

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
hearing of submissions and further submissions
on the Proposed Waimakariri District Plan**

AND

**of hearing of submissions and further
submissions on Large Lot Residential rezonings
to the Proposed Waimakariri District Plan**

**MINUTE 33 – EXPERT CONFERENCING FOR
HEARING STREAMS 12C AND 12D, LEGAL
ADVICE, AND NEXT STEPS FOR HEARING
STREAM 12C**

INTRODUCTION

1. This Minute relates to Hearing Stream 12C and in part to Hearing Stream 12D. Its purpose is to:
 - a. direct expert conferencing of the wastewater, stormwater and transportation experts in respect of Hearing Streams 12C and 12D,
 - b. request further legal advice from the Council's legal advisers, and
 - c. to set out next steps for Hearing Stream 12C.
2. The hearing for Hearing Stream 12C was held on 23 to 24 July 2024.

EXPERT CONFERENCING

3. At the end of hearing from submitters on Hearing Stream 12C, the Panel signalled that it would be directing expert conferencing in respect of wastewater, stormwater, and transportation. A key aspect of this is for the Panel to fully understand any cumulative effects arising from the various rezoning requests, to consider any appropriate mitigation and how this may be addressed through the rezoning requests. Given the proximity of the land proposed to be rezoned through the submissions of RIDL and Carter Group heard in Hearing Stream 12D, we have also included experts from Hearing Stream 12D in this expert conferencing.
4. We hereby direct, pursuant to s41C of the RMA, that expert conferencing occurs on the questions that we have set out in **Attachment 1** to this Minute, with a joint witness statement being provided for each suite of questions by no later than **4pm Friday 13th September 2024**. The Panel is to be kept informed of progress on the conferencing, including any constraints on availability of either information or availability.
5. The joint witness statements are to identify points of agreement on the issues, and, where experts disagree, a brief commentary on specific points of agreement. Expert conferencing is to occur in accordance with the Environment Court Consolidated Practice Note 2023–Code of Conduct for expert witnesses available at the following website <https://environmentcourt.govt.nz/about/practice-note/>
6. The Council's s42A reporting officer for Hearing Stream 12C is requested to coordinate the expert conferencing and to liaise with the s42A reporting officer for Hearing Stream 12D to ensure all relevant technical experts are involved in the expert conferencing.

LEGAL ADVISER'S RESPONSE TO LEGAL SUBMISSIONS

7. The Panel is conscious that there are significant and fundamental differences in the way the reporting officer and the planners for the submitters have approached the assessment of the rezoning requests. This is, to a large part, due to differing

interpretations of the relevant objectives and policies of the NPS-UD, the CRPS, and the PDP. It is also evident that the economics experts have based their evidence, at least in part, on their own understanding of the NPS-UD.

8. We received comprehensive legal submissions from the submitters challenging the way that the s42A reporting officer has applied the relevant statutory tests and on interpretations of the relevant statutory and non-statutory documents. Some of the legal submissions also challenged the statutory basis for the methodology used to derive the relevant residential growth model (i.e. the WCGM22).
9. The Panel considers it is fundamental for us to fully understand the correct legal framework for assessing the Large Lot Residential and Overlay rezoning requests, and for us to then be confident the expert evidence has been prepared on the correct statutory basis.
10. Accordingly, Council is directed to obtain from its legal advisers' responses to the questions we have set out in **Attachment 2** to this Minute. This response is due by not later than **4pm Friday 23rd August 2024**.

NEXT STEPS FOLLOWING EXPERT CONFERENCING AND LEGAL ADVICE

11. The Panel will issue further directions once it has received and reviewed the joint witness statements and the responses from Council's legal advisers. This will include the issuing of specific questions for the s42A reporting officer, and other Council experts, to respond to as part of the Reply Report.

CORRESPONDENCE

12. Submitters and other hearing participants must not attempt to correspond with or contact the Hearings Panel members directly. All correspondence relating to the hearing must be addressed to the Hearings Administrator on 0800 965 468 or Audrey.benbrook@wmk.govt.nz.



Gina Sweetman
Independent Commissioner – Chair - on behalf of the IHP members
29 July 2024

ATTACHMENT ONE

WASTEWATER EXPERT CONFERENCING

Attendees: Mr Aramowicz, Mr Roxburgh, Mr O'Neill, Mr Hopkins, Mr Sookdev, Mr McLeod, Mr Mars

Expert conferencing is required on the cumulative effects of all the requested rezonings, including the Ohoka rezoning addressed in Hearing Stream 12D.

1. Taking into account that some areas are using a Septic Tank Effluent Pumping system and are connected to the Mandeville Area Wastewater Scheme and others are connected to the Waimakariri wastewater network, is there sufficient wastewater capacity to accommodate additional demand in the Swannanoa/ Mandeville/Ohoka area? Please explain how the two systems operate, the capacity in each, and whether additional demand can be accommodated.
2. If it is identified that there would be adverse cumulative effects and that demand exceeds capacity, what might the triggers be for upgrades or new infrastructure to be provided, how could these be reflected in district plan provisions for each rezoning request.

STORMWATER EXPERT CONFERENCING

Attendees: Mr Aramowicz, Mr Veendrick, Mr Hopkins, Mr Delagarza, Mr Sookdev, Mr McLeod, Mr Mars, Mr McMullan

Expert conferencing is required on the cumulative effects of all the requested rezonings, including the Ohoka rezoning addressed in Hearing Stream 12D.

1. Can groundwater resurgence be managed on-site in a manner that is not going to result in cumulative effects "downstream"?
2. If it is identified that there would be adverse cumulative effects, what might the triggers be for upgrades or new infrastructure to be provided, how could these be reflected in district plan provisions for each rezoning request.

TRANSPORT EXPERT CONFERENCING

Attendees: Mr Smith, Mr, Mr Gallott, Mr Carr, Mr Binder, Mr Gregory, Mr Fuller

Expert conferencing is required on the cumulative effects of all the requested rezonings, including the Ohoka rezoning addressed in Hearing Stream 12D.

3. What would the cumulative traffic effects be from all requested rezonings being approved in the Swannanoa/Mandeville/Ohoka area?
4. If it is identified that there would be adverse cumulative effects, what might the triggers be for upgrades or new infrastructure to be provided, how could these be reflected in district plan provisions for each rezoning request.

ATTACHMENT TWO

LEGAL RESPONSE TO SUBMISSIONS

1. Please respond to the legal submissions provided at the hearing, in particular, in respect to:
 - Whether the LLZRO is exempted from the NPS-HPL
 - Whether the phrase 'at all times, provide at least sufficient development capacity' in NPS-UD Policy 2 (read alongside objectives 2 and 3), together with the quarterly monitoring requirement in clause 3.9 and the requirements to address shortfalls in 3.7 and 3.37, indicates a presumption or preference for providing more development capacity than is required to meet forecast demand.
 - Does the 'at least sufficient development capacity' phrase put the onus on Council to provide, at all times, the infrastructure (or a mechanism to provide for it) to meet the demand period, and within the various locations of demand?
 - Does Objective 6 of the NPS-UD require infrastructure planning and timing decisions be responsive to proposal that would supply significant development capacity (see legal submissions (paras 43-47) for Carter Group and RIDL at Stream 12D, as adopted for Stream 12C)
 - Regardless of whether there is sufficient development capacity or not under Policy 2 of the NPS-UD, can a rezoning request be considered on its merits under Policy 8 if it is determined that the NPS-UD applies? (see legal submissions (para 116) for Carter Group and RIDL at Stream 12D, as adopted for Stream 12C)
 - In giving effect to the NPS-UD, should a proposed district plan account for how NPS UD Policy 2 will be satisfied throughout the life of the plan (rather than simply at its commencement), insofar that this requires 'at least' sufficient development capacity, 'at all times'? (see legal submissions (para 85) for Carter Group and RIDL at Stream 12D, as adopted for Stream 12C)
 - Does Policy 6.3.9 of the RPS put a veto on rezoning land rural lifestyle or large lot residential that is not identified in a rural residential development strategy prepared under the LGA 2002? In the event that a rezoning to a large lot residential zone is considered to be urban for the purposes of the NPS-UD, what weight should be afforded to the chapeau of Policy 6.3.9 which only provides for further rural residential rezoning where it is in accordance with an adopted rural residential development strategy?

2. Is the methodology that is used in the WCGM22 consistent with the requirements of the NPS-UD? In preparing the WCGM22, has the Council approached the requirements of the NPS-UD correctly in assessing whether there is sufficient development capacity within Waimakariri District in the short, medium and long term, taking into account all the objectives and policies of the NPS-UD, but in particular Objectives 1, and 2, Objective 3(c) and Policy 1(a)(i)?