

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 Variation 1 to
the Proposed Waimakariri District Plan

and: Hearing Stream 12: Rezoning requests (larger scale)

and: **Rolleston Industrial Developments Limited**
(Submitter 60)

Legal submissions on behalf of Rolleston Industrial Developments
Limited

Dated: 20 June 2024

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LEGAL SUBMISSIONS ON BEHALF OF ROLLESTON INDUSTRIAL DEVELOPMENTS LIMITED

INTRODUCTION

- 1 These legal submissions are made on behalf of Rolleston Industrial Developments Limited (Submitter 60) (*Submitter*) on Variation 1 of the Proposed Waimakariri District Plan (*PDP*) to rezone approximately 156 hectares of land at Ōhoka.
- 2 The Submitter sought, through its submission on Variation 1, that the portion of the site sought to be rezoned General Residential Zone (*GRZ*) in its submission on the PDP be rezoned to Medium Density Residential Zone (*MRZ*) through the Variation 1 process.

THE EVIDENCE AND THE SECTION 42A

- 3 The Submitter filed planning evidence of **Mr Phillips** on 5 March 2024 in support of its submission. **Mr Phillips** considered in his evidence that in the absence of evidence that assesses the implications of enabling increased density by way of MRZ, he is unable to conclude that this zoning is appropriate for those parts of the site sought in the submission.¹ However, **Mr Phillips** considered nevertheless that it was appropriate to identify the Submitter's land at Ōhoka as a 'new residential zone' under Variation 1 as provided for under section 77G(4) of the RMA.²
- 4 The section 42A report for Hearing Stream 12D: Ōhoka confirms that the submission is to be considered within this hearing stream:³

"I understand that for efficiency, this submission has been allocated to this s42A rezoning report rather than the Variation 1 hearing."

- 5 **Mr Willis**, the section 42A report officer, questions whether there is scope for the relief sought in the submission to be provided in respect of Variation 1. He notes that the section 32 analysis for Variation 1 did not include the PDP's proposed Settlement Zone (*SETZ*).⁴ However, he does not set out his analysis of this issue, instead stating he anticipates the issue of scope in respect of Variation 1 will be covered in Hearing Stream 12E.⁵ That is not appropriate given that the submitter has filed evidence in Hearing

¹ Statement of evidence of Mr Phillips on Variation 1, 5 March 2024 at [15].

² At [14] and [17].

³ Officer's Report: Rezoning – Ōhoka Rezonings, 31 May 2024, at [28].

⁴ At [354].

⁵ At [359].

Stream 12D and been advised that its Variation 1 submission is to be heard in Hearing Stream 12D.

- 6 We note **Mr Willis** comes to a similar conclusion to **Mr Phillips**, in that he considers in the absence of more detailed evidence that assesses the implications of MRZ, the submission should be rejected.⁶
- 7 He does not, however, comment on the merits of the site becoming a 'new residential zone' if he is wrong on the scope issue and the Panel has scope to do so.

THE ISSUE OF SCOPE

- 8 Variation 1 was notified in the context of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Amendment Act*) which amended the Resource Management Act 1991 to, among other things, require the implementation of the Medium Density Residential Standards (*MDRS*) into Tier 1 urban environments through Intensification Planning Instruments (*IPIs*). Variation 1 is an IPI under the Amendment Act.
- 9 While **Mr Willis** does not elaborate in any detail on his potential scope issue, we suspect his concerns centre around the fact that the Council only considered 'relevant residential zones' for the purposes of implementing the MDRS in the district to be Rangiora, Kaiapoi, Woodend (including Ravenswood) and Pegasus and that therefore Ōhoka is not a 'relevant residential zone' subject to the Variation 1 changes.
- 10 We do not disagree that the proposed SETZ for Ōhoka is not a 'relevant residential zone', noting that the Amendment Act expressly excludes SETZs from the definition.⁷
- 11 Nevertheless, the combination of the Amendment Act and the breadth of Variation 1 does provide sufficient basis to request the relief sought in the submission. In particular, the Amendment Act:
- 11.1 grants the Panel wide jurisdiction to make recommendations on Variation 1, including the ability to make recommendations beyond the scope of submissions provided the matter was identified by the Panel or any other person during the hearing;⁸ and

⁶ At [362].

⁷ RMA, section 2.

⁸ RMA, section 99(2)(a).

- 11.2 provides that Councils may, when incorporating the MDRS through an IPI, “*create new residential zones or amend existing residential zones.*”⁹ In turn, this enables submitters the ability to seek new residential zones through submissions that they consider the Council should have included in the notification of their IPI, and it provides the Panel with jurisdiction to make recommendations on the creation of new residential zones.
- 12 We note that ‘new residential zone’ is defined in the Amendment Act as meaning “*an area proposed to become a relevant residential zone that is not shown in a district plan as a residential zone*”.¹⁰ While the Submitter through its PDP submission has amended the relief sought to provide for SETZ rather than GRZ (as originally sought in the submission on the PDP), the effect/outcome remains the same.¹¹ Should the Panel prefer, a set provisions could be provided that give effect to GRZ zoning of the site with identical outcomes to the SETZ zoning currently proposed in evidence for the PDP.
- 13 Further, the definition of ‘new residential zone’ in the Amendment Act does not require the creation of new MRZs. It is expressed broadly enough that the Panel would have the ability to create a new GRZ, based on the definition of ‘relevant residential zone’ referred to in the definition of ‘new residential zone’.
- 14 There is no scope issue with respect to the submission on Variation 1. It is entirely open to the Panel to consider and make recommendations on the appropriateness of rezoning the site under Variation 1 as a ‘new residential zone’ expressly contemplated under the Amendment Act.¹²

SPECIFYING THE RELIEF SOUGHT RELIEF SOUGHT

- 15 The Submitter accepts that there is no evidence before the Panel that actively supports a change in the sought proposed GRZ (or SETZ) zoning density, to increase to MRZ.
- 16 However, the Submitter seeks that if the PDP Panel considers it appropriate to rezone the land based on the merits of the evidence presented in the PDP hearing, the Panel should also recommend creation of a ‘new residential zone’ for the Site under Variation 1.

⁹ RMA, section 77G(4).

¹⁰ RMA, section 2.

¹¹ Statement of Evidence of Tim Walsh, 5 March 2024, at [41].

¹² We note that as part of the recent Selwyn District Plan review, the Panel created a ‘new residential zone’ in Lincoln where there was no submission on the variation in respect of that land.

- 17 In this respect, we note one of the core purposes of the Amendment Act is to give effect to and expedite the outcomes sought in the National Policy Statement on Urban Development – including the provision of significant development capacity.

Dated: 20 June 2024



J M Appleyard / Lucy M N Forrester
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