure plan is appropriate. These instances are examples of individual proposals, the nature of which are distinguishable from this proposal.

52 My opinion remains, as advised in the S42A report, that removal of the facilities and services infrastructure of the sports fields, collector road and stormwater corridor and resulting relativity of the community commercial centre with these elements is more flexibility than could be determined as reasonable or in accordance with the flexibility provided for or that may be expected from these components of a structure plan.

53 Relocation may be appropriate; however, this is not proposed as part of the application. They are being removed with no mitigative actions or offerings from the applicant.

54 This could be mitigated by their replacement on or off the site being assured of being secured or replaced and in relatively similar locations, not necessarily the exact locations, but achieving the same or similar service outcome.

CONTEXT

55 There is a specific context within which the structure plan provisions and opportunities for development can be applied to sites within structure plans. The proposal is to remove those components of this context from the structure plan that are required to allow development.

56 Paragraph 127 of Mr. Chrisp's evidence advises the Section 42A report does not provide a context to staged uplift of the deferred growth cells. The advice is to the effect that proposed Change 13 proposes to remove Rule 14.4.1.9. I expect that is the context being referred to.

57 I expect Rule 14.4.1.9 is proposed to be removed as a result of the proposed change making the deferred zone provisions operative, which removes the need for this rule. A decision in this regard has however not been made.

58 Regarding context, Rule 14.4.1.9(c) (which it is noted is a land use rule), provides context relevant to this proposal, being that infrastructure is “*either in place or there is a solution that can be delivered to provide the necessary infrastructure*”. This is a fundamental principal of my assessment that is necessary to give confidence in being able to support this application.

SOLUTION

59 As suggested in the recommendations and related discussion in the S42A report, when a new practicable site for the removed and displaced facilities is secured or provided then consent would be suitable. Lack of securing these facilities makes consent not suitable.

Signed



Mark Batchelor

CONSULTANT PLANNER