

Before the Independent Commissioners appointed by the Waimakariri District Council

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

and

In the matter of Further submission by the Oxford Ohoka 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
Ohoka

Synopsis of legal submissions on behalf of Oxford-Ōhoka Community Board

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Synopsis of legal submissions for Oxford-Ōhoka Community Board:

1. The legal submissions presented on behalf of the Board, canvass the Board's opposition the submitters proposal to rezone land at Ōhoka under the Proposed Waimakakiri District Plan.
2. The Board's opposition remains moored in genuine concerns regarding the suitability of the proposed site at Ōhoka for the level of intensification that is sought.
3. The Board's view is that intensification in this location is not unanticipated but has been actively considered previously and rejected, including as part of PC31¹.
4. The Board supports retention of the Rural Living Zone for the site.
5. The Board says there will be opportunity costs from in terms of the Council's ability to provide for the more intensive development elsewhere in the district under the PWDP.
6. The significance of the proposed development is generally accepted on the basis that significance alone *does not* overcome the issues with the site or that the proposal *must* be granted, under the NPS-UD or otherwise.

Interpretation

7. The basic principles on interpretation are not in issue. The focus is on the words used and the purpose of the provisions, in context.
8. The role of guidelines is indicative, even if persuasive, they do not purport to be legal advice.

The NPS-UD

9. The NPS-UD was a response to housing affordability and supply issues.
10. One purpose of the NPS-UD is to require local authorities to ensure that planning decisions weren't adversely affecting property values. In other words, that supply, or capacity, could keep up with demand.
11. The NPS-UD does not give carte blanche for development, even if significant, anywhere. The Board says approval of unanticipated, or out of sequence development, depends (amongst other things) on:

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

- 11.1. whether the development will *contribute to a well-functioning urban environment*; and
 - 11.2. whether it can be provided for, with current or planned (and funded) infrastructure and transport connections.
12. Given the parameters around growth in areas that are centrally located, well serviced by public transport and where the area has *high* demand, relative to other areas, the expectation is that most additional development should be located adjacent, or as an extension, to existing urban areas with those attributes. That there is this expectation is borne out by three factors. The first is that the definition of urban environment makes this connection apparent, second that the need to be either infrastructure ready, or soon to be so, and thirdly, that this is what has happened in practice.

Applicability – an urban environment

13. The NPS-UD applies to “urban environments”, the definition is which is yet to be judicially confirmed by the Courts.
14. The submitter say that we have conflated the terms urban environment and urban area, in truth the conflation occurs in the definition itself.
15. The submitters reference the identification of the urban environment with use of the term in strategic documents, such as the Greater Christchurch Spatial Plan, which also identify Ōhoka as an urban area (as does the PWDP).
16. It is therefore ironic that the remainder of those plans is mostly glossed over, given that strategically, Ōhoka has never been included in strategic plans for urban growth. I return to this point below.
17. The Board remains sceptical of the idea that despite Ōhoka Village having a more rural feel and character, it is, or is intended to be, predominantly urban, and thereby should be a candidate for urban intensification on the scale proposed. This just seems to go too far and seems inconsistent with the clear purpose of strategically aligned urban development (anticipated or not), a view that is consistent with the need to integrate with planned and funded infrastructure and having access to existing and planned public transport networks.
18. Applying the NPS-UD to Ōhoka because it falls within the broader GC area, must also raise issues as to scale, in relation to the contribution that a development makes to the whole of GC as a well-functioning urban environment. Even if proposed rezoning operates well on its own site, its contribution to the urban

environment will be less significant, with the potential for detracting, or distraction given the need to respond to servicing and transport issues.

19. Should capacity be considered on a district or GC wide basis? Shouldn't policy 10, that says local authorities need to "work together when implementing this [NPS]", also apply to supplying capacity to all of GC.
20. Commissioner Rae raised that the use of *predominantly* in the definition of urban environment. While the explanation given by Mr Phillips is appealing, it may also raise the possibility that the NPS-UD can be used for areas that would otherwise be ruled out because they are plainly rural. And while they might not survive a merits consideration, it would still need to be considered, especially if deemed significant. That approach belies having a definition that acts as a filter and directs the focus to more meritorious proposals.
21. The Board also considers the meaning of "*or is intended to be*", remains undetermined. Though if the GC is the purported urban environment, it would not need to be grappled with here.
22. I note the Commissioners decision on PC31 found²:

We have found on the evidence that Ōhoka township is not in and of itself, nor it is intended to be (as provided for in the ...proposed District Plan), predominantly urban. Ōhoka is not in and of itself a housing or labour market of more than 10,000 people.

However, for the purpose of the NPS-UD Ōhoka township is within the Greater Christchurch Urban Environment and it is part of the Waimakariri and Greater Christchurch housing and labour market of more than 10,000 people.

23. If the Panel agrees with the PC31 Commissioners that Ōhoka represents part of an urban environment (as part of a much broader one), as noted by Mr Boyes³, that simply provides an opportunity for the proposed rezoning to be considered under the NPS-UD, which the submitters agree with.
24. In addition, it still needs to fulfil the requirements for plan rezonings as set out in *Colonial Vineyards v Marlborough DC*⁴ summarised in the Boards submissions.
25. The requirements include testing against Part 2. This is discussed again below, under the place of character [para 86].

² RCP031 Independent Hearing Panel Decision Report, dated 27 October 2023 at [52] and [53].

³ Evidence of Nick Boyes dated 13 June 2024 at paragraph 63.

⁴ [Colonial Vineyard Limited v Marlborough District Council \[2014\] NZEnvC 55 \(14 March 2014\) \(nzlii.org\)](#) at [17]

26. Given potential environmental effects of rules need to be considered, there are at least three reasons why the Board says that the Panel needs to be particularly sure regarding the outcomes proposed by the proposed rezoning:
- 26.1. The history of the site and the previous conclusions that this level of intensification would have unacceptable adverse effects:
 - 26.2. That the responsive provisions of the NPS-UD to justify the absence of the proposed rezonings strategic compatibility. This should require an applicant to leave no doubt that what they are proposing is appropriate and will, in all circumstances, be the most appropriate way to fulfil the purpose of the RMA: and
 - 26.3. That the nature of potential effects, in particular as they relate to constraints on transport, and from stormwater, which might limit the ultimate total of dwellings that can be delivered, affecting the overall significance of the proposal, as judged under the NPS-UD.
27. Without a more detailed understanding of the existing environment and potential effects from the proposed rezoning, it is difficult to assess whether potential solutions are likely to be effective, and therefore viable. This is the position Mr Keenan reaches in respect of stormwater.

The NPS-UD and the CRPS

28. As submitted the outcome on the CRPS v NPS-UD issue is fundamentally related to the factual findings on whether sufficient capacity is being provided (presumably in GC), an argument the Board is not directly involved in. The Board accepts the position in the s.42A report that sufficient capacity has been provided or will be under the PWDP process.
29. The CRPS requirement to avoid also remains applicable if it is found that the proposed rezoning does not achieve the objectives and policies of the NPS-UD. And, the CRPS remains a relevant consideration as it still needs to be given effect to under the District Plan.

The NPS-HPL

30. The Board accepts the position that, in accordance with the provisions of the NPS-HPL that govern its interim application⁵, it does not apply to land in areas where the Council has proposed changing the zoning from rural general to rural lifestyle under the PWDP.

⁵ Clause 3.5(7), NPS-HPL 2022

31. However, regardless of the NPS-HPL applying, the PWDP and CRPS provisions on soils and the maintenance of rural character still need to be considered. It is already the case that fragmentation down to 4ha is possible, with the submitters saying that this is the likely outcome if the proposed rezoning is declined⁶.

The NPS-UD - substance

32. If the NPS-UD applies, the proposed rezoning still needs to achieve its requirements.
33. The proposed rezoning must offer significant development capacity and contribute to a well-functioning urban environment to overcome the CRPS avoid requirement.
34. The Board notes the requirement to be “well-connected along transport corridors”⁷ which, while an undefined term, is taken to mean more than just road corridors, and includes public transport accessibility (which is also an objective of the NPS-UD) and active transport facilities.
35. The Board does not consider that these hurdles have been cleared militating against approval.

Highlighted objectives

36. The submitters have previously focused on Policies 3, 4, and 6. However, Boards agrees that the objectives must be read as a whole (as should the NPS-UD itself). The objectives indicate:
 - 36.1. The principle of well-functioning urban environments is an overarching consideration:
 - 36.2. Improving housing affordability is also a broad goal:
 - 36.3. The expectation is that more development is allowed to occur in areas close to job opportunities, areas well-served by public transport and areas that have a high demand relative to other areas within the urban environment:
 - 36.4. Urban environments will evolve according to changing needs:
 - 36.5. Te Tiriti o Waitangi is to be taken into account:

⁶ It might be more accurate to say that the more immediate effect will be that the Submitter can still pursue the rezoning under the PWDP, on which it has also submitted to achieve the same outcome as PROPOSED REZONING.

⁷ NPS-UD, 3.8(2)(b)

- 36.6. Decisions should be informed by robust and current information: and
- 36.7. Reducing greenhouse gas emissions and promoting resilience to climate change is also a broad goal.

Objective 3:

37. The submitters identify objective 3(c) (comparative demand) as providing one link with the proposed rezoning. They have sought to establish that high demand for housing exists at Ōhoka. However, whether that demand sets Ōhoka apart, relative to other areas, must be more arguable.
38. The popularity of Ōhoka is based, at least in part, on the levels of amenity and rural character it currently possesses. Whether that supports the argument that there is also a high demand for more intensive urban sized lots at Ōhoka, relative to other areas, is less clear.
39. The Board says that the scale of the relevant urban environment is again relevant, given the availability of similar lot sizes at other locations within the GC area, such as Prebbleton and West Melton, areas which are well-connected to transport corridors as predicated under the NPS-UD.
40. Given objective 2, the question of high demand also needs to be seen through the lens of the contribution that meeting such 'demand' (if any) would make to the goal of housing affordability, through a competitive market. The submitters' staged development and phased release of lots based on growing market demand⁸, does not suggest a desire to influence housing affordability, rather to capitalise on market appetite. Appetite it will no doubt foster.
41. Rural lifestyle is also another housing typology which also serves a demand.
42. The Board considers the relevant statutory framework⁹, seek to reduce the reliance on remote urban greenfield development, unless the level of growth is catered for in terms of transport and other infrastructure planning, while contributing to a well-functioning urban environment.
43. Creating a new suburb with larger but still more intensive urban scale lots, results in further fragmentation of the rural resource, and introduces an expectation for urban levels of service which will need to be provided long after the developer has moved on.

⁸ Evidence of Garth Falconer dated 5 March 2024 at paragraphs 16 and 58.

⁹ Meaning the NPS-UD, the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021, which includes additional intensification under the NPS-UD, and the NPS-HPL

44. Use of covenants was raised in PC31. It is presumed that, in pursuing SETZ, the need for such covenants is removed.
45. Returning to Objective 3(c), the short point is that the submitters have not convinced the Board that there is an *existing* demand for the housing typologies they are promoting at Ōhoka. Rather one that can be fostered on a 'build-it-and-they-will-come' basis.
46. The submitter also says that the rezoned land will be *near* a centre zone as it includes a Local Centre Zone. Whether that LCZ will have "*many employment opportunities*" seems doubtful. Near, likely means close to.
47. As for the being well-serviced by public transport, the submitters offer may assist. But whether that will mean that Ōhoka will be "*well serviced by existing or planned public transport*" remains, in the Boards view, uncertain.

Objective 4

48. A question raised by objective 4 is what "*needs*" are being met by the proposed rezoning?
49. Needs mean more than desires or wishes. The use of the terms indicates that for a planning decision to be made that significantly changes existing amenity values, even though such changes in and of themselves may not be an adverse effect, the changes must be in the service of a need.
50. In the context of the NPS-UD, such needs must include affecting overall housing affordability, providing housing in closer proximity to more opportunities for employment, and focusing new development in areas with access to transport options that will encourage mode shift and support reduced emissions. This view is supported by the "*needs of households*" as to type, price and location of development being identified as part of contributing to a well-functioning urban environment under policy 1.
51. Whether the opportunity for a rural village lifestyle is such a "*need*" may be more questionable.

Objective 6

52. The submitters have clarified their view that objective 6(c) and its directive that planning decisions be responsive is not their sole focus. The Board did not say it was, only that it was clearly emphasised. For infrastructure, the submitters maintain that all that must be shown is viability and the availability of funding,

while little is said of the need for integration or a medium- and longer-term *strategic* focus.

53. By strategic focus, in the medium and long term, the Board refers to the existence of a long-term strategy. Such strategies already exist¹⁰. The submitters view appears to be that those strategies needs to change to accommodate its proposed rezoning. But how that might affect those pre-existing strategies, and the decisions made in reliance of them, in the medium and long term is not explored. Perhaps the submitter also has a longer term strategy? The Board can only speculate. But the need to integrate with strategic planning is stated, clearly, and it is difficult to see how the rezoning proposal seek to achieve that integration.
54. It is evident that the requirement to be responsive has general application. It is *not* just relevant for proposals of significance but nor does it override the need for integration with infrastructure planning and funding, or the need to maintain a strategic perspective. The Board does not agree that the need for integration and strategic thinking must be set aside in the interest of responsiveness.
55. The Board remains concerned regarding the interface with infrastructure and funding. Though, the promises made to, it seems, fully fund infrastructure may assist, provided the can be *adequately secured* and not traded away subsequent to a successful rezoning. The clarification that use of existing capacity for wastewater is but one option remains a concern for the Board but is understood to mean utilising capacity in the Mandeville to Rangiora wastewater pipeline should not impact development at Mandeville in the long term.

Policies and implementation

56. The following NPS-UD policies appear the most relevant:

56.1. Policy 1 – Well functioning urban environments

The Board supports as correct the finding in the decision on PC31 that this policy wording¹¹:

...prescribes a minimum set of criteria which we consider must be met in a positive or at least a neutral way.

56.2. Policy 2

¹⁰ Including the Waimakariri District Development Strategy 'our District, Our Future – Waimakariri 2048, and now including the Greater Christchurch Spatial Plan (GCSP)¹⁰, none of which include Ōhoka as location for more intensive growth.

¹¹ RCP031 Independent Hearing Panel Decision Report, dated 27 October 2023 at [102].

Tier 1, 2, and 3 local authorities, 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.

56.3. Policy 6

When making planning decisions that affect urban environments, decision makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this [NPS]
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - (ii) are not, of themselves, an adverse effect
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this [NPS] to provide or realise development capacity
- (e) the likely current and future effects of climate change.

[underlining added]

56.4. Policy 8

Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

- (a) unanticipated by RMA planning documents; or
- (b) out-of-sequence with planned land release.

57. These policies are then implemented in Part 3 of the NPD-UD, however the Outline at 3.1 makes it clear that:

...nothing in this part limits the general obligation under the Act to give effect to [the] objectives and policies.

58. Subpart 1 relates to providing development capacity. This includes, at 3.2, the components for sufficient development capacity, which is clearly linked to Policy

2. It notes the expectation, at 3.2(b), that it must be *infrastructure ready*. What this means is detailed in 3.4(3). In the short term there needs to be adequate existing development infrastructure, while in the medium and long term its funding needs to be identified, respectively in a long-term plan, or infrastructure strategy. And 3.5(1) states that Local authorities must be satisfied that the additional infrastructure to service the development capacity is *likely to be available*.

59. While these requirements specifically apply to the local authorities, when it comes to the practical provision of infrastructure to a development (that is in addition to its viability), these should also be relevant considerations.

60. Subpart 2, at 3.8, relates to responsive planning. It provides:

3.8 Unanticipated or out of sequence developments

- (1) This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.
- (2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
 - (a) would contribute to a well-functioning urban environment; and
 - (b) is well-connected along transport corridors; and
 - (c) meets the criteria set under subclause (3).
- (3) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

61. This provision, which was not provided in the preceding NPS-UDC, has been the catalyst for the proposed rezoning (or perhaps its pre-cursor PC31) and the series of plan changes at Selwyn. It too has not yet been the subject of consideration by the Courts. Several aspects of the provision need to be considered.

62. The first is the absence of any current regional council criteria on what plan changes are to be treated as adding significant development capacity, which is a threshold requirement. This means, Commissioners have had to make that determination themselves and raises the question of the extent to which it is open to Commissioners to identify and apply their own criteria.

63. The submitters discuss the relevant issues of the significance of the development capacity they say will be provided and whether, in their view, the proposed rezoning will contribute to a well-functioning urban environment. However, in the Board's view, insufficient attention has been given to the criteria in 3.8(2)(b), whether the development capacity is *well-connected* along transport corridors.

Importance of being well-connected

64. On its face, this criterion is of equal importance to the others, which must all be satisfied, though for criteria (c), it can only be satisfied by implication at this time. It is noted that the development capacity must be *well-connected*, so arguably, being able to be accessed by local or collector roads may not suffice. The use of the present tense “is” also suggests that the connection(s) should already exist.
65. The physical standard of those access roads must be relevant given the expectation that the development capacity be well-connected along transport corridors. That use of the plural also suggests an expectation there will be more than one corridor, or perhaps multiple access options along the relevant corridor. The use of the term transport corridor indicates multi-modal transport options, rather than just access via a rural road network, particular one with that exhibits limitations, as detailed in the combined traffic evidence. These are all reasonable inferences given the purpose is to enable the consideration of both significant, and well -functioning urban developments.
66. The submitters’ approach is that any such limitations *can* be overcome, however the question here is how not being well-connected along existing transport corridors impacts the *requirement* to have particular regard to the ‘unanticipated’ development capacity?
67. The Board’s position is that while regard may still be had (as it always is) to the significance of development capacity promoted in a proposed rezoning, the requirement for ‘particular regard’, or any sense of priority, is diminished. Whether this will make a real difference in practice, many be arguable but if, in a comparative sense, other anticipated options suffice, it may shift the weighting?
68. It is also noted that that Guidelines, for what they are worth, do also emphasise that the issue of accessibility along Transport corridors is considered a central consideration, in addition to the question of whether the plan change contributes to a well-functioning urban environment:
- The well-functioning urban environment and well connected along transport corridors criteria together signal the importance of considering the location of a proposed development in relation to other areas and amenities, relative accessibility and transport infrastructure and/or options, when assessing any unplanned or out-of-sequence development proposals.
69. As it relates to transport, including public transport, the guidelines suggest that the transport infrastructure may not exist when a plan change is proposed but there needs to be confidence the infrastructure will be *funded for delivery and*

maintenance in the future. However, importantly, the wording in the NPS-UD objective 3 speaks of more than just viable public transport options, it refers instead to *existing or planned public transport networks*.

70. As relates to active transport, the submitter indicates that the site is located along a cycleway planned in the Council's Walking and Cycling network. The Board understands that this network is unfunded having been reliant on Government funding. The Board acknowledges the 10 year funding for public transport but questions the extent to which it is likely to be utilised and therefore it's longevity and eventual replacement.
71. Further issues in relation to transport are canvassed in the evidence of Mr Metherell. He remains concerned regarding the impacts of the proposed development on the safety of local and wider transport network. He further considers that the site is not well located for the proposed scale of development, compared with other proposed growth areas at Waimakariri.

Does the proposed rezoning contribute to a well-functioning urban environment?

72. If the relevant urban environment is GC, what does well-functioning look like and how should a development contribute?
73. On its face the primary contribution that the proposed rezoning makes, to GC, or at Ōhoka, is the provision of additional dwellings. Though, despite a total figure being provided, how many dwellings over what time frame is not clear. The timeframe of 10 years, subject to market demand, has previously been mentioned, but the accuracy of that estimate is not established and, not uncommonly, would be unenforceable.
74. This initial view of the potential contribution, is perhaps unfair, at least as far as the likely quality of the development may be concerned. As its further submission notes, a principal concern of Board is with the scale of the development and its likely impacts on Ōhoka and the surrounding area, not whether the submitters will do a good job. In the end, if development is to be consented it will have to be to accepted and acceptable standards.
75. But looking at the other (minimum) criteria in Policy 1, Mr Boyes considers each in his evidence¹² and concludes that it has not been demonstrated that the proposed rezoning will result in a well-functioning environment. In addition, he considers that¹³ it is not clear that significant development capacity will be

¹² Evidence of Nick Boyes dated 13 June 2024 at paragraphs 81 – 92.

¹³ Ibid at paragraph 96.

provided (due to the identified stormwater and transportation network issues); and the proposal is not sufficiently well connected along transport corridors.

Significant development capacity

76. If the question of significant capacity is strictly a numbers game, then the total number of dwellings the proposed rezoning says it will deliver can be considered significant.
77. However, there are further details that the Board says may impact that assessment. For example, whether *significant* development capacity is being provided should include, similarly to *sufficient* development capacity, a consideration of whether the development can be considered *infrastructure ready*. Again, the submitters rely on the MfE guidelines, in relation to the view that provision for infrastructure funding need only be shown as being viable.
78. Viability must surely include both technical viability and practical viability (we no longer include financial viability given the submitters statements on funding). The Board says, there needs to be the practical ability to achieve the development capacity. For the proposed rezoning the Board remains concerned by areas of uncertainty in this regard.
79. One relates to any interim connection for wastewater, if that were to occur but the Board now understands that is one option only. So, presumably, the provision of a separate wastewater pipe for the proposed rezoning is an option from the outset. Less clear is what that eventuality would mean in terms of timing for the development under the proposed rezoning.
80. The submitter says timing is irrelevant, and that the need to provide infrastructure, with no development in the interim is business as usual. However, the Board's view is that timing should be relevant to whether the development capacity is considered significant, especially where the development site is unanticipated. If there is likely to be a significant lag in the development, what's the imperative for "particular regard" to be had as a matter of urgency? The capacity would be potential rather than realisable which, in turn, will affect issues such as housing affordability?
81. It may also be that given the untested nature of the groundwater levels across the entire site, there may be issues with whether the total number of dwellings can, in fact, be realised. We may not know until subdivision stage.

82. On these issues, the Board has reviewed the s.42A, report which conforms with its previous advice¹⁴, the while the solutions proposed by the submitters are technically viable, practical uncertainties still remain. They include potential consenting issues if the assumptions on groundwater are not confirmed in subsequent testing, both for potable water supply and stormwater mitigation measures, and the Board understands that the wastewater solution still relies on agreement with the Council.
83. The s.42A report highlights the concerns with the proposed stormwater solutions, concerns echoed in the evidence prepared for the Board by Mr Nick Keenan, of Stantec Ltd. The Board’s concern is not aided by the assumption in the flood modelling that a goal is allowing floodwater to flow through the site, which confirms that flooding will occur, with the question being severity.
84. Transport issues are another area affecting timing and uncertainty given that the matters the submitters need to address (in accordance with Mr Metherell’s evidence and the s.42A report) to realise their projected development capacity rely on the decisions of others, in particular the roading authorities. We have heard the NZTA funding is being made available for the SH1 interchange. However, whether the plans include specific upgrading to accommodate the rezoning wasn’t so clear.
85. A further issue in relation to whether the development capacity can be considered significant, is the impact on housing affordability in the local or wider market. Mr Boyes notes in his evidence the limited number of additional housing typologies and the absence of any specified affordable housing¹⁵.

Place of character

86. This section discusses the impact of Objective 4 and Policy 6. Again, these provisions are untested by the Courts. This is noted because there is an apparent tension between the approach of these provisions, in particular Policy 6, on the issue of amenity, and what is provided for in s.7(f) of the RMA.
87. The direction in s.7(f) is that:

In achieving the purpose of this Act, all persons exercising functions and powers under it, ...shall have particular regard to

...

(f) the maintenance and enhancement of the quality of the environment:

¹⁴ The Board refers to the evidence of Shane Bishop, an infrastructure engineer at Stantec, who gave evidence for the Waimakariri District Council as submitter on PC31, which the Board adopted.

¹⁵ Evidence of Nick Boyes dated 13 June 2024 at paragraphs 82 and 83.

...

88. The RMA definition of environment includes: amenity values, which are further defined as *“the natural and physical qualities and characteristics of an area that contribute to peoples appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”*.
89. That same standard (particular regard) is therefore required of decision makers under Policy 6 for ‘changes’ that detract from amenity values for some but increase amenity values for others. This formulation appears to require a re-balancing in making a judgement on amenity.
90. Section 7, unlike s.5 has been found to be, and applied as, more of an operative section in Part 2 of the RMA. It has also tended to be interpreted as meaning that the quality of the environment should be maintained or enhanced. But there also tends to be a point at which the degree and nature of change are such that the impact will be adverse.
91. The PC31 Commissioners’ suggested during the hearing that section 7(f) was effectively modified by policy 6 of the NPS-UD. On its face this appears correct, yet whether a NPS prevails over Part 2 of the Act, if there is a conflict, has not been tested. This is not surprising as one would usually expect a NPS to further particularise Part 2 matters and not contradict them. As with the debate over the NPS vs the CRPS, the apparent determinant in the case of a conflict would be their place in the RMA hierarchy of instruments.
92. Therefore, it must be debateable that the NPS can override the requirement to maintain and enhance the quality of the environment in Part 2. That ability would have been consistent with the NPS if the replacement for the RMA had remained in force (the NBEA removed amenity from the definition of environment, and repealed s.7) but it did not. And, while Part 2 of the RMA remains, the quality of the environment and, therefore, amenity remains a factor. However, policy 6 may be interpreted in a way that does not undermine s.7(f).
93. Mr Knott’s view¹⁶ that the extent of the changes to the amenity go beyond the level of change that the NPS-UD is seeking to authorise, re-engages s.7(f). Such change might be expected to impact urban amenity values rather than cause significant changes to rural character.

¹⁶ Evidence of Richard John Knott date 12 June 2024, at paragraph 28.

94. Mr Goodfellow's view is that the level of change that will be occasioned by the proposed rezoning will have an adverse effect on the character of Ōhoka in the *moderate-high* range, and would mean that the present rural character of Ōhoka would no longer exist.
95. Both Mr Goodfellow and Mr Knott have clearly identified a baseline for testing whether the degree of change proposed by the proposed rezoning is adverse. They have concluded that it should be based on the protections relating to character that are included in the PWDP. Therefore, the concerns relating to an excessive *fear* of change do not detract from their conclusions. In other words, change, in itself, is not the concern, but rather the extent and the effect of the proposed changes on the character of Ōhoka and its surroundings.
96. The Boards also opposes the change proposed to the SETZ objective to replace character with characteristics. The PWDP formulation is based on the nature of all the places that are zoned SETZ. Removing the notion that such places have an identifiable character, that should be maintained, runs the risk of unintended consequences for those places, despite the RMA definition of amenity also referring to characteristics.

Strategic incompatibility

97. Mr Boyes' evidence sets out the various planning documents that are relevant in considering the proposed rezoning¹⁷. At a strategic level he focuses on the CRPS, given the issues regarding the avoidance requirement in Objective 6.2.1(3), the GCSP, and the Waimakariri District Strategy 'Our District, Our Future'. However, it is evident that there is a suite of strategic planning documents relating to GC that have been produced which include the Ōhoka area.

The Greater Christchurch Spatial plan

98. The Board's position on the strategic inappropriateness of enabling the level of intensification proposed for Ōhoka is effectively summarised in the GCSP that was adopted by all the partner councils in March 2024..
99. The GCSP indicates that it does not represent a significant departure from the strategies and plans that it builds on¹⁸. Therefore, the underlying strategic focus

¹⁷ Evidence of Nick Boyes dated 13 June 2024 at paragraph 10.

¹⁸ Including: Greater Christchurch Urban Development Strategy 2007, updated 2016; Greater Christchurch Transport Statement 2012; Land Use Recovery Plan 2013; Greater Christchurch Resilience Strategy 2016; Our Space 2018-2048, 2018; Greater Christchurch Public Transport Futures Business Case 2018; and, Mass Rapid Transit Interim Report 2021.

that the GCSP outlines represent a distillation and reassertion of the direction of growth within GC.

100. And, even putting the fact that Ōhoka is not identified as an area for intensive urban growth to one side, the GCSP notes, in a manner that is consistent with the NPS-UD, that in relation to the goal to “Focus and incentivise intensification of housing to areas that support the desired pattern of growth”¹⁹ that the focus is to:

...encourage greater intensification and higher densities around centres and public transport routes [with] the benefits of intensification in line with this desired patten of growth includ[ing]:

- More people living in closer proximity to services and employment
- A competitive public transport system to encourage mode shift
- Less reliance on private vehicle use
- A reduction in greenhouse gas emissions
- Efficient and effective use of existing infrastructure
- More affordable and diverse housing choices
- Less need for urban expansion onto highly productive land

101. While the last of these benefits (re HPL) may appear less relevant given the proposed rural lifestyle zoning at Ōhoka, the relevance is brought back into focus in the discussion on the ongoing need for some greenfields development to be provided, which is the nature of the proposed rezoning at Ōhoka. The GCSP emphasises²⁰ that such development still “must achieve and not undermine other directions and principles”, and notes that to achieve this:

...successful future greenfield development needs to:

1. Be well connected with employment, services and leisure through public and active transport networks
2. Be integrated with existing urban areas
3. Meet a need identified by the latest Housing and Business Development Capacity Assessment
4. Be at the right scale, density and location to minimise impact on highly productive land and existing permitted or consented primary production activities.

[underlining added]

¹⁹ Greater Christchurch Spatial Plan 2024, at 4.3, page 64.

²⁰ Greater Christchurch Spatial Plan 2024, at 4.4: Provide housing choice and affordability, Greenfield, page 66.

102. The Board’s view is that the proposal for Ōhoka represents the opposite of what the GCSP considers would constitute a “successful future greenfield development”.

The District Plan

103. Mr Boyes’ evidence also discusses relevant objectives and policies in the PWDP which touch on development at Ōhoka²¹.
104. He considers that the proposal is inconsistent with or contrary to the Proposed Plan objectives and policies which discourage relatively remote and unconsolidated urban growth, and its associated poor accessibility, loss of productive farmland, and loss of small settlement character.

Development Contributions, Developer Agreements and potential burdens for ratepayers

105. While it is accepted that Development Contributions and Developer Agreements form the basis for how growth infrastructure is to be funded and therefore answers the funding viability question, these mechanisms will not necessarily ensure that the proposed rezoning will be cost neutral. Ōhoka would not be the first new town in recent Waimakariri history. While the context of Pegasus is different, the additional costs to the Council, and therefore to ratepayers over the years, means that Board says caution should be exercised in relation to the size of the development in Ōhoka.
106. The proposed rezoning will require changes to the Council’s planned infrastructure delivery strategy and long-term plan. These are changes imposed on the Council that could affect the public purse. The submitters refer to the Planning Tribunal Decision in *Bletchley Developments Ltd v Palmerston North City Council*²² which does indicate that delay of permissions for an improper purpose, such as securing funding agreements, is unlawful. However, the decision may equally reinforce that care needs to be taken prior to changes being made to plans that set further processes in motion that make potential costs to the community almost inevitable.
107. The submitters have indicated that the proposed rezoning will effectively be cost neutral for the Council, as they should be for a development of this nature.

²¹ Evidence of Nick Boyes dated 13 June 2024 at paragraphs 37 – 52.

²² [1995] NZRMA 337

108. However, and at the same time, the fact that the proposed rezoning sits well outside the strategic approach to infrastructure planning at Waimakariri means that, even with Development Contributions, Developer Agreements and Direct Funding, the changes mean a potential opportunity cost to development elsewhere in the district.
109. The situation in relation to public transport now includes an offer of a free service to Ōhoka over 10 years. Mr Metherell discusses issues raised by what is proposed in his evidence²³ which leads to a conclusion that the service need further consideration regarding its nature and feasibility. It is noted that the provision of public transport isn't promoted under the NPS-UD as an end in itself. The clear intention is to provide a convenient option that might lead to mode change. The limited service proposed would appear, to the Board, as unlikely to offer sufficient encouragement to lead to a reduction in private vehicle usage.
110. Wastewater 'options' and impacts have already been discussed.
111. Setting dwelling limits, that apply prior to the submitters providing infrastructure and traffic improvements also presents potential issues that will not necessarily be straightforward, though the promises of funding will assist.
112. The Board accepts that these issues are not uncommon for rezonings for new developments but, in the case of Ōhoka, because this form of development has not formed part of strategic calculations, the impacts of allowing this development could well go beyond those that would normally be expected. The distance from planned services and the resultant need for new services that, as well meaning as they wish to appear now, the submitters are unlikely to consider are solely their problem to resolve, will inevitably introduce further costs that will fall on the Council and therefore the ratepayers of the wider district.

Conclusions

113. At the heart of Board's opposition is the premise that proposed rezoning is a proposal that goes beyond 'unanticipated development'. It is a development that is inconsistent with the strategic outcomes that the both the Council and the GCP have been working towards, and the strategies and plans that underpin strategic growth across this wider planning context. It also runs counter to the clear wishes of the community.
114. The responses in the submitters' evidence to issues raised, both in the PWDP process and the previous PC31 process, including public transport, transport

²³ Evidence of Andrew Metherell dated 13 June 2024 at paragraphs 40 – 47.

safety, education, services and infrastructure, suggest a view that, as with site specific issues such as stormwater, water supply and wastewater, 'viable' solutions *may* be available.

115. The Board considers that there remain uncertainties underlying the practical viability of some of the proposed solutions.
116. The proposed rezoning *will* result in a fundamental change in the character and characteristics of Ōhoka.
117. However, most importantly in terms of the NPS-UD, it remains unclear how proposed rezoning will contribute to a well-functioning urban environment, especially on the scale at which it has been pitched, as part of the urban environment of GC.
118. Whether it will provide significant development capacity remains an issue we will not know until all detailed investigations have been carried out, and the market has spoken.
119. A development like the proposed rezoning seems destined to fuel rather than feed demand at Ōhoka.
120. Insofar as the goals under the NPS-UD of creating competitive housing markets and more affordable housing are concerned, The Boards says it is questionable whether the proposed rezoning will make a marked contribution to either.
121. Given the uncertainties that Board says remain, the NPS-UD should not be used to override the long-term strategic view for Ōhoka, and GC.
122. That is not to say that some development consistent with the maintenance of rural character should not occur. It is provided for under the PWDP. But the proposed rezoning goes far beyond that and will do little, in the Boards view, to contribute to a well-functioning urban environment.

Dated: 3 July 2024



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