

Before the Independent Commissioners appointed by the Waimakariri District Council

In the matter of Proposed Waimakariri District Plan: Ōhoka Rezoning
(Hearing Stream 12D)

and

In the matter of Further submission by the Oxford Ōhoka Community Board
[further submitter 62] to the Rolleston Industrial
Developments Limited [submitter 160] and Carter Group
Property Ltd [submitter 237] submission to Rezone land at
Ōhoka

Supplementary legal submissions on behalf of Oxford-Ōhoka Community Board

Dated: 25 October 2024

Andrew Schulte (andrew.schulte@cavell.co.nz)
Counsel for further submitter

CavellLeitch >
LIMITED

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Level 3, BNZ Centre
111 Cashel Mall
PO Box 799, Christchurch
T: +64 3 379 9940 F: +64 3 379 2408

Supplementary legal submissions for Oxford-Ōhoka Community Board:

1. These supplementary legal submissions on behalf of the Board, confirm its opposition to the submitters proposal to rezone land at Ōhoka under the Proposed Waimakariri District Plan (**PWDP**). That opposition is detailed in the Board's further submission (with reference to Plan Change 31 to the operative Waimakariri District Plan), its legal submissions dated 3 July 2024, and its evidence in support of its further submission.
2. These submissions, and the supplementary evidence also lodged on behalf of the Board, address issues arising from the expert witness conferencing and joint witness statements (**JWS**) the Board still believes have not been adequately addressed, and result in a degree of uncertainty that militates against accepting the submitters proposed changes to the PWDP.
3. The Board's opposition remains moored in the community's genuine concerns regarding the suitability of the proposed site at Ōhoka, for the level of intensification that is sought.
4. One point that I would also like to address, arises from a question posed by Commissioner Cubbit at the hearing in July. The question was whether the reference to unanticipated in the National Policy Statement for Urban Development (**NPS-UD**) meant unanticipated in planning instruments. At the time I agreed that was the case. However, on reflection, the answer may be a little more nuanced in respect of the Board's view that intensification at this location is not *unanticipated* because it has been actively considered previously and rejected, including as part of PC31¹. That is because planning instruments simply do not record the matters considered and rejected in the processes that led to their existence. The only means of doing so is by including restrictions or limits to development to reflect the outcomes of those processes. The Board's point therefore is simply that while the current detail of the submitter's proposal may be considered unanticipated (and may change again), the broader proposition of greater intensification at this location was anticipated and has been repeatedly rejected, for good reasons.
5. The Board therefore remains supportive of the retention of the Rural Living Zone for the site.

Highlighted issues

6. The Board considers that for the purpose of this limited resumption of the hearing that the key issues requiring further highlighting are:

¹ RCP031 Independent Hearing Panel Decision Report, dated 27 October 2023.

- 6.1. The remaining uncertainties on the flooding impacts, including the potential impact of resurgence events;
 - 6.2. The remaining issues with the extent and timeliness of required transport corridor upgrades; and
 - 6.3. The remaining issues associated with whether the submitter proposal will contribute to a well-functioning urban environment that is (amongst other things) well-located, on existing and planned transport corridors, with good access to employment and meets a high demand for housing relative to other areas in the urban environment.
7. These issues were also canvassed in the original hearing and the intention is not to repeat what has already been said. However, even following the expert witness conferencing and joint witness statements, the Board and, by extension, a significant proportion of the local community, remain unconvinced that the Panel can be satisfied that these issues have been answered sufficiently, and that consequently the submitters proposed changes to the PWDP should not be accepted.
8. These submissions also comment briefly on the recent development of inclusion of the proposed development (or similar) in the Government's recommended Fast-track list, and the responses to the Panel's legal questions provided by counsel for the District Council².

Flooding

9. A key point that the Board wishes to highlight in respect of the potential flooding issues that could affect the site, and downstream, is that the witness conferencing confirmed that the potential for impacts from groundwater resurgence was not a matter that featured in the previous modelling for the proposal at this site. As Nick Keenan notes³, stormwater surface modelling does not normally have groundwater flows inputted.
10. And, while the response has been to retrospectively include, or perhaps explain away, any impacts from the occurrence of resurgence, there remains an inherent level of uncertainty.
11. The Board says inherent because, again as Mr Keenan notes⁴, to achieve credible results when including groundwater resurgent flows, requires data, and despite the urging of locals (and the Board) in recent years as they have been affected by flooding events,

² Legal response to Minute 33 – Hearing Stream 12C and 12D dated 23 August 2024.

³ Paragraph 6, Supplementary evidence of Nick Keenan dated 18 October 2024.

⁴ Ibid

the phenomenon of groundwater resurgence at this locality has not been the subject of detailed study or field investigations and, therefore, is not well understood. So, while to the knowledge of the experts, the phenomenon has not occurred at the site, that doesn't mean it cannot.

12. After all, the site contains both springs and streams, which appear to be the likely points of resurgence⁵, and new development could affect "surface expressions"⁶ as an impact of new development. The view is that it has not occurred to date but with the extent of flooding that has occurred across the area, it must remain conceivable that there may have been a contribution (at least) from resurgence. That is the view of locals.
13. At the very least, the Board considers that the potential for such phenomena, in addition to the nature of the soil structure resulting in limited permeability and a high potential for surface flooding, is further justification for the requirement that larger areas of the site be made available for stormwater attenuation (which would need to be bunded to avoid the high water-table). That, in turn, would inevitably impact on the potential yield for the proposal, not to mention the time necessary for the further investigations to determine the extent of the issue.
14. The Board considers that the development proceeding would have to address these issues – at some point, but preferably sooner rather than later – because, while the phenomena is 'acknowledged' it remains insufficiently understood but could result in significant additional or cumulative hazard. In other words, a potential effect of uncertain probability but with a high potential impact. That could include an impact within the development area and beyond.
15. The effects downstream of the site were also discussed at conferencing in relation to 1 in 50-year rainfall events. As the proposal does not rely on soakage to deal with stormwater disposal (presumably because it can't), the contribution to flows in all significant rain events needs to be understood. Again, the outcome appears to be considered 'manageable' through attenuation and timed release.
16. What the reliance on attenuation means in terms of the size of areas set aside, and impacts on layout and yield, remains speculative, to be dealt with, as part of subdivision. Whether these issues will still be comprehensively dealt with, depending on what subdivision process might be chosen, can also only be speculated.

⁵ Paragraph 11, Reconvened hearing evidence of Bas Veendrick dated 17 October 2024.

⁶ Paragraph 4, Supplementary evidence of Nick Keenan dated 18 October 2024.

Transport

17. The comments made by Andrew Metherell in his supplementary evidence following, and with reference to, the expert witness conferencing on transport, records the numerous required enhancements to the transport network that the experts agree are needed prior to development occurring, and points⁷ to a remaining degree of uncertainty over⁸:
 - 17.1. The absence of suitable investigation, concept designs of the likely upgrades, and potential for reliance on third party land; and
 - 17.2. The absence of any specific funding plan or mechanism to provide funding certainty, as the projects are largely unanticipated and are only being considered as a direct result of the proposed rezoning.
18. The proposed inclusion of a rule⁹, also agreed to by the experts, with a discretionary activity consent default position is also seen as necessary, if the submission is to be accepted. While that may be considered satisfactory, if required the Board would prefer that the default was a non-complying activity status given the level of agreement as to the necessity for the improvements prior to development in order to avoid adverse effects on the safety and efficiency of the road network.
19. On the specific issues of the provision of public transport and active transport, Mr Metherell notes:
 - 19.1. The site will generate a need for improvements to active modes network beyond the immediate frontage¹⁰ including:
 - 19.1.1. An improved path to Ōhoka school while the establishment of a new school remains uncertain¹¹; and
 - 19.1.2. Better connections to Kaiapoi and Rangiora, with a preference for a sealed path as an unsealed path better supports cycling and means cyclists less likely to choose less-safe roads¹².

⁷ Paragraph 4, Supplementary evidence of Andrew Metherell dated 18 October 2024.

⁸ Paragraph 5, Supplementary evidence of Andrew Metherell dated 18 October 2024.

⁹ Proposed rule DEV-O-S4 Road infrastructure upgrades, Attachment 1: Proposed District plan Provisions for Transport conferencing, JWS – Transport dated 23 August 2024. Referred to at paragraph 7, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹⁰ Paragraph 10, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹¹ Ibid

¹² Paragraphs 11 and 12, Supplementary evidence of Andrew Metherell dated 18 October 2024.

- 19.2. The provision of 10 years funding for public transport will functionally connect site with Kaiapoi¹³, but:
- 19.2.1. Will not provide a functional connection with Rangiora¹⁴; and
 - 19.2.2. Uncertainty will persist as to whether a functional service can be maintained in the long term¹⁵.
20. On the suitability of the location, Mr Metherell reiterates that Ōhoka is close to the least preferred location for consolidated development¹⁶ from a transport perspective. This is due to the probable reliance on private vehicles for trips to existing centres. In addition, there is also a reliance on the use of rural roads with an increased safety risk, and the higher vehicle kilometres that will need to be travelled¹⁷.
21. Notably, the transport experts were unable, as part of the JWS¹⁸, to specifically assist the planners by providing a conclusion to the question of whether the site is ‘well-connected along transport corridors’. However, Mr Metherell considers that the site is not well connected to existing or planned multi-modal transport network¹⁹.

Well-functioning urban environment?

22. The Board and its planning expert Mr Boyes consider that the key planning issue remains whether the submitters proposal will contribute to a well-functioning urban environment. If not, the NPS-UD cannot be relied on to overcome the avoidance provisions of the Canterbury Regional Policy Statement.
23. Mr Boyes view also remains of the view²⁰ that Objective 3, subclauses (a), (b), and (c) of NPS-UD are not met by the proposal given it is: not in or near an existing centre zone and does not provide many employment opportunities; is not well serviced by public transport; and, does not exhibit a high demand for housing or business land relative to other areas.

¹³ Paragraph 13, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹⁴ Ibid

¹⁵ Paragraph 14, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹⁶ Paragraph 15, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹⁷ Paragraph 17, Supplementary evidence of Andrew Metherell dated 18 October 2024.

¹⁸ Paragraph 8, JWS – Transport dated 23 August 2024.

¹⁹ Paragraph 16, Supplementary evidence of Andrew Metherell dated 18 October 2024.

²⁰ Paragraph 5, Supplementary evidence of Nick Boyes dated 18 October 2024.

24. Mr Boyes also comments²¹ on the fact that the purported housing demand that is relied on relates to Ōhoka as it now exists with its current attributes. Attributes that will largely be lost if the proposal proceeds. He also maintains the view²² that the types of housing proposed are interchangeable with other urban areas of the District (at least) that he considers are better alternatives to provide additional housing capacity.
25. Overall, Mr Boyes maintains his view that the proposal's contribution to a well-functioning Urban environment has not been demonstrated²³ (my underlining). The site is relatively remote. It does not have good accessibility especially for active or public transport. It will place greater reliance on private vehicle use relative to alternative locations that are better connected and have greater accessibility between housing and employment opportunities, and community services.
26. Mr Boyes agrees with Mr Metherell that the site is not well-connected along transport corridors in a safe and sustainable manner²⁴.
27. Therefore, the proposal will not meet Objective 1 and Policy 1 of the NPS-UD and cannot be said to achieve the purpose of the RMA.

Inclusion on the Fast-track list

28. It is, of course, impossible to avoid the elephant that has been introduced into this process by the application for and inclusion of the submitter's proposal (or, potentially, another form of it) that has been included in the Governments list of activities to be Fast-tracked under the new legislation that is expected to be confirmed probably by the end of the year.
29. There are several implications that flow from the inclusion of the submitter's proposal in the list including some remaining (or further) points of uncertainty.
30. Looking at the key uncertainty first: whether the submitter remains too concerned about the current process? While it can only be speculation, until the legislation is in place and the submitter determines how they wishes to proceed, it is anticipated that the submitter will see greater social license in continuing to attempt to secure the acceptance of its submission in the PWDP. However, it is equally anticipated that the submitter will also utilise its position on the list as leverage to achieve its preferred outcome under the PWDP, which may or may not be what is currently proposed.

²¹ Paragraph 6, Supplementary evidence of Nick Boyes dated 18 October 2024.

²² Paragraph 7, Supplementary evidence of Nick Boyes dated 18 October 2024.

²³ Paragraph 8, Supplementary evidence of Nick Boyes dated 18 October 2024.

²⁴ Paragraph 10, Supplementary evidence of Nick Boyes dated 18 October 2024.

31. Therefore, the form of the actual application that sought inclusion on the Fast-track list is important as it may (or may not) exclude aspects that have been offered in mitigation here. Again, we will not know until we are told.
32. The Fast-track, while theoretically not a guaranteed approval, carries a sense of inevitability, especially with the select committee's majority proposed change²⁵ in the wording of its purpose, to emphasise that it is focused on delivery of projects rather than just a process for doing so. Any decision can still be subject to conditions but whether those conditions can be fully scrutinised for effectiveness or will even fully address all issues (given the limited provision for participation or comment) will remain to be seen.
33. However, the Board's view remains that the submission and proposal should not be accepted, regardless of the fact it has now been included in the Fast-track list. The proposals remaining uncertainties are not, in the Board's view, insignificant, and are not justified under the NPS-UD. Meanwhile, the changes that acceptance of the submission will implement, and the effects that stem from them, may well be significant and far reaching.

Panels legal questions

34. A series of legal questions were posed by the Panel following the July hearing. These we responded to in a letter from counsel for the Council, Buddle Findlay (**response**)²⁶.
35. The Board notes the following in relation to the response, insofar as it relates to the submitter's proposal and HS12D:
 - 35.1. It agrees²⁷ that there is no legal *presumption* in Policy 2 of the NPS-UD for the provision of more than sufficient development capacity but does provide a *discretion* for a local authority to do so. It also agrees with the observation that providing more than sufficient development capacity may be a pragmatic way to defer the requirement to address any future capacity shortfalls;
 - 35.2. The Board also agrees²⁸ that the need for capacity to be infrastructure ready does not remove the onus from a party seeking to rely on the responsiveness provisions of the NPS-UD to demonstrate that plan changes include a proposal that will provide adequate development infrastructure, and that Council

²⁵ Fast-track Approvals Bill, Environment Committee Commentary, dated 17 October 2024, at page 3 under 'Purpose Clause'.

²⁶ Fn2 above.

²⁷ In relation to question 1(b)/1(f), paragraphs 13-29, Fn2.

²⁸ In relation to question 1(c), paragraphs 30-45, Fn2.

options to address infrastructure shortfalls will form part of its future development strategies;

- 35.3. The Board agrees²⁹ with counsel for the Council, that the proposition for the submitter regarding the responsiveness required by the Council in relation to infrastructure under the NPS-UD:

...removes the NPS-UD onus on the developer to demonstrate that adequate supporting infrastructure for the plan change proposal will be provided, and instead attempts to place the onus on Council to ensure that its future infrastructure planning and funding decisions are responsive to wherever a developer proposes to provide unanticipated *plan-enabled* development capacity.

Which is inconsistent with the responsiveness provisions of the NPS-UD; and

- 35.4. The conclusion that a shortfall in capacity is not necessary for the responsiveness provisions in Policy 8 to apply³⁰ is accepted.

Conclusions

36. Considering the recent developments with the Fast-track list, the Board acknowledges that declining to accept the submitters proposal could prove to be as pyrrhic as the decline of PC31 has felt (and may yet feel) to members of the community who invested so much time and energy in that process.
37. But equally, it could send a signal to any Fast-track panel that there are issues and uncertainties with the nature and intensity of this development in this location that still warrant a hard look, and careful assessment.
38. Despite the time that has elapsed between PC31 and the PWDP process, the Board notes that issues that might have usefully been investigated in more detail in order to provide answers with greater clarity and certainty, have continued to be left to subdivision time. In many cases, that outcome is neither surprising, unexpected, or of great concern. But where an area has been subject to heightened scrutiny in the past due to issues with the high water-table and associated drainage constraints, a higher standard might be expected or even required.
39. Ultimately, if the development proposed for Ōhoka proceeds, and the effects the Board remains concerned with eventuate, it will be the Council and the ratepayers of the district (in particular residents at Ōhoka) that will have to deal with the fallout.

²⁹ In relation to question 1(d), paragraphs 46-61, Fn2.

³⁰ In relation to question 1(e), paragraphs 62-63, Fn2.

40. As previously noted, some level of development may be inevitable at Ōhoka, and is enabled under the PWDP as notified. But, for the reasons identified, such a level of development at Ōhoka would, in the Board’s view, be a potentially costly mistake, and should therefore be avoided.

Dated: 25 October 2024



A J Schulte
Counsel for the Oxford-Ōhoka Community Board