

**BEFORE THE INDEPENDENT HEARING PANEL APPOINTED BY THE
HAMILTON CITY COUNCIL, WAIKATO DISTRICT COUNCIL, AND WAIPA
DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of Plan Change 12 to the Hamilton City District Plan

BETWEEN **THE ADARE COMPANY LIMITED**

Submitter #243

AND **HAMILTON CITY COUNCIL**

Local authority

LEGAL SUBMISSIONS FOR THE ADARE COMPANY LIMITED

STRATEGIC ISSUES

10 February 2023

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MAY IT PLEASE THE HEARING PANEL:

Background

- 1 These submissions are filed for The Adare Company Limited (**Adare**).
- 2 Adare is a family-owned company, which manages the landholdings of the Peacocke family. The Peacocke family has a long-standing connection to Peacocke, Hamilton, having owned and farmed land since the 1880s.
- 3 Adare is a submitter and further submitter on Plan Change 12 to the Hamilton City District Plan (**PC12**). Adare's interest in PC12 is threefold:
 - (a) to ensure that amendments to city-wide residential zone and subdivision provisions avoid duplication or conflict with the comprehensive, bespoke provisions for the Peacocke Precinct that are being developed through Plan Change 5 – Peacocke Structure Plan (**PC5**);
 - (b) to improve the workability of assessment criteria, residential zone, transport, three waters and design guide provisions and ensure their consistency with the outcomes anticipated by PC5 and Plan Change 9 – Historic Heritage and Natural Environments; and
 - (c) to ensure that the proposed financial contributions regime is fair and workable, by excluding it from applying to greenfield areas or, at least, the Peacocke Precinct.
- 4 The submission points referred to at paragraphs 3(a) and (b) above relate to the finer planning details and workability of PC12. Given the focus of Session 1, those issues are not addressed further.
- 5 PC12's approach to financial contributions is an important strategic issue and are the focus of these submissions.

Financial contributions – an unfair regime

- 6 Through PC12, Hamilton City Council (**HCC**) proposes to completely rewrite Chapter 24 of the District Plan. In essence, the proposed regime would require any new residential development¹ to provide a financial contribution in money or land of:

¹ Non-residential developments are also subject to financial contributions, with the financial contribution calculated by applying an "equity conversion factor".

- (a) ~\$3000 per dwelling for streetscape and amenity enhancement (i.e. for increasing tree canopy cover and upgrading neighbourhood and community/sport parks);
 - (b) ~\$1700 per dwelling to give effect to Te Ture Whaimana objectives, including riparian enhancement, enhancing and maintaining public access to waterbodies, gully restoration and education initiatives; and
 - (c) ~\$106 per dwelling for local network infrastructure upgrades.
- 7 The proposed financial contributions regime takes a relatively blunt approach of estimating the total funding required for HCC's proposed works, dividing that cost by the projected development across the entire Hamilton City and then adjusting for inflation.
- 8 The issue that Adare and other submitters have with this approach is that financial contribution liability is not linked to the effects of a proposal. The broad approach means that developers in greenfield areas will be subsidising works to improve areas of the City that their development does not adversely effect.

Financial contributions – issues for consideration

- 9 The approach taken to financial contributions is addressed in HCC's own submission on PC12,² the Themes and Issues Report,³ Mr Davey's evidence (in passing) and in the Joint Opening Legal Submissions for the Waikato IPI Councils.⁴
- 10 Adare agrees with HCC's submission that "more thought should be given to how Chapter 24 applies to greenfield development areas." Adare supports the relief sought by HCC to amend Chapter 24 to clearly articulate the application of the financial contribution rules to greenfield development areas.⁵
- 11 Adare generally agrees with the way that the Themes and Issues Report has summarised submissions (including Adare's submission), described the relief sought and outlined the factors for the Panel to consider in its

² Submission number 270.23 at page 9.

³ Hamilton Theme 2 at paragraphs [5.108]-[5.120].

⁴ At section 10.

⁵ Submission number 270 at page 9. Submission point 23.

decision-making. In addition to the factors for decision-making identified, Adare submits that the Panel will also need to consider:

- (a) the appropriateness of the proposed financial contribution provisions in terms of section 32 of the RMA, particularly the costs and benefits of the regime (including who bears the costs and who enjoys the benefits);
 - (b) the legality and appropriateness of requiring and calculating financial contributions on a city-wide basis for developments that have no direct or indirect effect on the matter the financial contribution is levied for; and
 - (c) the appropriateness of having greenfield development fund its own adequately designed infrastructure (either developer funded or through development contributions) yet also be asked to contribute to the improvement of infrastructure in brownfield areas.
- 12 Adare intends to call evidence and provide legal submissions on these issues at the substantive hearing later this year.

Scope issues

- 13 Counsel acknowledges that procedural issues concerning scope will be addressed at the conclusion of the strategic hearing, rather than form part of the strategic hearing.
- 14 However, to support an efficient discussion of procedural issues:
- (a) Adare acknowledges the comments made to date by the Councils⁶ and the Panel⁷ that there is sufficient time to resolve scope issues prior to the commencement of the substantive hearings. Adare supports the apparent intent that scope issues will be addressed well in advance of substantive hearings to avoid unnecessary time and cost being expended on responding to invalid submissions. In the interests of fairness and efficiency these issues should be resolved prior to any expert conferencing or the preparation of evidence, rather than the commencement of the hearing itself.

⁶ In the Joint Memorandum to the Panel dated 1 February 2023.

⁷ In its Direction #8 dated 2 February 2023.

- (b) The two categories of scope issue (rezoning and on inclusionary zoning / affordable housing provisions) are distinct and should be addressed separately. It may be appropriate to address the different categories at different times, given the different timing of hearing on each IPI and that the submissions seeking inclusionary zoning / affordable housing provisions are common to all three Waikato IPIs, whereas rezoning requests are IPI-specific.
- 15 Counsel will attend the procedural discussion at the conclusion of the strategic hearing.

Dated this 10th day of February 2022



M J Doesburg
Counsel for The Adare Company Limited