

**BEFORE THE INDEPENDENT HEARINGS PANEL
APPOINTED ON BEHALF OF THE WAIMAKARIRI DISTRICT
COUNCIL**

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF the Proposed Waimakariri District
Plan - Hearing Stream 12E -
Rangiora, Kaiapoi, Woodend,
Variation 1

AND the submissions of B & A Stokes on
the Proposed Waimakariri District
Plan (#214) and Variation 1 (#29)

MEMORANDUM OF COUNSEL

Dated: 2 September 2024

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1 INTRODUCTION

- 1.1 This memorandum of counsel is filed on behalf of B and A Stokes (the **Stokes**).
- 1.2 The Stokes made submissions on the Proposed Waimakariri District Plan (**PDP**) and Variation 1 to the PDP (**Variation 1**), requesting the rezoning of their land at 81 Gressons Road and 1375 Main North Road, Waikuku (the **Site**) to enable residential development on the Site in accordance with an outline development plan (**ODP**) (the **Proposal**).
- 1.3 Expert evidence on behalf of the Stokes in support of those submissions has been filed and was presented to the Hearings Panel on Wednesday 21 August 2024 as part of Hearing Stream 12E.
- 1.4 This memorandum seeks further directions from the Panel regarding its recent directions issued in Minute 37 for expert conferencing to occur between Hearing Stream 12E submitters seeking rezoning of land and experts for Waimakariri District Council.

2 MINUTE 37

- 2.1 On 30 August 2024, the Hearings Panel issued Minute 37 directing “planners and other technical experts for [rezoning] submitters [to] liaise with Mr Wilson, and any other Council technical experts as appropriate to:
 - (a) determine whether they can reach consensus on any outstanding matters in contention raised in the section 42A report;
 - (b) finalise the details of those ODPs and associated provisions;
 - (c) address any matters in contention that were identified in the section 42A report and subject to new evidence before and during the hearing.”
- 2.2 Minute 37 also directs the joint witness statements for each of the rezoning requests to identify points of agreement on the issues, and, where experts disagree, to include a brief commentary on specific points of disagreement.

2.3 The Panel advised that “parties to the expert conferencing are encouraged to commence conferencing as soon as possible in order to meet the timeframe set for the [section 42A reply report].”

The Stokes’ Proposal

2.4 As outlined in the supplementary evidence of Mr Clease, the section 42A report authored by Mr Wilson did not identify any fatal flaws or insurmountable effects-based reasons to decline the relief sought by the Stokes. Mr Wilson did however consider that he lacked sufficient evidence on three discrete matters relating to the Proposal, being:¹

- (a) downstream capacity for stormwater, both through the culverts under State Highway 1 (**SH1**), and beyond;
- (b) the yields that the subdivision will achieve, particularly in respect of the PDP requirements to achieve 15 households per hectare; and
- (c) the rule framework, and/or other mechanisms that will ensure the necessary upgrades occur prior to development commencing, and/or are appropriately staged as development occurs.

2.5 Each of these matters were addressed in some detail in the supplementary evidence of the Stokes’ experts (and Mr Clease and Mr Hall in particular).

2.6 Following receipt of Minute 37, Mr Clease contacted Mr Wilson on the morning of 30 August 2024 suggesting that:

- (a) Mr Hall (the Stokes’ infrastructure expert) and Mr Aramowicz (Waimakariri District Council’s expert) meet to discuss the downstream stormwater capacity matter (outlined in para 2.4(a)) and the infrastructure mechanisms matter outlined in (para 2.4(c)) and prepare a joint witness statement in respect of those matters.
- (b) Following receipt of the joint witness statement from Mr Hall and Mr Aramowicz , Mr Clease and Mr Wilson meet to discuss all three

¹ Section 42A Report at [887].

outstanding matters, and to prepare a joint witness statement on those matters in accordance with the Panel's directions.

- 2.7 In response later that morning, Mr Wilson advised that because the Stokes' did not present evidence relating to downstream capacity for stormwater, he did not have anything to assess in relation to that matter.
- 2.8 Mr Clease then responded to Mr Wilson, advising that that matter was addressed in the supplementary evidence of the Stokes' experts. In particular, Mr Hall's evidence confirmed that by attenuating stormwater on the Site so that the volume that is released at peak times is no greater than what is currently discharged, the Proposal does not change or otherwise affect existing downstream capacity. There is, in other words, no need to assess downstream stormwater capacity because the Proposal will not result in any change to, or effect on, that existing capacity.
- 2.9 In response to Mr Clease, Mr Wilson maintained that because the Stokes' experts had not quantified or addressed "downstream hazard risk", Mr Clease was "asking the Council's expert to confer and discuss over matters that were not raised at the hearing". He therefore advised that his "instruction to Mr Aramowicz will be not to meet until the procedural issue is resolved".

3 DIRECTIONS SOUGHT

- 3.1 With respect to Mr Wilson, it is not clear why he considers that evidence regarding existing downstream stormwater capacity is required from the Stokes' experts when the independent expert evidence has established that the Proposal will not result in any change to that capacity. It is akin to requiring an assessment of existing transport network capacity when there is no proposal to add any additional cars to the road.
- 3.2 In any event, the questions of downstream stormwater capacity and the Proposal's impacts on that capacity are technical matters which are best addressed by the relevant technical experts; in this case, Mr Hall and Mr Aramowicz. If either or both of those experts determine that further evidence relating to downstream stormwater capacity is required, then that will be detailed in their joint witness statement in

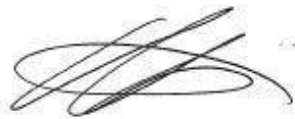
accordance with the requirements of the Environment Court Practice Note 2023 – Code of Conduct for expert witnesses.² That will then be a matter for Mr Cleese and Mr Wilson to consider.

3.3 In that context, Mr Wilson’s “instruction” to Mr Aramowicz is, in our submission, inappropriate in light of the Panel’s directions.

3.4 The Stokes therefore respectfully request further directions confirming the Panel’s requirement for conferencing to occur between relevant experts for the Stokes and for the Council, including Mr Hall and Mr Aramowicz, as the relevant technical experts on stormwater matters relating to the Proposal.

3.5 The Stokes thank the Panel for its consideration.

DATED this 2nd day of September 2024



R Murdoch
Counsel for B and A Stokes

² Environment Court Practice Note 2023, clause 9.5(b)(viii) requires joint witness statements to identify any issue which the experts agree is not adequately addressed by the evidence lodged to that point in the proceedings and the reasons for that inadequacy.