

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

**MEMORANDUM OF COUNSEL FOR WAIPĀ DISTRICT COUNCIL FOR
PROCEDURAL MATTERS CONFERENCE ON 24 FEBRUARY 2023**

Dated 22 February 2023

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Introduction

1. This memorandum is lodged by counsel for Waipā District Council (the **Council**) in respect of the procedural matters conference scheduled for 24 February 2023 as part of the joint opening hearing of the Waikato IPIs.
2. As requested by the Hearing Panel, consideration has been given to the procedural directions that may be required in advance of the substantive hearing of Plan Change 26, particularly in respect of:
 - (a) Early determination of submissions which are out of scope of Plan Change 26;
 - (b) Topics on which conferencing may be of benefit; and
 - (c) Any other matters arising during the joint opening hearing.

Out of scope submissions - rezoning

3. On 23 December 2022 Direction #6 put in place a timetable for the exchange of legal submissions relating to the submissions on the Waikato IPIs which seek rezoning of land which the Councils consider to be out of scope of the relevant plan change or variation. On 3 February 2023 that timetable was amended by Direction #9 so that it only applies to Waipā District Council.
4. As confirmed by Direction #9, the following timetable now applies to the four rezoning submissions which the Council has identified as potentially out of scope of Plan Change 26 (Triple 3 Farm Limited 59.1; CKL NZ Limited 65.31, Retirement Village Association 73.125 and Ryman Healthcare Limited 70.125):
 - (a) Submissions on behalf of the submitters in support of their relief being within scope to be lodged by 17 February 2023;
 - (b) Submissions by the Council in response to be lodged by 24 February 2023;
 - (c) Subject to the need for a scope hearing, the Panel will issue its determination by 3 March 2023.

5. In accordance with this timetable, legal submissions have been lodged on behalf of Triple 3 Farm Limited and joint legal submissions have been lodged on behalf of the Retirement Village Association and Ryman Healthcare Limited. Legal submissions in reply on behalf of the Council will be lodged on Friday 24 February 2023.
6. The legal submissions for the submitters have requested an opportunity to reply to the Council's legal submissions, by 28 February 2023. The Council has no objection to a right of reply, provided that there is no effect on the date of the Hearing Panel's determination on scope. Alternatively, counsel would be available for a short hearing on the issue of scope, if that would be of assistance to the Hearing Panel.

Out of scope submissions – inclusionary zoning

7. The Waikato Community Lands Trust (together with Bridge Housing Charitable Trust, Waikato Housing Initiative, Habitat for Humanity Central Region Limited and Momentum Waikato) (WCLT) lodged a submission on Plan Change 26 (submission number 64) seeking inclusionary zoning / affordable housing provisions (**inclusionary zoning**).
8. At the request of The Adare Company Limited, Direction #7 included the issue of whether inclusionary zoning falls within the scope of the Waikato IPIs in the matters to be determined in accordance with the timetable set out at paragraph 4 above. However, at the request of the Councils, Direction #9 removed the issue of inclusionary zoning from this timetable. Waipā District Council agreed to remove this issue from the timetable as submissions requesting inclusionary zoning have been made on all of the Waikato IPIs, so that a joint determination as to whether the issue is within the scope of the Waikato IPIs is desirable.
9. In terms of the timing of the determination relating to whether inclusionary zoning is within the scope of the Waikato IPIs, with the previous timetable having been vacated, it is no longer possible for the issue to be determined in advance of the circulation of the s42A report and evidence on Plan Change 26. However, counsel proposes the

following timetable which would enable a determination to be made before the substantive hearing of Plan Change 26 commences on 26 April 2023:

- (a) Any party who considers that submissions seeking inclusionary zoning are beyond the scope of the Waikato IPIs to provide written legal submissions by 10 March 2023;
- (b) Submissions on behalf of the submitters in support of their relief being within scope to be lodged by 17 March 2023;
- (c) Submissions by the Councils and any other party in response to be lodged by 24 March 2023; and
- (d) Subject to the need for a scope hearing, the Panel will issue its determination by 31 March 2023.

10. Given the timing of this determination in relation to the commencement of the hearing of Plan Change 26, counsel proposes that:

- (a) If the Panel determines that inclusionary zoning falls outside the scope of Plan Change 26, the hearing will proceed without considering those submissions on the Plan Change; and
- (b) If the Panel determines that inclusionary zoning falls within the scope of Plan Change 26, the submissions relating to this issue will be heard as a separate topic to be considered by the Panel at a later date (timetable to be determined in consultation with the Panel).

11. The reasons for proposing a separate hearing on inclusionary zoning (if determined to be within scope) are:

- (a) The scope determination will not be made in time to be considered in the s42A report or parties' evidence for the hearing scheduled to commence on 26 April 2023.
- (b) The Waipā District Council has considered options for affordable housing including inclusionary zoning as part of draft Plan Change 21. Following the preparation of an Issues and Options Report, Council asked staff to look at progressing options for inclusionary zoning through draft Plan Change 21. On

this basis, Council has indicated preliminary support to look into all options for inclusionary zoning, including the potential use of financial contributions.

- (c) As Plan Change 26 does not currently contain inclusionary zoning provisions, significant additional work will be required to develop these provisions.
- (d) If inclusionary zoning provisions are proposed for Plan Change 12 or Variation 3, it may be appropriate for a joint hearing to be held on this issue.

Conferencing

- 12. The Panel has requested an indication of whether there are topics which would benefit from informal or formal conferencing in advance of the substantive hearing of Plan Change 26.
- 13. Direction #4 sets out the timetabling directions for the substantive hearing of Plan Change 26, and includes:
 - (a) Council's s42A report to be circulated on 10 March 2023;
 - (b) Council's evidence to be circulated on 24 March 2023;
 - (c) Submitters evidence to be circulated on 6 April 2023.
- 14. The Direction also provides for expert conferencing in the week of 13 March 2023.
- 15. The Council proposes to continue direct discussions with individual submitters so that, as far as possible, Council's s42A report will incorporate any proposed amendments to Plan Change 26 arising from those discussions.
- 16. If the s42A report shows that more formal conferencing may assist in respect of particular issues or topics, this will be arranged for the week of 13 March.

Topics for the substantive hearing

17. While counsel for Hamilton City Council has requested a topic-based approach for its substantive hearing, with the one exception below, Waipā District Council does not consider that this will be required for its hearing.

18. In respect of submissions relating to Financial Contributions, counsel considers that it would be more efficient for the hearing of submissions relating to the Financial Contributions provisions of Plan Change 26 to be heard jointly with submissions relating to the Financial Contributions provisions of Plan Change 12 for the following reasons:
 - (a) Both Plan Change 26 and Plan Change 12 seek to introduce new financial contributions relating to Te Ture Whaimana and residential amenity;
 - (b) A number of the submitters have lodged a submission on both plan changes;
 - (c) It would be appropriate for a consistent approach to be taken to financial contributions between the two councils;
 - (d) A joint timetable for evidence exchange and hearing would enable any informal discussions or formal conferencing to involve both councils and submitters, rather than separate discussions taking place in respect of each plan change; and
 - (e) A later hearing for the Financial Contributions topic could also include the issue of inclusionary zoning, if this issue is found to be within the scope of the plan changes.

Directions

19. Accordingly, counsel seeks the following directions:
 - (a) A timetable for the determination of whether the issue of inclusionary zoning is within the scope of the Waikato IPIs, as proposed at paragraph 9 above; and
 - (b) A direction that submissions on the topic of Financial Contributions will not be heard at the substantive hearing of Plan Change 26 scheduled for 26 April to 3 May 2023, but will be heard at a joint hearing with submissions on the topic of

Financial Contributions on Plan Change 12, with a timetable for evidence exchange and hearing to be advised in a later direction.

Consultation with parties

20. A draft of this memorandum has been circulated to all submitters on Plan Change 26 and to counsel who appeared at the joint opening hearing of the Waikato IPIs.

Signed this 22nd day of February 2023



W J Embling
Counsel for Waipā District Council