

**BEFORE AN EXPERT CONSENTING PANEL**

**UNDER THE**

COVID-19 Recovery  
(Fast-track Consenting)  
Act 2020

**AND**

**IN THE MATTER**

of the application for  
resource consent for the  
Wooing Tree Estate

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**LEGAL SUBMISSIONS ON BEHALF OF THE WOOING TREE PROPERTY  
DEVELOPMENT LIMITED PARTNERSHIP IN RESPONSE TO COMMENTS**

**DATED: 27 JULY 2021**

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**MAY IT PLEASE THE PANEL:**

**1. INTRODUCTION**

**1.1** These submissions are made on behalf of the Wooing Tree Property Development Limited Partnership (the **Applicant**), the authorised person for the Wooing Tree Estate.

**1.2** The Wooing Tree Estate project was referred to a panel for consideration under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**Act**) on 1 March 2021 by clause 4 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No 2) 2021. The Wooing Tree Estate project is described in Schedule 13 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020. An application under the Act was lodged on 7 May 2021 (the **Application**).

**1.3** A panel was appointed to consider the Application on 26 May 2021 (**Panel**).

**1.4** On 9 June 2021 the Panel invited comments on the Application. Comments were received from 20 individuals and organisations. In order to prepare a fulsome response to these comments, and in particular to engage with the CODC and attempt to narrow the issues of contention, the Applicant requested that the Application be put on hold until today's date.

**1.5** These legal submissions accompany the Applicant's response to comments on the Application, and:

- (a) provide an overview of the Application and a description of the Wooing Tree Estate project;
- (b) respond to issues raised by the parties who provided comments on the Application; and
- (c) comment on the legal framework for the assessment of this resource consent.

## 2. PROJECT DESCRIPTION

2.1 The Application is for a development known as the Wooing Tree Estate in Cromwell, Central Otago.

2.2 The development site is a 25.4 ha polygon shaped site that is zoned under the Central Otago District Plan (**District Plan**) for residential development with an area zoned for a hospitality and neighbourhood centre in the middle of the site. The site is discussed further in section 8 of John Duthie's Planning Analysis and Assessment of Effects (**AEE**) which was submitted as Appendix A to the original Application.

2.3 Following amendments made to the Application in response to the Panel's further information requests and comments made on the Application, the proposal for which consent is sought (**Revised Proposal**) comprises:

- (a) 360 residential lots that will provide for a range of typologies and price-points (and consent for the construction of building platforms for homes within the business zoned land). The number of residential lots has increased as a result of the removal of the hospitality centre north of Blondie Drive;
- (b) a hospitality center comprising of a 350m<sup>2</sup> cellar door for the Wooing Tree Vineyard (and adjacent outdoor seating area of 150m<sup>2</sup>) and a 500m<sup>2</sup> retail offering. This figure has been substantially reduced from the 3,000m<sup>2</sup> retail and 1,000m<sup>2</sup> business GFA sought in the Application;
- (c) a childcare facility;
- (d) a superlot for visitor's accommodation (a future resource consent will be sought from the CODC for a building on this site); and
- (e) the associated construction of infrastructure, roads, an underpass under State Highway 8B (**SH8B**), open space and parkland areas, and signage.

- 2.4** It is the Applicant's position that there are no issues as to jurisdiction in respect of the revisions to the proposal, in the context of the process of this Act where there is no formal notification process. The Revised Proposal has been provided to the CODC and its response is provided as part of this response to comments. If the Panel considers that it needs the views of the other persons from whom comments were sought on the original Application, it can request comments on the revised proposal pursuant to clause 25 of schedule 6 of the Act.
- 2.5** The list of activities for which consent is sought is set out in the Applicant's response to the Panel's request for further information,<sup>1</sup> with the addition of the two additional matters outlined in section L of Mr Duthie's statement in response to the comments received on the Application.<sup>2</sup> An updated list of the plans and documents that form part of the Application is included in the updated conditions attached to Mr Duthie's memorandum.
- 2.6** The Application adds to the 32 residential sites that have already been consented and which are described in the AEE as Stage 1 of the Wooing Tree Estate development. Construction was completed in April 2021 and title issued in June 2021. House construction has now commenced. The Applicant has constructors on the ground and ready to begin Stage 2, pending the grant of consent. It is ready to deliver much needed housing.
- 2.7** The land is the only large block of 'development-ready' property within walking distance of the Cromwell town centre. As such, it is ideally placed for helping meet the residential growth requirements of the Cromwell township, and would do this in a location that supports the retail and community facilities of the town centre. As part of this response to comments, Mr Haynes (on behalf of the Applicant) has outlined the demand that it is experiencing for sites within the Wooing Tree Estate, and in particular the smaller lots with a lower price point.<sup>3</sup> Pre-sales for Stage 2 have almost completely sold out.

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1 Applicant's response to request 1 for further information *Letter from applicant outlining the response to request 1 for further information* at [1(a)];

2 Applicant's response to comments on the Application *Appendix C – Planning Statement (27 July 2021)* at [206]-[209].

3 Applicant's response to comments on the Application *Appendix B – Corporate Statement (26 July 2021)* at 13.

### **3. INFORMATION PROVIDED AS PART OF THIS RESPONSE**

**3.1** The Applicant's response to the comments received from other parties attaches 9 further reports. Those are:

- (a) A statement from Mr John Duthie in respect of planning matters. Mr Duthie explains the amendments that the Applicant has made to the Application and responds to the planning matters raised in comments from other parties. This statement supports the AEE prepared by Mr Duthie for the Application and which undertook the relevant planning assessments for the Application;
- (b) Mr Sean Haynes provides a response to the comments received on behalf of the Applicant and explains further the approach the Applicant has taken and the reason for seeking consent under the Act;
- (c) Mr Paddy Baxter of Baxter Design considers the urban design effects of the amendments made to the Application and responds to comments. Mr Baxter provided an urban design report that was attached as Appendix B to the Application;
- (d) Ms Natalie Hampson of Market Economics considers the economic implications of the amendments made to the Application and responds to comments. Ms Hampson's economic assessment was attached as Appendix I to the Application;
- (e) Mr Myles Garmonsway of Patterson Pitts Group has considered the comments and conditions of consent relating to earthworks and infrastructure that have been provided, and has confirmed that the amendments made to the Application can be accommodated from an infrastructure perspective. Mr Garmonsway prepared the Infrastructure Report that was attached as Appendix E1 to the Application;
- (f) Mr Rob Hay from Marshall Day has considered the comments (and proposed conditions of consent) as they relate to noise effects, and has assessed the noise effects of the amendments made to the Application. A memorandum from Mr Hay was attached as Appendix E

to the Applicant's response to the Panel's request for further information;

- (g) Mr Andy Carr has considered the transport effects of the amendments made to the Application and responds to comments as is relevant to his expertise. Mr Carr provided a transport report that was attached as Appendix G to the Application;
- (h) WSP has prepared a remediation action plan for the site to address the land contamination issues that the Applicant has recently become aware of; and
- (i) Revised architectural and subdivision plans which show the amendments that have been made to the Application in response to the comments received.

**3.2** The Applicant has also sought comments from the Central Otago District Council (**CODC**) and Waka Kotahi New Zealand Transport Agency (**Waka Kotahi**) on the amendments that it has made to the Application, and those additional comments are included in this response.

#### **4. RESPONSE TO COMMENTS**

**4.1** This section of the submissions responds to the comments that were received on the Application.

##### **General response to CODC's comments**

**4.2** Of particular note were the comments received from the CODC and its expert consultants in opposition to the Application. The level of opposition expressed in these comments took the Applicant by surprise. The Applicant had endeavoured to work collaboratively with CODC throughout the preparation and lodgement of the Application and a number of the issues raised in the CODC's detailed comments had not been raised with the Applicant before.

**4.3** For example, the Applicant had never received any verbal or written feedback on its proposed 15m buffer. It relied on the scheme it had provided to the CODC and the CODC's silence in response. However, in the comments it made to the

Panel, and the subsequent discussions with the Applicant during the suspension period, the CODC has now indicated that it will not support a buffer area of less than 30m (as provided for the District Plan), notwithstanding that:

- (a) the Applicant's proposed buffer will provide a better outcome than what is currently required by the District Plan. This is set out in more detail below; and
- (b) A 30m buffer would require the redesign of the roading layout within the subdivision, and would result in the loss of approximately 40 lots. This would impact on the Applicant's ability to provide more affordable housing.

- 4.4** The CODC has also commented that rather than lodging an application under the Act, the Applicant should have waited for the CODC to prepare a plan change for Cromwell to give effect to the Cromwell Spatial Framework Plan – which at this stage is anticipated to be notified in 2022 – and then apply for resource consent. A plan change would take some 12-18 months to work through the statutory process, with further time required for resolution of any appeals. With respect, this comment that the Applicant should wait ignores the very purpose of the Act as set out in section 4:

*to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.*

- 4.5** It is clear that consenting this project under a fast-track process will achieve this purpose. In particular, the Application represents an opportunity:

- (a) To promote employment and economic activity in a part of New Zealand that is suffering from the economic impacts of COVID-19;
- (b) To increase housing supply in a manner that will provide housing that is more affordable and within the reach of first time home buyers. There is no other suitable land available in Cromwell to achieve this at this scale;
- (c) To provide investment certainty. This site is development-ready. The contractors are on the site and ready to immediately beginning to

implement the consent if granted. The sales programme is well advanced, with nearly all of Stage 2 sold out; and

- (d) To achieve all these things in a manner in which the environmental effects can all be effectively managed and the sustainable management of natural and physical resources is promoted.

**4.6** To say that the Applicant should wait for a Resource Management Act 1991 (RMA) process that may or may not take place next year completely ignores these opportunities. It also ignores the very clear direction given by the Minister via the decision to refer the Application to the Panel that this Application is one that should be considered under the Act.

**4.7** Notwithstanding these points, the Applicant has worked hard to prepared the Revised Proposal to address the concerns that have been raised in the comments received from CODC and the other parties who commented. The focus of the CODCs' comments was the scale of the hospitality centre, the buffer with the state highways, transportation issues and residential yield. In response, fundamental changes have been made to the proposal including a significant reduction to the scale of the hospitality centre, removal of the shared space north of Blondie Drive, changes to the design of the bund that will form part of the buffer, and changes to the interface with the residential land to the north. The changes that have been made are set out in detail in Mr Duthie's statement.

**4.8** It is understood that the issues that remain between the CODC and the Applicant have narrowed to:

- (a) The location of the reduced commercial offering adjacent to SH8B;
- (b) The appropriateness of the buffer;
- (c) The residential density proposed; and
- (d) The traffic and transportation strategy.

**4.9** The next section of these submissions address some of the key themes that have arisen in the comments that have been received. A comprehensive response to the comments (including recommended changes to the conditions

to address the issues that have been raised) is provided in Mr Duthie's statement.

## Hospitality Centre

### *Size*

- 4.10** A number of the comments received raised concerns about the size of the hospitality centre and the prospect that it would compete with the Cromwell town centre.
- 4.11** It is worth noting that a number of the CODC's comments on the hospitality centre appeared to be based on a fundamental misunderstanding of what the Applicant was proposing. CODC's comments state that the Application involves 25,500m<sup>2</sup> of retail, visitor accommodation and other commercial. In that context it is perhaps understandable that that level of GFA would be opposed. However, this is not correct. The proposal as lodged was for 3,000m<sup>2</sup> retail, 1,000m<sup>2</sup> business and 6,000m<sup>2</sup> traveller's accommodation – within the 10,000m<sup>2</sup> GFA cap already provided for the site in the District Plan.
- 4.12** Despite the incorrect understanding of the level of GFA, as is discussed in Mr Duthie's statement, the Applicant has made changes to the scale of the hospitality centre. The part of the hospitality centre north of Blondie Drive has been deleted (and replaced with residential lots)<sup>4</sup>. This means that the only retail activity on the site will be:
- (a) the Wooing Tree Vineyard cellar door that will replace the existing cellar door (350m<sup>2</sup>, with an open space dining area of 150m<sup>2</sup>); and
  - (b) an additional shop with a gross floor area of 500m<sup>2</sup>. This shop is not to include a bike hire/sale/repair element (so as not to compete with similar activities envisaged for the Cromwell town centre).
- 4.13** The Applicant is now also proposing a condition that would place a consent notice on the superlots intended for the visitor's accommodation and the

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<sup>4</sup> A review has been undertaken by Mr Garmonsway who has confirmed that the infrastructure can support the additional residential lots that are now proposed. See Applicant's response to comments on the Application *Appendix G – Infrastructure Statement* (14 July 2021).

childcare facility preventing them being used for “shops” as defined in the District Plan or as commercial offices.<sup>5</sup>

- 4.14** Ms Hampson’s response to the comments received on the Application assesses the effect of this scaled back retail activity on the Cromwell town centre. Her analysis concludes that the reduction in the scale of the hospitality centre will significantly reduce the potential for competitive effects on the Cromwell town centre.
- 4.15** In response to the changes now proposed by the Applicant, Ms Brown on behalf of the CODC accepted that the proposal to delete the commercial area north of Blondie Drive would better align the hospitality centre with the “provisions of the [District Plan] to achieve on-site facilities in a manner complimentary to the town centre”.<sup>6</sup>

#### *Location*

- 4.16** Comments on behalf of the CODC questioned whether it was appropriate for the hospitality centre to be located adjacent to SH8B, rather than further into the site where the District Plan currently provides an area of business zoning. Under the Revised Proposal the cellar door will be located on the western corner adjacent to the SH8B roundabout, with the retail facility on the eastern corner.
- 4.17** Mr Duthie and Mr Baxter’s responses to the comments on the Application outline the planning and urban design rationale for locating the hospitality centre there. Mr Duthie notes that this location:<sup>7</sup>
- (a) Concentrates the hospitality activity in a node;
  - (b) Is close to the pedestrian underpass and so is within the walkable catchment of the town centre; and
  - (c) Prevents vehicles having to travel through the residential area to access the hospitality centre.

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5 Applicant’s response to comments on the Application *Appendix C – Planning Statement (27 July 2021)* at [54].

6 CODC Response to Revised Proposal (12 July 2021) at [1]. At the CODC’s request, this is being provided to the Panel along with this response.

7 Applicant’s response to comments on the Application *Appendix C – Planning Statement (27 July 2021)* at [40].

**4.18** Mr Baxter's opinion is that there are clear advantages to locating these activities close to the SH8B and existing town centre. His view is that appropriately designed buildings of the scale and size proposed have the ability to bookend the space, create a strong gateway into the Cromwell town centre and further accentuate the wider urban precinct that includes the existing town centre.<sup>8</sup> In particular the proposed cellar door location will be a clear and visible link to the vineyard frame surrounding the site. Mr Baxter considers the revised location to be a preferable location for the cellar door as it will have closer association with both the visible vineyard and with the Cromwell Town centre.<sup>9</sup>

#### *Visitor's accommodation*

**4.19** Comments from The Gate Limited and Keyrouz Holdings and the CODC also raised concerns about the visual amenity of the hospitality centre, particularly in respect of the design of the visitor's accommodation. The Applicant accepts that the design of the visitor's accommodation, as was depicted in the Application as lodged, was not sufficiently progressed. As such, the Applicant now proposes creating the lot for the visitor's accommodation as a vacant superlot. Consent is not sought for the building. The Applicant will seek a separate resource consent from the CODC when it comes to develop the visitor's accommodation.

**4.20** In respect of the concerns about the scale of the hospitality centre, Mr Duthie explains why the visitor's accommodation was not the type of activity that would compete with the Cromwell town centre, and would in fact in his view, complement the town centre.<sup>10</sup>

#### **Residential density**

**4.21** A number of comments, including those from a number of neighbours to the site, noted that the Applicant is seeking consent for a development that has an increased level of residential density compared to what is permitted under its existing consent (for Stage 1) and under the District Plan.

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8 Applicant's response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [32].

9 Applicant's response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [34].

10 Applicant's response to comments on the Application *Appendix C – Planning Statement* (27 July 2021) at [43].

**4.22** The Applicant accepts that the proposed density is greater than what is anticipated by the District Plan. However, the Cromwell Spatial Framework Plan (**Framework Plan**) targets a yield of between 15 to 20 homes per hectare. In his response to comments on the Application, Mr Duthie clarifies that by his calculations the modified proposal will achieve a density of 14.9 homes per hectare. Mr Duthie does not agree with the way Mr Penney has calculated yield (by excluding the roads, JOALs and open space) and so does not support Mr Penney's figure of 23.5 homes per hectare.<sup>11</sup> Notwithstanding that, even if Mr Penney's figure was correct, the difference with the targeted yield of 15 to 20 homes is relatively small.

**4.23** Regardless of how density is calculated, the view of the Applicant's experts is that the proposed density is appropriate. Mr Baxter's opinion is that the increased lot numbers do not automatically translate to a loss of rural character.<sup>12</sup> His view is that the rigour of the Wooing Tree Design Guidelines will ensure a quality rural amenity outcome.<sup>13</sup> His response to the comments explain his involvement in the approval process under the Design Guidelines and his view that the Design Guidelines will give the Wooing Tree Estate a unique and distinctive character. Mr Duthie supports these views on the amenity that will be delivered by the Design Guidelines and notes that the increased yield, together with the range of typologies that will be enabled, will provide a wider variety of housing choice within the market.

**4.24** Furthermore, Mr Haynes explains why the Applicant is seeking to develop at this density. In particular, he notes that any reduction in the density would have flow on implications for the efficiency of the masterplan and the Applicant's ability to deliver affordable sections. Mr Haynes confirms that for Stage 2 the greatest demand is being experienced for the smaller, more affordable sections.<sup>14</sup>

#### **Adequacy of the proposed buffer adjacent to the state highways**

**4.25** Comments on the Application also noted that the Applicant has proposed a 15m buffer between SH8B and SH6 and the site, instead of the 30m buffer envisaged

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11 Applicant's response to comments on the Application *Appendix C – Planning Statement* (27 July 2021) at [66]-[69].

12 Applicant's response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [50].

13 Applicant's response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [50] to [52].

14 Applicant's response to comments on the Application *Appendix B – Corporate Statement* (26 July 2021) at 14.

in the District Plan. This is one of the outstanding issues between the Applicant and the CODC.

**4.26** In response to those comments, the Applicant:<sup>15</sup>

- (a) is now proposing to extend the 15m buffer across the southern face of the visitor's accommodation and childcare facility sites;
- (b) has formalised the design of a 1.8m high bund within the buffer, including conditions of consent to ensure that the bund is planted with five rows of vines on the slope adjacent to the state highways that will be managed by the Wooing Tree Vineyard, with fruit or native trees on the side adjacent to the dwellings; and
- (c) is proposing consent notices that prohibits buildings and accessory buildings within 3m of the common boundary between the residential lots and the buffer, and sets a maximum dwelling height for those lots of 6m.

**4.27** Mr Baxter has undertaken a landscape and urban design assessment of the buffer. He concludes that the proposed buffer will enable a high-quality landscape amenity such that the visual and character effects on the travelling public and users of the state highway, when glimpsing the residential areas of Wooing Tree, will be less than minor due to the quality of the landscape buffer works proposed.<sup>16</sup>

**4.28** Similarly, Mr Hay's opinion is that the 1.8m high bund within the buffer area will achieve the necessary noise attenuation for adjacent outdoor residential spaces and that a 2.5-3.0 m high bund, as proposed by the CODC's noise consultants Styles Group, would be excessive.<sup>17</sup> This includes noise from SH8B and SH6, and from frost fans in the orchards across SH6.<sup>18</sup>

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15 Applicant's response to comments on the Application *Appendix C – Planning Statement* (27 July 2021) at [106].

16 Applicant's response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [17].

17 Applicant's response to comments on the Application *Appendix H – Noise and Vibration Statement* (23 July 2021) at 1.

18 Applicant's response to comments on the Application *Appendix H – Noise and Vibration Statement* (23 July 2021) at 1; Applicant's response to request 1 for further information *Attachment E – Further information response on acoustics by Marshall Day Consultants* at 4 and 5.

- 4.29** In respect of air quality, it is notable that the orchards that are located across SH6 from the site have not raised any reverse sensitivity concerns in comments on the Application. However, in response to the Panel's request for additional information Ms Deborah Ryan of Pattle Delamore Partners confirmed that the Application would have a less than minor reverse sensitivity effect.<sup>19</sup>
- 4.30** Mr Duthie's statement responding to the comments received on the Application also undertook an assessment of the District Plan objectives and policies relating to the 30m buffer. He concludes that the 15m buffer will satisfy elements of the relevant objectives and policies because it would ensure that the site has a vineyard-like character when viewed from SH8B and SH6 and is compatible with the surrounding environment.<sup>20</sup>
- 4.31** It is the Applicant's position that the buffer it has proposed will deliver a better outcome than the 30m buffer envisaged by the District Plan and supported by the CODC's comments. There is very little direction provided in the District Plan as to the landscape treatment that is to be applied to the buffer. In contrast, this Application includes a detailed design, secured by conditions, that is supported by planning, landscape and noise experts. Mr Baxter's response to comments includes photographs of how the buffer has been applied elsewhere in Cromwell. In essence, it comprises grassed areas and individual lot fences. He notes that in general, these buffers are of low landscape quality.<sup>21</sup>
- 4.32** It is not clear what effects the CODC considers would be addressed by the 30m buffer (with few accompanying controls in the District Plan) that would not be addressed by the Applicant's proposal. With respect, it appears that the basis for the CODC's concerns is the perceived inconsistency with the District Plan provisions, rather than a concern as to adverse effects.

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19 Applicant's response to request 1 for further information *Attachment F – Air quality report by Pattle Delamore* at 7.

20 Applicant's response to comments on the Application *Appendix C – Planning Statement (27 July 2021)* at [132].

21 Applicant's response to comments on the Application *Appendix D – Urban Design Statement (27 July 2021)* at [13].

## Transport

- 4.33** The Applicant has reviewed the comments that have been received that related to transport matters and has worked proactively to resolve the issues raised.
- 4.34** First, comments from Waka Kotahi and the CODC raised concerns about the layout of the Blondie Drive intersection at the entrance to the site. Since these comments were received, the Applicant and Waka Kotahi have been working on an intersection design whereby the main entry road into the development will now curve around to the east. Waka Kotahi's consultants have prepared a preliminary sketch which is included in Mr Carr's response to comments. The Applicant is continuing discussions with Waka Kotahi on the design of the intersection and further adjustments may be required. Mr Carr anticipates that this revised layout would address the concerns expressed by Mr Facey on behalf of CODC on this matter.
- 4.35** Waka Kotahi's comments on the Application also requested that the conditions of consent were amended so that no more than 176 dwellings could be granted section 224(c) certification prior to the roundabout with SH8B and underpass under SH8B being constructed. The Applicant accepts that amendment.
- 4.36** A number of parties who commented on the Application raised concerns about the location of the underpass under SH8B. The Applicant has reviewed these concerns and the street layout to the north of the pedestrian underpass has been redesigned to improve the pedestrian connections. This is addressed in Mr Baxter's statement. Mr Carr's statement also responds to the concerns that have been raised as to the legibility of the route.

## Open Space

- 4.37** The Urban Design comments on behalf of the CODC described the open space network as having an "inadequate" scale.<sup>22</sup> This concern has also been raised by comments from other parties. However, as is explained in Mr Baxter's response to the comments on the Application, while the area of open space is less than was shown on the application documents for the private plan change that originally rezoned the Wooing Tree site, this Application provides ample

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22 Comments received from Central Otago District Council *Statement of Evidence of Neil Penney* (30 June 2021) at [57.6].

open space with strong vista opportunities and connectivity, both within the site and beyond.<sup>23</sup> Mr Duthie confirms that from a planning perspective that “the open space development provides two neighbourhood parks, the greenway connection with walking and cycling paths, an area of communal open space in the north, and the rural buffer which has visual amenity benefits. Together with the streetscape amenity and private open space, this provides an appropriate open space network”.<sup>24</sup>

### **Interface with adjacent residential land to the north**

**4.38** Concerns have been expressed by adjacent landowners to the north as to the appropriateness of the interface at the boundary. Mr Duthie’s response to the comments deals with these issues in detail. In summary:

- (a) no changes have been made to the location or dimension of the buffer between the development and the residential properties to the north as provided for in the District Plan;
- (b) the eastern area of the buffer is 17.4m wide, will comprise a public greenway and will vest in the Council as a public reserve;
- (c) the western end of the buffer will be jointly owned and maintained by the abutting residential property owners. Conditions of consent are now proposed to address these maintenance obligations;
- (d) a small landscaped bund is proposed within the buffer to address concerns that have been raised about users of the Wooing Tree greenway network cutting across the privately owned communal open space land to the north; and
- (e) no changes have been made to the existing District Plan controls that apply to the dwellings adjacent to this buffer (including height, rear and side yards and building coverage).

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23 Applicant’s response to comments on the Application *Appendix D – Urban Design Statement* (27 July 2021) at [53].

24 Applicant’s response to comments on the Application *Appendix C – Planning Statement* (27 July 2021) at [158].

## Regional consent requirements

- 4.39** The comments received from the Otago Regional Council (**ORC**) suggested that consent might be required as a result of Plan Change 8 to the Otago Regional Plan: Water. The ORC also queried whether consent was required under the Regional Plan: Waste in relation to the disturbance of land at contaminated sites.
- 4.40** Regarding Plan Change 8, this is addressed at paragraphs 161 to 170 of Mr Duthie's planning statement in response to comments received on the Application. He concludes that:
- (a) consent is not required under the Regional Plan: Water for the proposed earthworks. This is because there are no watercourses or overland flowpaths within the site and no prospect of sedimentation or other effects on any waterbodies;
  - (b) consent may be required to infill the artificial pond on the site. While this is not clear (and in particular the Regional Council has not confirmed that a consent is required for this activity), out of an abundance of caution the Applicant is requesting that this is added as a reason for consent and Mr Duthie has undertaken a statutory assessment which has been provided as part of this response.<sup>25</sup> It is important to note that this activity was included in the Application at lodgement. It does not represent a change to the activities for which consent is sought, rather it is a change to the list of consents that are required for the proposal.
- 4.41** Put simply, with the potential exception of the pond infilling the Regional Plan: Water is not engaged and there is no scope for activities of the nature proposed to be governed by a plan that addresses effects on waterbodies. This has been added to the list of reasons for consent out of an abundance of caution.
- 4.42** In terms of contamination, the Applicant had originally understood that the site did not trigger any land contamination consent requirements, based on a 2016 preliminary site investigation carried out by WSP. For this reason consents under the Otago Regional Plan: Waste and the National Environmental

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<sup>25</sup> Applicant's response to comments on the Application *Appendix Q – Plan Change 8 Planning Assessment* (27 July 2021).

Standard for Assessing and Managing Contaminants in Soil to protect Human Health (**NESCS**) were not included in the reasons for consent in the Application.

**4.43** However, WSP has subsequently undertaken a land contamination assessment for Waka Kotahi as part of forthcoming roundabout construction works. That assessment identified a potential contamination issue arising from the posts used to hold up the vineyard vines. As soon as the Applicant became aware of this it commissioned WSP to undertake an investigation of the Wooing Tree site. WSP have prepared a detailed Remediation Action Plan which will address this issue and ensure that the level of contaminants are satisfactorily dealt with. This has been included in this response to comments. Consent is required under the Regional Plan: Waste, and the NESCS and Mr Duthie has prepared an assessment under these documents, and proposed conditions, which forms part of this response.

## **5. STATUTORY FRAMEWORK FOR ASSESSING THE APPLICATION**

**5.1** This section of these submissions considers the Application with reference to the statutory framework established by the Act. It also responds to the comments made in the legal submissions on behalf of CODC.

**5.2** The legal framework for the assessment of the Application is set out in clauses 31 and 32 of Schedule 6 to the Act. In summary:

(a) the Panel must have regard to, subject to Part 2 of the RMA and the purpose of the Act, and applying section 6 of the Act rather than section 8 of the RMA:

(i) any actual and potential effects on the environment of allowing the activity. The effects of the proposal have been considered in detail in the Application, the responses to the request for further information and the response to the comments;

(ii) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity. The Applicant does not rely on any

specific measures under this provision. However, and as noted in the planning assessment that supported the Application, a number of measures proposed by the Applicant to address stormwater and transport (such as the pedestrian underpass for example) will have positive effects;

(iii) any relevant provisions of a:

- A national environmental standard;
- B other regulations made under the RMA;
- C national policy statement;
- D New Zealand coastal policy statement;
- E regional policy statement or proposed regional policy statement;
- F plan or proposed plan;
- G planning document recognised by a relevant iwi authority and lodged with a local authority;

To the extent that these documents are relevant, they have been extensively canvassed and assessed in the planning assessment that accompanied the Application, and the planning responses that were prepared in response to the Panel's questions and the comments received on the Application.

(iv) any other matter the panel considers relevant and reasonably necessary to determine the consent application. As noted in the legal opinion provided in response to the Panel's questions, in our view the Framework Plan is such a matter;

- (b) when having regard to any actual and potential effects on the environment of allowing the activity, the Panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect;
- (c) the Panel must not have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application; and
- (d) the Panel is to apply sections 104A to 104D, 105 to 107, and 138A(1), (2), (5), and (6) of the RMA.

**5.3** These submissions do not repeat the analysis that has been provided to the Panel already. However, comments are provided below on some of the key steps in the statutory analysis.

#### **Section 104D gateway tests**

**5.4** Overall, the Application falls to be considered as a non-complying activity in accordance with the standard bundling approach.

**5.5** Therefore, and as with a standard RMA consent application, the statutory assessment must begin with a consideration of the gateway tests. In order to grant consent,<sup>26</sup> the Panel must be satisfied that either:<sup>27</sup>

- (a) the adverse effects of the activities which comprise the Application will be minor; or
- (b) the activities which comprise the Application are not contrary to the objectives and policies of the relevant plans.

**5.6** In section 10 of his AEE, Mr Duthie undertook a detailed analysis of the effects of the Application on the environment and he concluded that the effects (including on infrastructure, earthworks, stormwater, amenity and transport) can all be managed so that they are less than minor.<sup>28</sup>

**5.7** Mr Duthie's opinion, as expressed in the Application, is that the proposal passes the first gateway test and that no effects will be minor or more than minor. As part of the additional analysis that has been provided as part of the responses to the request for further information and the comments, no adverse effects have been identified that reach that threshold. In particular, the Applicant's response to the Panel's further information request confirmed that:<sup>29</sup>

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26 COVID-19 Recovery (Fast-track Consenting) Act 2020 [CRFCA], schedule 6 clause 32; Resource Management Act 1991 [RMA], section 104B.

27 CRFCA, schedule 6 clause 32; RMA, section 104D.

28 Appendix A to the Application *Planning Analysis and Assessment of Effects* (7 May 2021) at [12.3].

29 Applicant's response to request 1 for further information *Attachment G – Legal opinion from Simpson Grierson* at [9] and [10].

- (a) any adverse effects on the future residents of the Wooing Tree Estate from the orchard operations across State Highway 6 (**SH6**) will be avoided, remedied and mitigated; and
- (b) the condition framework and subdivision layout are adequate to address noise effects from surrounding rural land uses and the state highways.

**5.8** Further changes have been made in the Revised Proposal to serve to address the residual adverse effects of the proposal and further reduce their scale. This includes the reduction in the scale of the commercial area, the amendments that have been made to the transport elements (including the removal of the shared space, clarification on the design of the Blondie Drive intersection and the trigger point at which further infrastructure is required) and the greater specificity that has been provided in relation to the buffer areas adjacent to the state highways and the residential land uses to the north. Infrastructure capacity is sufficient for the increased residential yield.<sup>30</sup>

**5.9** As such, it remains the Appellant's position that the Application easily passes the first gateway test.

**5.10** As part of the response to the Panel's request for further information, Mr Duthie undertook a detailed analysis of the second gateway test.<sup>31</sup> His view was that the Application will not be contrary (in the sense of being "repugnant" or "opposed") to the objectives and policies of the relevant planning documents and so will again easily pass the second gateway test under section 104D(1)(b).

### **The purposes of the Act and the RMA**

**5.11** Once the Application has passed a gateway test, the Panel must work its way through the matters to which it is required to have regard under clause 31. What is important to note here is the lens through which this assessment is to be viewed. This differs in a material way from an assessment under the RMA for a standard consent application - the Panel's consideration is subject to both Part 2 of the RMA and the purpose of the Act.

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30 Applicant's response to comments on the Application *Appendix C – Planning Statement* (27 July 2021) at [193].

31 Applicant's response to request 1 for further information *Attachment P – Section 104D analysis*.

- 5.12** The Act does not establish a hierarchy, in which the purpose of the Act will override Part 2 of the RMA. Both purposes are equally relevant. Nevertheless, it is submitted that the Panel must have the purpose of the Act front in mind when making its decision. It should also explicitly address it in its decision. This includes the purpose as set out in section 4 of the Act, and the matters listed in section 19 which can be had regard to when determining whether a project will help to achieve that purpose. The extent to which the Application will do so has been canvassed extensively in the Application documents and is not repeated here. It is also important to note that the Minister had to be satisfied of this before deciding to refer the Application to the Panel in the first place. Put simply, the Application represents an opportunity to promote employment and economic activity, increase the housing supply and to achieve certainty of investment, in a part of New Zealand that has been disproportionately affected by the impacts of the COVID-19 pandemic.
- 5.13** Notwithstanding this, it is clear that when considering Part 2 of the RMA, the Application will promote the sustainable management of natural and physical resources pursuant to section 5. A detailed assessment against Part 2 was provided in the Application.<sup>32</sup> It is worth emphasising in particular, that the Application will further the efficient use and development of natural and physical resources, and the maintenance and enhancement of amenity values, and the quality of the environment, matters to which the Panel must have particular regard to pursuant to section 7 of the RMA.
- 5.14** It appears that the concerns expressed in the legal submissions on behalf of the CODC regarding the Application's consistency with Part 2 are largely based on concerns regarding the scale of the hospitality centre and the impacts this will have on the Cromwell town centre. As has already been discussed, the legal submissions appear to be based on a fundamental misunderstanding of the level of retail activity proposed by the Application. In any event, the scale has been substantially reduced in the Revised Proposal. The information that has been provided by the Applicant makes clear that the Wooing Tree Estate project (as provided for in the Revised Proposal) will result in a positive planning outcome that aligns to both the purpose of the Act and Part 2 of the RMA.

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32 Appendix A to the Application *Planning Analysis and Assessment of Effects* (7 May 2021) at [13.1] to [13.7].

## Relevant provisions

- 5.15** Pursuant to clause 31(1)(c) of schedule 6 of the Act the Panel must have regard to the provisions of any of the documents listed in clause 29(2) which lists the documents referred to in paragraph 5.2(a)(iii) above. Of those, the provisions of the District Plan and Otago Regional Plan: Water (**Regional Plan**) (as amended by Plan Change 8) are relevant and detailed assessments have been provided in the Application and in the responses to the Panel's request for further information and the comments received.
- 5.16** The CODC has pointed to inconsistencies with the District Plan, and has argued that the Applicant should wait for an RMA plan change and consenting processes to be undertaken at some point in the future. It is accepted that the District Plan is a relevant document for the Panel's consideration and fulsome analysis has been provided by Mr Duthie of the provisions. But it is also important to acknowledge that the District Plan predates the Act and was prepared under a different statutory regime. It does not contemplate the economic and investment certainty imperatives that have been introduced by this legislation and that this Application will clearly meet. The Applicants have rightly availed themselves of an opportunity to seek a fast-tracked consent under a statutory regime that applies a different, and additional, focus to the assessment of the consent.
- 5.17** As has been set out above, it is now apparent that the NESCS is a relevant document, and Mr Duthie has undertaken an assessment under the NESCS as part of this response
- 5.18** As set out in the Applicant's response to the Panel's request for further information, it is submitted that the NPS-UD is a relevant and applicable document pursuant to Schedule 6, clause 31(1)(c) of the Act. This is because:<sup>33</sup>
- (a) the decision as to whether to grant consent to the Application is a "planning decision" for the purposes of the NPS-UD; and

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33 Applicant's response to request 1 for further information *Attachment G – Legal opinion from Simpson Grierson* at [22] and [31].

- (b) Cromwell is an “urban environment”:
  - (i) the Framework Plan forecasts that Cromwell’s population will reach 10,900 by 2038 and so Cromwell is *intended to be* part of a housing and labour market of at least 10,000 people; or
  - (ii) alternatively, Cromwell could be said to be a part of the Queenstown and Wanaka housing and labour markets which would make Cromwell part of a housing and labour market of at least 10,000 people.

**5.19** While the comments on the Application provided by the CODC suggest that Cromwell’s population will only reach 8,700 by 2050,<sup>34</sup> that analysis was, with respect, not focussed on the *intention* for Cromwell’s development. The Framework Plan and associated growth forecasts are sufficient to indicate that CODC has an *intention* for Cromwell’s population to grow to this level within the timeframes anticipated in the NPS-UD.

**5.20** As is outlined in section 15.3 of Mr Duthie’s AEE, the Application gives effect to a number of the objectives and policies of the NPS-UD. The Application gives effect to:

- (a) Objective 2 of the NPS-UD, as the development of the site for more intensive development than is permitted under the District Plan will improve housing affordability in Cromwell by supporting competitive land and development markets;
- (b) Objective 3 of the NPS-UD, because while it is not a decision in respect of the District Plan, it will complement the existing town centre and other areas of development;
- (c) Objective 4 of the NPS-UD, because it reflects the level of intensity envisaged in the Framework Plan and so in turn reflects how the needs of the community have changed since the District Plan was prepared;
- (d) Objective 6 of the NPS-UD, because the Wooing Tree Estate site can be serviced by infrastructure; and

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34 Comments received from Central Otago District Council *Planning Evidence* at [30].

- (e) Policy 1 of the NPS-UD, as the Wooing Tree Estate will contribute to making Cromwell a well-functioning urban environment.

**5.21** The planning evidence attached to the comments of the CODC submitted that the “residential component of the application meets the NPS-UD in part, with the fast tracked residential development occurring only to a reduced density consistent with PC12”.<sup>35</sup> With respect, it is immaterial that developing the site in another way might also give effect to the NPS-UD, the material consideration is whether the Application gives effect to the NPS-UD. Mr Duthie’s analysis is clear that the Application does give effect to the NPS-UD.

**5.22** The CODC’s other concerns about the consistency of the NPS-UD with the Application related to the scale of the proposed hospitality centre.<sup>36</sup> Those concerns have been addressed by the Revised Proposal.

#### **Other relevant matters**

**5.23** Finally, it is submitted that the Panel should consider the Framework Plan<sup>37</sup> as a matter that is “relevant and reasonably necessary to determine the consent application” pursuant to clause 31(1)(d) of schedule 6 of the Act.<sup>38</sup> It is submitted that considering the Framework Plan is analogous to the consideration of similar documents pursuant to section 104(1)(c) of the RMA where, non-statutory management plans setting out a Council’s vision for development have been given weight by the Environment Court when deciding an application for consent.<sup>39</sup>

**5.24** The Framework Plan was completed as part of a masterplanning exercise undertaken by the CODC. It was informed by consultation and engagement with the Cromwell community and other stakeholders, and was adopted by the Cromwell Community Board in June 2019.

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35 Comments received from Central Otago District Council *Legal Submissions* (30 June 2021) at [8.8].

36 Comments received from Central Otago District Council *Legal Submissions* (30 June 2021) at [8.9].

37 Stage 1 of the Cromwell 'Eye to the Future' Masterplan: Central Otago District Council *Cromwell Masterplan Spatial Framework* (7 June 2019) <<https://www.codc.govt.nz/your-council/news?item=id:2aq5tuzfy17q9sdcu126>>.

38 Applicant’s response to request 1 for further information *Attachment G – Legal opinion from Simpson Grierson* at [32] and [36].

39 Applicant’s response to request 1 for further information *Attachment G – Legal opinion from Simpson Grierson* at [35]; *Re Site 10 Redevelopment Limited Partnership* [2015] NZEnvC 173 at [121].]

**5.25** Mr Duthie’s AEE discusses the Framework Plan and its relevance of the Application. Specifically, Mr Duthie noted that the Application “is about taking the Council’s settled development strategy for Cromwell and fast tracking it so, for economic recovery reasons, this work can start much sooner than if it followed the standard RMA process”.<sup>40</sup> The Application gives effect to the Framework Plan by:<sup>41</sup>

- (a) being consistent with the preference for growth to be within the existing Cromwell area so as to promote an accessible walking and cycling town with an increased/higher density of development within walking distance of the town centre;
- (b) promoting a diversity of housing typologies; and
- (c) reinforcing the primacy of the town centre as the centre of retail activity.

**5.26** The legal submissions attached to the comments provided by the CODC do not suggest that the Framework Plan is not a relevant consideration in the Panel’s assessment of the Application. Instead, those submissions contend that the Application is not consistent with the Framework Plan because of the incorrect understanding of the scale of the hospitality centre,<sup>42</sup> highlighting that the Framework Plan identified the site for residential development, rather than as a location for retail or business development.<sup>43</sup> It is submitted that the Revised Proposal includes the changes that the legal submissions on behalf of the CODC implied would be necessary to ensure the Application was consistent with the Framework Plan.

## **6. CONCLUSION**

**6.1** This Application is seeking consent for a medium density development on the only large block of ‘development-ready’ property within walking distance of the

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40 Appendix A to the Application *Planning Analysis and Assessment of Effects* (7 May 2021) at [14.5].  
41 Appendix A to the Application *Planning Analysis and Assessment of Effects* (7 May 2021) at [12.5].  
42 Comments received from Central Otago District Council *Legal Submissions* (30 June 2021) at [8.5].  
43 Comments received from Central Otago District Council *Legal Submissions* (30 June 2021) at [8.4].

Cromwell town centre. As the Application and the Applicant's responses to the Panel's further information request and to comments make clear:

- (a) the development-ready project provides an immediate economic benefit to the construction industry in the Cromwell area and stimulates job creation;
- (b) it provides a much needed residential growth opportunity in a part of Cromwell identified in CODC's growth strategy as being suitable for medium to high density residential development, and for which strong demand is being experienced for higher density sections; and
- (c) the effects of the development are not more than minor and will be appropriately managed by the conditions of consent that have been proposed.

**6.2** In my submission, the material before the Panel clearly establishes that it is appropriate to grant resource consent to the Application pursuant to clauses 31 and 32 of Schedule 6 to the Act, subject to the conditions proposed by Mr Duthie.

**DATED** at Auckland this 27<sup>th</sup> day of July 2021



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Bill Loutit / Sarah Mitchell  
Counsel for the Wooing Tree Property  
Development Limited Partnership