

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 DIRECTIONS #7 AND #8**

Dated 1 February 2023

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MAY IT PLEASE THE INDEPENDENT HEARING PANEL

INTRODUCTION

1. This joint memorandum of counsel for Hamilton City Council (**HCC**), Waipā District Council (**Waipā DC**) and Waikato District Council (**WDC**) (the **Councils**), responds to the Independent Hearing Panel's (**Panel**) direction #7 (relating to HCC and WDC) and direction #8 (relating to Waipā DC) both dated 1 February 2023 (**directions**). These directions are, for practical purposes, identical for each of the plan changes (**Waikato IPIs**) and establish a revised timetable for the filing of legal submissions relating to scope matters.
2. For the reasons set out in this memorandum, the Councils respectfully seek that the directions be amended as set out in paragraph 19 of this memorandum.

BACKGROUND

Procedural history

3. In the joint memorandum of counsel for the Councils dated 22 December 2022 (**December memorandum**), the Councils identified that there were a number of submissions that may be outside the scope of the respective plan changes. The Councils sought an efficient process to deal with scope issues, and identified that a subset of submissions that sought rezoning were amenable to a scope determination 'on the papers', while others would be better resolved at or before the substantive hearings.
4. The Councils set out that subset of rezoning submissions in Appendix 2 to the December memorandum, which included a summary of the reasons why scope was questionable. They then proposed a timetable for the exchange of submissions addressing scope, which required the submitters

to file first, by 17 February 2023, and the Councils to reply by 24 February 2023. This sequence reflected the fact that the Councils had set out their initial scope reasoning in Appendix 2 to the December memorandum.

5. On 23 December 2022 the Panel issued direction #5 (direction #6 for Waipā DC) which confirmed the timetable proposed in the December memorandum. Notably, under direction #5, the Councils were not required to file submissions until 24 February 2023, after the initial hearing scheduled for 14- 17 February had been concluded. This gave the Councils sufficient time to manage competing time constraints.
6. Next, on 17 January 2023 counsel for The Adare Company Limited (**Adare**) filed a memorandum seeking that submissions relating to 'inclusionary zoning/affordable housing provisions' (**inclusionary zoning**) be included for determination on the papers, according to the timetable established under direction #5, but with a slight adjustment requiring parties (excluding Councils) who considered this issue outside scope to file submissions by 10 February 2023.
7. Despite the Adare application broadening out the extent of the scope submissions to be dealt with on the papers to include inclusionary zoning, the Councils confirmed with the Panel that they agreed to the directions sought by Adare. The Council's agreement was predicated on the directions reflecting that the date for the Councils to file their submissions was consistent with the timetable in direction #5, being 24 February 2023.
8. On 18 January 2023 the Panel issued direction #6 (direction #7 for Waipā DC) which confirmed the amended directions. Under direction #6, the timetable recorded the date for the Councils to file their submissions on scope as being 24 February 2023, which was consistent with direction #5.
9. Next, on 31 January 2023, counsel for Te Awa Lakes Unincorporated Joint Venture, Perry Group, and Horotiu Farms Ltd (**Te Awa Lakes**) filed a memorandum highlighting that the two sets of directions contained an

inconsistency, in that for the inclusionary zoning scope issue, an additional step was required; namely that submitters who wished to argue the submissions on inclusionary zoning were outside scope were required to file submissions by 10 February 2023.

10. To address the inconsistency, counsel suggested that the timetables be amended to align, and that they now commence with the Councils filing submissions by 10 February 2023, with other parties to follow.
11. Without hearing from the Councils, the Panel issued the directions establishing that suggested timetable.

Prejudice caused

12. The directions cause procedural prejudice to the Councils by bringing forward the deadline for them to file submissions on the scope issues relating to rezoning and inclusionary zoning.
13. The strategic hearing into the Waikato IPIs is scheduled for 14 -17 February 2023 (**strategic hearing**), with the Councils required to file legal submissions by 10 February 2023. Counsel are currently directing their efforts towards meeting that deadline.
14. If counsel are required to now present detailed written submissions on scope matters by 10 February also, this will prejudice their ability to present effective and helpful opening submissions, and submissions on scope. This will compromise the efficacy of the strategic hearing.
15. While the Councils were willing to address the scope issues early, this was not intended to compromise or complicate the preparation for the strategic hearing in the manner that the directions now do.
16. There is no reason why the scope issues relating to HCC and WDC require advanced determination in the manner established by the directions. Each

of the Councils have different dates for the substantive hearings.¹ For HCC and WDC, these scope issues only require determination ahead of the substantive hearings in July through September 2023. Waipā DC does however require an earlier determination on scope issues due to its substantive hearing commencing in April 2023.

17. Accordingly, the Councils are on slightly different paths. For HCC and WDC, those councils are content to leave the question of a timetable for the resolution of all scope issues to be determined at the strategic hearing. This is on the basis that counsel expect that at the conclusion of hearing all evidence, the Panel will engage with all counsel on the issue of what procedural directions are appropriate for each of the Waikato IPIs, taking into account their staggered substantive hearings, the extent of any differentiated or overlapping issues (including scope related), and similar matters affecting procedural efficiency.
18. Waipā DC does however require a timetable for zoning scope issues at this stage, and seeks to revert to the original timetable on the basis that the explanation in Appendix 2 of the December memorandum does sufficiently put the submitters on notice of the scope risks. Like HCC and WDC, Waipā DC is content to address the timetable for inclusionary zoning scope issues at the strategic hearing.

UPDATED DIRECTIONS SOUGHT


19. Accordingly, the Councils seek that the following directions be made:
 - a) The submission exchange timetable set out in Direction #7 (relating to HCC and WDC) is vacated;

¹ Waipā DC 26 April – 3 May 2023, WDC 26 July -4 August 2023, HCC 4-22 September 2023.

- b) The submission exchange timetable set out in direction #8 (relating to Waipā DC) is amended to remove the requirement for Waipā DC to file submissions by 10 February 2023;

- c) All remaining procedural issues concerning scope, including inclusionary zoning, will be addressed at the conclusion of the strategic hearing. Any party seeking to participate in the discussion with the Panel on those topics is required to attend at a time to be confirmed by the hearing administrator.

Dated this 1st day of February 2023



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