

Before an Independent Hearings Panel
Appointed by Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions on the Proposed
Waimakariri District Plan and on Variation 1 to the
Proposed Waimakariri District Plan

and: Hearing Stream 12D: Ōhoka Rezoning

and: **Carter Group Property Limited**
(Submitter 237)

and: **Rolleston Industrial Developments Limited**
(Submitter 160 and Submitter 60 (Variation 1))

Memorandum of counsel regarding Council's Hearing Stream 12D
right of reply report

Dated: 12 December 2024

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**MEMORANDUM OF COUNSEL REGARDING COUNCIL'S HEARING
STREAM 12D RIGHT OF REPLY REPORT**

- 1 This memorandum of counsel is filed on behalf of Carter Group Property Limited (Submitter 237) and Rolleston Industrial Developments Limited (Submitter 160 and Submitter 60 (Variation 1)) (*Submitters*) regarding Mr Willis' right of reply report for Hearing Stream 12D (*Reply Report*).
- 2 We were very concerned upon receiving the Reply Report to see a raft of new issues and evidence that neither the Submitters (nor we suspect the Panel) anticipated.
- 3 In the context of the particular hearing process that has occurred for Hearing Stream 12D, the Submitters hold serious concerns about the introduction of new evidence at this late stage in the process on the grounds of fairness and natural justice, and the lack of an opportunity to respond.
- 4 The Submitters had understood (or at the very least were led to believe) following the extensive expert conferencing and the reconvened hearing that there was a very limited list of live issues as far as Council officers and experts were concerned. This is reflected in the Panel's Minute 40 which sets out what was to be covered at the reconvened hearing, and from Mr Willis' section 42A report and addendum for the reconvened hearing. Yet there are new substantial issues raised in the Reply Report which were not signalled at any point by Mr Willis, including at the time the questions for conferencing were jointly discussed and drafted and at the time of the reconvened hearing where what was understood to be the outstanding issues were discussed.
- 5 This memorandum is lodged in the context of the process that has occurred in Hearing Stream 12D where unlike some of the other hearing streams there was a substantive hearing, then expert conferencing on identified and agreed issues, and then a reconvened hearing. In particular:
 - 5.1 At the conclusion of the substantive hearing on 3 July 2024, it was agreed that between parties that conferencing would be appropriate on the topics of engineering, economics, transport, LUMS, and planning. All parties agreed to collectively come up with an appropriate set of conferencing questions on these topics and provide them to the Panel who would then issue a direction in a subsequent Minute. There was no suggestion that conferencing needed to occur with Mr Davidson, Mr Sellars, or Mr Jones.

- 5.2 The Submitters suggested a list of questions reflecting their understanding of outstanding issues to Mr Willis and Mr Schulte, and feedback was exchanged between parties regarding suggested amendments and additions to the list of questions. It is understood that Mr Willis liaised with the Council experts on the live topics and questions requiring conferencing.
- 5.3 After that exchange, the Submitters filed a memorandum on 10 July 2024 with their suggested conferencing questions and requested Council and other submitters add anything further.
- 5.4 On 11 July 2024, the Council filed a memorandum with their suggested conferencing topics and questions. We would have expected that if any of the Council experts had further issues arising from the evidence at the substantive hearing there was an obligation on them pursuant to the Code of Conduct for expert witnesses to flag those as live conferencing topics to the Submitters and in particular the Panel.
- 5.5 On 15 July 2024, the Panel issued Minute 31 directing expert conferencing for Hearing Stream 12D and setting out the questions it considered appropriate for conferencing based on both the Submitters and the Council's suggestions.
- 6 We set out our particular concerns below.

The statement of Mr Yeoman

- 7 The Submitters oppose the statement by Mr Yeoman included in the Right of Reply being considered by the Panel.
- 8 With respect to Mr Yeoman's statement, we were very concerned to see its inclusion given that:
- 8.1 Mr Willis had apparently liaised with Mr Yeoman over the list of issues/questions to be covered at conferencing with the other economists Ms Hampson and Mr Akehurst before he filed his memorandum 11 July 2024.
- 8.2 The Panel on 15 July 2024 in its Minute 31 at paragraph 4 directed Mr Yeoman to provide parties with information that underpinned his economic assessment and directed that expert conferencing on economics occur following this information exchange.
- 8.3 Mr Yeoman responded by way of memorandum which made it clear that he did not have that information, and that he had

not assessed demand and sufficiency for housing for Ohoka (or outside of the three main towns).¹

- 8.4 The Submitters filed a memorandum on 29 July 2024 seeking to cancel the scheduled economic conferencing on the basis that because Mr Yeoman had not provided the information, or indeed had not assessed demand and sufficiency outside of the three main towns and in this respect, there was little point in conferencing.
- 8.5 The Panel in its Minute 34 agreed with the Submitters that there would be little point in proceeding with the economic conferencing for Hearing Stream 12D and cancelled the direction for expert conferencing.
- 9 Mr Yeoman's statement provides a raft of new information and responses to the Submitter's expert evidence presented at the hearing. Yet there is no explanation as to how Mr Yeoman comes to his conclusions on demand (including substitutability of demand) when he has clearly still not considered or assessed demand/capacity for housing outside of the three main towns.
- 10 At no time after the substantive hearing and particularly during discussions over the questions for conferencing did Mr Willis (or Mr Yeoman) raise the new issues now covered in the Reply Report in relation to Ms Hampson and Mr Akehurst's evidence.
- 11 Nor did Mr Willis (or Mr Yeoman) ever indicate any need for expert conferencing of any issues arising out of the evidence of Mr Davidson, Mr Sellars, or Mr Jones that Mr Yeoman now covers in his reply statement. It is also unclear what expertise Mr Yeoman would have to conference with those experts.
- 12 As an example, Mr Yeoman's statement asserts that Mr Davidson has made a mistake in his calculation of the survey results in his evidence. While we don't understand Mr Yeoman to have expertise in designing, conducting and analysing community surveys, with the leave of the Panel, we wish to provide a very simple explanation to clarify this point:
- 12.1 In terms of percentages that add up to over 100%, we are advised by Mr Davidson that the reason for this is because the question was a multi-select question allowing participants to choose more than one 'area preference' in responding to the survey.

¹ Memorandum to Matt Bacon from Rodney Yeoman "Stream 12D Provision of Information to Inform Expert Conferencing" dated 24 July 2024.

- 13 We are particularly concerned to see Mr Yeoman's statement at paragraph 1.3 that "*I have not previously responded to these as part of my evidence, in accordance with instructions I had received.*" It appears that Mr Yeoman has been instructed to 'sit on' issues that he had with the evidence of others and not raise them as topics or questions suitable for conferencing or as unresolved topics prior to the reconvened hearing.
- 14 The Submitters request that the Panel should decline to take Mr Yeoman's statement included in the Reply Report into account on the basis that:
- 14.1 Mr Yeoman has never assessed the demand and capacity for Ohoka and on this basis that there is no evidential foundation for the statements he makes; and
- 14.2 Allowing the new information and evidence at this late stage when the Submitters have not had the opportunity to review and respond would prejudice the Submitter and be contrary to natural justice.
- 15 If the Panel do decline to take into account Mr Yeoman's statement, then those parts of Mr Willis' Reply Report where he relies on Mr Yeoman's statement should be treated in the same way.
- The statement of Mr Binder**
- 16 The Submitters oppose the statement by Mr Binder included in the Right of Reply which includes a range of new information and evidence:
- 16.1 that was not raised by Council as topics or questions to be discussed at expert conferencing; and
- 16.2 that was not provided to the other experts for the transport expert conferencing of Hearing Streams 12D and/or 12C; and
- 16.3 which contradict conclusions in the transport joint witness statements (*JWS*) which Mr Binder agreed to.
- 17 By way of example:
- 17.1 Mr Binder in his paragraphs 11-13 introduces new evidence regarding high-level cost estimates for some of the identified intersection upgrades in the provisions. None of the Submitters experts have seen this information before, nor had a chance to comment on its accuracy (or otherwise).

- 17.2 Mr Binder in his paragraph 14 requests non-complying activity status regarding the SH1 / Tram Road interchange upgrades. Yet in the JWS for Hearing Stream 12D it is recorded Mr Binder considers discretionary activity status for this interchange is suitable.² Mr Binder does not give any explanation as to his change in position.
- 17.3 Mr Binder in his paragraph 19-21 introduces new evidence relating to intersection crash rates despite all experts (including Mr Binder) agreeing in the JWS for Hearing Streams 12C/12D an appropriate methodology for road safety effects which excluded intersection crash rates.³ None of the Submitters experts have seen this information before, and nor does Mr Binder give any explanation as to his change in position around methodology of assessing road safety effects.
- 17.4 Mr Binder in his paragraph 24 introduces new evidence relating to travel distances which none of the Submitters' experts have seen this information before or had the opportunity to comment on.
- 18 If we had become aware of this sooner, we would have suggested to the Panel that it directs further transport conferencing (for both Hearing Streams 12C and 12D) on the new evidence that Mr Binder has provided above and in light of the apparent changes in his position. However, given the number of experts involved in the transport conferencing, the difficulties experienced by all parties to arrange a suitable time for the first two expert conferences, and the Panel's signal that it wishes to close the hearing and issue decisions, we do not consider this now a practical option.
- 19 Rather, natural justice requires that the Panel decline to take Mr Binder's statement included in the Reply Report into account. In which case those parts of Mr Willis' Reply Report where he relies on Mr Binder's statement should also be treated in the same way.

Concluding comments

- 20 We are disappointed that at no point at all did Mr Willis suggest to us that:
- 20.1 Mr Yeoman would be preparing a statement for the Reply Report and was withholding advising the parties and the Panel of other issues arising from the substantive hearing which Mr Yeoman had concerns about and which therefore ought to

² Joint Witness Statement "Transport" for Hearing Stream 12D dated 23 August 2024 at [11].

³ Joint Witness Statement "Transport" for Hearing Streams 12C/12D dated 10 October 2024 at [35]-[36].

have been identified as topics or questions for expert conferencing with Ms Hampson and Mr Akehurst; or

- 20.2 Mr Yeoman had issues with the evidence of Mr Davidson, Mr Sellars, or Mr Jones and therefore should have engaged in conferencing with those experts (if he demonstrated expertise in the relevant topics); or
- 20.3 Mr Binder's statement would include new evidence and information not previously available to submitters and introduced post conferencing and post the reconvened hearing (which he appeared at).
- 21 If the Submitters had known the above, their concerns would have been raised with the Panel sooner and we would have sought more expert conferencing and a more extensive list of suggested questions and then the opportunity to address any issues unresolved at conferencing at the reconvened hearing by recalling other experts.
- 22 The Submitters would like to again express their general concerns as to the Council witnesses' objectivity (and transparency) in relation to this rezoning request. The Submitters have recently received documents from the Council in response to a request for information under the Local Government Official Information and Meetings Act 1987 which have further exacerbated these concerns, including the following documents:
- 22.1 The instructions sent to DHI (by Chris Bacon) to review the Council's flood model which clearly states the review is in relation to the Submitter's rezoning request at Ohoka under the district plan review and needs to be completed ahead of the reconvened hearing for Stream 12D. This is at odds with the advice given to the Panel that the work was for "asset management".
- 22.2 An email from Mr Buckley to Mr Binder, Mr Roxburgh, and Mr Bacon on 21 October 2024 where Mr Buckley states that while he understands that there may be options that can potentially address submitter issues, that these should not be considered unless it was raised by the submitter themselves. Mr Buckley goes on to direct those experts not to rely on statements that such issues can be addressed at resource consent stage for complex issues.
- 23 If the Panel would like a copy of these documents, the Submitters would be happy to provide these.

24 We thank the Panel for its assistance on these matters.

Dated: 12 December 2024

A handwritten signature in blue ink, appearing to read 'J M Appleyard', is positioned above a horizontal line.

J M Appleyard / L M N Forrester
Counsel for Carter Group Property
Limited and Rolleston Industrial
Developments Limited