

**BEFORE THE HEARINGS PANEL
FOR THE SELWYN PROPOSED DISTRICT PLAN**

IN THE MATTER

of the Resource
Management Act
1991

AND

IN THE MATTER

of Hearing Topic 1,
Strategic Directions

FURTHER LEGAL SUBMISSIONS FOR CHRISTCHURCH CITY COUNCIL

**HEARING TOPIC 1 – STRATEGIC DIRECTIONS SECTION OF THE
PROPOSED DISTRICT PLAN**

3 September 2021



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1. INTRODUCTION

- 1.1** These further legal submissions are made on behalf of Christchurch City Council (**Council or CCC**) in response to Minute 5 issued by the Panel, and the memorandum of counsel for the 'Carter Group Companies', dated 25 August 2021.
- 1.2** Minute 5 provides an opportunity for submitters on the Strategic Directions chapter to respond to the additional legal submissions made by counsel for the Carter Group, to the extent necessary.

2. OUTLINE OF SUBMISSIONS

- 2.1** These legal submissions:
- (a) Briefly address the timeline set out in the Carter Group memorandum;
 - (b) Discuss the interpretation advanced by the Carter Group, to the extent that it has not already been addressed in the submissions filed by CCC for the Urban Growth topic.

3. TIMELINE SET OUT BY THE CARTER GROUP

- 3.1** CCC (and Canterbury Regional Council or CRC) were aware that the timing of Change 1 to the Canterbury Regional Policy Statement (**CRPS**) had been discussed between the Panel and counsel for the Carter Group during Day 3 of the Strategic Directions hearing, and that a timeline had been requested by the Panel.
- 3.2** As a result, CRC's evidence for the Urban Growth hearing, and both CRC and CCC's legal submissions were able to address the timing of the NPS-UD in relation to the preparation and approval of Change 1.
- 3.3** Without repeating the details of the CRC evidence, or the legal submissions filed by CRC and CCC, we observe that:

- (a) Ms Tamara Phillips, in her evidence dated 13 August 2021, outlines the preparation of Change 1 (refer paragraph 36);
- (b) The legal submissions for CRC provide background information and a timeline in relation to the preparation of Change 1 (refer paragraphs 28 and 30); and
- (c) CCC's legal submissions also discuss the background to Change 1 (refer paragraph 4.3 and 4.4).

3.4 With respect, it is submitted that there are several relevant omissions to the timeline outlined by the Carter Group. These are:

- (a) the absence of any reference to the 120-day extension sought by CRC, and the purpose of such extension (to enable specific consideration of the NPS-UD);
- (b) the absence of any reference to the evaluation report prepared by CRC which assessed Change 1 in light of the NPS-UD, and which accompanied the recommendation to the Minister; and
- (c) the absence of any reference to the peer review required by the Minister's directions for the Change 1 process.

3.5 CCC has decided to bring these matters to the attention of the Panel, and respectfully suggests that any questions on these points may be appropriately raised during the Urban Growth hearing in due course. It is submitted however that the Panel should place greater reliance on the evidence of CRC in this regard, given its understanding of the process and direct involvement in it.

4. INTERPRETATION ADVANCED BY THE CARTER GROUP

4.1 In the context of the Urban Growth hearing, CCC has already made legal submissions addressing, and rejecting, the interpretation advanced by the Carter Group (albeit that these submissions were prepared on the basis of the oral argument made during Day 3 of the Strategic Growth hearing). As a result,

these legal submissions focus on matters that have not already been covered.

The interpretation advanced by the Carter Group

4.2 The submissions made by the Carter Group focus on the potential inconsistency between the CRPS, and Objective 6 and Policy 8 of the NPS-UD (or what we have termed the responsive planning framework). The Carter Group submissions argue that in reconciling the NPS-UD and CRPS it is permissible to adopt a softer interpretation of the “avoid” framework in the CRPS, by reading that term as “avoid unless...”.

4.3 With reference to CCC’s urban growth submissions (refer 5.18 to 5.29), this interpretation cannot reasonably be sustained. The fact that the CRPS provides an avoid framework for urban growth does not preclude local authorities considering proposals for unanticipated or unplanned urban development, and acting on those in a responsive way. What it does mean however, is that before any such proposals can be adopted by a local authority, there is an additional process step involved to change the CRPS (so that the requirements of section 75(3) are satisfied).

4.4 The Carter Group submissions, in paragraph 40, refer to the guidance issued by MfE, which notes:

The identified areas must give effect to the responsive planning policies in the NPS-UD and therefore should not represent an immovable line. Council policies, including those in regional policy statements relating to out-of-sequence development, will need to be reviewed and, in some cases, amended to reflect the responsive planning policies of the NPS-UD.

4.5 Relevantly, this guidance does not mandate any amendments to regional policy statements or Council policies, as it is qualified by the reference to “in some cases”. It is submitted for CCC that in reaching any position as to the appropriateness of reviewing the

CRPS, or any other policy document, the NPS-UD should be considered as a whole. When this holistic reading is taken, it is submitted that it is both appropriate and reasonable for the relevant regional authority to adopt an interpretation that a restrictive framework is warranted for urban growth.

4.6 While CCC accepts that the NPS-UD provides direction to enable development capacity,¹ it is submitted that this is not open ended. The NPS-UD requires certain levels of development capacity to be enabled over specific temporal periods, with the levels determined through detailed capacity assessments prepared on a 3-yearly cycle. CCC's position is that enabling unconstrained capacity is not in keeping with the overall intent of the NPS-UD, which contains a number of relevant objectives and policies that seek to collectively achieve a well-functioning urban environment. Put another way, enablement is not the sole driver for the NPS-UD, there are a number of important considerations in play.

4.7 Finally, in relation to the suggestion that the CRPS (post-Change 1) does not give effect to Policy 8, we note again that the responsive planning framework is a pathway for the consideration of proposed plan changes. Policy 8 does not, itself, direct any particular outcomes that may be expected to be incorporated into a regional policy statement, or a district plan, other than the criteria required by clause 3.8 which clarify how to assess what is a "significant" addition to development capacity.

DATED this 3rd day of September 2021



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¹ Carter Group submissions, at 43.1.