

Before an Independent Hearings Panel  
Appointed by Waimakariri District Council

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*under:* the Resource Management Act 1991

*in the matter of:* Submissions and further submissions on the Proposed  
Waimakariri District Plan

*and:* Hearing Stream 12D: Ohoka Rezoning

*and:* **Rolleston Industrial Developments Limited**  
(Submitter 160)

Memorandum of counsel in response to Minute 25 and in  
opposition to Mandeville Village Limited Partnership's application  
for leave to file late further submission

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Dated: 31 May 2024

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**MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 25 AND IN OPPOSITION TO MANDEVILLE VILLAGE LIMITED PARTNERSHIP'S APPLICATION FOR LEAVE TO FILE LATE FURTHER SUBMISSION**

- 1 This memorandum responds to Minute 25, which seeks comment from Rolleston Industrial Developments Limited (*RIDL*) by 4 pm Friday, 31 May 2024, on a request by Mandeville Village Limited Partnership (*MVLP*) for leave to file a late further submission (*Request*).
- 2 The Proposed Waimakariri District Plan (*PWDP*) was publicly notified on 18 September 2021, and submissions were filed on 26 November 2021. The summary of submissions was notified on 5 November 2022 with the last day to file further submissions being 21 November 2022.
- 3 The IHP received the Request on 20 May 2024. The further submission relates to *RIDL*'s submission dated 26 November 2021 seeking to rezone land in Ōhoka which is being heard as part of Hearing Stream 12D.
- 4 *RIDL* strongly oppose the Request and seek that the IHP decline to accept the late further submission for the reasons set out in this memorandum.

**Power of the IHP to grant the extension sought**

- 5 The request relies on section 37(1)(a) and 37A(5)(b) and clause 98(3) of Schedule 1 of the Resource Management Act 1991 (*RMA*).
- 6 Firstly, we note that clause 98(3) of Schedule 1 is found under Part 6 of Schedule 1, which relates to the intensification streamlined planning process (i.e. Variation 1 to the *PWDP*) only. We note the Request only seeks to lodge a further submission in respect of *RIDL*'s submission on the *PWDP*, not its submission on Variation 1. Therefore, this clause is not relevant.
- 7 The *PWDP* process is covered under Part 1 of Schedule 1. Clause 1(2) of that part provides that "*Where any time limit is set in this schedule, a local authority may extend it under section 37.*"
- 8 Section 37 *RMA* provides the Council with the power to extend a time period specified in the *RMA*, whether or not that time period has expired.
- 9 Section 37A sets out the requirements for extension to time periods under section 37. For the IHP's benefit, section 37A of the *RMA* is set out in full at **Appendix 1** to this memorandum.

- 10 Section 37A(1) of the RMA provides that the Council must not extend a time period under section 37 unless it has taken into account:
- (a) the interests of any person who, in its opinion, may be directly affected by the extension; and
  - (b) the interests of the community in achieving adequate assessment of the effects of a proposal or plan; and
  - (c) its duty under section 21 to avoid unreasonable delay.
- 11 Section 37A(2) provides that a time period may be extended under section 37 for:
- (a) a time not exceeding twice the maximum time period specified in the RMA; or
  - (b) a time exceeding twice the maximum time period specified in the RMA if the applicant requests or agrees.
- 12 The relevant time period sought to be extended in the Request relates to a person's ability to make a further submission. Clause 7(1)(c) of Schedule 1 RMA provides that a further submission can be made no later than 10 working days after public notice of the summary of submissions.
- 13 Given the last day to make a further submission was some 18 months ago, the time period well exceeds twice the maximum time period for lodging a further submission under the RMA, and therefore section 37A(2)(b) applies and an extension may only be granted if the applicant requests it or agrees.
- 14 'Applicant' is defined under section 2 of the RMA, as meaning for the purposes of section 37A in the context of a proposed plan "*the person who initiates the matter.*" We consider the 'applicant' in the context of the PWDP to be the Council, as the person who initiated the PWDP.
- 15 We note that section 37A(5)(b) (as cited in the Request) is not relevant because subsection (5) only applies to extensions of time related to resource consent processes by virtue of section 37A(3).
- Reason for late further submission**
- 16 The Request notes that MVLP did, through an agent, review the summary of submissions looking for submissions lodged by RIDL and related entities but did not find anything in relation to rezoning of land at Ōhoka. The Request acknowledges that RIDL's submission was included in this summary, but considers it was not

obvious to the agent because of the way the RIDL submission had been categorised by Council.

- 17 We do not accept this as a reasonable justification for why MVPL did not lodge a further submission within the appropriate time frame, noting that:

17.1 The submission itself was not ambiguous in any way:

- (a) It was lodged on behalf of the same company (RIDL) that sought to rezone the land at Ōhoka through private plan change 31 to the operative Waimakariri District Plan (PC31);
- (b) The submission sought relief equivalent to what was sought in PC31 and attached the PC31 ODP map and provisions as an appendix. It would have been clear to anyone reading the submission exactly what was being sought, and particularly so to anyone who was aware of or actively involved in the PC31 process.

17.2 A word search of the summary of submissions (by District Plan chapter) for "Rolleston Industrial Developments Limited" gets 23 hits with the first four of these quite clearly relating to the rezoning of land at Ōhoka, with specific references to PC31.

17.3 A summary of submissions was also released sorted by submitter/submission point. Again, a word search for "Rolleston Industrial Developments Limited" would have taken anyone directly to all of the submission points made by RIDL which quite clearly refer to the rezoning of land at Ōhoka, with specific references to PC31.

17.4 While the submissions on the PWDP are no longer available through the Council website, we note that at the time all submissions (including RIDL's) in their original form were available for download on the Council's website. It would not have been difficult to locate RIDL's submission and read it in its entirety, which would have clearly showed that RIDL were seeking changes to the PWDP related to the PC31 land at Ōhoka.

17.5 There were a substantial number of further submissions made on RIDL's submission related to the proposed rezoning at Ōhoka and PC31, including by lay persons not familiar with resource management processes. In this respect, we are very surprised the agent, was not able to locate the relevant submission points.

18 We seriously struggle to see how MVLP, having reviewed the summary of submissions, could have missed the submission related to the rezoning of the PC31 land at Ōhoka.

19 We are not aware of any other person raising a similar issue or seeking to join with a late submission.

**RIDL will be directly prejudiced by the grant of the Request**

20 The PWDP process is at an advanced state, with a large proportion of hearing streams already completed.

21 The time extension sought in the Request is a substantial one, and has come months after RIDL filing evidence in support of their submission ahead of Hearing Stream 12D.

22 As a result, RIDL have not had the opportunity to address the specific matters raised in the MVLP further submission in detail as it did not exist at the time RIDL prepared its evidence. We note the evidence diligently and thoroughly works through all matters raised by further submitters on the proposed rezoning.<sup>1</sup>

23 Had MVLP lodged a further submission in time, or even at any point before RIDL's evidence exchange, then RIDL would have had a reasonable opportunity to consider the further submission and respond to it through expert evidence accordingly.

24 Further, the section 42A report for Hearing Stream 12D was released yesterday. As such, the Council themselves would not have had a chance to review and consider the further submission in their assessment of the submission either.

25 The further submission has simply come too late. Prejudice and fairness issues would arise if the IHP were to allow the late further submission.

26 Furthermore, RIDL considers that the prejudice to RIDL in either not being able to respond to the additional matters raised in late further submission or having to respond to them at this late stage outweighs any merits to allowing the late further submission.

27 There are real implications for allowing a submission so late in the process, in particular the submitter is given appeal rights.

**Adequate assessment of effects will be achieved irrespective of allowing the late further submission**

28 In any case, we note that the concerns raised in the submission relate to the potential retail distribution effects on other commercial centres (specifically including the Mandeville commercial centre) as

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<sup>1</sup> Evidence of Tim Walsh dated 5 March 2024, at paragraph 77 onwards.

a result of the Local Centre Zone proposed as part of the rezoning request. This issue and potential effect has been addressed in detail in the evidence Ms Natalie Hampson in support of the rezoning.<sup>2</sup>

- 29 Ms Hampson concludes that “no centre, including the nearby Mandeville centre, would suffer more than minor adverse effects on centre amenity, vitality and vibrancy based on the food, grocery and liquor store supply assumptions modelled” as a result of the proposed Local Centre Zone.<sup>3</sup> To ensure this outcome, Ms Hampson recommends a total gross floor area (GFA) cap for the Local Centre Zone of between 2,500 and 3,000 m<sup>2</sup>.<sup>4</sup>
- 30 Mr Walsh has accounted for a cap of 2,700 m<sup>2</sup> GFA for the Local Centre Zone in the proposed rules package based on Ms Hampson’s expert opinion. Mr Walsh has also assessed the proposed rezoning against the relevant objectives and policies in the PWDP, including those for the Local Centre Zone chapter, as being appropriate.<sup>5</sup>
- 31 We note that retail distribution effects were covered in detail at the PC31 hearing, where Mr Yeoman on behalf of Council considered a 2,700 m<sup>2</sup> limit on GFA for the commercial zone was appropriate for managing potential retail distribution effects on the Mandeville commercial centre. We further note MVLP did not provide any economic evidence at the PC31 hearing.
- 32 The Council’s section 42A report released yesterday confirms that Mr Yeoman’s view remains that a 2,700 m<sup>2</sup> limit on GFA for the commercial zone is appropriate.<sup>6</sup>
- 33 The IHP is not required to allow the MVLP further submission to ensure an adequate assessment of retail distribution effects is undertaken. It has already been assessed in depth by both RIDL and the Council’s economic experts.
- 34 In this sense, the IHP can be satisfied that under section 37A(1)(b) the interests of the community in achieving adequate assessment of effects does not necessitate that this late submission should be accepted.
- 35 Finally, we note that the late further submission does not address potential trade competition issues.

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<sup>2</sup> Evidence of Natalie Hampson dated 5 March 2024, at paragraph 71 onwards.

<sup>3</sup> Evidence of Natalie Hampson dated 5 March 2024, at paragraph 16.

<sup>4</sup> Evidence of Natalie Hampson dated 5 March 2024, at paragraph 18.

<sup>5</sup> Evidence of Tim Walsh dated 5 March 2024, at Table 2.

<sup>6</sup> Section 42A Report prepared by Andrew Willis for Hearing Stream 12D Ōhoka dated 31 May 2024, at paragraph 139.

- 36 In summary, RIDL strongly opposes the Request and considers the fair and proper outcome in the circumstances is for the IHP not to accept the late further submission.
- 37 We thank the IHP for their attention to this memorandum.

Dated: 31 May 2024

A handwritten signature in blue ink, appearing to read 'J M Appleyard', is written over a light blue rectangular background.

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J M Appleyard / L M N Forrester  
Counsel for Rolleston Industrial  
Developments Limited

## APPENDIX 1

### 37A Requirements for waivers and extensions

- (1) A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with [section 37](#) unless it has taken into account—
  - (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
  - (c) its duty under [section 21](#) to avoid unreasonable delay.
- (2) A time period may be extended under [section 37](#) for—
  - (a) a time not exceeding twice the maximum time period specified in this Act; or
  - (b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.
- (3) Instead of subsections (1) and (2), subsections (4) and (5) apply to an extension of a time limit imposed on a consent authority in respect of—
  - (a) an application for a resource consent; or
  - (b) an application to change or cancel a condition of a resource consent; or
  - (c) a review of a resource consent.
- (4) A consent authority may extend a time period under [section 37](#) only if—
  - (a) the time period as extended does not exceed twice the maximum time period specified in this Act; and
  - (b) either—
    - (i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or
    - (ii) the applicant agrees to the extension; and
  - (c) the authority has taken into account the matters specified in subsection (1).
- (5) A consent authority may extend a time period under [section 37](#) so that the extended period exceeds twice the maximum time period specified in the Act only if—
  - (a) the applicant agrees to the extension; and
  - (b) the authority has taken into account the matters specified in subsection (1).
- (6) A consent authority or a local authority must ensure that every person who, in its opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.