

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 final set of provisions

Dated: 20 November 2024

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MEMORANDUM OF COUNSEL REGARDING FINAL SET OF PROVISIONS

- 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*) related to paragraph 1(c) of Minute 46.
- 2 Minute 46 required Mr Walsh, on behalf of the Submitters, to provide Mr Willis with the final set of provisions for the Ohoka rezoning request considered under Hearing Stream 12D by Tuesday 19 November 2024.
- 3 Mr Walsh has provided the following sets of provisions as per the Panel's directions to Mr Willis, which are enclosed alongside this memorandum for the Panel and other submitter's benefit:
 - 3.1 SETZ provisions (being the Submitters' relief sought under the Proposed District Plan process); and
 - 3.2 GRZ provisions (being the Submitters' relief sought under the Variation 1 process).
- 4 The SETZ provisions incorporate changes addressing some of the concerns raised by the Panel and Council officers at the reconvened hearing. The GRZ provisions have been drafted so as to ensure the same substantive outcome as the SETZ provisions.
- 5 For completeness:
 - 5.1 We had understood at the end of the reconvened hearing that Mr Willis was meeting with Council planning officers for the other hearing streams to discuss the issue of consistency across all of the Proposed Plan provisions, and that Mr Willis would then indicate to Mr Walsh whether changes to the proposed provisions for Hearing Stream 12D would be required based on those discussions.
 - 5.2 We understand that Mr Willis met with the other Council planning officers on Monday 11 November 2024 but that the consistency of plan provisions across hearing streams was not discussed.
 - 5.3 Nevertheless, the Submitters have done their best to prepare the provisions in a manner they consider is consistent with how the rest of the Proposed Plan is drafted. If further changes are required for consistency reasons, these are likely to be relatively minor and are likely to relate to form rather than substance.

- 5.4 Mr Willis has not yet provided any substantive feedback to the Submitters on the provisions provided on 1 November 2024 prior to the reconvened hearing (and in particular the proposed Ōhoka Assessment Criteria), other than during his brief comments at the reconvened hearing.
- 5.5 If Mr Willis has any additional changes to make to the provisions at the time he does his review or following any further discussions about consistency across planning provisions, Mr Walsh is happy to undertake any further drafting between now and the release of the Hearing Stream 12D reply report.
- 6 Should the Panel require anything else from the Submitters prior to the close of hearings, we are happy to assist.

Final comments on Buddle Findlay’s advice on scope dated 18 November 2024

- 7 We have read Buddle Findlay’s letter dated 18 November 2024 titled “Hearing Stream 12D – Minutes 29 and 46 – Advice on Scope” which responds to RIDL’s memorandum dated 8 November 2024 regarding the scope of its submission on Variation 1.
- 8 There are some factual inaccuracies in Buddle Findlay’s advice that we bring to the attention of the Panel.
- 9 Buddle Findlay consider that there may be submitters who were led to believe from the Hearing Streams 12D and/or 12E proceedings that RIDL may no longer be seeking to rezone the land (including to GRZ) under its Variation 1 submission.¹ That suggestion is not supported by the facts of what occurred during the hearing process:
- 9.1 Buddle Findlay assert that Mr Walsh’s evidence states RIDL are no longer seeking a GRZ but are seeking a SETZ.² This is not correct. In fact, Mr Walsh’s evidence quite clearly sets out RIDL’s position in this respect:³

“While the revised proposal has been drafted to seek SETZ rather than GRZ, the proposed rules package could readily be drafted to use the GRZ zoning and maintain the same development outcomes. The SETZ zoning was chosen over the GRZ zoning as in the context of the Proposed Plan provisions this was the simplest and most effective way of drafting the

¹ Buddle Findlay’s letter dated 18 November 2024 titled “Hearing Stream 12D – Minutes 29 and 46 – Advice on Scope” at [31].

² Buddle Findlay’s letter dated 18 November 2024 titled “Hearing Stream 12D – Minutes 29 and 46 – Advice on Scope” at [31].

³ Evidence of Mr Walsh for Hearing Stream 12D dated 5 March 2024 at [41].

development area provisions. In addition, the SETZ suits the proposal better in terms of the minimum lot size for that zone and the type of development intended. However, if the Panel preferred GRZ zoning (instead of SETZ) for those areas of the site, an amended set of provisions could be prepared."

- 9.2 Nowhere in its evidence or legal submissions has RIDL stated they are no longer seeking to pursue their relief under Variation 1:
- (a) RIDL provided legal submissions and planning evidence of Mr Phillips at Hearing Stream 12D held 1 to 4 July 2024 on its Variation 1 submission.⁴
 - (b) The Oxford-Ohoka Community Board also provided legal submissions and evidence at Hearing Stream 12D held 1 to 4 July 2024 on RIDL's Variation 1 submission.⁵
 - (c) Buddle Findlay do not engage with the timeline of events set out in RIDL's memorandum dated 8 November 2024 on the scope of Variation 1,⁶ namely:
 - (i) That the section 42A report for Hearing Stream 12E(B) did not consider RIDL's submission on the Variation at all, and therefore RIDL did not appear at that hearing stream on its Variation 1 submission. Rather, it noted in its legal submissions to the Panel at Hearing Stream 12E that it intended on addressing its Variation 1 submission at the reconvened hearing for Stream 12D.⁷

⁴ Legal submissions on behalf of Rolleston Industrial Developments Limited for Variation 1, Hearing Stream 12D dated 20 June 2024; Evidence of Jeremy Phillips on Variation 1 Hearing Stream 12D dated 5 March 2024.

⁵ Legal submissions on behalf of the Oxford-Ohoka Community Board for Hearing Stream 12D dated 20 June 2024; Evidence of Richard Knott for Hearing Stream 12D dated 12 June 2024; Evidence of Nick Keenan for Hearing Stream 12D dated 13 June 2024; Evidence of Nick Boyes for Hearing Stream 12D dated 13 June 2024; Evidence of Kim Goodfellow for Hearing Stream 12D dated 13 June 2024; Evidence of Andrew Metherell for Hearing Stream 12D dated 13 June 2024; Evidence of Sarah Barkle for Hearing Stream 12D dated 20 June 2024.

⁶ Memorandum of counsel on behalf of Rolleston Industrial Developments Limited regarding scope of Variation 1 dated 8 November 2024 at [3].

⁷ Memorandum of counsel on behalf of Rolleston Industrial Developments Limited regarding scope of Variation 1 dated 8 November 2024 at [3.5]; Legal submissions on behalf of Carter Group Limited and Rolleston Industrial Developments Limited for Hearing Stream 12E dated 9 August 2024 at [5].

- (ii) That the reason Mr Walsh did not provide a set of GRZ provisions sought under RIDL's Variation submission on 26 July 2024 (as per Minute 31) was that we had understood the direction only to relate to substantive drafting of the PDP provisions on the basis that the issue of scope of Variation 1 was still yet to be traversed by the parties (and in particular we were awaiting Council's specific legal advice on this issue pursuant to Minute 29).
- (d) Buddle Findlay suggests that the fact RIDL did not continue to pursue cross-examination under the Variation, or bring further evidence on the Variation submission at the reconvened hearing suggests RIDL were no longer seeking the relief under their Variation submission.⁸ That is a wrong implication to be drawn and flies in the face of natural justice:
 - (i) The fact that a party does not seek to cross-examine any expert witness or does not provide further evidence cannot imply that they no longer seek to pursue their relief. Most submitters did not seek to cross examine Council officers or other submitters' experts.
 - (ii) Buddle Findlay overlooks the fact that evidence and legal submissions were already provided for the 1 - 4 July 2024 Stream 12D hearing, and that RIDL's legal submissions at the reconvened hearing covered its Variation submission.
 - (iii) For completeness, RIDL did not continue pursue its original cross-examination request it had made in relation to the Variation because the key witness they wished to cross examine was Mr Yeoman and it subsequently became apparent (including by the time of the Stream 12E hearing) that he had not done any assessment work beyond the three main towns⁹ which would assist the Panel with determining RIDL's submission relating to Ohoka and therefore cross examination would be futile. Instead, the limitations of Mr Yeoman's evidence in the face of the evidence of other experts such

⁸ Buddle Findlay's letter dated 18 November 2024 titled "Hearing Stream 12D – Minutes 29 and 46 – Advice on Scope" at [31].

⁹ Memorandum to Matt Bacon from Rodney Yeoman "Stream 12D Provision of Information to Inform Expert Conferencing" dated 24 July 2024.

as Ms Hampson, Mr Jones and Mr Davidson was addressed in legal submissions.

- (iv) As for other witnesses which RIDL might have originally wished to cross examine, Buddle Findlay fails to note the significant work that went on prior to the reconvened hearing for all parties to collectively draft a pointed set of suggested questions for experts to conference on (essentially the questions that would have been asked by RIDL in cross examination), the Panel's own set of questions ahead of those conferencing sessions, the significant narrowing of issues through that conferencing and the limited number of matters left in issue by the time the hearing reconvened, and the Panel's Minute 40 setting out its expectations as to the limited number of issues to be covered by the experts at the reconvened hearing.
 - (v) In short RIDL were very happy with where matters had got to by the reconvened hearing and were content to rely on their ability to make legal submissions, particularly submissions directly challenging Mr Willis' report (and those submissions did raise questions the Panel might consider putting to Mr Willis and the Panel has a track record of asking relevant questions themselves).
- 10 The Buddle Findlay advice records that there are less further submitters on RIDL's Variation submission than on its PDP submission and this demonstrates people were disenfranchised from participating on RIDL's Variation submission. This is a very long bow to draw and is not based on any evidence. If there was some defect in the Council's own statutory notification process relating to Variation 1 then counsel should have drawn the Panel's attention to that issue before the hearings commenced.
- 11 We note that there were only two submitters who actually provided expert evidence and appeared at the PDP Hearing Stream 12D: the Ohoka Residents Association, and the Oxford-Ohoka Community Board. It is equally an implication from this that other individual further submitters considered that their interests would be adequately covered by those groups. Both the Ohoka Residents Association and the Oxford-Ohoka Community Board were then further submitters on RIDL's Variation submission and by that time PC31 was well advanced and submitters were well organised as to how they presented in opposition to any rezoning of Ohoka by grouping collectively. It is therefore more reasonable to assume that

submitters did not submit on the publicly notified Variation process because they were better organised than previously and knew their interests would be represented as part of a collective group.

- 12 No party has come forward to say they were disenfranchised from an ability to make a submission on Variation 1, nor sought to lodge a late submission.
- 13 In any case, the substantive relief sought through Variation 1 is the same as that sought through the PDP (albeit the form is in GRZ not SETZ), and the Panel has read submissions and received evidence from all parties on the proposal to rezone the land for residential purposes. We note that the granting of RIDL's relief under its Variation submission could only occur if the PDP Panel consider it appropriate to rezone the land from rural to residential use. In this sense, the substantive decision being made to rezone this land is under the PDP, not the Variation. RIDL is simply asking the Variation Panel to create a new residential zone should the PDP Panel deem the land appropriate for residential use.
- 14 Buddle Findlay assert that RIDL is effectively seeking to disenfranchise people from exercising appeal rights through use of the Variation process. With respect, it is the Amendment Act and IPI process which removes appeal rights, not RIDL. RIDL is simply seeking to use a process established by Parliament which is intended to give effect to the NPS-UD, including seeking to remove overly restrictive rules and enable sufficient development capacity for all people and communities. The fact that this process does not provide rights of appeal is not of RIDL's making and it was Parliament's direct intention. Buddle Findlay may disagree with the legislation but that is a matter for them or the Council to take up in other forums.

Dated: 20 November 2024



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