

**BEFORE THE INDEPENDENT HEARINGS PANEL
AT SELWYN DISTRICT COUNCIL**

UNDER the Resource
Management Act 1991

IN THE MATTER a request by Hughes
Developments Limited for
a private plan change to
the Selwyn District Plan to
rezone 163 Halkett Road
and 1066 West Coast
Road in West Melton for
the development of
approximately 124 lots

**AND Hughes Development
Limited (DPR-0411)**

MEMORANDUM OF COUNSEL

14 April 2023

Counsel acting:

I M Gordon Barrister
Stout Street Chambers PO Box 117
Wellington
P: 04 4729026
Email: ian.gordon@stoutstreet.co.nz

Introduction

1. This memorandum of Counsel is on behalf of Hughes Developments Limited (**HDL**).
2. HDL is the proponent of Plan Change 74, which requests that land located at 163 Halkett Road and 1066 West Coast Road, West Melton (the **Site**) is rezoned from Rural Inner Plains to Living West Melton under the Operative Selwyn District Plan (**PC74**).
3. Following the tabling of new evidence by Selwyn District Council's economic expert at the commencement of the first day of the hearing for PC74 (Monday 27 March), HDL requested an adjournment to enable consideration of that evidence. That request was granted shortly thereafter, and was followed by a minute issued by the Commissioner on 28 March which:
 - a) identified the week of 15 May 2023 as an anticipated timeframe for a reconvened hearing;
 - b) directed conferencing between the economic experts to occur in advance of that reconvened hearing and in accordance with the relevant provisions of the Environment Court Practice Note 2023 (**Practice Note**);
 - c) directed conferencing between the planning experts to follow economic expert conferencing and to occur in accordance with the Practice Note;
 - d) directed that any necessary additional evidence to be provided between 15 – 5 working days before the reconvened hearing. If that hearing is reconvened on 15 May 2023, then, in accordance with that timeframe, any additional evidence from the Council would need to be provided by 21 April (being 15 working days before 15 May).
4. Since that minute was issued, HDL has expended considerable effort and expense to move forward with this matter in accordance with those directions, but for the reasons set out in this memorandum, that action has not yielded any meaningful progress.

5. As set out further below, the key constraint to date has been the persistent unwillingness on the part of Selwyn District Council to provide HDL with adequate, sufficient information regarding recent updates to the Selwyn Capacity Growth Model (**Updated SCGM22**), which provides the fundamental basis for the new evidence produced by Mr Foy at the PC74 hearing in March.
6. Consequently, in accordance with the Practice Note's Expert Code of Conduct, the Updated SCGM22 and all relevant information pertaining to it fall within the scope of that evidence.¹
7. This memorandum outlines the nature of that information and why provision of that information is necessary to progress this matter. It then describes the various attempts that HDL has made to secure that information, Council's responses to those attempts (where such responses have been received), and why, to date, those responses have been simply inadequate.
8. Unless and until that requested information is provided, Mr Colegrave, mindful of his obligations under the Practice Note's Expert Code of Conduct, continues to be precluded from undertaking any meaningful engagement with Mr Foy's analysis, and providing any effective response to it.
9. This puts HDL at a significant information disadvantage and raises procedural and natural justice issues. Owing to this continued delay, there is now also serious doubt as to whether the directed conferencing and evidence exchange can be achieved before the anticipated timeframe for the reconvened hearing (being mid-May 2023).
10. In that context, this memorandum also:
 - a) requests assistance from the Commissioner in its attempts to secure that necessary information; and
 - b) suggests any continued adjournment of the PC74 hearing until such time as that information is made available.

¹ Environment Court Practice Note 2023, clause 9.3(a).

Updated SCG22 Information

11. Following the adjournment of the PC74 hearing, Mr Colegrave commenced his review of the new evidence presented by Mr Foy; however, it quickly became apparent to Mr Colegrave that further information concerning the Updated SCG22 was required to enable effective interrogation of that evidence, and an appropriate response.
12. That further information constituted:
 - a) A full operating copy of the Updated SCGM22 with the ability to upload and run scenarios and analyse outputs and the like.
 - b) An exhaustive list of all inputs and assumptions, including sources and explanations.
 - c) The final methodology document.
 - d) Any use manual or model guidelines/instructions.
 - e) Any reporting around the latest outputs, including township breakdowns by housing typology and the like.
 - f) A detailed explanation of how the model calculates infill feasibility on parcels that already contain a dwelling. Particularly how it accounts for the size and location of dwellings, driveways, swimming pools, minor dwellings, sheds and so on.
13. That information was requested from Selwyn District Council on 29 March 2023 (refer **Attachment 1**).
14. Council responded to that request on 3 April 2023, directing HDL's attention to the following information which had subsequently been uploaded to the PC74 website:
 - a) An Excel spreadsheet, recording residential data outputs from the SCGM22.
 - b) GIS inputs to the SCGM22.

- c) A report produced by Formative Limited on behalf of the Council which purports to summarise the SCGM22.
- 15. Mr Colegrave reviewed those documents and concluded that they do not include or otherwise address the vast majority of the outstanding further information required for him to undertake an appropriate interrogation of Mr Foy's evidence. That response was conveyed to Selwyn District Council later in the day on 3 April 2023 (refer **Attachment 2**).
- 16. Further communications between Mr Colegrave and Mr Foy as recently as 13 April have been unfruitful. Mr Foy continues to decline the request for access to the model for intellectual property reasons.
- 17. A follow up email from counsel to the Chief Executive of the Council on 13 April has yet to be acknowledged. (refer **Attachment 3**).
- 18. The Commissioner will be aware that the Updated SCGM22, and its apparent findings regarding projected housing demand and supply could have significant implications for the Council's position on those matters at the upcoming Intensification Variation to the Proposed Selwyn District Plan. In that context, counsel for various other parties filed a joint memorandum with the Hearings Panel (also on 3 April 2023), requesting the disclosure of that same outstanding further information identified by Mr Colegrave (refer **Attachment 4**).
- 19. The Panel's response to that joint memorandum was issued on 13 April 2023 (refer **Attachment 5**). It noted, inter alia, that:
 - a) some information concerning the Updated SCGM22 had already been made available (described above);
 - b) the model coding itself is the intellectual property of Formative Limited and will not be available;
 - c) in the Panel's view, the provision of the input data and methodological explanation contained in the Formative report should be sufficient for the submitter's economic experts to undertake their own assessment of demand and supply.
- 20. To ensure submitters had access to the relevant inputs and outputs

of the Updated SCGM22, the Panel nevertheless directed that Council “make all necessary information available...as soon as possible”.

21. In respect of (c) above, it remains Mr Colegrave’s firm opinion that that information is not sufficient to enable completion of that assessment. Of particular relevance to PC74, it is also not sufficient to enable him to appropriately consider and respond to the evidence produced by Mr Foy at the PC74 hearing.
22. If the Council considers that issues of intellectual property will constrain it from providing Mr Colegrave with access to the actual SCGM22 model, as HDL has persistently requested, then Mr Colegrave has identified an alternative list of further information which:
 - a) will not impinge on intellectual property rights;
 - b) will at least enable a more fulsome interrogation of, and response to, Mr Foy’s evidence.
23. That alternative list is included as **Attachment 6**.
24. It is understood that that alternative list has been requested from the Council by other private plan change proponents. If Council continues to resist providing Mr Colegrave with access to the actual SCGM22 model, then HDL would be grateful if the Commissioner could direct the Council to provide the information outlined in **Attachment 6**.

Expert Code of Conduct

25. In his summary statement of evidence for PC74, Mr Foy confirms that he has complied with the Practice Note’s Expert Code of Conduct, and will continue to do so in providing that evidence at the PC74 hearing. Mr Colegrave has done the same.
26. As noted above, that Code requires that in giving evidence, an expert witness must:
 - a) identify the data, information, facts and assumptions

considered in forming their opinions;

- b) specify any literature or other material use or relief on by them in support of any opinion;
- c) identify the nature and extent of uncertainties in any scientific information and analyses relied on and the potential implications of any uncertainty;
- d) if relying on a mathematical model, include appropriate or generally accepted sensitivity and uncertainty analyses for that model.²

- 27. If an expert witness changes any of their opinions on a material matter, that must be communicated without delay to all parties, including the reason or reasons why that opinion has changed and such of the information outlined above as is relevant.³
- 28. In preparing for expert conferencing, the Code also directs parties to provide experts with all relevant application...documentation as appropriate, and pre-circulated evidence and reports necessary to enable them to thoroughly understand the issues in the proceeding...⁴
- 29. In my submission, the recent conduct of the Council as a party to this matter, and its experts in regard to the provision of this outstanding information, has fallen short of these obligations. Repeated attempts to access that information and ultimately advance this matter have come at significant, ongoing cost and delay to HDL.

Requested directions

- 30. In light of the above, HDL respectfully requests that:
 - a) The Council is directed to disclose the information described in paragraph 9 to HDL by Wednesday 19 April.
 - b) In the alternative, the Council is directed to disclose the

² Environment Court Practice Note 2023, clause 9.3(a).

³ Environment Court Practice Note 2023, clause 9.3(f).

⁴ Environment Court Practice Note 2023, clause 9.6.

information described in Attachment 5 to HDL by Wednesday 19 April.

- c) The hearing for PC74 continues to be adjourned until such time as the above information is disclosed (either (a) or (b)), and Mr Colegrave has had sufficient time to consider that information. At that time, further directions regarding expert conferencing, the exchange of any additional evidence and timing of a reconvened hearing will be sought.

DATED 14 April 2023



Ian Gordon
Counsel for Hughes Developments Limited

ATTACHMENT 1 – HDL 28 MARCH INFORMATION REQUEST

IAN GORDON

BARRISTER

29 March 2023

Rachael Carruthers
Strategy and Policy Planner
Selwyn District Council
Rolleston

By email: Rachael.Carruthers@selwyn.govt.nz

Dear Ms Carruthers

PC74

I act for Hughes Development Ltd (HDL).

This letter refers to the events of Monday 27 March and the 3rd Minute of Commissioner Caldwell which you will have received and read.

Please immediately provide the Selwyn Capacity Growth Model (SCG22) that you advised the hearing was 'finalised' just last week. Presently, Mr Colegrave has no idea what has been done/used/assumed but he surmises that the most efficient way forward is for him to immediately receive:

- A full operating copy of the SCGM22 with ability to upload and run scenarios and analyse outputs and the like.
- An exhaustive list of all inputs and assumptions, including sources and explanations.
- The final methodology document.
- Any user manual or model guidelines/instructions.
- Any reporting around the latest outputs, including township breakdowns by housing typology and the like.
- A detailed explanation of how the model calculates infill feasibility on parcels that already contain a dwelling, particularly how it accounts for the size and location of dwellings, driveways, swimming pools, minor dwellings, sheds, and so on.

Without full and proper access to all the relevant information, HDL will continue to have a significant information disadvantage which raises procedural and natural justice issues.

STOUT STREET CHAMBERS

Level 6, Huddart Parker Building, 1 Post Office Square. PO Box 117, Wellington 6140, New Zealand
P 04 4729026 M 029 4819276 F 04 4729029 E ian.gordon@stoutstreet.co.nz www.stoutstreet.co.nz

Please also provide any earlier or draft version of an output report received by SDC from Mr Foy's firm earlier this year or last year. I note that the model or a report based on it is described as 'SCG22' which appears to indicate that it was developed in 2022 and may have resulted in initial reports being produced and provided to council in 2022. It is understood that the author was Rodney Yeoman, Mr Foy's business partner.

Please be aware that any delay in providing this material will result in an immediate memorandum to the Commissioner seeking further directions.

Please also note that my client regards the 'unfortunate' events of Monday's hearing to have been entirely the responsibility of the council team. Marshalling Mr Foy to revisit and reverse aspects of the JWS which Mr Friedel was relying on without notice and at the 11th hour, can only have been deliberate. It was not in compliance with the Commissioner's directions. It appears to have been a pre-meditated action on the part of SDC to undermine Mr Friedel's published recommendation and the process that the parties were committed to.

It will not have escaped your attention that HDL had committed considerable expense to having its expert witnesses and counsel present and prepared to proceed yesterday. This is an issue that will need to be resolved in due course.

Please acknowledge receipt of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ian Gordon', with a stylized flourish at the end.

Ian Gordon

DDI: 64 4 472 9026
Mob: 0294 819 276
Email: ian.gordon@stoutstreet.co.nz

ATTACHMENT 2 – COUNCIL RESPONSE AND HDL FURTHER RESPONSE

From: Ian Gordon
Sent: Monday, April 3, 2023 1:42 PM
To: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>
Subject: RE: PC 74 / HDL

Dear Ms Carruthers

Thanks for your email.

I note that the March report you refer to has not yet been posted or provided.

I am attaching the Joint Memorandum of Counsel for a number of other parties to the PDP process. It sets out and reaffirms the full scope of information now needed.

There is little point in posting to the website anything less than this full suite of information necessary to interrogate the work done and outcomes adopted.

We have already lost a week and if Council continues to prevaricate, we will inevitably lose more time and ultimately a hearing date in May.

Kind regards,

Ian Gordon
Barrister / Rōia Tūtahi
Stout Street Chambers
P: 04 4729026
M: 029 4819 276
F: 04 4729029
E: ian.gordon@stoutstreet.co.nz
W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>
Sent: Monday, April 3, 2023 11:36 AM
To: Ian Gordon <ian.gordon@stoutstreet.co.nz>
Subject: RE: PC 74 / HDL

Good morning Mr Gordon

A colleague has been collating the requested information in my absence, and most of what Mr Colegrave will be after should be on the PC74 [webpage](#) now. We'll be in touch with the remainder as soon as we can.

In terms of what Mr Colegrave has seen previously, the model and the model results remain unchanged. It is the associated report that was finalised in March, as reviewers requested clarification of some matters.

Kind regards
Rachael Carruthers

From: Ian Gordon <ian.gordon@stoutstreet.co.nz>
Sent: Monday, 3 April 2023 9:58 am
To: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>
Subject: RE: PC 74 / HDL

Thank you.

Kind regards,

Ian Gordon
Barrister / Rōia Tūtahi
Stout Street Chambers
P: 04 4729026
M: 029 4819 276
F: 04 4729029
E: ian.gordon@stoutstreet.co.nz
W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>
Sent: Monday, 3 April 2023 9:44 AM
To: Ian Gordon <ian.gordon@stoutstreet.co.nz>
Subject: RE: PC 74 / HDL

Apologies Mr Gordon, I forgot to turn my out of office on before I went on annual leave. I'm looking at your letter now.
Kind regards
Rachael

From: Ian Gordon <ian.gordon@stoutstreet.co.nz>
Sent: Friday, 31 March 2023 12:08 pm
To: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>
Subject: FW: PC 74 / HDL

Dear Ms Carruthers

The simple courtesy of an acknowledgement would gratefully received. Or should I seek that from the Chief Executive?

Thank you.

Ngā mihi, nā

Ian Gordon

Barrister

Stout Street Chambers

P: 04 4729026

M: 029 4819 276

F: 04 4729029

E: ian.gordon@stoutstreet.co.nz

W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Ian Gordon

Sent: Wednesday, 29 March 2023 1:06 p.m.

To: Rachael.Carruthers@selwyn.govt.nz

Subject: FW: PC 74 / HDL

Please confirm that you have received my letter.

Thank you.

Ian Gordon

Barrister

Stout Street Chambers

029 4819 276

From: Ian Gordon

Sent: Wednesday, March 29, 2023 10:20 AM

To: Rachael.Carruthers@selwyn.govt.nz

Subject: PC 74 / HDL

Dear Rachael

Letter attached.

Please acknowledge receipt.

Regards,

Ian Gordon

Barrister

Stout Street Chambers

ATTACHMENT 3 – CHIEF EXECUTIVE CORRESPONDENCE

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Sent: Thursday, 13 April 2023 5:10 pm
To: David Ward
Subject: RE: PC 74 / HDL

Thanks David

Some relevant information has been uploaded but it is information produced through the operation of a computer model and without access to the model itself, it is impossible to assess the integrity of the information.

My client's expert economist has requested access to the model on the basis that it is within the scope of evidence exchange covered by the 2023 Code of Conduct for Expert Witnesses at Clause 9.3(a). The response from Mr Foy has been that protection of intellectual property prevents the model being accessed.

This response is contrary to the Code of Conduct and counterproductive to the need for fair and just hearing.

The reasonable way forward is for SDC to request Mr Foy to provide immediate access to the model. The alternative is for SDC to withdraw Mr Foy's statement from the evidence. Either way, this question needs to be urgently resolved so that evidence preparation for the adjourned hearing can be undertaken in time for the hearing in May.

Kindly acknowledge receipt of this email.

Thank you.

Ngā mihi, nā

Ian

Ian Gordon
Barrister
Stout Street Chambers
P: 04 4729026
M: 029 4819 276
E: ian.gordon@stoutstreet.co.nz
W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: David Ward <David.Ward@selwyn.govt.nz>
Sent: Monday, April 3, 2023 3:27 PM
To: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>
Subject: RE: PC 74 / HDL

Good afternoon Ian,

I have been advised by staff that material specific to this matter is in the process of being uploaded onto Council's website.

Regards

David

From: Ian Gordon <Ian.Gordon@stoutstreet.co.nz>

Sent: Friday, March 31, 2023 3:23 PM

To: David Ward <David.Ward@selwyn.govt.nz>

Subject: FW: PC 74 / HDL

Dear Mr Ward

On Wednesday 29 March I sent the attached letter to Ms Carruthers and politely requested that receipt be acknowledged.

As you can see from this thread, Ms Carruthers has remained silent. It is unclear whether she has received the letter.

The letter itself refers to circumstances that show the Council in a poor light. The information and material requested is essential to the statutory process that the Council is responsible for and the applicant has invested heavily in. The hearing has had to be adjourned to enable the applicant to receive and assess the information as soon as reasonably possible.

Some information in the form of outputs has been drip fed to the applicant but the crucial inputs and the model continue to be withheld.

Please acknowledge receipt of this email and the attached letter.

Thank you.

Nāku noa, nā

Ian Gordon

Barrister

Stout Street Chambers

P: 04 4729026

M: 029 4819 276

F: 04 4729029

E: ian.gordon@stoutstreet.co.nz

W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Ian Gordon

Sent: Friday, 31 March 2023 12:08 p.m.

To: Rachael Carruthers <Rachael.Carruthers@selwyn.govt.nz>

Subject: FW: PC 74 / HDL

Dear Ms Carruthers

The simple courtesy of an acknowledgement would gratefully received. Or should I seek that from the Chief Executive?

Thank you.

Ngā mihi, nā

Ian Gordon

Barrister

Stout Street Chambers

P: 04 4729026

M: 029 4819 276

F: 04 4729029

E: ian.gordon@stoutstreet.co.nz

W: www.stoutstreet.co.nz

This email and any attachment is confidential and may be legally privileged. If you have received this email in error, please notify me immediately and then delete the email.

From: Ian Gordon

Sent: Wednesday, 29 March 2023 1:06 p.m.

To: Rachael.Carruthers@selwyn.govt.nz

Subject: FW: PC 74 / HDL

Please confirm that you have received my letter.

Thank you.

Ian Gordon

Barrister

Stout Street Chambers

029 4819 276

From: Ian Gordon

Sent: Wednesday, March 29, 2023 10:20 AM

To: Rachael.Carruthers@selwyn.govt.nz

Subject: PC 74 / HDL

Dear Rachael

Letter attached.

Please acknowledge receipt.

Regards,

ATTACHMENT 4 – JOINT MEMORANDUM FROM SUBMITTERS' COUNSEL

BEFORE THE SELWYN DISTRICT COUNCIL VARIATION HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of Variations to the Proposed Selwyn District Plan

SUBMITTER Various

**Joint Memorandum of Counsel requesting directions as to disclosure of the
Selwyn Capacity Growth Model**

Christchurch

Solicitor acting: G Cleary
Level 9, Anthony Harper Tower
PO Box 2646, Christchurch 8140
Tel +64 3 379 0920 | Fax +64 3 366 9277
gerard.cleary@ah.co.nz

A handwritten signature in dark ink, reading "Anthony Harper". The signature is written in a cursive, flowing style with a large initial 'A'.

May it Please the Panel

- 1 This Joint Memorandum requests that the Variation Hearings Panel (the Panel) direct that the Selwyn District Council (Council) disclose full details of the updated Selwyn Capacity Growth Model (SCGM) as a matter of urgency.
 - 2 By way of context, the Council recently instructed Formative Ltd to prepare an update to the Selwyn Capacity Growth Model 2020 (SCGM). The update to the SCGM was completed either in late 2022 or early 2023. Accordingly, its content has yet to feature in any meaningful way in the hearings on submissions to the Selwyn Proposed District Plan (Proposed Plan).
 - 3 Counsel understands that the upgraded SCGM concludes that sufficient development capacity may be provided for within the Proposed District Plan, as varied, to meet all short, medium and long-term demand for housing within the District. It is further understood that a significant portion of this apparent capacity is to be enabled by means of intensification within existing and new residential zones as those terms are defined in the Resource Management (Enabling Housing Supply & Other Matters) Amendment Act 2021 (the Enabling Act).
 - 4 The Panel will be aware that economic evidence previously presented at hearings into the Proposed Plan reached the dual conclusion that there would be a significant shortfall of development capacity and that, for a wide variety of reasons, the likely take-up of intensification opportunities within the District would do little to address this shortfall. Similar conclusions have consistently been reached at the majority, if not all, of the individual private plan change applications decided to date. Furthermore, the conclusions as to limited take up of intensification within the Selwyn District directly corresponds with cost benefit analysis undertaken on behalf of the Government in the development of the Enabling Act.
 - 5 Looking ahead, it is fully expected that the Council will seek to rely on the updated SCGM in s 42A Reports currently being prepared for the forthcoming rezoning hearings on the Variation for Rolleston, Lincoln & Prebbleton.
 - 6 Counsel have been advised by their economic witnesses that there are likely to be significant difficulties in analysing and responding to any evidence which relies on the SCGM without understanding all documentation associated with, including inputs into, the SCGM. Likewise, the experts' ability to participate in any expert conferencing prior to the Variation hearings will be compromised without full disclosure of this documentation.
 - 7 Even if all relevant documentation were to be disclosed contemporaneously with the s 42A Reports, the current timetable for the Variation hearings does
-

not, in the experts' opinion, provide sufficient time in which to analyse, understand and critique the SCGM.


8 Based on the experts' advice, the following information is considered necessary for them to receive as a matter of urgency:

- (a) The final version of the methodology used for the updated SCGM.
- (b) A list of all inputs and assumptions used, include sources and explanations.
- (c) Any guidelines/instructions as to how the SCGM is to be operated.
- (d) Any reporting undertaken of the latest inputs, including township breakdowns by housing typology and the like.
- (e) A detailed explanation of how the SCGM has calculated intensification potential for properties containing existing dwellings, in particular how it accounts for the size and location of such dwellings and any other improvements; and
- (f) A full operating copy of the SCGM, with the ability to upload and run scenarios and analyses outputs.

9 Without limitation to the documentation sought above, Counsel requests that the following parcel level outputs be provided for **all** parcels of land within the District analysed by the SCGM, not just those that are deemed to have additional capacity:

- (i) Parcel ID;
 - (ii) Township;
 - (iii) Address;
 - (iv) Section size;
 - (v) ODP Zone
 - (vi) PDP Zone;
 - (vii) Any overlays or precincts
 - (viii) Presence and impacts of any covenants
 - (ix) Land value;
 - (x) Capital value;
 - (xi) Current number of dwellings;
 - (xii) Current dwelling typology
 - (xiii) Current dwelling GFA
 - (xiv) Current Dwelling age
 - (xv) Estimated short-medium term capacity – number of additional dwellings
-

- (xvi) Estimated short-medium term capacity – dwelling typology assumed
 - (xvii) Estimated short-medium term capacity – GFA per additional dwelling
 - (xviii) Estimated short-medium term capacity – average section sizes
 - (xix) Estimated short-medium term capacity – building coverage ratio
 - (xx) Estimated short-medium term capacity – Assumed/modelled land development costs (covering all costs identified above)
 - (xxi) Estimated short-medium term capacity – Assumed/modelled building costs (covering all costs identified above)
 - (xxii) Estimated short-medium term capacity – Assumed profit margin
 - (xxiii) Estimated short-medium term capacity – Assumed profit \$
 - (xxiv) Estimated short-medium term capacity – Assumed sales prices
- 10 Counsel requests that the information sought be made available as soon as practicable, but in any event no later than **5.00pm, Wednesday 05 April 2023**.
- 11 As a final point, Counsel notes the obligation on behalf of the Council to provide at least sufficient development capacity is of course a fundamental requirement of the National Policy Statement on Urban Development 2020 (NPS-UD 2020). The Proposed District Plan must give effect to the NPS-UD 2020.
- 12 Given the importance of this requirement, it is submitted therefore that the Panel should be fully informed as to the reliability or otherwise of the updated SCGM. In order to be in such a position, it is considered necessary for experts engaged by submitters to have the opportunity to fully interrogate the SCGM. Such an opportunity is also considered necessary from a natural justice perspective.



G J Cleary

On Behalf of Urban Estates No 21 Group Ltd & Ors (V1-0098); Gould Developments Limited & Four Stars Limited (V1 -0010)

Alex Booker

On behalf of Birchs Village Ltd (V1-0066)

- (xvi) Estimated short-medium term capacity – dwelling typology assumed
 - (xvii) Estimated short-medium term capacity – GFA per additional dwelling
 - (xviii) Estimated short-medium term capacity – average section sizes
 - (xix) Estimated short-medium term capacity – building coverage ratio
 - (xx) Estimated short-medium term capacity – Assumed/modelled land development costs (covering all costs identified above)
 - (xxi) Estimated short-medium term capacity – Assumed/modelled building costs (covering all costs identified above)
 - (xxii) Estimated short-medium term capacity – Assumed profit margin
 - (xxiii) Estimated short-medium term capacity – Assumed profit \$
 - (xxiv) Estimated short-medium term capacity – Assumed sales prices
- 10 Counsel requests that the information sought be made available as soon as practicable, but in any event no later than **5.00pm, Wednesday 05 April 2023**.
- 11 As a final point, Counsel notes the obligation on behalf of the Council to provide at least sufficient development capacity is of course a fundamental requirement of the National Policy Statement on Urban Development 2020 (NPS-UD 2020). The Proposed District Plan must give effect to the NPS-UD 2020.
- 12 Given the importance of this requirement, it is submitted therefore that the Panel should be fully informed as to the reliability or otherwise of the updated SCGM. In order to be in such a position, it is considered necessary for experts engaged by submitters to have the opportunity to fully interrogate the SCGM. Such an opportunity is also considered necessary from a natural justice perspective.



G J Cleary

On Behalf of Urban Estates No 21 Group Ltd & Ors (V1-0098); Gould Developments Limited & Four Stars Limited (V1 -0010)



Alex Booker

On behalf of Birchs Village Ltd (V1-0066)



Jo Appleyard/ Lucy Forrester

On behalf of Rolleston Industrial Developments Limited (V1-0115), Carter Group Property Limited (V1-0103), and CSI Property Limited & Rolleston West Residential Limited (V1-0114)

Andrew Schulte

On behalf of G & J Drinnan

30 April 2023

Jo Appleyard/ Lucy Forrester

On behalf of Rolleston Industrial Developments Limited (V1-0115), Carter Group Property Limited (V1-0103), and CSI Property Limited & Rolleston West Residential Limited (V1-0114)



Andrew Schulte

On behalf of G & J Drinnan

30 April 2023

ATTACHMENT 5 – IHP RESPONSE TO JOINT MEMORANDUM

**DIRECTIONS OF THE INDEPENDENT HEARINGS PANEL
MINUTE 2
Selwyn Capacity Growth Model – SCGM**

- [1] By way of a Joint Memorandum received on 3 April 2023, counsel for Urban Estates No 21 Group Ltd & Ors (V1-0098), Gould Developments Ltd & Four Stars Ltd (V1-0010); Birchs Village Ltd (V1-0066); Rolleston Industrial Developments Ltd (V1-0115); Carter Group Property Ltd (V1-0103); CSI Property Ltd & Rolleston West Residential Ltd (V1-0114); and G & J Drinnan (V1-0098) requested that the Independent Hearings Panel direct the Council disclose full details of the updated Selwyn Capacity Growth Model (SCGM).
- [2] We understand that the recent update to the SCGM undertaken by Formative Ltd was initiated to inform the s42A reports currently being prepared to address rezoning submissions lodged with respect to Variation 1 to the PDP. Given the inherent crossover with other planning processes currently underway, including private plan change requests, we have been advised that the Formative report (dated 22 March 2023) has been made available to some parties involved in these other processes or by way of a public request for information. In addition, we understand that the GIS inputs into the SCGM, together with raw data outputs (in Excel spreadsheet format) have been made available via the Council's website and that the Council is currently working with various counsel to provide as much supporting input data as possible.
- [3] Notwithstanding, we are cognisant that the model coding itself is the intellectual property of Formative Ltd and will not be released. We are comfortable with this approach on the basis that the provision of the input data and the methodological explanation contained in the Formative report should be sufficient for the submitter's economic experts to undertake their own assessment of demand and supply.
- [4] To ensure that all rezoning submitters have access to the relevant inputs and outputs of the updated SCGM, we direct that Council make all necessary information available on the website (<https://www.selwyn.govt.nz/property-And-building/planning/population>) as soon as practicable.



Rob van Voorthuysen

Independent Commissioner – Chair - on behalf of the Independent Hearing Panel members

13 April 2023

ATTACHMENT 6 – ALTERNATIVE INFORMATION

1. A complete list of all inputs and assumptions, both at the township and district wide level including, but not limited to:
 - a) Current and assumed future densities by township and housing typology, including any differences under the ODP vs PDP vs MDRS
 - b) Land development variables (by township and/or building typology)
 - i. Date at which the costs were finalised
 - ii. Site acquisition costs
 - iii. Site preparation/levelling/civil/landscaping costs
 - iv. Utility connection costs – power, phone, internet, gas (if applicable)
 - v. DCs for Council infrastructure
 - vi. Infrastructure costs within the boundary of the development for roading and three waters
 - vii. Resource consent fees
 - viii. Legal/accounting fees
 - ix. Geotech and other professional services fees
 - x. Site/project management fees
 - xi. Section price gradient by township or location (i.e. sales prices as a function of section size)
 - xii. Contingency costs
 - xiii. Days to sell and associated holding costs
 - xiv. Sales and marketing costs
 - xv. Land developer cost of capital
 - xvi. Minimum developer margin
 - xvii. Corporate tax rate
 - c) Building development variables (by township and/or building typology)
 - i. Date at which the costs were finalised
 - ii. Site preparation including slab, piling, and any demolition required
 - iii. Council Resource consent fees
 - iv. Council Building consent fees
 - v. Council DCs
 - vi. Utility connection costs – power, phone, internet, gas (if applicable)
 - vii. Design/Architect/Building Plans
 - viii. Site/Project Management
 - ix. Legal, Accounting, Surveying
 - x. Dwelling construction costs per square metre by typology and number of storeys
 - xi. Landscaping costs
 - xii. Driveway and parking areas
 - xiii. Contingency costs
 - xiv. Days to sell and associated holding costs
 - xv. Sales and marketing costs
 - xvi. Building developer cost of capital
 - xvii. Minimum developer margin
 - xviii. Corporate tax rate
 - xix. Sales prices by dwelling size, type, quality, and township
2. Parcel-level outputs for all parcels analysed (not just those that are deemed to have additional capacity)
 - a) Parcel ID;
 - b) Township;
 - c) Address;
 - d) Section size;
 - e) ODP Zone

- f) PDP Zone;
- g) MDRS (yes/no)
- h) Any overlays or precincts in the ODP and/or PDP
- i) Presence and impacts of any covenants
- j) Land value;
- k) Capital value;
- l) Current number of dwellings;
- m) Current dwelling typology
- n) Current dwelling GFA
- o) Current Dwelling age
- p) Estimated medium term capacity – number of additional dwellings
- q) Estimated medium term capacity – dwelling typology assumed
- r) Estimated medium term capacity – GFA per additional dwelling
- s) Estimated medium term capacity – average section sizes
- t) Estimated medium term capacity – building coverage ratio
- u) Estimated medium term capacity – Assumed/modelled land development costs (covering all costs identified above)
- v) Estimated medium term capacity – Assumed/modelled building costs (covering all costs identified above)
- w) Estimated medium term capacity – Assumed profit margin on land development
- x) Estimated medium term capacity – Assumed profit margin on building development
- y) Estimated medium term capacity – Assumed profit \$ for land development and building development separately
- z) Estimated medium term capacity – Assumed sales prices

3. Any user manual or model guidelines/instructions
4. A detailed explanation of how the model calculates infill feasibility on parcels that already contain a dwelling, particularly how it accounts for the size and location of dwellings, driveways, swimming pools, minor dwellings, sheds, and so on.
5. The precise calculations of demand, including
 - a) how the 2018 projections were rolled forward to 2022
 - b) allocation to areas and dwelling types (including the period over which township shares were estimated from building consent data, and why that period was chosen)
6. Exactly how population projections were converted to households and then dwellings, including a break down of the values used/assumed by township etc
7. What assumptions are made about unoccupied dwellings
8. Assumed sales prices by dwelling type and area (and the date/period at which they were derived)
9. How the cost of capital of 10% was derived
10. What adjustments the model makes to translate reasonably expected to be realised (RER) capacity into likely future market supply to account for the myriad factors that limit the latter over the short to medium term, including (but not limited to)
 - a) Developer intentions – some landowners have no clear intention to develop in the short to medium-term, nor to sell their land to others who may wish to develop it.
 - b) Tax implications – greenfield land-owners are liable for taxes on recent land value uplifts caused by rezoning. These taxes are

greatest in the first year following the rezoning, but gradually diminish over time and then cease 10 years later.

- c) Land banking and drip-feeding – other landowners intend to develop in future but are currently withholding supply to capitalise on inevitable land price inflation, while some are drip-feeding supply to maintain prices and hence maximise returns.
 - d) Site constraints – the Council's estimates of likely supply appear to consider only infrastructure as a potential site constraint and therefore overlook other factors that affect developability, such as contamination or awkward site shape/topography.
 - e) Operational capacity – some landowners face operational capacity constraints, which limit the number of new residential lots that they can supply per annum.
 - f) Financing – similarly, some landowners face capital/financing constraints that also limit their ability to supply.
11. The rationale for adopting a 7% profit margin for building development despite unequivocal guidance by MHUD to use 20% and to only depart from that with input from the development community
 12. The extent to which the development community was consulted during this process, and their feedback incorporated, as opposed to just being a black box modelling exercise by "out of town" consultants.
 13. How sufficiency was assessed across different price bands, as is usually done to properly assess capacity
 14. The results of any affordability analyses performed.