

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: Rezoning requests (Ōhoka)

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

and: **Rolleston Industrial Developments Limited**
(Submitter 160 and Variation Submitter 60)

Legal submissions for reconvened hearing on behalf of Carter
Group Property Limited and Rolleston Industrial Developments
Limited

Dated: 24 October 2024

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LEGAL SUBMISSIONS FOR RECONVENED HEARING ON BEHALF OF CARTER GROUP PROPERTY LIMITED AND ROLLESTON INDUSTRIAL DEVELOPMENTS LIMITED

INTRODUCTION

- 1 These legal submissions are made on behalf of Carter Group Property Limited (Submitter 237) and Rolleston Industrial Developments Limited (Submitter 160, Variation Submitter 60) (*Submitters*) for the reconvened hearing (Stream 12D) relating to submissions on the Proposed Waimakariri District Plan (*PDP*) and the Variation to the PDP to rezone for residential purposes approximately 156 hectares of rural zone land at Ōhoka.
- 2 These legal submissions are made in accordance with paragraph 9 of Minute 40, and will traverse:
 - 2.1 The key legal and planning issue for the Panel to determine;
 - 2.2 Site-specific outstanding issues following expert conferencing;
 - 2.3 Response to Buddle Findlay legal opinion; and
 - 2.4 Comment on the Variation submission.

THE KEY ISSUE

- 3 As summarised succinctly in the evidence of Mr Phillips,¹ the key issue for the Panel to determine boils down to a proper interpretation of the NPS-UD:

At what granularity does the NPS-UD require the Waimakariri District Council to provide for expected housing demand in different locations within its urban environment?

- 4 Relevantly, the planners have agreed in conferencing that:
 - 4.1 The Proposed Plan must have or enable a variety of homes that meet the needs in terms of type, price, and location, of difference households, per NPS-UD Policy 1(a)(i).²
 - 4.2 Setting aside the long-term, at a minimum, the Proposed Plan must provide at least sufficient development capacity to meet

¹ Reconvened hearing evidence of Mr Jeremy Phillips for Hearing Stream 12D dated 17 October 2024, at [9] – [11].

² Joint Witness Statement “Confirmation of agreement of planning matters” dated 16 July 2024 at [2.2].

expected demand for housing and for business land over the short term and medium term, per NPS-UD Policy 2.³

- 4.3 Setting aside the long-term, at a minimum, the Proposed Plan must provide at least sufficient development capacity in the district to meet expected demand for, among other things, housing in existing and new urban areas and for standalone dwellings in the short and medium term, per NPS-UD Clause 3.2.⁴
- 4.4 Ōhoka should be assessed against Greater Christchurch (as depicted in Map A of the CRPS) as the relevant 'Urban Environment' for the purposes of the NPS-UD and therefore the NPS-UD applies;⁵
- 4.5 That the proposed rezoning at Ohoka can be considered on its merits under Policy 8 on the basis that the NPS-UD applies and provided that it is found to contribute to a well-functioning urban environment.⁶
- 4.6 The Ōhoka settlement as depicted in Map A of the CRPS and zoned SETZ in the proposed Plan is an 'existing urban area', or would otherwise be a 'new urban area' in any event;⁷
- 4.7 Other than what is set out in Policy 1(a)(i) and clause 3.2, the NPS-UD provides no specific guidance in terms of the level of granularity.⁸
- 4.8 The proposed rezoning would add significantly to development capacity provided it can be serviced with adequate development infrastructure to support the development of land for housing and business use.⁹
- 4.9 There are no issues with the proposal and ODP achieving a well-functioning urban environment within the Development Area.¹⁰

³ Joint Witness Statement "Confirmation of agreement of planning matters" dated 16 July 2024 at [2.3].

⁴ Joint Witness Statement "Confirmation of agreement of planning matters" dated 16 July 2024 at [2.4].

⁵ Joint Witness Statement "Confirmation of agreement of planning matters" dated 16 July 2024 at [2.1]; Joint Witness Statement "Planning" dated 30 August 2024 at [9].

⁶ Joint Witness Statement "Planning" dated 30 August 2024 at [10]-[11].

⁷ Joint Witness Statement "Planning" dated 30 August 2024 at [6]-[8], noting Mr Willis was uncertain as to whether it qualifies as an 'existing urban area' but accepted it would be a 'new urban area'.

⁸ Joint Witness Statement "Planning" dated 30 August 2024 at [86.2].

⁹ Joint Witness Statement "Planning" dated 30 August 2024 at [19].

¹⁰ Joint Witness Statement "Planning" dated 30 August 2024 at [84].

- 5 The remaining matters of disagreement between the planners (and other expert witnesses) following conferencing are covered later in these submissions. These relate predominantly to whether the rezoning would contribute to a well-functioning urban environment as required by Policy 1.
- 6 Mr Willis, as confirmed in the addendum to his section 42A, does not consider the proposal contributes to the well-functioning urban environment of Greater Christchurch¹¹ and notes this "*is principally due to the site's relatively remote location, which results in it not having good accessibility, especially for public and active transport.*"¹² Mr Boyes holds the same view.¹³
- 7 Notwithstanding that the Submitters and their expert witnesses do not agree with Mr Willis' position on accessibility in terms of Policy 1(c), this statement highlights that the key reason for differing opinion between planners on the merits of the rezoning is due to differing interpretations as to the levels of granularity which the NPS-UD requires a local authority to provide sufficient development capacity for demand in different locations.
- 8 The Submitters say that if the Panel finds that the part of the urban environment west of the District has a housing locality and market demand in terms of the NPS-UD that cannot be substituted with supply in the three main towns, then there is an imperative under the NPS-UD for the Panel to provide supply at least sufficient development capacity in that part of the District.
- 9 As set out in our primary legal submissions, the Submitters' position is that:¹⁴
- 9.1 While Policy 2 of the NPS-UD does not include the word 'location' in terms of needing to provide sufficient development capacity, it is a necessary implication deriving from the words "*to meet expected demand*".
- 9.2 Demand, as demonstrated in the evidence,¹⁵ is necessarily location-specific as different locations provide different types of housing which appeal to different peoples' needs.

¹¹ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024.

¹² Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [67].

¹³ Supplementary evidence of Nick Boyes on behalf of the Oxford-Ohoka Community Board dated 18 October 2024 at [4].

¹⁴ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited dated 20 June 2024 (Hearing Stream 12D: Rezoning Requests (Ōhoka)) from [96].

¹⁵ Statement of Evidence of Chris Jones dated 5 March 2024 at [15]-[23]; Statement of Evidence of Natalie Hampson dated 4 March 2024; and Statement of Evidence of Gregory Akehurst dated 4 March 2024.

9.3 Reading the NPS-UD as a whole, it is clear that local authorities are required to assess capacity and sufficiency in different locations:

(a) Objective 3 requires district plans to:

"enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which...

(c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment."

(b) Policy 1(a) sets out that well-functioning urban environments are urban environments that, at a minimum:

"have or enable a variety of homes that: (i) meet the needs, in terms of type, price, and location, of different households"

(c) Policy 2 requires local authorities to:

"at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term"

(d) Clause 3.2(a) requires a local authority to provide sufficient development capacity in 'existing and new urban areas', and the GCSP Map 2: The Greater Christchurch spatial strategy (1 million people) identifies a range of locations, including Ōhoka as an existing urban area.

(e) Clause 3.24(1)(b) requires housing demand assessments (which the WCGM22 forms part of for the Greater Christchurch urban environments):

"...estimate, for the short term, medium term, and long term, the demand for additional housing in the region and each constituent district of the tier 1 or tier 2 urban environment:

(a) in different locations; [...]"

(f) Clause 3.25(2)(a) requires that within housing demand assessments the development capacity must be quantified as numbers of dwellings "in different locations, including in existing and new urban areas".

9.4 The monitoring and assessment of development capacity the Council is required to undertake (as set out in the clauses of the NPS-UD) necessarily ensures consistency with the objectives and policies of the NPS-UD (in particular Objective 3, Policy 1(a), and Policy 2). This necessarily means that Council must provide sufficient development capacity in different locations of demand within its urban environment.

10 The only evidence before the Panel is that:

10.1 That there is a distinct and separate demand for housing outside of the three main towns and particularly in the west of the District, including in Ohoka where there is currently insufficient development capacity to meet demand in the medium and long terms.

10.2 The demand outside of the three main towns and in the west of the District is not substitutable with demand/capacity in the three main towns.

There is a distinct and separate demand for housing outside of the three main towns and particularly in the west of the District, including in Ohoka where there is currently insufficient development capacity to meet demand in the medium and long terms.

10.3 Mr Jones' evidence sets out from his on-the ground experience as a real estate agent in the District that residential buyers looking to purchase in the District consistently express an interest of preference for the Ohoka area.¹⁶ In Mr Jones' experience, there is high demand for housing in the Ohoka area, relative to and distinct from other areas in the District, including Kaiapoi, Rangiora, and Woodend/Pegasus.¹⁷

10.4 Mr Jones' experience is corroborated by the survey undertaken by ResearchFirst and described in the evidence of Mr Davidson. The results of that survey demonstrate:¹⁸

(a) When asked where survey participants would most like to live in the Waimakariri District, Ōhoka ranked third behind the two major settlements in the District (Rangiora and Kaiapoi). 21% of respondents nominated Ōhoka as their first choice. This shows that unprompted preferences for Ōhoka are ahead of urban

¹⁶ Statement of Evidence of Mr Jones dated 5 March 2024 at [8].

¹⁷ Statement of Evidence of Mr Jones dated 5 March 2024 at [14]; Supplementary Statement of Evidence of Mr Jones dated 13 June 2024 at [6.2] and [7].

¹⁸ Statement of Evidence of Mr Davidson dated 13 June 2024 at [24].

areas and settlements such as Pegasus, Woodend, Tuahiwi, Oxford, etc.

- (b) When asked to reconsider their preferences but to imagine that “all the areas in the Waimakariri District have all the same facilities available to you (i.e. schooling, supermarkets and transport)” the preference for Ōhoka increased to second overall across the District, moving ahead of Kaiapoi.

10.5 Mr Davidson considers the results of the survey clearly shows that Ōhoka has high demand relative to other areas in Waimakariri District generally.¹⁹

10.6 Mr Akehurst has calculated the demand arising outside of the three main towns (but within the Greater Christchurch urban environment) inclusive of the competitiveness margin to be:

- (a) 748 dwellings in the medium term, and accounting for feasible supply in this area (224 dwellings) results in a shortfall in the medium term of 524 dwellings to meet expected demand.²⁰

- (b) 1,931 dwellings in the long term, and accounting for feasible supply in this area (390 dwellings) results in a shortfall in the long term of 1,541 dwellings to meet expected demand.²¹

10.7 Of these figures, Mr Akehurst’s evidence is that in both the short-medium and long term, 83% of the dwelling demand (including competitiveness margin) for dwellings outside of the three main towns (but within the Greater Christchurch urban environment) occurs in the Southwest quadrant of the District’s portion of the Greater Christchurch urban environment (comprising the areas of Fernside, Mandeville, Ōhoka, Swannanoa, Eyreton and Clarkville).²²

10.8 Mr Akehurst considers that the rezoning would enable more people to live in areas of the urban environment where there is high demand for housing, relative to other areas within the urban environment, consistent with Objective 3(c).²³

10.9 Mr Akehurst concludes “*By focusing solely on the townships of Rangiora, Kaiapoi and Woodend/Pegasus within the GCUE, and not considering demands that arise outside these*

¹⁹ Statement of Evidence of Mr Davidson dated 13 June 2024 at [25].

²⁰ Statement of Evidence of Mr Akehurst dated 5 March 2024 at [61].

²¹ Statement of Evidence of Mr Akehurst dated 5 March 2024 at [62].

²² Statement of Evidence of Mr Akehurst dated 5 March 2024 at [63].

²³ Statement of Evidence of Mr Akehurst dated 5 March 2024 at [76].

locations, Waimakariri District Council have failed to identify a significant market segment whose housing needs are not being met.”²⁴

10.10 Ms Hampson’s evidence is that:

- (a) While the three main towns have accounted for the majority of the District’s population growth, the rest of the Greater Christchurch area of the District (outside of the three main towns) has still provided for between 4-16% of the district population growth since 2018.²⁵ Further that it is important to remember that population growth is (largely) dependent of dwelling supply. Dwelling supply is in turn contingent on dwelling capacity. The fluctuations seen in the population estimate data are a reflection of where housing development has been occurring.²⁶
- (b) While the three main towns have accounted for the majority of the District’s total dwelling consents year on year, the rest of the Greater Christchurch area of the District (outside of the three main towns) has still provided for between 8-11% of the total dwelling consents per year since 2018.²⁷ Of the dwelling consents issued outside of the three main towns in that period, Ohoka accounted for as high as 26% of these, and *“this confirms Ōhoka’s attractiveness relative to other settlements in Greater Christchurch as a location of demand.”*²⁸ Ohoka is a location of demand in the District.²⁹
- (c) Smaller settlements will always appeal to a share of the market as not everybody wants to live in a large urban town. As the three main urban towns get larger, this may even make the smaller settlements relatively more attractive for some households.³⁰
- (d) StatisticsNZ projects that Ōhoka and Mandeville combined⁹ will increase its population by 41% between 2023 and 2048 under the High Growth Series (growth of 1,580 additional residents).¹⁰ This location has the highest projected growth in both quantum and percent

²⁴ Statement of Evidence of Mr Akehurst dated 5 March 2024 at [129].

²⁵ Supplementary evidence of Ms Hampson dated 18 June 2024 at [22].

²⁶ Supplementary evidence of Ms Hampson dated 18 June 2024 at [24].

²⁷ Supplementary evidence of Ms Hampson dated 18 June 2024 at [28].

²⁸ Supplementary evidence of Ms Hampson dated 18 June 2024 at [29].

²⁹ Supplementary evidence of Ms Hampson dated 18 June 2024 at [63].

³⁰ Supplementary evidence of Ms Hampson dated 18 June 2024 at [44].

of all the settlements/towns outside of the three main townships.³¹

10.11 The evidence of Mr Sellars is that the western part of the District's urban environment (outside of the three main towns) has experienced a significant price escalation since 2019 which reflects the constrained supply in this part of the District.³²

The demand outside of the three main towns and in the west of the District is not substitutable with demand/capacity in the three main towns.

10.12 Mr Jones' evidence is that from his experience with residential purchasers showing an interest or preference in the Ohoka area, these same buyers would not generally substitute this location for a property within Rangiora or Kaiapoi. Rather, they tend to look to other locations outside of main urban townships, but still within the Greater Christchurch urban environment.³³

10.13 Ms Hampson does not consider that the future development areas in Rangiora and Kaiapoi are an effective substitute for demand occurring outside of the three main towns, nor that the proposal will transfer demand away from the main urban townships. Rather the rezoning will meet demand in the Ōhoka locality and may draw some demand away from other settlements within Greater Christchurch outside of the main urban townships.³⁴

10.14 The evidence of Mr Sellars is that Rangiora, Kaiapoi and Woodend/Pegasus are not an option as a supply substitute to the Ōhoka area.³⁵

11 Despite the above, Mr Willis in his addendum states that he remains of the opinion that *"the evidence demonstrated there is demand for housing in Ohoka, however, this demand is not high relative to other areas in the urban environment, such as Rangiora, Kaiapoi and Woodend."*³⁶ Further, he considers that the capacity that would be provided by the proposed rezoning would be interchangeable with capacity provided in other locations such as Rangiora, Kaiapoi,

³¹ Supplementary evidence of Ms Hampson dated 18 June 2024 at [45].

³² Statement of Evidence of Mr Sellars dated 5 March 2024 at [60].

³³ Statement of Evidence of Mr Jones dated 5 March 2024 at [11] and [17]; Supplementary evidence of Mr Jones dated 13 June 2024 at [7.1].

³⁴ Supplementary evidence of Ms Hampson dated 18 June 2024 at [62].

³⁵ Statement of Evidence of Mr Sellars dated 5 March 2024 at [107].

³⁶ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [59].

and Woodend.³⁷ It is unclear what Mr Willis' response is to the evidence set out in paragraphs 10.3 to 10.14 above or whose contrary evidence he is relying on to make these assertions, and in this respect we note:

- 11.1 The Panel had directed expert conferencing between the Submitters' and the Council's economic experts. However, following the receipt of request information from Mr Yeoman for the Council, this conferencing was cancelled on the basis that Mr Yeoman did not provide any evidence or information in respect of demand and sufficiency outside of the three main towns and in this respect there was little point in conferencing.
 - 11.2 The information Mr Yeoman did provide made it clear he does not have the information, nor has he assessed demand and sufficiency for housing for Ohoka.³⁸
 - 11.3 While Mr Yeoman in his evidence for the stream 12D hearing baldly stated his view that the demand between Ohoka and the three main townships was substitutable,³⁹ there is no analysis as to how Mr Yeoman has been able to determine this demand and to compare its relativity with other locations when he has not considered or assessed demand/capacity for housing outside of the three main towns.
- 12 Mr Boyes holds the same view as Mr Willis on this issue, and in his evidence for the reconvened hearing appears to rely on the evidence of Mr Knott and Mr Goodfellow to assert that while the Submitters' evidence does demonstrate a demand for housing for Ohoka, this demand relates to the existing Ohoka settlement and it cannot be assumed that same demand will transfer to the proposed rezoning.⁴⁰ We are not aware of Mr Knott or Mr Goodfellow holding any relevant expertise to be able to comment on matters of demand. Nor have Mr Boyes, Mr Knott, or Mr Goodfellow provided any response to the evidence in paragraphs 10.3 to 10.14 above.
- 13 Mr Boyes goes on to assert his view that the proposed rezoning would be interchangeable with those found in alternative urban locations such as Rangiora, Kaiapoi, and Woodend but does not say

³⁷ Proposed Waimakariri District Plan: Ōhoka Rezonings – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [60].

³⁸ Memorandum to Matt Bacon from Rodney Yeoman "Stream 12D Provision of Information to Inform Expert Conferencing" dated 24 July 2024.

³⁹ Statement of evidence of Mr Yeoman for Hearing Stream 12D dated 20 May 2024 (Appendix C to Section 42A Report of Mr Willis "Proposed Waimakariri District Plan: Ōhoka Rezonings" dated 31 May 2023) at [3.15], [3.14], [3.34], and [3.40].

⁴⁰ Supplementary evidence of Nick Boyes on behalf of the Oxford-Ohoka Community Board dated 18 October 2024 at [6].

what evidence he relies on to form this conclusion.⁴¹ Mr Boyes does not engage with the expert evidence of the Submitters' on substitutability and it is not clear what expertise Mr Boyes has himself to come to such a conclusion.

- 14 If the Panel accepts our legal submissions as to the granularity at which Council should be providing sufficient development capacity, and that capacity in the west of the District is not substitutable for capacity in the three main towns, then irrespective of Mr Willis' views on the "*remoteness of the location*",⁴² the Council must provide capacity in this area.
- 15 In this sense, the difference in opinions between the planners as to whether the proposed rezoning contributes to a well-functioning urban environment are inherently based on differing interpretations of the key issue.
- 16 The matters contained in Policy 1 must be considered in the context of the wider urban environment needing to provide capacity in a particular location. The assessment under Policy 1 should not be made in a comparative way with what might otherwise occur in different localities in the District, it must be in its proper context.
- 17 The Submitters request that the Panel ask Mr Willis the following question:

If we accept the Submitters' position in terms of the granularity of which sufficient development capacity should be provided, doesn't the evidence demonstrate a need for sufficiency in this locality and market, and wouldn't your position on the rezoning have to change as a result?

- 18 We turn now to some of the more site-specific disagreements between the experts.

THE SITE-SPECIFIC OUTSTANDING ISSUES

- 19 In this section, we consider the key outstanding site-specific disagreements remaining between the expert witnesses following expert conferencing, with reference to Mr Willis' addendum and recommendation.
- 20 We do not traverse all of the areas of agreement between the experts in the joint witness statements as this information is already

⁴¹ Supplementary evidence of Nick Boyes on behalf of the Oxford-Ohoka Community Board dated 18 October 2024 at [7].

⁴² Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [67].

before the Panel and has been summarised in the evidence of the relevant witnesses for this reconvened hearing.⁴³

Engineering expert conferencing

- 21 This expert conferencing related to stormwater, wastewater and flooding matters (both for the site and cumulatively) and resulted in three joint witness statements.⁴⁴
- 22 We understand from Mr Willis' addendum that the key remaining concern he holds in respect of the engineering evidence is the potential for groundwater seepage into the stormwater management systems and specifically that this may be a prohibited activity under the LWRP, which may render the rezoning nugatory.
- 23 This concern appears to have arisen out of the engineering joint witness statement for hearing stream 12D⁴⁵ where in respect of question 7 all experts agreed that the use of raingardens will provide appropriate treatment of stormwater at the site, and that *"there is potential for some groundwater seepage into the raingarden drainage layer and stormwater network over the lifetime of the system. This base flow should be managed via detailed design so it does not result in a continuous flow through the downstream attenuation basins and result in a maintenance issue within the basin."* We note this question did not require the experts to consider what this means in the context of the LWRP issues.
- 24 Mr O'Neill's evidence for this reconvened hearing notes that this issue has already been resolved through the engineering joint witness conferencing that occurred for PC31.⁴⁶ Mr Willis is aware of this as he was the reporting officer in that process as well. In that joint witness statement all of the experts (including Mr Bacon and Roxburgh for the Council, and Mr Margetts and Mr Wilkins for ECan) agreed that the type of groundwater infiltration that Mr Willis is concerned about is endemic to all stormwater and wastewater networks and has not interpreted by Environment Canterbury to require a specific water take consent under the LWRP.

⁴³ See Reconvened Statement of Evidence of Mr Throssell dated 17 October 2024; Reconvened Statement of Evidence of Mr Veendrick dated 17 October 2024; Reconvened Statement of Evidence of Mr Sexton dated 17 October 2024; Reconvened Statement of Evidence of Mr Compton-Moen dated 17 October 2024; Reconvened Statement of Evidence of Mr O'Neil dated 17 October 2024; Reconvened Statement of Evidence of Mr Phillips dated 17 October 2024; Reconvened Statement of Evidence of Mr Fuller dated 17 October 2024; and Reconvened Statement of Evidence of Mr Walsh dated 17 October 2024.

⁴⁴ Joint Witness Statement "Engineering" dated 6 August 2024; Joint Witness Statement "Stream 12C/12D Stormwater Expert Conferencing" dated 5 September 2024; and Joint Witness Statement "Stream 12C/12D Wastewater Expert Conferencing" dated 4 September 2024.

⁴⁵ Joint Witness Statement "Engineering" dated 6 August.

⁴⁶ Reconvened Hearing Statement of Evidence of Mr O'Neill dated 17 October 2024 at [12].

25 In any event, we have dealt with ECan's interpretation of its rules in detail in our primary legal submissions and will not repeat these here.⁴⁷ Quite simply, we do not agree with ECan's legal analysis and neither does WDC's own legal advisor.⁴⁸

26 In this respect, the concern Mr Willis holds over the interception of groundwater, notwithstanding Mr O'Neill's evidence that the experts do not consider this to be an insurmountable issue, as it has a consenting path which is not precluded by ECan's (wrong) interpretation.

Transport

27 This expert conferencing related transport and public transport matters (both for the site and cumulatively) and resulted in two joint witness statements.⁴⁹

28 Mr Willis in his addendum, while accepting that the proposed rules package for the site will require transport upgrades prior to the site's development and that if implemented this rule should resolve the identified network issues and thereby improve accessibility, remains concerned that there is uncertainty that all the required upgrades will be substantially completed.⁵⁰ He therefore considers he cannot conclude that the proposal is integrated with transport infrastructure.⁵¹

29 We note that in the planning expert conferencing for stream 12D, all planners (including Mr Willis) agreed that:

29.1 The NPS-UD does not require infrastructure to be in place or planned in advance of unanticipated plan changes. Rather, certainty is required that infrastructure can be physically and legally provided and can be funded. The counterfactual would otherwise illogically preclude most or all Policy 8 proposals, given that adequate infrastructure would rarely, if ever, be in place, planned or funded for significant development proposals that are 'unanticipated' or 'out of sequence'.⁵²

29.2 Based on the evidence, there is sufficient certainty that the site physically can be serviced with adequate road

⁴⁷ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited (Hearing Stream 12D: Rezoning Requests (Ōhoka)) at [174]-[177] and Appendix 2.

⁴⁸ Mr Carranceja from Buddle Findlay.

⁴⁹ Joint Witness Statement "Transport" dated 23 August 2024; and Joint Witness Statement "Transport" dated 10 October 2024.

⁵⁰ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [35] and [37].

⁵¹ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [37].

⁵² Joint Witness Statement "Planning" dated 30 August 2024 at [12]-[13] and [42]-[43].

infrastructure, accepting that there are planning and funding decisions, including by third parties, that need to be made to enable this. The consequence is that there is some uncertainty as to timing and overall quantum of development, which is to follow the required road upgrades.⁵³

- 30 The evidence of Mr Fuller and Mr Walsh for this reconvened hearing set out how the various transport improvements required in the proposed rules package can be physically and legally provided and funded with sufficient certainty.⁵⁴
- 31 Again, this issue needs to be considered in the context of the key issue discussed above regarding the granularity at which the NPS-UD requires Council's to provide sufficient development capacity. If the Panel finds that the NPS-UD is required to provide capacity to meet the specific demand of the Ohoka area, then there is an imperative on the Council to provide that development capacity (including the necessary development infrastructure) irrespective of the fact that development infrastructure may not be in place or planned. It would not be strategic, responsive, or consistent with the NPS-UD to not enable capacity on the basis that while development capacity can physically and legally be provided, the specific funding mechanisms to achieve this have not yet been identified. This would be very circular and would preclude almost all proposals under Policy 8.
- 32 As an aside, we have some concerns regarding the process related to the cumulative joint witness statement for transport.⁵⁵
- 33 The process took a considerable amount of time with delays in finalising the joint witness statement occurring at the Council's end. The Submitters would like to be reassured that the delays which occurred did not result from Mr Binder taking time to consult with other individuals over the drafting of the joint witness statement.
- 34 For example, we understand that Mr Binder copied Mr Buckley in email chains containing the draft JWS and understand that Mr Carr raised this as a concern and removed Mr Buckley from the email chains on the basis that Mr Buckley was not a party to the expert conferencing, and it was inappropriate to include him in the exchange.
- 35 In order to put to rest the perception that there may have been outside influence in the drafting of the JWS and in the expression of

⁵³ Joint Witness Statement "Planning" dated 30 August 2024 at [14]

⁵⁴ Reconvened Statement of Evidence of Mr Walsh dated 17 October 2024; and Reconvened Statement of Evidence of Mr Fuller dated 17 October 2024.

⁵⁵ Joint Witness Statement "Transport" dated 10 October 2024.

Mr Binder's views in the JWS,⁵⁶ the Submitters request that the Panel simply ask Mr Willis and Mr Buckley whether they saw the draft JWS and/or provided input to Mr Binder as to its contents before it was signed. If an assurance is given that this did not occur, the concerns can be laid to rest.

- 36 For completeness, we understand that Mr Willis does not consider that the rezoning would be consistent with:
- 36.1 Policy 1(c) because of the site's relative remoteness and consequential reliance on private motor vehicles.⁵⁷
- 36.2 Policy 1(e) because development in this location would contribute more GHG emissions than alternative growth options surrounding the main towns of the district.⁵⁸
- 37 We have already covered the position in respect of Policy 1 and these matters in full in our legal submissions and will not repeat that here.⁵⁹
- 38 However, again, the fundamental differences in the planning experts position in respect of these aspects of Policy 1 is based on their differing position on the key issue set out above regarding the granularity at which the NPS-UD requires Council's to provide sufficient development capacity.
- 39 If the Panel finds that the NPS-UD is required to provide capacity to meet the specific demand of the Ohoka area, then there is an imperative on the Council to provide that development capacity. In the context that the Ohoka area provides for a distinct and un-substitutable market and demand, it is not appropriate to consider the matters in Policy 1 as against other locations in the urban environment forming part of a different market and demand.
- 40 In this respect, we do consider that it is appropriate to consider the proposed rezoning against other proposals in this process to provide capacity in this location and market. The consolidated nature of the proposed Ohoka rezoning is preferable compared to other submitter

⁵⁶ Which would be a breach of Rule 9.4(h) of the Environment Court Practice Note 2023 which provides that: "*In conferring with another expert witness and in preparing a joint witness statement, an expert witness must exercise independent and professional judgment and must not act on the instruction or direction of any person to present an opinion or to withhold or avoid agreement.*"

⁵⁷ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [64].

⁵⁸ Proposed Waimakariri District Plan: Ōhoka Rezoning – S42A Report of Mr Andrew Willis Addendum dated 9 October 2024 at [62].

⁵⁹ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited (Hearing Stream 12D: Rezoning Requests (Ōhoka)) dated 20 June 2024 at [48]-[87].

proposals as the scale and master-planned nature of the Submitters' rezoning would:⁶⁰

- 40.1 concentrates the population which in turn increases the viability of providing day-to-day type goods and services, local schooling, healthcare facilities, and local reserves and recreation facilities,
 - 40.2 leverages the social fabric and networks of existing communities,
 - 40.3 provides more affordable housing options,
 - 40.4 makes efficient use of existing infrastructure (acknowledging that upgrades would likely be required), and
 - 40.5 provides for higher densities which:
 - (a) is a more efficient use of land,
 - (b) provides for walkable communities and the ability to service the population with public transport, and
 - (c) are less carbon intensive.
- 41 Viewed through that lens, and acknowledging the agreement between all parties that Ohoka is already part of the well-functioning Greater Christchurch urban environment, the proposal will:
- 41.1 Improve accessibility for people in the Ohoka area between housing, jobs, community services, natural and open spaces (including by way of public and active transport) because the rezoning will otherwise be providing transport options and connections that do not currently exist in this part of the urban environment.
 - 41.2 Support reductions in greenhouse gas emissions by providing future residents with the ability to reduce their carbon footprints,⁶¹ including by providing the option of public transport (which will also provide existing residents of the Ohoka area with an alternative transport mode that supports greenhouse gas reductions).

⁶⁰ Reconvened Statement of Evidence of Mr Walsh dated 17 October 2024 at [25]; Statement of Evidence of Mr Walsh dated 5 March 2024 at [97].

⁶¹ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited (Hearing Stream 12D: Rezoning Requests (Ohoka)) dated 20 June 2024 at [68]-[75]; Statement of evidence of Mr Farrelly dated 5 March 2024.

BRIEF NOTE ON FAST TRACK APPROVALS BILL

- 42 As the Panel may be aware, Cabinet selected the proposed development to be included in Schedule 2 of the Fast Track Approvals Bill as a project with “significant regional or national benefits”.⁶² The project was selected for inclusion in the Bill through a process which involved an application to the Ministry for the Environment, analysis by officials and recommendations process by an Independent Advisory Group and final decisions by Cabinet.
- 43 It is expected that the Fast Track Approvals Bill will be passed into law before the end of this year. That legislation allows applications to be granted irrespective of whether it would include a prohibited activity.⁶³ This too would resolve any issues that may arise as a result of ECan’s interpretation of the LWRP rules following the AWA decision.

RESPONSE TO CERTAIN MATTERS IN BUDDLE FINDLAY MEMORANDUM

- 44 We have reviewed Buddle Findlay’s legal response to Minute 33.⁶⁴ (*Buddle Finlay Letter*).
- 45 We do not seek to respond to every point of detail in the Buddle Findlay advice, the Submitters’ primary position on these matters is set out in full its legal submissions.⁶⁵
- 46 However, we make the following additional comments in response to some of the submissions made by Buddle Findlay in its memorandum:

Questions 1(b) and 1(f)⁶⁶

- 47 Buddle Findlay do not consider that the NPS-UD or Policy 2 expresses any form of presumption or preference for providing more

⁶² Hon Shane Jones and Hon Chris Bishop “Fast-track projects released” (press release, 6 October 2024) <<https://www.beehive.govt.nz/release/fast-track-projects-released>>.

⁶³ Fast-track Approvals Bill (31-2), cl 22A(7) and Schedule 4, cls 12(3) and (4).

⁶⁴ Letter from Buddle Findlay to Mark Buckley “Legal Response to Minute 33 – Hearing Stream 12C and 12D” dated 23 August 2024.

⁶⁵ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited dated 20 June 2024 (Hearing Stream 12D: Rezoning Requests (Ōhoka)).

⁶⁶ Letter from Buddle Findlay to Mark Buckley “Legal Response to Minute 33 – Hearing Stream 12C and 12D” dated 23 August 2024 at [13]–[29].

than sufficient development capacity.⁶⁷ We do not agree and note that the planners at conferencing all agreed:⁶⁸

"the term 'at least' indicates a preference for enabling rather than constraining development capacity (all other NPS-UD matters considered, e.g. contributing to a well-functioning urban environment)."

- 48 Buddle Findlay note that pragmatically an oversupply in capacity may increase the length of time between plan changes needed to address any future shortfalls resulting from the district plan.⁶⁹ Similarly, the planners at conferencing all agreed:⁷⁰

"that 'at all times' means a minimum of 10 years medium term capacity must be in place on a rolling basis throughout the life of a district plan.

Live zoning 20 years of capacity as at the commencement of a district plan is one way in which that can be achieved. Deferred zoning is an example of another method for responsively delivering additional and sufficient capacity, as and when it is required through the life of a district plan. The Proposed Plan has a land release mechanism similar to deferred zoning by way of the New Development Areas ('NDAs'), noting that the NDAs only relate to Rangiora and Kaiapoi. The three yearly Housing and Business Capacity Assessment ('HBA') cycle could also be relied on to monitor capacity with subsequent rezoning of land where required. However, given the length of time HBA and plan change processes takes, there would need to be 10 years of capacity plus sufficient buffer capacity at any point in time throughout the life of a district plan to allow for the time taken for the monitoring, review and rezoning processes to deliver any additional required capacity."

- 49 Ms Hampson also discusses the benefits of rezoning more land than required in the district plan process:⁷¹

"In the scenario where a local authority consistently delivers only slim surpluses that are quickly eroded, even if it is being responsive to those shortfalls, that local authority is likely having an adverse impact on housing affordability, even if it is not having an adverse impact on housing supply. In that

⁶⁷ Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [16].

⁶⁸ Joint Witness Statement "Planning" dated 30 August 2024 at [26].

⁶⁹ Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [29(c)].

⁷⁰ Joint Witness Statement "Planning" dated 30 August 2024 at [20]-[21].

⁷¹ Supplementary evidence of Ms Hampson dated 18 June 2024 at [75]-[77].

situation, private landowners are often forced to initiate private plan changes just to keep urban housing supply flowing without constraint. Submissions, private plan changes and appeals are expensive. Those costs have to be recovered in the overall costs of residential development. This ultimately drives up the prices of residential sections – counter to the objectives of the NPS-UD.

With that in mind, district plan reviews are the most efficient time to provide at least sufficient capacity at the least marginal cost to landowners and ratepayers. Waimakariri is a very fast growing urban environment. If there is any Council that needs to be generous in their surplus zoned land, Waimakariri would be one of them.³⁰ Yet, the notified PDP, even with the assistance of Variation 1, has delivered a "tight" level of sufficiency across all three main urban townships, did not provide strategic growth for Woodend/Pegasus, has not provided sufficient capacity in the rest of Greater Christchurch outside of the main urban townships and has not provided sufficient capacity in the rest of the district."

Questions 1(d)⁷²

- 50 Buddle Findlay consider that a developer needs to demonstrate the provision of adequate infrastructure "can be met by providing an actual, realistic and workable proposal that will provide adequate development infrastructure to support the development of the relevant land for housing or business use."⁷³
- 51 The planners at conferencing all agreed that there is sufficient certainty that the site physically can be serviced with adequate road and three waters infrastructure, accepting there are planning and funding decisions that need to be made to enable this.⁷⁴
- 52 Buddle Findlay consider that a submitter can demonstrate the adequate provision of development infrastructure through a number of vehicles (for example Council agreeing to amend their infrastructure plans, contractual agreement between the Council and landowner, or establishing a 'special purpose vehicle').⁷⁵ However, they seem to imply that this needs to be in place now in order for a

⁷² Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [46]-[61].

⁷³ Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [56].

⁷⁴ Joint Witness Statement "Planning" dated 30 August 2024 [14] and [16].

⁷⁵ Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [57].

submitter to be able to rely on the responsive planning provisions in the NPS-UD.

- 53 While we agree that these vehicles are useful tools for Councils and developers, but do not agree with the suggestion that these should be in place before a decision-maker is able to make a decision under Policy 8. Policy 8 necessarily contemplates proposals that are “unanticipated” by RMA planning documents which would rarely, if ever, have adequate infrastructure in place, planned or funded.⁷⁶ Further, it is highly unlikely that a developer would go to the cost of establishing such a vehicle with the Council without the certainty that it would be able to develop the land in question. Equally, it would be highly unusual for a Council to enter into such an agreement where the land had not yet been deemed appropriate for development.
- 54 The correct position is best reflected in the consensus of the planning experts at conferencing:⁷⁷

“Certainty is required that infrastructure can be provided (i.e. physically), not that it is in place, planned, funded or identified in an LTP. The counterfactual would otherwise illogically preclude most or all Policy 8 proposals, given that adequate infrastructure would rarely, if ever, be in place, planned or funded for significant development proposals (with presumably significant infrastructure requirements) that are ‘unanticipated’ or ‘out of sequence’.”

Questions 1(h)⁷⁸

- 55 Buddle Findlay notes that “*The WCGM22 demand assessment was not limited to urban housing demand for the main towns of Rangiora, Kaiapoi, and Woodend/Pegasus, but considered all urban demand in the district.*”⁷⁹
- 56 This is not correct. Mr Yeoman has confirmed that the WCGM22 only assesses demand and sufficiency for the three main towns and that there are no demand and sufficiency results for the settlement and large lot residential zones outside the main towns.⁸⁰ As set out

⁷⁶ Joint Witness Statement “Planning” dated 30 August 2024 at [43].

⁷⁷ Joint Witness Statement “Planning” dated 30 August 2024 at [43].

⁷⁸ Letter from Buddle Findlay to Mark Buckley “Legal Response to Minute 33 – Hearing Stream 12C and 12D” dated 23 August 2024 [80]-[109].

⁷⁹ Letter from Buddle Findlay to Mark Buckley “Legal Response to Minute 33 – Hearing Stream 12C and 12D” dated 23 August 2024 at [84].

⁸⁰ Memorandum of Mr Yeoman to Mr Bacon dated 24 July 2024 “Stream 12D Provision of Information to Inform Expert Conferencing”.

above, it was on this basis that the Panel cancelled the economic conferencing for stream 12D.⁸¹

57 Buddle Findlay go on to say that:⁸²

"clause 3.2(1)(a) confirms that the provision of at least sufficient development capacity is not intended to be at provided at a fine level of locational granularity such as a particular site or group of sites. Instead, the provision of at least sufficient development capacity is intended to be at a broad level of locational granularity, which is to meet expected demand in existing and new urban areas in the district."

58 We clarify that we are not suggesting that the granularity of development capacity provision is required at the level of a "site or group of sites". We reiterate that:

58.1 The planners all agreed at conferencing that the Ōhoka settlement as depicted in Map A of the CRPS and zoned SETZ in the proposed Plan is an 'existing urban area', or would otherwise be a 'new urban area' in any event;⁸³ and

58.2 Mr Akehurst's evidence demonstrates that the Ohoka area is a significant and separate market segment in the District.⁸⁴

59 Given this, the Submitters' position that the level of granularity at which a Council must provide sufficient development capacity under the NPS-UD requires consideration of the Ohoka locality and not just the three main towns is actually consistent with Buddle Findlay's interpretation of clause 3.2(1)(a).

THE VARIATION

60 The Submitters have previously filed legal submissions on the submission on the Variation.⁸⁵

61 This was not addressed at the time of the Hearing Stream 12D hearing.

⁸¹ Minute 34 of the Independent Hearings Panel dated 30 July 2024.

⁸² Letter from Buddle Findlay to Mark Buckley "Legal Response to Minute 33 – Hearing Stream 12C and 12D" dated 23 August 2024 at [105].

⁸³ Joint Witness Statement "Planning" dated 30 August 2024 at [6]-[8], noting Mr Willis was uncertain as to whether it qualifies as an 'existing urban area' but accepted it would be a 'new urban area'.

⁸⁴ Statement of Evidence of Mr Akehurst dated 5 March 2024 at [61]- [76].

⁸⁵ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited dated 20 June 2024 (Hearing Stream 12D: Rezoning Requests (Ōhoka)) related to its submission on Variation 1 to the Proposed Plan.

62 The Submitters' position remains that:⁸⁶

62.1 While proposed SETZ for Ōhoka is not a 'relevant residential zone',⁸⁷ the combination of the Amendment Act and the breadth of Variation 1 does provide sufficient basis to request the relief sought in the submission.

62.2 The Amendment Act:

- (a) 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.⁸⁸
- (b) provides that Councils may, when incorporating the MDRS through an IPI, "create new residential zones or amend existing residential zones."⁸⁹ 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.

62.3 '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".⁹⁰ 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 (although accounting for the specific design controls for the Development Area which ensure a distinct character that is different from the standard GRZ outcomes).⁹¹ 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.

62.4 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

⁸⁶ Legal submissions on behalf of Carter Group Property Limited and Rolleston Industrial Developments Limited dated 20 June 2024 (Hearing Stream 12D: Rezoning Requests (Ōhoka)) at [10]-[17].

⁸⁷ Resource Management Act 1991, s 2.

⁸⁸ Resource Management Act 1991, s 99(2)(a).

⁸⁹ Resource Management Act 1991, s 77G(4).

⁹⁰ Resource Management Act 1991, s 2.

⁹¹ Statement of Evidence of Tim Walsh, 5 March 2024, at [41].

ability to create a new GRZ, based on the definition of 'relevant residential zone' referred to in the definition of 'new residential zone'.

- 62.5 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.⁹²
- 63 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.
- 64 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: 24 October 2024



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⁹² 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.