

File ref: FTC000053

27 May 2022

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Dear Ian

### **Request #3 for information from Waimakariri District Council in relation to the Bellgrove application under COVID-19 Recovery (Fast-track Consenting) Act 2020**

The Bellgrove Expert Consenting Panel (the Panel) has directed the Environmental Protection Authority (EPA) to request further information from you under clause 25 of Schedule 6 of the COVID-19 Recovery Act 2020 (the Act), relating to the Bellgrove consent application.

The Panel requires further assessment from the Waimakariri District Council concerning the tests to be applied to the application pursuant to section 104D of the Resource Management Act (RMA). The background assumptions to the request for information are as follows:

1. The applicant accepts that its proposal does not meet the second test set out in s 104D(1)(b) in that it will be contrary to the Objectives and Policies of the OWDP, on account of the fact that the current zoning of the land is rural and its intended use is urban.
2. Despite that the applicant also says that the proposal would meet the Objectives and Policies of the proposed Waimakariri District Plan (PWDP).
3. However as there is both an operative and proposed plan s 104D(1)(b)(iii) would require us to conclude that the proposal is not contrary to the objectives and policies of both plans – which it is not.
4. As the proposal cannot meet s 104D(1)(b)(iii) it must satisfy the first limb of the test in s104D(1)(a) that the adverse effects of its proposal on the environment are no more than minor if we are to consider granting consent.
5. The application submitted that it does so by considering the effects against the provisions of the PWDP and in doing so presumes that the land will be used for urban development. There is no assessment against the operative rural zone environment and how this should now be considered in the context of other planning instruments and s104D.

The Panel seeks further legal / planning advice as to the proper definition of the “environment” that is relevant for the purposes of assessing the effects in the context of this proposal, given the conflict between the OWDP and PWDP and their relative status. We know from case law that it includes the existing environment and an environment that can be brought about because of permitted activities. But here we are presupposing an environment that is to be brought into being by the PWDP, which at this stage is still at an early submission stage, therefore its provisions are not yet certain. We are advised that it was publicly notified in September 2021, and submissions closed on 26 November 2021. We have enquired and we have been advised that there is no summary of submissions available. Some provisions of that

Plan were to have immediate legal effect, but none of those relate to this issue of land use. Under the PWDP, the site is not directly zoned for urban development, but rather it is zoned Rural Lifestyle, with a capacity to then transform it to an urban environment by appropriate further application.

The Panel appreciates there is an issue of weight in relation to both Plans, but does that affect the environment within which we must consider effects for the purposes of Section 104D?

Would it be possible to provide this information by **5PM on 3 June 2022**? If it is not possible to meet this time frame, can you advise when the information can be provided to the EPA. Or, if you do not have the information advise the EPA accordingly.

The information will also be made available on the EPA website. If you have any questions or queries please don't hesitate to contact me by email [june.cahill@epa.govt.nz](mailto:june.cahill@epa.govt.nz) or by phone [REDACTED]

Yours sincerely

June Cahill

Project Lead