

**IN THE MATTER OF
AND**

the Resource Management Act 1991

IN THE MATTER OF

Waikato IPIs – Waipā DC PC 26.

RESOURCE MANAGEMENT ACT 1991

DIRECTION #12

INDEPENDENT HEARING PANEL

Purpose: The purpose of Direction #12 is to make directions per s.41D(2)(a) RMA on Council-identified potentially out-of-scope submission points with respect to PC 26.

1. Waipā District Council submits that the following submission points are out of scope and should be struck out per s.41D RMA:
 - Triple 3 Farm Limited: submission point 59.1;
 - CKL NZ Limited: submission point 65.31;
 - Retirement Village Association: submission point 73.125; and
 - Ryman Healthcare Limited: submission point 70.125.
2. We deal with each matter in turn.
3. **Triple 3 Farm Limited** submission point 59.1 seeks to rezone 333 Tuhikaramea Road from rural to residential (either in whole or in part).
4. Council submitted that this submission point falls outside the scope of PC 26 as:
 - (a) PC 26 relates solely to residential zones and does not propose changes to rural zones;
 - (b) the s.32 report had not considered the potential effects of rezoning the site or the servicing requirements in terms of three waters and transportation; and
 - (c) 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.
5. Furthermore, Council submitted that the site does not adjoin any land currently zoned Residential, so its rezoning cannot be considered to be an incidental or consequential change that would be enabled by clause 99(2) of Schedule 1 RMA.
6. In reply, counsel for Triple 3 Farm Limited submitted that the Panel should take an holistic approach to the question of scope to avoid undue compartmentalisation, and not be too quick in reaching a conclusion as to whether a reasonable or relevant case is disclosed ahead of hearing substantive evidence on the matter. Mr Gibbons submitted that the High Court's *Albany North Landowners* decision was authority for departing from a strict reading of *Clearwater* where bespoke planning processes are in play.
7. We are also aware that the western side of Tuhikaramea Road (which is the boundary with Hamilton City Council) is zoned Future Urban through to Templeview.
8. Having considered the submissions made, and whilst agreeing with the broad principles submitted by Mr Gibbons, the Panel is not persuaded that they assist Triple

3 Farm Limited's case. In effect it is submitting for an isolated spot zone in what is still predominantly rural zoned land. The fact that the land on the other side of the road in Hamilton City is zoned Future Urban does not assist either – as it might if that were in fact live zoned. Indeed, we see little prospect for success in this present process should this proceed further, although make no finding on that account, not having heard the evidence.

9. The Panel finds that the submission point is not on PC 26 and discloses no reasonable or relevant case for the reasons noted in paragraphs (4), (5), (7) and (8) above.
10. **Direction 1:** Submission point 59.1 of Triple 3 Farm Limited's submission is struck out per s.41D(1)(b) RMA.
11. **CKL NZ Limited** submission point 65.31 seeks to rezone Growth Cells O3 and O4 in Ōhaupō from Deferred Large Lot Residential Zone to a live Large Lot Residential Zone.
12. Council submitted that the submission point falls outside the scope of PC 26 as:
 - (a) PC 26 relates solely to residential zones and does not propose changes to Deferred Large Lot Residential Zones;
 - (b) the Large Lot Residential Zone is not a “relevant residential zone” under section 2 of the Act and is therefore not required to incorporate the MDRS;
 - (c) the s.32 report for PC 26 did not consider the potential effects, or the servicing requirements in terms of three waters or infrastructure, of a live Large Lot Residential Zone in Ōhaupō; and
 - (d) 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.
13. Furthermore, Council submitted that the rezoning of land in Ōhaupō from Deferred Large Lot Residential Zone to a live Large Lot Residential Zone is beyond the type of consequential change that would be enabled by clause 99(2) of Schedule 1 RMA.
14. No further submissions were received from CKL NZ Limited.
15. For the reasons submitted by Council, the Panel finds that the submission point is not on PC 26 and discloses no reasonable or relevant case.
16. **Direction 2:** Submission point 65.31 of CKL NZ Limited's submission is struck out per s.41D(1)(b) RMA.
17. **Retirement Village Association** submission point 73.125 and **Ryman Healthcare Limited** submission point 70.125 are essentially the same and seek to rezone the deferred residential zones to a live Medium Density Residential Zone.
18. Council submitted that the submission point falls outside the scope of PC 26 as:
 - (a) PC 26 relates solely to residential zones and does not propose changes to deferred residential zones;
 - (b) the s.32 report for PC 26 did not consider the potential effects, or the servicing requirements in terms of three waters or infrastructure, of live Residential Zones in all locations;
 - (c) PC 26 did not insert a structure plan for development of these growth cells; and

- (d) there is a real risk that persons who would be directly affected by the rezoning, including the owners of land both within and surrounding these growth cells, have been denied an effective opportunity to participate in the plan change process.
19. Furthermore, Council submitted that the rezoning of growth cells from a deferred residential to a live residential zone is beyond the type of consequential change that would be enabled by clause 99(2) of Schedule 1 RMA.
 20. As a preliminary point, counsel for Retirement Village Association and Ryman Healthcare Limited (hereinafter referred to as **RVA/R**) submitted that the Panel's power to strike out submissions under s.41D was not applicable because it only has a recommendatory function. We disagree.
 21. Clause 98(1)(h) of Part 6 Schedule 1 confirms that we have the same powers and duties as a local authority under s.41D "*to the extent applicable*". As s.41D(2)(b) requires reasons for any such direction, that implicitly assumes that applicability must be a consideration. Furthermore, clause 98(2) explicitly provides for the s.357 right of objection – which would be unnecessary if that power was not available.
 22. The primary difficulty the Panel has with the submission point is its breadth – applying as it does to *all* deferred residential zones (albeit these are confined to Cambridge and Te Awamutu).
 23. The Panel accepts that rezoning falls within its jurisdiction. It makes no direction at this time as to whether it agrees with Council that rezoning not notified by Council is necessarily out-of-scope. We do not think that we need to determine that issue for the present matter because the issue is live zoning an already determined residential zone – technically a rezoning certainly, but at the lowest end of that spectrum.
 24. Of more concern to us is the question as to whether any (rather than all) of the deferred residential zones might merit being made live in order to better achieve the objective of the legislation. That is an evidential question. While that is a lesser relief than it appears RVA/R seek, it would fall within the compass of their submission. On that basis the Panel is reluctant to strike out the submission point. Having said that we note that it is incumbent upon RVA/R to produce a comprehensive s.32 analysis should they decide to pursue either the breadth of their relief or a more limited option. It should be evident from the above discussion that we have significant doubt as to whether the broader relief itself is within scope.
 25. **Direction 3:** The Panel declines to exercise its discretion to strike out submission point 73.125 of Retirement Village Association's submission and submission point 70.125 of Ryman Healthcare Limited's submission.
 26. Any queries or correspondence related to this Direction should be sent through to the Hearing Coordinator, Steve Rice at steve@riceres.co.nz .



David Hill (Chairperson)
Independent Hearing Panel

10 March 2023