

**Before the Hearings Panels appointed by
the Waimakariri District Council**

In the Matter of

the Resource Management Act 1991
(Act)

And

In the Matter of

the Proposed District Plan and
Variation 1 to the Waimakariri District
Plan

**Memorandum of Counsel on behalf of 199
Johns Road Limited, Caroline Homes
Ltd, Carolina Rental Homes Ltd and
Allan Downs Limited on the Proposed
District Plan and Variation 1**

Dated: 27 June 2023

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May it Please the Hearings Panel

1. This memorandum is filed by Counsel for 199 Johns Road Limited, Carolina Homes Limited, Carolina Rental Homes Limited and Allan Downs Limited in response to Minutes 1 and 2 prepared on behalf of the Proposed District Plan (**PDP**) Hearings Panel and the Variation 1 Independent Hearings Panel (**IHP**).
2. The memorandum seeks clarification in relation to the following points:
 - (a) The scope of Variation 1; and
 - (b) The proposed format for the hearing of submissions and preparation of decisions on the PDP and Variation 1.

The Scope of Variation 1

3. The Chapman Tripp memorandum dated 24 March 2023 (**Chapman Tripp Memo**) states at paragraph 20.2 that: “The extent of rezoning through Variation 1 is confined to incorporating the MDRS and NPS-UD intensification policies”. This comment is made in the context of explaining why Clause 16B of Schedule 1 does not apply to Variation 1. This comment is cited with apparent approval by the Buddle Findlay Legal Opinion dated 30 May 2023 (**Buddle Findlay Memo**) attached as Appendix 6 to the Council’s memorandum dated 1 June 2023 (**Council Memo**).
4. This memorandum seeks to clarify that the extent of rezoning through Variation 1 is not confined to merely incorporating the MDRS and NPS-UD intensification policies, but is able to include a broader scope. This is provided for by section 77G(4) of the Resource Management Act 1991 (**RMA**) which expressly states that in carrying out its functions to incorporate the MDRS and giving effect to the relevant policies a specified territorial authority “may create new residential zones or amend existing residential zones”. This approach of including new zones and amending the zoning of some land within intensification planning instruments has been widely adopted by territorial authorities across the country.
5. The above comment should therefore more accurately state: “The scope of rezoning enabled by Variation 1 is limited to the extent of rezoning provided for within the notified version of Variation 1”. This does not alter the conclusions set out by Chapman Tripp or Buddle Findlay in relation to the application of Clause 16B of Schedule 1, and we do not dispute those conclusions. Rather, this point has been raised as a clarification in relation to the legality of the scope of the notified version of Variation 1.

6. We do not consider that there is any issue with the legality of Variation 1 seeking to rezone land to the extent provided for in the notified version of the variation.

Proposed Format for Hearing and Preparation of Decisions

7. Minute 2 states: “In our Minute 1, the Hearings Panel set out our intent to take an integrated approach to hearing submissions and making recommendations on the PDP and Variations 1 and 2. The Hearings Panel still intends to do this, while ensuring that there is a clear distinction between hearing, deliberating and making recommendations on Variation 1 and doing the same with the PDP and Variation 1”. However, it is currently unclear whether this “integrated approach” with a “clear distinction” in hearing means that separate hearings will be held and separate decisions will be provided in relation to Variation 1 and the PDP.
8. Minute 1 and Minute 2 do not expressly clarify the proposed format for the hearing of submissions on Variation 1 and submissions on the PDP. As a submitter on both instruments, it would be useful to understand whether separate presentations will be provided to the Hearings Panel in relation to the PDP submission and the Independent Hearings Panel in relation to the Variation 1 submission or whether this would be a single presentation. This will particularly apply to Hearing Stream 7 as set out in Minute 1.
9. Where a submitter has lodged submissions in relation to both of those instruments it would be also be useful to understand whether the Panel intends to issue two separate (but consistent) decisions in relation to each of those instruments or whether these will be included in one decision. Paragraph 122 of Minute 1 states “The recommendation reports of the different Hearing Panels will be released together, as a package... That recommendation package will then be provided to the Council, for the Council to make their decision.” Whether the “recommendation package” includes separate reports for Variation 1 and the PDP is significant as how those decisions are characterised may impact on appeal rights given the different appeal regimes under the different processes.

Conclusion

10. We seek confirmation from the Hearings Panel that:
 - (a) There is no issue in dispute in relation to the legality of the scope of Variation 1 as notified; and

- (b) Whether separate hearings will be held and separate decisions will be provided in relation to the PDP and Variation 1.

Dated this 27th day of June 2023

A handwritten signature in blue ink, appearing to read 'Joshua Leckie'.

Joshua Leckie and Sarah Anderton
Counsel for 199 Johns Road Limited, Carolina Homes Limited, Carolina Rental Homes
Limited and Allan Downs Limited