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## **Objection to Proposed Plan Change 26, 1050 Bank Street, Te Awamutu**

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### **A. Purpose of the Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021: housing intensification unless qualifying matters apply**

- 1) The Resource Management (Enabling Housing Supply and other Matters) Amendment Act 2021 (**“the Amendment Act”**) provides for housing intensification (i.e. higher density) in residential areas (s 77G(1)). As the Amendment Act is a statute passed by parliament (the supreme law-making body in the country), territorial authorities have a duty to implement that intensification purpose, unless a qualifying matter applies.
- 2) More specifically, the overall duty to intensify land use means that a territorial authority may only make the “relevant density requirements ... less enabling of development in relation to an area within a relevant residential zone” (s. 77(l)) where at least one of the qualifying matters specified in s. 77(l) (a) to (j) applies. Since the provision referring to national importance and iwi participation etc. do not apply here, Waipa District Council evidently seeks to invoke s. 77 (l) (j), i.e. “any other matter that makes high density, as provided for by the MDRS or policy 3, inappropriate in an area”. However, that section is subject to s 77(L) or, as the Act puts it, that section must be “satisfied” (s77(l)(j)).

### **B. Narrow definition of qualifying matters**

- 3) Qualifying matters are narrowly defined in the Act. They are deemed valid only if they are
  - clearly defined;
  - justify low levels of development;
  - are site-specific; and
  - overall they must attest to the greatest possible effort made to achieve the greatest heights and densities as provided by Medium Density Residential Standards (MDRS).

- 4) Section 77(L) of the Amendment Act expresses the high requirements for legally valid qualifying matters thus:

*77L Further requirement about application of section 77I(j)*

**A matter is not a qualifying matter** under section 77I(j) in relation to an area **unless** the evaluation report referred to in section 32 also—

- a) **identifies the specific characteristic** that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and
- b) **justifies why that characteristic makes that level of development inappropriate** in light of the national significance of urban development and the objectives of the NPS-UD; and
- c) includes a **site-specific analysis** that—
  - i. **identifies the site to which the matter relates**; and
  - ii. **evaluates the specific characteristic on a site-specific basis** to determine the geographic area where intensification needs to be compatible with the specific matter; and
  - iii. **evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS** (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.

### **C. Implications of the high bar for qualifying matters as specified in the Amendment Act**

4. In view of the far-reaching limitations on qualifying matters as laid out in the Amendment Act and notably the **requirement laid out in s 77(L)(c) for a site-specific analysis**, it is at least arguable that **the territorial authority has a duty to protect individual sites rather than attempting to blanket-protect entire sections** of a street.
5. To justify its blanket approach, the Waiapa District Council’s website argues that Bank Street “contains a varied collection of dwellings from the early 20<sup>th</sup> century”.<sup>1</sup> It is important to note, however, that the street as it appears today does not present a uniform front: the street’s early twentieth century character has been significantly compromised by subdivisions and in-fill housing occurring every single decade since the 1950s.
6. In addition to the lack of a uniform picture of the street as a whole, our own house in Bank Street (number 1050) has lost its original character through an unsightly alteration and the addition of a similarly unattractive garage: these amateurish additions which must have been carried out roughly 50 years ago mean that the house today presents an odd combination of 1920s and 1970s elements.

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<sup>1</sup>Waiapa District Website,

<<https://www.waipadc.govt.nz/repository/libraries/id:26zgz4o7s1cxbyk7hfo7/hierarchy/our-council/waipadistrictplan/documents/Plan%20Change%2026/s42A%20Report/2.%20Appendix%20A%20Tracked%20changes%20to%20Plan%20Change%2026.pdf>>.

**D. Outcome sought**

7. In view of the discrepancy between the strict legal requirements for qualifying matters on the one hand and the architecturally extremely homogeneous appearance of the proposed character cluster in Bank Street, Waipa District Council's rezoning parts of Bank Street as a character cluster would have a good chance of being successfully challenged in court (judicial review).
8. The preferred outcome for the owners of 1050 Bank Street is thus to dispense with the entire plan for protecting large areas of Bank Street. At the very least, 1050 Bank Street should be excluded from any proposed character cluster.
9. Should Waipa District Council provide compelling evidence and arguments pursuant to s 77(L) that 1050 Bank Street is worth including in a character cluster (the wording of the Act strongly suggests that the burden of proof would be on Waipa District Council rather than the owners to provide such evidence), the following solution is proposed: only the roadside of the street where all 1920s houses are, in fact, situated is to be protected.
10. This proposed solution would mean that if 1050 Bank Street was included in the character cluster, it would have to be done in such a way that our rights as owners to subdivide the backyard comply with the higher housing density requirements as envisaged by the Amendment Act. Given that if anything at all only the façade along the roadside is worth preserving, our insistence on our right to further development of the available land behind the old houses is not unreasonable: the new developments would be behind the historic façade and as such would not interfere with it.
11. Allowing the owners of Bank Street to develop their sections behind their old house while including the front house in the character cluster would amount to an elegant compromise between the legal requirements of the Amendment Act for land use intensification on the one hand and preservation of character homes on the other.

Kind regards,



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