

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: Hearing Stream 12D: Ōhoka Rezoning

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

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

Memorandum of counsel in response to Minute 35 and in
opposition to the request by the Ōhoka Residents Association to
file late expert evidence and attend expert conferencing

Dated: 16 August 2024

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MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 35 AND IN OPPOSITION TO THE REQUEST BY THE ŌHOKA RESIDENTS ASSOCIATION TO FILE LATE TECHNICAL EVIDENCE AND ATTEND EXPERT CONFERENCING

1 This memorandum responds to Minute 35, which seeks comment from Carter Group Property Limited and Rolleston Industrial Developments Limited (the *Submitters*) by 4 pm Friday, 16 August 2024, on a request by the Ōhoka Residents Association (*ORA*) for leave:

1.1 to file a brief of evidence from a civil engineering expert related to the Council's flood modelling; and

1.2 for that expert to attend expert conferencing, as directed by Minute 31.

(*Request*).

2 The Request relates to the Submitters' request to rezone land in Ōhoka, which was heard as part of Hearing Stream 12D on 1 to 3 July 2024.

3 The Submitters oppose the Request and seek that the Panel decline to accept the late evidence from ORA for the reasons set out in this memorandum.

Timing of Hearing Stream 12D (Ōhoka Rezoning) for the Proposed Waimakariri District Plan

4 The Proposed Waimakariri District Plan (*PWDP*) was publicly notified on 18 September 2021, and submissions were filed on 26 November 2021.

5 The ORA made a further submission¹ on 21 November 2022 in opposition to the Submitters' relief.² The ORA's further submission noted potential issues in relation to flooding.

6 In relation to Hearing Stream 12D (Ōhoka Rezoning) for the PWDP:

6.1 Expert evidence supporting the rezoning sought by the Submitters was filed on 5 March 2024;

6.2 The Council's Section 42A report was published on 31 May 2024;

¹ Further Submission number 84.

² ORA opposed the submissions made by the Submitters.

- 6.3 Expert evidence of other submitters were filed on 13 June 2024;
- 6.4 Legal Submissions were filed on 20 June 2024;
- 6.5 The hearing for Hearing Stream 12D (Ōhoka Rezoning) was held on 1 – 4 July 2024; and
- 6.6 As per Minute 31, a reconvened hearing will be held for Hearing Stream 12D for the purposes of:³
- (a) Addressing matters of capacity and demand which can only be addressed after the Council’s economic evidence for Hearing Stream 12E being publicly available;
 - (b) Address the revised planning provisions proposed by the Submitters; and
 - (c) If required, for the Panel to question any witnesses that partook in expert conferencing.
- 7 The ORA:
- 7.1 On 13 June 2024 (when expert evidence of other submitters was due) filed a number of documents:
- (a) A document showing the Kaiapoi and Rangiora Future Development Areas;
 - (b) A document titled “Funding for infrastructure to support development”; and
 - (c) The Independent Hearing Panel Decision Report for private plan change 31.
- 7.2 Presented written legal submissions and oral presentations to the Panel on 1 July 2024 during the hearing. These legal submissions were not produced in the timeframe provided for in Minute 1 so the ORA has a history of non-compliance with Panel expectations.
- 8 Following the hearing, the Panel directed a range of expert conferencing to occur as recorded in Minute 31. The engineering expert conferencing has already occurred resulting in a joint witness

³ Expected to occur sometime in September/October. The Submitters are awaiting confirmation from the Panel, noting that they have provided the hearing administrator with suggested dates.

statement dated 6 August 2024 (and **attached** alongside this memorandum).

- 9 The planning experts are now finalising their expert conferencing (which relies on all other joint witness statements for Hearing Stream 12D), with all joint witness statements being due 23 August 2024.

Reason for late evidence

- 10 The Panel received the Request on 31 July 2024. The Request notes that following the hearing, the ORA received an Engineering Memorandum prepared by Andrew Congalton, Principal and Senior Environmental Engineer at Kotahi Engineering Studio, dated 23 July 2024 (*Engineering Memorandum*) and that the Engineering Memorandum provides an opinion on the flood modelling used in the assessment of the PWDP.

- 11 The Request acknowledges the prejudice arising from granting the Request, but ORA submits that any prejudice is outweighed by the relevance and importance of the information in the Engineering Memorandum and that the other experts/parties will have the opportunity to consider the evidence as part of expert witness conferencing (if Mr Congalton is permitted to attend).

- 12 As noted in the Panel’s Minute 35, the Request does not set out any extenuating circumstances as to why this evidence was not filed in time in advance of the hearing.

- 13 The Submitters oppose the Request and do not consider the ORA have established reasonable justification as to why the Request should be granted, noting that:

13.1 The matters addressed in the Engineering Memorandum have already been addressed in the expert evidence of the Submitters and the Council, and through expert conferencing which has already occurred.

13.2 The ORA filed a number of other documents to support their submission on 13 June 2024. It is therefore clear that the ORA was aware of the proper procedure to be followed in relation to Hearing Stream 12D.

13.3 The ORA have access to legal advice so should know of the requirements of Minute 1.

The Submitters will be directly prejudiced by the grant of the Request

- 14 The Submitters agree with the Panel’s initial view in their Minute 35, that the Request raises significant issues of natural justice and fair process and that acceptance of the Request would prejudice

submitters to Hearing Stream 12D, and other submitters on other hearing streams who have met the requirements set out in Minute 1.

- 15 The PWDP process is at an advanced stage, with a large proportion of hearing streams already completed. Should the Request be granted, this would necessitate a further exchange of evidence by all parties, and potentially further expert conferencing. The Submitters have already spent significant time and expense on expert evidence preparation and conferencing.
- 16 Had the Engineering Memorandum been provided within the time specified by the Panel or even at any point before the Panel heard issues in relation to Hearing Stream 12D, the Submitters would have had a reasonable opportunity to consider the additional evidence and respond to it through expert evidence accordingly.
- 17 The Submitters consider that the prejudice arising from the Request at this late stage outweighs any merits of allowing the Request.

Adequate assessment of effects will be achieved irrespective of allowing the Request

- 18 In any case, we note that the concerns raised in the Engineering Memorandum have already been addressed extensively in the evidence for Hearing Stream 12D.
- 19 By way of further comment:
- 19.1 Almost all of the concerns raised in the Engineering Memorandum are either incorrect or already addressed in expert evidence through Hearing Stream 12D;
- 19.2 It seems that Mr Congalton has not reviewed any of Mr Throssell's evidence which addresses many of the concerns raised in the Engineering Memorandum;
- 19.3 Mr Congalton is primarily concerned with the Flood Modelling which quantifies the flood hazard for areas in the District, however, the purpose of the Submitters' flood assessment was to demonstrate effects from the proposed development and this has been done on a conservative basis;
- 19.4 It is difficult to see how any further calibration of the Flood Modelling for the District would result in a change to Mr Throssell's site-specific assessment of effects;
- 19.5 Mr Congalton has incorrectly summarised the views of Council expert Mr Bacon;

- 19.6 Mr Congalton does not appear to have fully understood what is proposed for stormwater management on the site.
- 20 Should the Panel have any further questions for Mr Throssell or any of the other engineering experts who attended the expert conferencing (including about the Flood Modelling for the District) then it can ask those at the reconvened hearing.
- 21 In summary, the Submitters oppose the Request and considers the fair and proper outcome in the circumstances is for the Panel not to accept the additional material. In the event that the Panel decline the Request, the Submitters also ask that the Engineering Memorandum be removed from the Hearing Stream 12D website.
- 22 We thank the Panel for their attention to this memorandum.

Dated: 16 August 2024



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