

BEFORE THE HEARING PANEL OF INDEPENDENT COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an application to Masterton District Council by
Welhom Developments Limited for a private plan
change to the combined Wairarapa District Plan

**LEGAL SUBMISSIONS
ON BEHALF OF WELHOM DEVELOPMENTS LIMITED**

7 MARCH 2023

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1. INTRODUCTION

- 1.1 Welhom Developments Limited ("**Welhom**") is the requestor for the proposed Private Plan Change ("**Plan Change**"), to rezone approximately 14.7ha of land in the north of the Masterton township ("**Site**") to residential, with specific provision for a retirement village.
- 1.2 Welhom is a subsidiary of Summerset Group Holdings Limited and is responsible for identifying and acquiring potential sites for new retirement villages (together, "**Summerset**"). Summerset is one of New Zealand's leading retirement village operators, with 44 comprehensive care retirement villages across New Zealand in various development stages, ranging from site selection to completion.
- 1.3 New Zealand is in the midst of a significant housing crisis. Due to our ageing population, there is unprecedented demand for retirement and aged care living options. This is recognised as a serious issue of national scale and the Wairarapa is no exception. Masterton and Carterton are experiencing significant urban growth and require more housing capacity to support this growth. Not only does it affect affordability, but also housing choice. A lack of appropriate aged care housing results in people having to relocate from their established communities, to get the care they need. In their retirement, people deserve to be able to age within their existing communities, around friends and family.
- 1.4 The Plan Change is a critical step towards addressing this housing shortage, and more needs to be done to address it. A mixture of both infill and greenfield development is needed to deliver housing for the area.
- 1.5 Despite the concerns raised by the reporting planner and various submitters, the evidence on behalf of Summerset is that all potential effects can be appropriately managed through the resource consent process and that the Plan Change represents the most appropriate means of achieving the relevant objective of the Wairarapa Combined District Plan ("**District Plan**"). In our submission, the Hearing Panel can have comfort in approving the Plan Change.
- 1.6 The following experts have provided evidence in support of the Plan Change:
 - (a) Aaron Smail – Corporate;
 - (b) Russell Brents – Civil Engineering;

- (c) James Allen – Land Use Capability and Soil;
- (d) Tim Heath – Economics;
- (e) James Bentley – Landscape and Visual;
- (f) Mark Georgeson – Transport;
- (g) Melanie Muirson – Road Safety; and
- (h) Mitch Lewandowski – Planning.

1.7 Each of these experts have provided a pre-circulated statement of evidence and will provide a short summary statement when they present. In addition, to assist the Hearing Panel, Messrs Allen, Georgeson, Lewandowski, and Ms Muirson will also respond to the evidence subsequently provided by other parties.

1.8 These submissions will:

- (a) provide a brief overview of the Plan Change;
- (b) outline the legal framework for the assessment; and
- (c) address the key issues for determination.

2. OVERVIEW OF PLAN CHANGE

2.1 The Plan Change seeks to rezone the Site from Rural – Primary Production to Residential Zone, with provision for a retirement village over the majority of the Site. The balance of the Site is proposed to be utilised for general residential purposes.

2.2 The Plan Change adopts the Residential Zone rules in the District Plan and applies them to the Site with some modifications. The modifications are to accommodate a retirement village on the Site as a controlled activity with a height up to 14m at the central part of the Site.

2.3 Mr Lewandowski discusses the proposed provisions in further detail in his evidence, with further modifications made to address matters raised in the s42A Report and in submissions.

2.4 Future development of the Site is contingent on a future resource consent process. The granular detail of environmental effects arising from future development of the Site, and how they will be appropriately managed, will be carefully considered as part of that future process. As you will hear,

Summerset is concerned that some of the other parties have not understood the distinction between the plan change and resource consent stages.

3. LEGAL FRAMEWORK FOR ASSESSMENT

3.1 As the Hearing Panel will appreciate, a plan change sets out the framework of consideration for subsequent resource consent applications. It is necessarily lighter on detail on the final form of development than a subsequent resource consent application.

3.2 Section 74 sets out the matters the Masterton District Council ("**Council**") must consider in preparing and changing a district plan. These include:

- (a) the Council's functions under section 31;
- (b) the provisions of Part 2;
- (c) the Council's obligations in either preparing or having regard to a section 32 evaluation report;
- (d) any national policy statements; and
- (e) the purpose and principles of the Resource Management Act 1991 ("**RMA**").

3.3 The Hearing Panel will be well aware of the legal framework for assessing the Plan Change under the RMA, and we do not propose to address the framework in detail. Instead, we focus on the key issues for determination. This specifically includes consideration of section 32 and relevant National Policy Statements.

4. KEY ISSUES FOR DETERMINATION

4.1 In our submission, there are six key matters for the Hearing Panel to consider:

- (a) transport and road safety;
- (b) the National Policy Statement on Highly Productive Land ("**NPS-HPL**");
- (c) the National Policy Statement on Urban Development ("**NPS-UD**");
- (d) landscape and visual amenity;

- (e) civil engineering; and
- (f) planning, including the weighting of non-statutory documents, changes to the Plan Change provisions and section 32.

4.2 We address each of these below.

5. TRANSPORT AND ROAD SAFETY

5.1 The transport and road safety aspects of the Plan Change have been thoroughly considered by Mr Georgeson and Ms Muirson. This is addressed in the transport assessment accompanying the Plan Change request, and in the evidence of Mr Georgeson and Ms Muirson.

5.2 In our submission, that evidence is clear that there is no fundamental transport issue, and appropriate provisions have been proposed within the Plan Change to ensure that matters of detail can be appropriately addressed through any subsequent resource consent application.

5.3 Mr Georgeson and Ms Muirson have considered the existing transport network against potential effects arising from the future development of the Site in scenarios where a retirement village is developed, or the whole of the Site is developed for general residential. This is within the context of a transport network that has already been designed to manage traffic from the neighbouring Cashmere Oaks subdivision, which was considered and approved through a resource consent process.

5.4 Both Mr Georgeson and Ms Muirson conclude that a range of standard, good practice measures can be implemented to appropriately manage effects from future development of the Site, both in terms of traffic volumes and road safety:

- (a) The Cashmere Oaks roading network, including the intersection of Cashmere Oaks Drive and State Highway 2, can readily accommodate the anticipated increase in users.¹ Any required changes to the roading network (including minor changes such as increased signage and changes in road markings) can be considered at the resource consent stage, rather than the plan change stage.²
- (b) Ms Muirson has provided evidence specifically addressing road safety. Her firm view is that the record of deaths and serious injuries

¹ Evidence of Mr Georgeson at [13.5].

² Evidence of Mr Georgeson at [13.5].

("DSI") in the area indicates that the current infrastructure is operating well within acceptable levels and can continue to do so as the Site is developed.

- 5.5 The appropriateness of the particular measures to be implemented may be influenced by the speed limit of State Highway 2 at the time, but are not dependent on a speed reduction. As indicated by Mr Georgeson, Waka Kotahi has recently proposed to reduce the speed limit for the stretch of State Highway 2 from Cashmere Oaks Drive north from 100km/hour to 80km/hour.³ If the speed limit remains at 100km/hour, there are tools that can be implemented to manage transport effects. Ms Muirson observes that in practice vehicles using State Highway 2 in this area typically travel at speeds lower than 100km/hour.⁴ Mr Connelly agrees that this reflects the reality of speeds in this area.⁵ Any reduction in the speed limit for this stretch of State Highway 2 will have safety benefits, but that is a matter for Waka Kotahi.
- 5.6 Should a speed reduction occur prior to development of the Site, it will inform what measures are required to be implemented to manage effects. These are all matters that will be appropriately considered as part of a future resource consent process, and Mr Lewandowski has proposed more detailed matters of control regarding roading and road safety to provide further comfort that the Council can provide greater scrutiny over these matters at consent stage. Critically, it is neither appropriate, nor necessary, for a speed limit change to be required to be implemented on State Highway 2 in order to accommodate future development of the Site.
- 5.7 The s42A Report recommends decline, on the basis of transport and road safety matters. The reporting planner considers transport effects to be "unacceptable" but provides no reasoning as to how that conclusion has been qualified. The Council's traffic expert, Ms Fraser, relies heavily on Waka Kotahi's submission in reaching her conclusions. Mr Georgeson and Ms Muirson have considered the matters raised by the Council and submitters regarding transport and road safety matters and remain of the view that there is no transport or road safety impediment to the Plan Change being granted, and that transport matters can be readily addressed as part of a future consent process when the Site is developed.

³ Evidence of Mr Georgeson at [5.5]-[5.8].

⁴ Evidence of Ms Muirson at [3.4].

⁵ Evidence of Mr Connelly at [42].

- 5.8 Mr Connelly acknowledges that the appropriateness of a range of measures proposed by Ms Muirson are informed by the rural or urban nature of the environment.⁶ This is an area experiencing growth and is in transition from rural to urban already, with the Cashmere Oaks subdivision well-advanced. The tools outlined by Ms Muirson can readily support new development irrespective of whether the road has a "rural appearance", without the need for a roundabout or speed reduction.
- 5.9 In terms of pedestrian and cycle connectivity, there is already a well-established network within the Cashmere Oaks subdivision, with a range of further potential connection options, including a shared path across the Waipoua River to the south of Cashmere Oaks and associated recreational park connectivity.⁷ In terms of connectivity across State Highway 2, this would be informed by the speed of State Highway 2 at the time that resource consent is sought, but at its current speed is not considered appropriate. As explained by Mr Georgeson, the Plan Change does not preclude a range of connectivity options, including connectivity across State Highway 2 should a speed reduction occur. However, future connectivity is not required to be across State Highway 2.
- 5.10 Ms Muirson's evidence is that 1.1 DSI crashes would be anticipated for the intersection in a 20-year period.⁸ That is well short of being considered "high-risk" intersection (one identified as having 12 or more DSI crashes in the same 20-year period).⁹
- 5.11 While the evidence for Waka Kotahi and the Council make out that there is a critical issue and that risk is unacceptable, this seems to be driven by Waka Kotahi's Road to Zero strategy, rather than grounded in any resource management basis, and fails to consider the real world context of the Site and area.
- 5.12 The Road to Zero strategy is one of a range of government strategies that inform the Government Policy Statement on Land Transport ("**GPS-Land Transport**"). The GPS-Land Transport is a key document under the Land Transport Act 2003 that provides direction on strategic priorities for Waka Kotahi and how funding is allocated to achieve the goals identified in initiatives, such as Road to Zero.

⁶ Evidence of Mr Connelly at [106] and [107].

⁷ Evidence of Mr Georgeson at [4.7] and [4.8].

⁸ Evidence of Ms Muirson at [5.16].

⁹ Evidence of Ms Muirson at [5.16].

- 5.13 While the Road to Zero strategy does not have direct statutory weight, it is relevant to Waka Kotahi's decision making and therefore (understandably) colours its position as a submitter through this plan change process. Summerset acknowledges Waka Kotahi's Road to Zero strategy and supports the general intention behind the strategy, but it is an aspirational document only and should not be given significant weight in considering effects under the RMA, particularly as to what road safety effects are "acceptable". The Hearing Panel is not bound to accept or reject aspects of the Plan Change where it is, for example, inconsistent with the Road to Zero strategy.
- 5.14 The RMA is not a "no effects statute".¹⁰ There are effects resulting from any activity, and it is not appropriate (nor practical) to avoid every effect. Mr Connelly for Waka Kotahi suggests that a structure plan is required, but has not provided any clear view as to what measures would be acceptable, even acknowledging that a roundabout is not necessarily the only solution.¹¹ In his view, the potential safety management treatments to the road network outlined in Ms Muirson's evidence will not "make a fundamental or substantial improvement to road safety."¹² With respect, that is not the correct threshold against which to assess the Plan Change. Summerset is not required to make improvements to road safety as part of this plan change, nor any future resource consent process under the RMA, but rather manage adverse effects. While that may be part of Waka Kotahi's Road to Zero strategy, a DSI of 1.1 does not require fundamental intersection redesign nor does it provide a basis for declining this Plan Change, particularly given that it represents an incremental increase on the existing transport safety environment. Importantly, the DSI calculations fail to consider technological advancements or mode shift, and also do not factor in the other mitigation measures proposed by Summerset.
- 5.15 If any increase in road safety risk was unacceptable and warranted decline of a plan change request or consent application, in reality most new subdivisions would not be able to proceed, including the recent Cashmere Oaks subdivision. That does not reflect reality. The recent amendments to the RMA through the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 recognise there are effects that come with enabling more development. The immediate legal effect of medium density residential standards, which allow three houses of three storeys to be developed on most residential sites as a permitted activity for Tier 1 Councils

¹⁰ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [245].

¹¹ Evidence of Mr Connelly at [93].

¹² Evidence of Mr Connelly at [125].

are a prime example of this. Higher density development and 'infill' development has been enabled without any corresponding infrastructure upgrades. That results in more users on existing transport networks without any upgrades or a consent process to manage those effects and road safety effects that have not been considered or managed.¹³

- 5.16 Summerset acknowledges that Waka Kotahi does not have limitless funding, and therefore needs to carefully consider where across New Zealand it invests in network improvements. However, in our submission, that does not mean that a no risk approach should be taken to any proposals for development by the private sector.
- 5.17 Rather, when considered appropriately in context, there is no transport safety issue that warrants decline of the Plan Change. Summerset acknowledges that traffic matters will require consideration through any subsequent resource consent, and the amended provisions provide a robust framework for any subsequent decision-maker to appropriately consider transport and transport safety matters. That includes a requirement for financial contribution for transport upgrades on any subdivision or land-use consents.

6. NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND

- 6.1 The NPS-HPL was in development for a considerable period of time, with initial consultation with the public on the Proposed NPS-HPL taking place in 2019. Further progress was delayed due to Covid-19.
- 6.2 The Plan Change request documents considered the proposed NPS-HPL in its draft form. Prior to submitting the Plan Change request, Summerset obtained a soil assessment from AgFirst to ascertain the productive capabilities of the Site. From the testing that took place, AgFirst identified that the Site's Land Use Capability ("**LUC**") is Class 3. Messrs Allen and Millner are clear that the Site's soil while technically captured by the NPS-HPL, are the lowest quality soil class that is captured under the NPS-HPL and there are significant constraints to utilising the Site for productive purposes.

¹³ The approach under the RMA in this respect is not an unusual one, the earthquake strengthening regime under the Building Act 2004 requires strengthening of buildings to occur within specified time periods (being in many cases a number of years), and in many cases allows buildings that require strengthening to continue to be used in the meantime. That regime balances an appropriate level of risk against the practical and economic implications of undertaking earthquake strengthening works.

6.3 The Plan Change included an assessment against the draft NPS-HPL as it existed at that time. The NPS-HPL was released on 20 September 2022 and came into force on 17 October 2022. There are subtle differences between the draft NPS-HPL and the finalised NPS-HPL, which Summerset has addressed on direction from the Hearing Panel in the statements of evidence from Messrs Lewandowski, Allen and Heath.

6.4 In our submission, the Plan Change satisfies the requirements of the NPS-HPL. The evidence of Messrs Lewandowski, Allen and Heath outlines how the Plan Change complies with the criteria, particularly clauses 3.6(4) and 3.6(5) of the NPS-HPL, being:

- (4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:
 - (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and
 - (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and
 - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
- (5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

6.5 These criteria are addressed in further detail below.

Clause 3.6(4)(a) - Providing for sufficient development capacity to meet expected demand for housing

6.6 The evidence of Mr Heath considers the Masterton District and Carterton District markets together as one catchment due to the proximity of both Masterton and the Site to Carterton.¹⁴ Carterton and Masterton are already undersupplied with retirement units with this deficiency is set to increase, and

¹⁴ Evidence of Mr Heath at [5.3].

the market will have a shortfall of approximately 240 retirement units by as early as 2024 (with this number set to increase as the years go on).¹⁵

- 6.7 Mr Heath forecasts significant housing shortages in the area for aged care housing, and that the increase in supply resulting from the Plan Change will improve housing affordability, the wellbeing of the local community and land use efficiencies.¹⁶

Clause 3.6(4)(b) - Other reasonably practicable and feasible options for provided required development capacity

- 6.8 The second limb of the clause 3.6(4) test is whether there are other reasonably practicable and feasible options for providing the required development capacity for a comprehensive care retirement village. In our submission, this encompasses two relevant aspects:

- (a) the productive viability of the Site; and
- (b) how the Site compares to other options for development capacity while considering Summerset's specific development needs.

- 6.9 In relation to the productive viability of the Site, Mr Allen has considered the Site's physical characteristics, current use, other potential uses.¹⁷ In terms of physical characteristics:¹⁸

- (a) the size of the Site presents limitations to successfully sustaining pastoral agricultural use, this aspect of the Site cannot be remedied through expansion due to the fragmentation on surrounding sites and the incompatibility of other land uses;
- (b) the soil fertility is low and would require fertiliser application, at significant cost;
- (c) the soil naturally has poor drainage and requires significant drainage upgrades to address this; and
- (d) the Site is bordered by residential activities to the south and lifestyle blocks surrounding the eastern and northern boundary. Mr Allen reiterates in his evidence that the land uses contemplated above involve significant use of agrichemicals such as herbicides and

¹⁵ Evidence of Mr Heath at [8.12].

¹⁶ Evidence of Mr Heath at [4.2].

¹⁷ Evidence of Mr Allen at section 4 and 5.

¹⁸ Evidence of Mr Allen at [2.1].

pesticides that may be at risk of drifting onto residential sites and creating reverse sensitivity effects.¹⁹

- 6.10 To reach this overall conclusion, Mr Allen considered a range of productive uses for the Site and their viability, including pastoral, horticultural, and viticultural activities.²⁰ Overall, he concludes that pastoral farming would be the most appropriate, but the small site size is a barrier to viability.
- 6.11 The Council engaged Mr Millner to provide soil evidence which was provided on 6 March 2023. Mr Millner differs in the LUC sub-classification of the Site to Mr Allen, but they are in agreement that irrespective of the LUC classification, the Site suffers from physical constraints that affect its productive viability. In particular, Mr Millner agrees that the Site is constrained in terms of soil drainage, site size, irrigation, and reverse sensitivity.²¹ Overall, Mr Millner concludes that these limitations are both "permanent and unavoidable", which reinforces the evidence of Mr Allen in relation to the above considerations under the NPS-HPL.
- 6.12 Summerset has actively considered a range of other sites in the area against critical criteria for supporting a retirement village, as outlined in Mr Smail's evidence. This includes a minimum lot size of 8-10 ha. It is rare to find sites appropriate for retirement villages in urbanised environments and with the features are needed to support a retirement village.²²
- 6.13 In order to address the second limb of the clause 3.6(4) test, Mr Heath also carried out an extensive alternative location assessment, with 6 residentially zoned sites in Masterton physically suitable to accommodate a retirement village. However, none were appropriate due to them being under development, part of a treaty settlement, subdivided, or proposed to no longer be residentially zoned.²³ Other sites that were considered and out of the residential zone were either less economically viable due to proximity to infrastructure and transport or of a higher LUC class.²⁴ Therefore, there were no other feasible sites that would provide for the required development capacity that were of a lower productive value.

¹⁹ Evidence of Mr Allen at [5.6].

²⁰ Evidence of Mr Allen from [5.9] - [5.21].

²¹ Evidence of Mr Millner, at [23] to [26].

²² Evidence of Mr Smail at [4.13].

²³ Evidence of Mr Heath at [9.11] - [9.17].

²⁴ Evidence of Mr Heath at [9.19] - [9.20].

Clause 3.6(4)(c) - Environmental, social, cultural and economic benefits vs costs

- 6.14 The final limb of the clause 3.6(4) test requires a cost / benefit analysis to be undertaken with the rezoning. To successfully utilise the Site for productive purposes there are significant barriers due to the physical characteristics of the Site and its location.
- 6.15 Mr Heath, with reference to the evidence of Mr Allen, has provided a detailed cost benefit analysis and concludes the benefits outweigh the costs, specifically, there will be increased land and dwelling supply, an increase in affordable housing, increased variety in choice of housing type and location, increased amenity, increase economic investment, decreased marginal infrastructure costs, greater levels of growth, and an increased diversity of the buyer pool.
- 6.16 Mr Lewandowski considers that increased land supply for a development is an environmental benefit that outweighs any of the potential negative environmental effects associated with the Plan Change.²⁵ The social benefits associated with the Plan Change, in particular with regard to the increase in retirement housing, outweigh any negative social effects.²⁶ No negative social effects have been expressly identified in relation to the Plan Change. From engagement with iwi there have also been no cultural costs or benefits identified.²⁷

Clause 3.6(5) - Spatial extent of urban rezoning is minimum necessary to provide the required development capacity while achieving a well-functioning environment

- 6.17 In addition to the three-step test for Tier 3 territorial authorities outlined above, clause 3.6(5) requires that all territorial authorities must take measures to ensure that the spatial extent of the rezoning is the minimum necessary to provide for the required development capacity, while also ensuring that a well-functioning environment is achieved.
- 6.18 The Plan Change seeks to rezone the entirety of the Site. As is illustrated in the plans submitted with the Plan Change request, the proposed retirement village will utilise approximately 9ha of the 14.7ha Site. The balance of the Site could be utilised for standard residential subdivision and development under the general residential zone controls.

²⁵ Evidence of Mr Lewandowski at [6.49].

²⁶ Evidence of Mr Lewandowski at [6.49].

²⁷ Evidence of Mr Lewandowski at [6.49].

- 6.19 To only rezone the portion of the Site used by the retirement village would be inefficient as it prevents the proposed residential development capacity for the remaining 5.7ha of the Site. Further, leaving a small portion of the Site zoned as Rural (Primary Production) exacerbates its existing constraints, as outlined in the evidence of Mr Allen.²⁸ It would increase fragmentation of the area, which already has a mix of rural lifestyle and residential land uses. Mr Heath considers that leaving the balance of the Site does not assist with achieving good economic outcomes considering the Site currently has limitations for rural and highly productive uses.²⁹
- 6.20 To not rezone the whole Site would exacerbate these limitations.³⁰ Rezoning of the whole Site must occur to ensure that a well-functioning environment is achieved as limiting the rezoning to the lot allocated for retirement village units not only creates potential reverse sensitivity effects, but has no economic justification.³¹

7. NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT

- 7.1 The NPS-UD seeks to ensure that well-functioning urban environments are established to meet the ever-changing needs of New Zealand communities. The NPS-UD removes overly restrictive barriers to development to allow for intensification, specifically in locations that have good access to services and infrastructure. Within the NPS-UD, each area and specific council are identified as being part of a three-tier system, with larger councils being considered Tier 1 councils.
- 7.2 Masterton District Council is classified as a Tier 3 authority and is held to a different standard to Tier 1 and 2 authorities under the NPS-UD. However, these councils are strongly encouraged to do things that the Tier 1 and Tier 2 authorities are obliged to do under Parts 2 and 3 of the NPS-UD.
- 7.3 As supported by the evidence of Mr Lewandowski, the Plan Change is consistent with the NPS-UD and makes a significant contribution to the housing need in the districts.³² Rezoning the land for residential use will support the competitive operation of land in the districts, which again will have flow on effects for example for housing affordability and is beneficial for all

²⁸ Evidence of Mr Allen at [5.8].

²⁹ Evidence of Mr Heath at [9.27].

³⁰ Evidence of Mr Allen at [5.8].

³¹ Evidence of Mr Lewandowski at [6.45].

³² Evidence of Mr Lewandowski at [6.21] and [6.28].

members in the community not just the elderly.³³ Further, additional development capacity is advocated for under Policy 8 of the NPS-UD, which councils must be responsive to.³⁴

- 7.4 The NPS-UD recognises that development capacity may not be anticipated by RMA documents, and it may be out of sequence with planned land release. It should give the Hearing Panel comfort that the NPS-UD has considered that development capacity should be utilised in scenarios where it has not already been provided for by district or regional plans. In our submission, the Plan Change seeks to bring forward the urbanisation of the Site, which has long been anticipated by the Council.
- 7.5 The Environment Court has acknowledged the importance of urban planning documents and objectives and stated in relation to the implementation of the National Policy Statement of Urban Development Capacity that decision makers have been directed to consider urban growth outcomes, which in the past had been overlooked as a result on the emphasis on local environment and amenity considerations.³⁵ The Court stated that a more future orientated, outcome focused conclusion was envisaged.³⁶ This approach has carried through in the NPS-UD.
- 7.6 The matters of concern are whether the Plan Change is consistent with the NPS-UD in relation to connectivity and integration with the surrounding area.³⁷ In our submission, these issues have been adequately addressed through these legal submissions and the evidence of Mr Lewandowski.

8. LANDSCAPE VISUAL AMENITY

- 8.1 In our submission, the Plan Change is a logical extension to the surrounding residential development and a budding urban area, in line with the Cashmere Oaks subdivision. Landscape visual matters have been thoroughly considered and appropriately addressed by our expert, Mr Bentley. In relation to effects, Mr Bentley states that while the proposed residential development for a retirement village will initially create moderate adverse landscape effects during the construction phase, over time with the establishment of the

³³ Evidence of Mr Lewandowski at [6.28(b)].

³⁴ Evidence of Mr Lewandowski at [6.28(e)].

³⁵ *Summerset Villages (St Johns) Limited v Auckland Council* [2019] NZEnvC 173 at [49].

³⁶ *Summerset Villages (St Johns) Limited v Auckland Council* [2019] NZEnvC 173 at [49] and [50].

³⁷ Section 42A Report at [71].

appropriate landscaping and planting will assist with these effects.³⁸ The adverse visual effects are considered to be low or very low.³⁹

- 8.2 The s42A Report has identified that there will be a significant change to the character and amenity of the Site as a result of the rezoning. For the purpose of composing the s42A Report the Council engaged an external consultant, Ms Angela McArthur. Ms McArthur recommends planting of all boundaries of the Site. While Mr Bentley agrees that planting should be established on the northern boundary of the Site, he disagrees with the need to plant all boundaries due to this leading to a greater disconnect between residential areas and the need for ongoing maintenance to prevent other issues.⁴⁰ Ms McArthur agrees that the character of the area will change because of the Plan Change,⁴¹ and agrees with Mr Bentley's assessment that the Plan Change is a logical extension to the residential subdivision to the south of the Site.⁴²
- 8.3 Submitters have raised concerns in relation to a range of landscape visual matters. In our submission, all of these matters have been adequately assessed and all effects have been appropriately dealt with in these submissions and by Mr Bentley.

9. CIVIL ENGINEERING

- 9.1 In our submission, the Site is suitable for the change in zoning as sought by the Plan Change and can readily accommodate the required infrastructure for the proposed future development to the standards required by the Council, including earthworks and three waters infrastructure. Mr Brents considers these matters can be appropriately addressed in detail during the resource consent and engineering approval processes, rather than at the plan change stage.
- 9.2 The Council's civil engineering expert, Mr Rose, is largely aligned with Mr Brents that civil engineering matters can be addressed at the resource consenting stage, prior to residential development.⁴³ One concern raised by Mr Rose was potable water supply pressure to the Site, but this can be readily accommodated through the use of private booster pumps at the development

³⁸ Evidence of Mr Bentley at [6.3].

³⁹ Evidence of Mr Bentley at [6.5].

⁴⁰ Evidence of Mr Bentley at [7.5].

⁴¹ Section 42A Report at Appendix 5.

⁴² Section 42A Report at Appendix 5.

⁴³ Section 42A Report at 29.

stage.⁴⁴ Other concerns raised by submitters regarding wastewater and water supply have been carefully considered by Mr Brents and addressed in his evidence.⁴⁵

10. PLANNING

Weighting of MUGS and Draft Plan

- 10.1 In our submission, the Masterton Urban Growth Strategy ("**MUGS**") and draft combined Wairarapa District Plan ("**Draft Plan**") are relevant considerations when assessing the Plan Change. While non-statutory documents, they do have a role to play in the consideration of the Plan Change.
- 10.2 The MUGS has never formally been adopted by the Council, but as stated in Mr Lewandowski's evidence, the Council has advised that the MUGS is to be treated as a technical document.⁴⁶ In our submission, the MUGS provides useful insight as to what is anticipated for the area in relation to urban development.
- 10.3 Similarly, the Draft Plan provides useful planning context and insight into the Council's considerations regarding urban development in the area.⁴⁷ When read together, the MUGS and the Draft Plan are aligned in contemplating urban growth to the north of Masterton, including the Site.

Changes to the Plan Change provisions

- 10.4 Mr Lewandowski in his evidence has considered Ms Barr's recommended amendments to the Plan Change provisions and has proposed further amendments to those provisions in his evidence in response to Ms Barr. This includes more prescriptive matters of control regarding transport and road safety effects, which provide further comfort to the Hearing Panel that those matters can be appropriately addressed as part of a future resource consent process.
- 10.5 Summerset's position is that a controlled activity status is appropriate for a retirement village on the Site, and is consistent with the approach taken with comparable plan changes and developments such as the Greytown Orchards. Ms St Amand considers that a controlled activity status does not "proportionately respond to the significant resource management issues the

⁴⁴ Evidence of Mr Brents at [6.5].

⁴⁵ Evidence of Mr Brents at section 7.

⁴⁶ Evidence of Mr Lewandowski at [6.36(b)].

⁴⁷ Evidence of Mr Lewandowski at [6.36(d)].

Plan Change request raises". The evidence before the Hearing Panel is clear that there are no significant resource management issues that cannot be addressed through a range of standard measures for managing adverse effects.

- 10.6 Ms St Amand considers that a structure plan and discretionary rule framework would better address transport and infrastructure issues, but fails to identify what particular details would be included in these, or why their absence preclude the Plan Change proceeding, or management of effects through a consent process. This is despite her agreement that traffic effects from a retirement village scenario can be adequately considered by the proposed matters of control. Given the types of effects under both scenarios are the same, in our submission there is material distinction that justifies a different activity status.
- 10.7 In terms of future Waka Kotahi involvement and approval required under the Government Rounding Powers Act, this is not relevant to this process, but should provide further comfort to the Hearing Panel that such matters must be appropriately addressed for any development to proceed in the future.
- 10.8 In terms of cumulative effects, Mr Lewandowski has considered Ms St Amand's evidence and proposed further amendments to the Plan Change provisions that are **attached** to these legal submissions. These further controls provide further comfort that effects from any residential development occurring on the Site as a permitted activity will be appropriately managed.

Section 32 evaluation

- 10.9 Mr Lewandowski prepared a section 32 evaluation as part of the Plan Change request documentation.⁴⁸ The section 32 evaluation states that the Plan Change does not seek to amend any District Plan objectives.
- 10.10 Objective Res1 – Residential Amenity Values and Character is the relevant residential zone objective. Objective Res1 provides for diversity of residential lifestyle choices and non-residential services, which is relevant to the Plan Change's provision for a retirement village:

Objective Res1 – Residential Amenity Values and Character

To maintain and enhance the character and amenity values of Wairarapa's residential areas, having due regard to the particular characteristics of each neighbourhood, and the need

⁴⁸

At section 7 of the Plan Change request documentation.

to provide for a diversity of residential lifestyles and non-residential services and activities.

- 10.11 The section 32 evaluation considers three options:
- (a) Option 1: residential rezoning without specific retirement village provisions;
 - (b) Option 2: the proposed rezoning and specific retirement village provisions; and
 - (c) Option 3: the status quo of maintaining the Rural (Primary Production) Zoning.
- 10.12 The assessment includes the identification and assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions. A similar type of assessment has also been undertaken in considering the NPS-HPL, as outlined above.
- 10.13 Overall, the section 32 evaluation concludes that the Plan Change reflects that most appropriate option to achieve the objective of the District Plan. This is supported by the technical assessments accompanying the Plan Change, and the expert evidence before the Hearing Panel.

11. CONCLUSION

- 11.1 As outlined in the Plan Change request documentation and supporting evidence, the Plan Change will significantly contribute to social and economic well-being in the Masterton and Carterton districts. The proposed provisions of the Plan Change ensure that any development will most appropriately achieve the District Plan objectives of providing for residential development within residential zones. In turn this will assist with addressing the lack of housing supply in the Masterton and Carterton districts.
- 11.2 Summerset's team of experts have provided extensive technical input to appropriately address the matters raised in the s42A Report and concerns of submitters. We submit that these matters have been sufficiently covered.
- 11.3 We respectfully request that the Plan Change be approved based on the provisions **attached** to these legal submissions.

Dated 7 March 2023

Daniel Minhinnick / Jacob Burton / Poppy Mitchell-Anyon
Counsel for Welhom Developments Limited

CHANGES TO THE DISTRICT PLAN

Guide

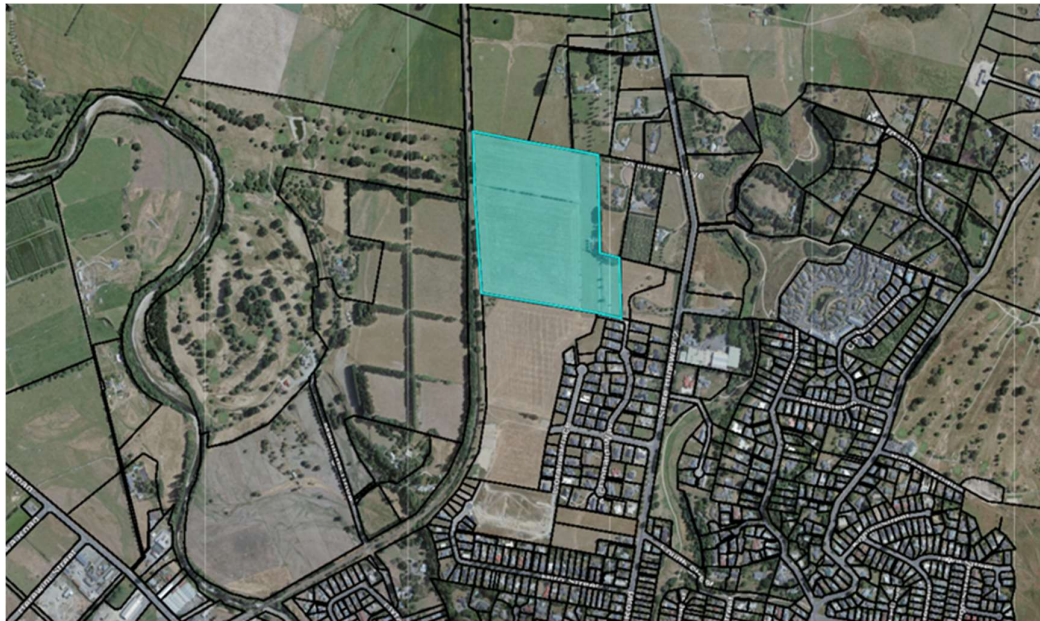
- Existing District Plan text is in normal font.
- Changes originally proposed by Welhom Developments Ltd as part of the Request are shown underline and ~~strikethrough~~.
- Changes proposed by officer recommendations are red underline and ~~red strikethrough~~.
- Further changes proposed by Welhom Developments Ltd in response to Council section 42A report and submissions are shown in blue underline and ~~blue strikethrough~~.
- Further changes proposed by Welhom Developments Ltd in response to Waka Kotahi evidence are shown in green underline.

Amendment 1

Amend Masterton Edition Volume 2 Maps of the District Plan as follows:

Change the zoning of the Site from Rural (Primary Production) to Residential.

Move the Rural-Urban Boundary notation to include the Site.



Amendment 2

Amend Masterton Edition Volume 1 Text – Part C – Consent Process and General Provisions - Section 27 Definitions of the District Plan as follows:

Delete the existing definition of retirement village:

~~Retirement village – means any land building or site used for a comprehensive residential development that contains two or more residential units, together with services and/or facilities for on-site residents and staff and which may include staff accommodation, advanced residential care facilities, such as nursing, medical, hospital or dementia care, recreation, leisure, welfare facilities and activities, and other non-residential activities ancillary to the retirement village, predominantly for persons in their retirement and their spouses or partners.~~

Insert a new definition of retirement village as follows:

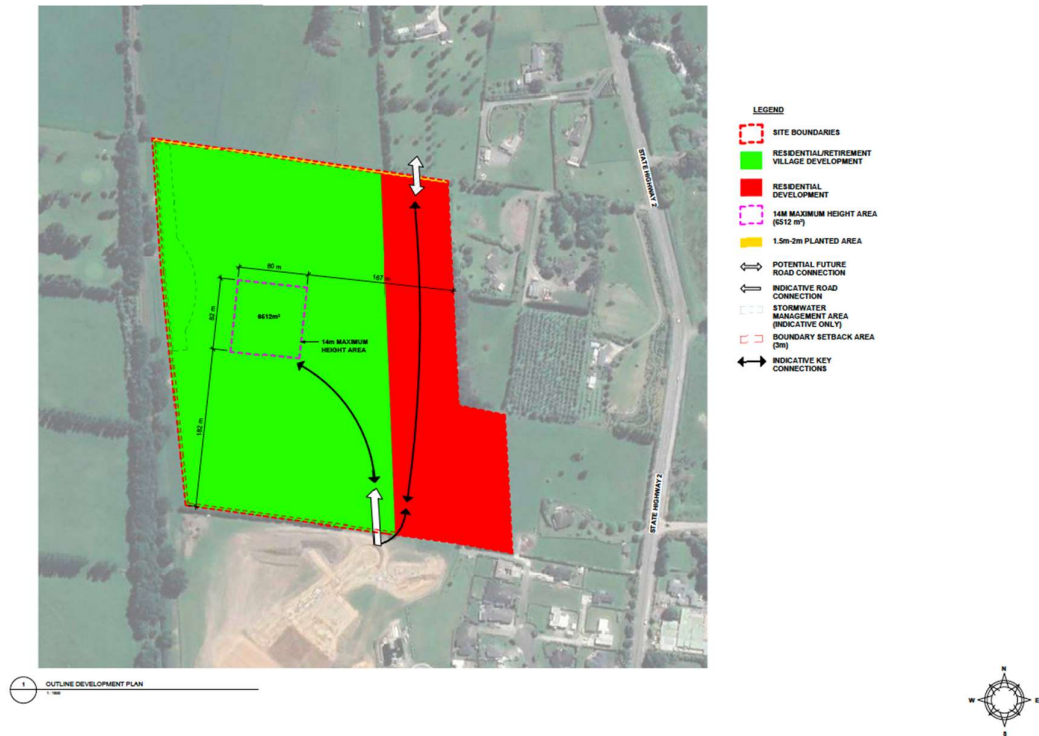
Retirement village – means a managed comprehensive residential complex or facilities used to provide residential accommodation for people who are retired and any spouses or partners of such people. It may also include any of the following for residents within the complex: recreation, leisure, supported residential care, welfare and medical facilities (inclusive of hospital care) and other non-residential activities.

Amendment 3

Amend Masterton Edition Volume 1 Text – Part D – Appendices of the District Plan as follows:

Insert new Appendix 16:

Outline Development Plan



~~Modified by: extending the 1.5m-2m planted buffer around all external site boundaries.~~

Amendment 4

Amend Masterton Edition Volume 1 Text - Part A – Environmental Zones – 5 Residential Zones of the District Plan as follows:

Amend Policy 5.3.2(k) as follows:

- (k) Provide for the development and operation of a retirement village in the Orchards Retirement Village Character Area shown on the indicative Concept Plan (Appendix X) and on the land identified as **'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT'** in Appendix 16 subject to such environmental standards as necessary to avoid, remedy or mitigate any adverse effects.

Amend standard 5.5.2(f):

(f) Number of dwellings

- (i) The total number of dwellings per site shall be limited to that which enables each dwelling to meet the minimum lot area subdivision requirements for that site (Rule 20.1.2(a)).
- (ii) For the land identified in Appendix 16, the total number of dwellings per site, not associated with a retirement village, is limited to 1.

Insert new standard 5.5.2(n):

Mitigation of noise and vibration on land identified in Appendix 16

(1) Indoor railway noise

Within 100m of the legal boundary of a railway network:

- (a) any new building or alteration to an existing building that contains ~~an activity sensitive to noise~~ a noise sensitive activity where the building or alteration:

- (i) is designed, constructed and maintained to achieve indoor design noise levels resulting from the railway not exceeding the maximum values in the following table; ~~or~~

<u>Building Type</u>	<u>Occupation/Activity</u>	<u>Maximum railway noise level LAeq(1h)</u>
<u>Residential</u>	<u>Sleeping spaces</u>	<u>35dB</u>
	<u>All other habitable rooms</u>	<u>40dB</u>
<u>Health</u>	<u>Overnight medical care, wards</u>	<u>40dB</u>
	<u>Clinic, consulting rooms, theatres, nurses stations</u>	<u>45dB</u>

or

- (b) is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to all points 3.8 metres above railway tracks, or
- (c) is a single-storey framed residential building with habitable rooms designed, constructed and maintained in accordance with the construction schedule in Schedule 1.

(2) Mechanical ventilation

If a building is constructed in accordance with 1(c), or if windows must be closed to achieve the design noise levels in 1(a), the building is designed, constructed and maintained with a mechanical ventilation system that:

- (a) For habitable rooms for a residential activity, achieves the following requirements:
 - (i) Provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and
 - (ii) Is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and
 - (iii) Provides relief for equivalent volumes of spill air;
 - (iv) Provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and
 - (v) Does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser.
- (b) For other spaces, is as determined by a suitably qualified and experienced person.

(3) Indoor railway vibration

Any new buildings or alterations to existing buildings containing ~~an activity sensitive to noise~~ a noise sensitive activity, closer than 60 metres from the boundary of a railway network:

- (a) Is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.6 mm/s vw,95 or
 - (b) Is a single-storey framed residential building with:
 - (i) A constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and
 - (ii) Vibration isolation separating the sides of the floor slab from the ground; and
 - (iii) No rigid connections between the building and the ground.
- (4) A report is submitted to the Council demonstrating compliance with (1) to (3) above (as relevant) prior to the construction or alteration of any building containing ~~an activity sensitive to noise~~ a noise sensitive activity. In the design:
- (a) Railway noise is assumed to be 64dB LAeq(1h) at a distance of 12 metres from the track, and must be deemed to reduce at a rate of 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres.

Schedule 1. Construction schedule for indoor noise control

<u>Elements</u>	<u>Minimum construction for noise control in addition to the requirements of the New Zealand Building Code</u>	
<u>External walls</u>	<u>Wall cavity infill of fibrous insulation, batts or similar (minimum density of 9 km/m³)</u>	
	<u>Cladding and internal wall lining complying with either Options A, B or C below:</u>	
	<u>Option A – Light cladding: timber weatherboard or sheet materials with surface mass between 8kg/m² and 30kg/m² of wall cladding</u>	<u>Internal lining of minimum 17kg/m² plasterboard, such as two layers of 10mm thick high density plasterboard, on resilient/isolating mountings</u>
	<u>Option B - Medium cladding: surface mass between 30 kg/m² and 80 kg/m² of wall cladding</u>	<u>Internal lining of minimum 17 kg/m² plasterboard, such as two layers of 10 mm thick high density plasterboard</u>
	<u>Option C - Heavy cladding: surface mass between 80 kg/m² and 220 kg/m² of wall cladding</u>	<u>No requirements additional to New Zealand Building Code</u>
<u>Roof/ceiling</u>	<u>Ceiling cavity infill of fibrous insulation, batts or similar (minimum density of 7 kg/m³)</u>	
	<u>Ceiling penetrations, such as for recessed lighting or ventilation, shall not allow additional noise break-in</u>	
	<u>Roof type and internal ceiling lining complying with either Options A, B or C below:</u>	
	<u>Option A - Skillion roof with light cladding: surface mass up to 20 kg/m² of roof cladding</u>	<u>Internal lining of minimum 25 kg/m² plasterboard, such as two layers of 13 mm thick high density plasterboard</u>

	<u>Option B - Pitched roof with light cladding: surface mass up to 20 kg/m² of roof cladding</u>	<u>Internal lining of minimum 17 kg/m² plasterboard, such as two layers of 10 mm thick high density plasterboard</u>
	<u>Option C - Roof with heavy cladding: surface mass between 20 kg/m² and 60 kg/m² of roof cladding</u>	<u>No requirements additional to New Zealand Building Code</u>
<u>Glazed areas</u>	<u>Aluminium frames with full compression seals on opening panes</u>	
	<u>Glazed areas shall be less than 35% of each room floor area</u>	
	<p><u>Either, double-glazing with:</u></p> <ul style="list-style-type: none"> • <u>a laminated pane of glass at least 6 mm thick; and</u> • <u>a cavity between the two panes of glass at least 12 mm deep; and</u> • <u>a second pane of glass at least 4 mm thick</u> <p><u>Or, any other glazing with a minimum performance of Rw 33 dB</u></p>	
<u>Exterior doors</u>	<u>Exterior door with line-of-sight, to any part of the state highway road surface or to any point 3.8 metres above railway tracks</u>	<u>Solid core exterior door, minimum surface mass 24 kg/m², with edge and threshold compression seals; or other doorset with minimum performance of Rw 30 dB</u>
	<u>Exterior door shielded by the building so there is no line-of-sight to any parts of the state highway road surface or any points 3.8 metres above railway tracks</u>	<u>Exterior door with edge and threshold compression seals</u>

Insert new standard 5.5.2(o):

Land identified as 'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT' in Appendix 16

All buildings and activities associated with the development and operation of a retirement village within the land identified as 'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT' in Appendix 16 shall comply with all Residential Zone and District-wide permitted activity standards, except where the following apply:

- (1) The maximum height of ~~buildings~~ ~~the hospital care building~~ ~~a building or buildings comprising the main building used for retirement village or aged care uses~~ shall be 14 metres in the area identified as '14M MAXIMUM HEIGHT AREA' in the Outline Development Plan in Appendix 16
- (2) Minimum building setbacks shall be 3m from all external boundaries
- (3) Stormwater from buildings and hard surfaces from within the retirement village area identified in Appendix 16 shall be managed and attenuated on-site using low impact urban design measures such that post-development peak flow and total discharge from the site does not exceed a pre-development scenario, and all stormwater from the site shall be managed and disposed of in accordance with NZS 4404:2010 Land Development and Subdivision Infrastructure
- (4) Any permanent sign shall be permitted provided it complies with the following standards:
 - (a) A maximum of three signs per frontage with the public road, with a total face area per sign of no more than 4m²
 - (b) The sign must relate to the activity undertaken on the site and be located fully within the site of the activity to which it relates.
 - (c) Where a sign is affixed to a building, the sign shall comply with the maximum height and setback requirements.
 - (d) All signs must comply with the sight distance requirement in Appendix 5.
 - (e) No sign shall be located where it conceals the visibility of an existing official sign or traffic-controlling device.
 - (f) No sign shall use reflective materials, be flashing or moving.

Insert new Rule 5.5.3(e):

5.5.3 Controlled Activities

The following are Controlled Activities:

[...]

(e) Within the land identified as 'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT' at Appendix 16, the construction and operation of a retirement village.

The matters over which control is reserved are:

- (i) The design, scale and appearance of all buildings
- (ii) The provision of adequate supply of water for firefighting in accordance with the Code of Practice SNZ PAS 4509:2008
- (iii) The provision of water supply, wastewater disposal and for stormwater collection and disposal
- (iv) Roading, road safety, and the provision of access and parking spaces, specifically including:
 - (a) Improvements and alterations to existing roads
 - (b) Safety improvements to the intersection of State Highway 2 and Cashmere Oaks Drive
 - (c) The provision for public transport facilities and infrastructure
 - (d) The provision of safe pedestrian and cycle access and connections to existing transport corridors and within the site
 - (e) The management of construction traffic effects.
- ~~(v) The provision for safe pedestrian and cycle access throughout the site~~
- (v) The provision of landscaping, screening and open spaces.
- (vi) Signage
- (vii) Earthworks, sediment and dust management.
- (viii) Financial contributions

Amendment 5

Amend Masterton Edition Volume 1 Text - Part C – Consent Process and General Provisions – 22 Assessment Criteria of the District Plan as follows:

Insert new assessment criteria at 22.2.25.

22.2.25 Retirement Village on land identified as 'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT' in Appendix 16

- (i) The ability of the proposal to integrate with surrounding land uses, with regard to:

- (1) fencing and boundary treatments;
- (2) connectivity, including the configuration and location of pedestrian and vehicle accesses.
- (ii) Creation of visual quality and variety as assessed from the public realm through the separation of buildings, building orientation, and in the use of architectural design, detailing, glazing, materials, colour and landscaping.
- (iii) The extent to which the development is consistent with the indicative Outline Development Plan contained in Appendix 16.
- (iv) The safety, effectiveness and efficiency of utilities and services.
- (v) The proposed stormwater management within the site.

Amendment 6

Amend Masterton Edition Volume 1 Text - Part C – Consent Process and General Provisions – 26 Information to be Supplied with Resource Consent Applications of the District Plan as follows:

Insert the following into 26.3.5 'Information Schedule 5: Controlled Activities' at 26.3.5(i)

(i) Retirement Village on land identified as 'RESIDENTIAL/RETIREMENT VILLAGE DEVELOPMENT' in Appendix 16

- (i) A landscape plan showing the proposed landscaping and screening treatment for the proposal. ~~The landscape plan should include the following:~~
 - ~~• Street tree and amenity planting, including proposed buffer planting along the northern external boundaries of the Site;~~
 - ~~• Reserves/open space design;~~
 - ~~• Transport network (roads, pedestrian and cycle links); and~~
 - ~~• Stormwater basin and swale design.~~
- (ii) An Integrated Transportation Assessment.
- ~~(iii) The first resource consent application (either subdivision or land use) for a retirement village within this land shall include a Structure Plan to be added to Appendix 16 of the District Plan that includes:~~
 - ~~(a) Infrastructure interventions at the intersection of Cashmere Oaks Drive and SH2 to address traffic safety effects;~~
 - ~~(b) The internal transport network (roads, footpaths and cycleways) and external connections;~~

- (c) Where higher and lower density residential development will occur; and
- (d) A 1.5-2.0m wide planted buffer zone around external site boundaries.