

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 26 to the Operative Waipā District Plan, Proposed Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan

**JOINT MEMORANDUM OF COUNSEL FOR THE COUNCILS REGARDING
INDEPENDENT HEARING PANEL DIRECTION #2**

Dated 22 December 2022

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INTRODUCTION

1. Proposed Plan Change 26 to the Operative Waipā District Plan, Proposed Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan are Intensification Planning Instruments (**Waikato IPIs**) under s80E of the Resource Management Act 1991 (the **Act**).
2. On 25 August 2022 the Independent Hearing Panel (IHP) issued a direction regarding procedures for dealing with invalid, potentially invalid, or late submissions on the Waikato IPIs (**Direction #2**).
3. This Joint Memorandum is submitted on behalf of Waipā District Council, Hamilton City Council and Waikato District Council (the **Councils**) for the purpose of identifying, and seeking direction from the IHP, in respect of late, potentially invalid, and out of scope submissions.

LATE SUBMISSIONS

4. Late submissions are usually accepted or rejected by the Councils under clause 1 of the First Schedule of the Act. However, under clause 95(2) of the First Schedule, clause 1 does not apply to an Intensification Streamlined Planning Process (ISPP). Instead, the IHP has power to accept or reject late submissions under clause 98(3) of the First Schedule.
5. The Councils advise that they have received the late submissions set out in Appendix 1 of this memorandum. As these submissions were received only a short time following the close of submissions and were able to be included in the summary of submissions which was notified on 28 November 2022 (for Hamilton City Council and Waipā District Council) and 5 December 2022 (for Waikato District Council), the Councils request a direction from the IHP that:
 - (a) The late submissions identified in Appendix 1 be accepted;

- (b) Any submissions received by Hamilton City Council or Waipā District Council after 28 November 2022 will not be accepted unless a waiver is sought from the IHP; and
- (c) Any submissions received by Waikato District Council after 5 December 2022 will not be accepted unless a waiver is sought from the IHP.

POTENTIALLY INVALID SUBMISSIONS

- 6. The Councils have received a large number of submissions which seek relief which cannot be granted by the IHP in respect of an IPI. These include matters such as:
 - (a) General opposition to the Medium Density Residential Standards in Schedule 3A of the Act or requests for withdrawal of the IPI;
 - (b) Requests for amendment of the Medium Density Residential Standards in Schedule 3A of the Act (without identifying a qualifying matter);
 - (c) Requests for the IHP to assess the effects of the Medium Density Residential Standards in Schedule 3A of the Act in respect of amenity, visual effects, shading and privacy; and
 - (d) Requests for the IHP to require the provision of on-site carparking.
- 7. This group of submissions is described more fully in paragraphs 4.4 to 4.12 and 4.26 to 4.29 of the Joint Themes and Issues Report submitted on 15 December 2022 (**Themes and Issues Report**).
- 8. The Councils do not oppose these submitters being heard at the upcoming hearings of the Waikato IPIs. However, for the purpose of ensuring a transparent and efficient hearing process, the Councils request that the IHP issue directions in advance of the hearings clarifying that:

- (a) The Councils were required to notify an IPI (s80F of the Act) and do not have power to withdraw the Waikato IPIs (s80G(1)(c) of the Act);
- (b) The IHP does not have power to amend the Medium Density Residential Standards in Schedule 3A of the Act, except where a qualifying matter applies to a site (ss77I and 77O of the Act);
- (c) The Councils, and the IHP, cannot take into account the effects of the Medium Density Residential Standards in Schedule 3A of the Act in respect of amenity, visual effects, shading and privacy, except where a qualifying matter applies to a site (the Medium Density Residential Standards are required by s77G of the Act);
- (d) The Councils, and the IHP, are unable to include rules in the district plans which require on-site car parking, except in limited circumstances such as accessible parking (clause 3.38 of the National Policy Statement for Urban Development 2020);
- (e) The Panel will limit any submitter presentations which seek to argue for outcomes not available at law, and all submitters should review their relief sought accordingly.

OUT OF SCOPE SUBMISSIONS

- 9. The Councils have received number of submissions which are potentially out of scope of the notified Waikato IPIs. These submissions are described more fully in paragraphs 4.30 to 4.49 of the Themes and Issues Report.
- 10. This Joint Memorandum seeks directions only in respect of the submissions seeking rezoning which are identified in Appendix 2 of this Joint Memorandum, with the reasons why each submission is considered to be clearly out of scope and capable of a determination by the IHP on

the papers. Waikato District Council in particular has identified additional rezoning submissions which may be out of scope however it considers these should be dealt with at the substantive hearing. These submissions are not identified in Appendix 2.


11. In order to avoid the Councils and the submitters incurring expenses in preparing for the hearing, and to avoid prolonging the hearing process, the Councils request the IHP to determine whether the appeals are out of scope and should be struck out under s41D of the Act in advance of the hearings.
12. Whether the remaining categories of submissions identified in the Themes and Issues Report are out of scope of the notified Waikato IPIs will be addressed in legal submissions at the hearings of the Waikato IPIs.

DIRECTIONS

13. The Councils seek the following directions:
 - (a) The late submissions identified in Appendix 1 be accepted.
 - (b) Any submissions received by Hamilton City Council or Waipā District Council after 28 November 2022 will not be accepted unless a waiver is sought from the IHP.
 - (c) Any submissions received by Waikato District Council after 5 December 2022 will not be accepted unless a waiver is sought from the IHP.
 - (d) The IHP issue directions confirming the matters in paragraph 8(a) to (d) of this Joint Memorandum.
 - (e) The submissions identified in Appendix 2 of this Joint Memorandum are to be the subject of a scope determination by the IHP before the respective substantive hearings. Submitters identified in Appendix 2 are required to provide to the Hearing Coordinator written submissions in support of their relief being within scope by 17 February 2023. The Councils are required to

provide to the Hearing Coordinator written submissions in opposition by 24 February 2023. Subject to any requirement for a scope hearing, the IHP will then issue a determination on each submission by 3 March 2023.

Signed this 22nd day of December 2022



L F Muldowney
Counsel for Hamilton City Council



B A Parham
Counsel for Waikato District Council



W J Embling
Counsel for Waipā District Council

APPENDIX 1: LATE SUBMISSIONS**Waipā District Council**

Submitter	Submission number	Date and time submission received (submissions closed 5pm 30 September 2022)
Sam Shears	76	After 5pm, 30 Sept 2022
John Andrew	77	1 October 2022
Edmund Bruce Horner	78	1 October 2022

Waikato District Council

Submitter	Submission number	Date and time submissions received (submissions closed 5pm 28 October 2022)
Kainga Ora	106	28 Oct 2022, 5.33pm
Mike Allington	109	29 Oct 2022, 9.31am
Te Whakakitenga o Waikato Incorporated	114	23 Nov 2022, 9.48am
Queens Redoubt Trust	115	27 Nov 2022, 6.05pm

Hamilton City Council

Submitter	Submission number	Date and time submissions received (submissions closed 5pm 30 September 2022)
Graham Shirley	185	01 Oct 2022, 12:12 am
Jim Downey	188	01 Oct 2022, 8:48 am
Lynne McKeown	186	01 Oct 2022, 11:05 am
Kristine Hayward	220	05 Oct 2022, 1:49 pm
Margaret Louise Sale (Residents of Frankton East)	350	12 Oct 2022, 5:10 pm
Jan Whaley	339	14 Oct 2022, 10:42 pm
Waikato River Authority - Bob Penter	324	03 Nov 2022, 9:47 am

APPENDIX 2: OUT OF SCOPE SUBMISSIONS**Waipā District Council**

Submission number and name	Decision requested	Reason for the submission being out of scope
59.1 Triple 3 Farm Limited	The submission seeks to rezone 333 Tuhikaramea Road from rural to residential (either in whole or in part).	The submission falls outside the scope of PC26 which related solely to residential zones and did not propose changes to rural zones. There is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.
65.31 CKL NZ Limited	The submission seeks to rezone Growth Cells O3 and O4 in Ohaupo from deferred large lot residential to a live large lot residential zone.	The submission falls outside the scope of PC26 which related solely to residential zones and did not propose changes to deferred large lot residential zones. There is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.
73.125 Retirement Village Association 70.125 Ryman Healthcare Limited	These submissions seek to rezone the deferred residential zones to a live residential zone.	The submissions fall outside the scope of PC26 which related solely to residential zones and did not propose changes to deferred residential zones. There is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.

Waikato District Council

Submission number and name	Decision Requested	Reason for the submission being out of scope
13.1 Halm Fan Kong	Rezone 145 Park Road from GRUZ to MDRZ to allow for more housing in Horotiu	The submission seeks the rezoning of land zoned General Rural in Horotiu. This falls outside the scope of V3 which relates only to the towns of Huntly, Ngaaruawaahia, Pookeno and Tuakau. Within these towns, V3 relates to the relevant residential zones only (except for the rezoning of two rural sites in Pookeno). The change sought would not be an incidental or consequential extension of zoning in the four towns and there is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.
20 Greig Developments	Amend the maps to include 23A Harrisville Road and a property on Johnson/Oak Street, Tuakau as MDRZ (see submission for map of sites).	This submission is considered to be partially out of scope in so far as it seeks to rezone RT 551376; RT 655697; RT NA1022/190; and RT NA1024/222 from Large Lot Residential Zone to MDRZ. This falls outside the scope of V3, which relates to the relevant residential zones only (except for the rezoning of two rural sites in Pookeno). The Large Lot Residential Zone is specifically excluded from the definition of relevant residential zone. ¹ There is a

¹ Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, s 4 and Resource Management Act 1991, s 2.

Submission number and name	Decision Requested	Reason for the submission being out of scope
		real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.
27.1 Howard Lovell	Amend maps to identify areas of land between Great South Road and Gordonton Road in Taupiri as MRZ1. Refer to areas identified within Attachment A of the submission.	This submission requests rezoning of land in Taupiri. This falls outside the scope of V3 which relates only to the towns of Huntly, Ngaaruawaahia, Pookeno and Tuakau. Within these towns, V3 relates to the relevant residential zones only (except for the rezoning of two rural sites in Pookeno). The change sought would not be an incidental or consequential extension of zoning and there is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.
49.1 Horotiu Farms Limited	Amend Variation 3 zoning maps to include areas 1-10 Horotiu West as MDRZ located between Great South Road and State Highway 1 (shown in submissions) and associated consequential amendments to the Proposed District Plan.	This submissions requests rezoning of land in Horotiu. This falls outside the scope of V3 which relates only to the towns of Huntly, Ngaaruawaahia, Pookeno and Tuakau. Within these towns, Variation 3 relates to the relevant residential zones only (except for the rezoning of two rural sites in Pookeno). There is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.

Submission number and name	Decision Requested	Reason for the submission being out of scope
106.15 Kainga Ora	Amend the zoning of 32 Main Road and at 1-7 Baird Ave, Te Kauwhata from Commercial zone to Town centre zone. AND Any such further alternative or consequential relief as may be necessary to fully achieve the relief sought in the submission.	This submission requests rezoning of land in Te Kauwhata. This falls outside the scope of V3 which relates only to the towns of Huntly, Ngaaruawaahia, Pookeno and Tuakau. Within these towns, V3 relates to the relevant residential zones only (except for the rezoning of two rural sites in Pookeno). V3 does not seek any changes to the commercial zone. There is a real risk that persons living in the vicinity of the site would be denied an effective opportunity to participate in the process.

Hamilton City Council

(Identified as at 22 December 2022)

Submission number and name	Decision requested	Reason for the submission being out of scope
Waikato Racing Club, John Olliver; BBO - 266.2	Amend planning maps to rezone the Te Rapa Racecourse (PPC13 site) from Major Facilities Zone to Medium Density Residential Zone.	The submission falls outside the scope of PC12 which does not propose changes to the Major Facilities Zone and extending the Residential Zone in its place. There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.
Station Corner – Barker and Associates; Fraser McNutt - 233.1	The Base Shopping Centre and surrounding area identified in Figure 1 of the submission (which includes Business Zone, General Residential Zone, Industrial Zone, Open Space Zone and Community Facilities Zone) be rezoned as Metropolitan Centre Zone.	The submission is considered to be partially beyond the scope of PC12 which does not make changes to the extent of the Industrial Zone (except with respect to Quentin Drive), the Open Space Zone or the Community Facilities Zone. There is a real risk that directly affected parties and property owners would be denied an effective opportunity to participate in the process.
Pragma (51A Rifle Range Rd); Fraser McNutt - 219.1	Rezone 51A Rifle Range Road from Sports and Recreation Open Space Zone to General Residential Zone.	The submission falls outside the scope of PC12 which does not propose reducing the extent of the Natural Open Space Zone and extending the Residential Zone in its place. There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.

Submission number and name	Decision requested	Reason for the submission being out of scope
Aurecon NZ Ltd, Te Awa Lakes Joint Venture, Perry Group and Horotiu Farms Ltd; Melissa Needham - 249.8	Rezone the 'HEN' site (Figure 6 of submission) from Major Facilities Zone to Medium Density Residential Zone, and any consequential amendments including the rezoning of the 'HES' site from Te Rapa North Industrial Zone – Deferred Industrial Zone to Major Facilities Zone and complimentary commercial and light industrial zones.	The submission falls outside the scope of PC12 which does not propose reducing the extent of the Major Facilities Zone or the Te Rapa North Industrial Zone – Deferred Industrial Zone and extending the Residential Zone, the Business Zone, or the Industrial Zone in their place There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.
Metlifecare Ltd (288.8); Bianca tree	The submitter seeks that the planning maps be amended to rezone part of the Te Rapa Racecourse from Major Facilities Zone to Medium Density Residential Zone.	The submission falls outside the scope of PC12 which does not propose changes to the Major Facilities Zone and extending the Residential Zone in its place. There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.
David and Barbara Yzendoorn - 347.1	Rezone 29 Petersburg Drive from Natural Open Space Zone to General Residential Zone.	The submission falls outside the scope of PC12 which does not propose reducing the extent of the Natural Open Space Zone and extending the Residential Zone in its place. There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.

Submission number and name	Decision requested	Reason for the submission being out of scope
Sarah Josephine and Zoe Georgina Yzendoorn – 201.7	Seek that the HHA on Oxford Street (west) and Heritage Building - 3 Oxford Street (H253) be removed from the planning maps.	The submission falls outside the scope of PC12 which recognises heritage as a QM. PC12 is confined to the question of whether to apply the QM, it is not addressing the underlying identification of heritage. There is a real risk that directly affected parties would be denied an effective opportunity to participate in the process.