

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS
IN THE WAIKATO REGION**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE
WAIKATO**

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER of the hearing of submissions on Hamilton CC PC12

**MEMORANDUM ON BEHALF OF KĀINGA ORA - HOMES
AND COMMUNITIES OPPOSING COUNCIL REQUEST FOR
DEFERRAL**

Dated: 5 July 2023

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MAY IT PLEASE THE COMMISSIONERS:

1. Kāinga Ora-Homes and Communities ("**Kāinga Ora**") opposes the request by Hamilton City Council ("**Council**") in its memorandum of 29 June 2023 ("**Council Memorandum**") that the Panel defer the hearing on Plan Change 12 Enabling Housing Supply ("**PC12**") "*to a later date, likely to be in the second quarter of 2024*"¹ ("**the Request**").

Process Matters

2. The Request refers² to the Council's application to the Minister for the Environment ("**Minister**") for an extension to the date on which the Council is "*to notify decisions on the independent hearings panels' recommendations in accordance with clause 102 of Schedule 1 of the RMA*" from 31 March 2024³ to 31 December 2024.
3. The Request has been made notwithstanding the fact that the Minister is yet to make a decision on the application for extension. Accordingly, the Council is currently required to issue the decisions on PC12 (i.e.: by 31 March 2024) prior to the date on which the Request anticipates the PC12 hearing commencing (the second quarter of 2024).
4. Paragraph 28 of the Request asserts that, "*Compliance with the ministerial direction issued under s 80L of the RMA is a matter for HCC. HCC considers that this is a compliance matter for it alone, and not a matter for the Panel to address.*" In paragraph 29 of the Request, the Council, "*invites the Panel to put aside this issue of compliance*". Kāinga Ora opposes that submission:
 - a. The 31 March 2024 date is a ministerial direction with which the Council "*must comply*"⁴. The Council does not have a discretion in that regard.
 - b. Parliament has created a unique process and timeframe for the IPI's, notwithstanding the possibility (if not inevitability) of those plan

¹ Council Memorandum para 5.

² Council Memorandum para 2.

³ The Resource Management (Direction for the Intensification Streamlined Planning Process to Hamilton City Council, Waikato District Council, Waipā District Council and Rotorua District Council) Notice 2022.

⁴ Section 80N(1)(a) RMA.

changes overlapping with other planning processes being undertaken by territorial authorities. That compressed process and timeframe reflects Parliament's frustration regarding the lack of progress on issues relating to intensification of major urban areas.⁵ The delays potentially generated by the approach of Council in notifying PC9 (which seeks to avoid the IPI obligations through allocating section 6 RMA historic heritage status to sites that might at most raise section 7 RMA special character issues, and thus will require a subsequent process if aspects of it are not upheld) and the Request in respect of PC14 exemplify that central government concern.

- c. Kāinga Ora presumes that the commissioners have been retained by Council explicitly to carry out their task in time for the Council to issue the decisions by 31 March 2024. Otherwise, there would be no certainty for Council that it would be able to meet its obligation under section 80N RMA. Were the Panel not to release their findings in time for the decision to be notified by 31 March 2024, they would no doubt be subject to criticism (including from Council).
 - d. If this were a matter solely for the Council to address, it would have *directed* the Panel to defer the hearing. Instead, it has *requested* a deferral. That approach makes it clear that the responsibility for any decision to defer rests with the Panel. This is not a matter on which you are Council's agent or where Council can absolve you of responsibility for the consequences of your decision.
 - e. Rather, you have a discretion regarding the Request and Kāinga Ora submits that granting any deferral in the absence of an extension to the 31 March 2024 date raises a very real risk that the obligation to notify the decisions by 31 March 2024 will not be complied with. Given that regulatory directive, there is no reasonable basis on which you could defer the PC12 hearing at this stage.
5. In any event, even if you acceded to Council's request that you "*put aside this issue of compliance*" with the time limit, you would still have to comply with the

⁵ Minister for the Environment, David Parker "Bill to Boost Housing Supply Passes" (press release, 14 December 2021): <https://www.beehive.govt.nz/release/bill-boost-housing-supply-passes>

duty under RMA⁶ to avoid unreasonable delay. It cannot be reasonable to defer the PC12 hearing given that doing so will compromise or prevent the Council's compliance with the 31 March 2024 notification date.

Resource Management Issues

6. Having asked that you "*put aside this issue of compliance*" with the time limit, the Council then asks⁷ that you "*instead focus on the resource management issues and the matters of efficiency and duplication*" identified in paragraphs 9-22 of the Council Memorandum. Four broad issues are raised by Council.
7. The first issue raised by Council is, "*integrated decision-making between PC12 and PC14.*"⁸
 - a. The Council Memorandum states⁹ that, "*the primary reason for seeking deferral is to ensure that when the Panel hears evidence relating to the proposed intensification planning instrument (IPI) it is properly informed by the best and most up to date flood hazard information available*". It goes on to suggest¹⁰ that the best and most practical way for the Panel to be properly informed would be to have a new plan change, PC14, notified before the PC12 hearing. Kāinga Ora opposes that approach:
 - i. Kāinga Ora does not accept that there is any necessary connection between PC12 and the matters that Council may include in PC14 when and if it is notified. The stormwater and flooding issues referred to by the Council are distinct from the PC12 issues. They presumably existed prior to notification of PC12 and will require resolution through a separate plan change regardless of whether and when PC12 comes into effect. They will presumably relate to all urban areas of the

⁶ Section 21 RMA states, "*Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.*"

⁷ Council Memorandum para 29.

⁸ Council Memorandum paras 9-13.

⁹ Council Memorandum para 9.

¹⁰ Council Memorandum para 11.

city and not simply those for which intensification is planned under PC12.

- ii. Council may want to add additional consenting obligations or promote managed retreat in some areas but will require a separate plan change (PC14) to do so. That plan change will be subject to the Schedule 1 RMA process and hence merits appeals. That process is entirely different (including differing timeframes) to the process required for PC12.
 - iii. The Panel could therefore end up in a position where it makes decisions on PC12 in reliance on two plan changes (PC9 and PC14) which may still not be resolved if both were under appeal to the Environment Court. Once those appeals are resolved, the PC12 provisions are likely to require amendment through a new Schedule 1 RMA process. That is same position as would apply if the PC12 process simply continues as currently programmed.
- b. The Council Memorandum goes on to note¹¹, “*some parties may contend that this integration can still be achieved by proceeding to hear PC12 but defer decisions and until after PC14 is notified*”. That is not an outcome that Kāinga Ora would support:
- i. Kāinga Ora does not consider that a decision on PC12 needs to await notification of PC14 or that the outcome of PC12 should be dependent on the content of PC14.
 - ii. It cannot be assumed that the publicly notified version of PC14 incorporated information or provisions that will ultimately be upheld (potentially after appeal to the Environment Court). Accordingly, any reliance on PC14 by the Panel may be misplaced and may simply incorporate into PC12 erroneous conclusions.

¹¹ Council Memorandum para 12.

8. The subsequent issues raised by Council are, “*impacts on residential zones within PC12*”¹², “*impacts on zoning decisions within PC12*”¹³, “*impacts on Three Waters provisions within PC12*”¹⁴, and “*impacts on transport provisions within PC12*”¹⁵. These paragraphs argue that having visibility over the PC14 issues may be relevant when the Panel settles its recommendations on PC12 and imply that PC12 should be changed to give effect to concerns that will be embodied in PC14. Kāinga Ora disagrees:
- a. The scope of PC12 is limited by statute. It cannot be used to bring in the city-wide provisions that Council intends to pursue through PC14. Nor can it be used to do reduce development opportunities currently provided in the District Plan¹⁶.
 - b. As PC14 will apply across the city, it may involve the application provisions which apply independently of the underlying zoning. Landowners will need to obtain consents in terms of the full matrix of rules applying to their sites. It is not necessary to amend PC12 to ensure that an appropriate suite of provisions is ultimately put in place as a consequence of both PC12 and PC14.
 - c. If PC14 ultimately results in changes to the zonings that are being introduced via PC12 then that will need to be addressed through that separate, subsequent planning process. The Panel should not endeavour to second guess the outcome of PC14, which at best will only be notified when you deliver your recommendations, when applying zones through PC12.
 - d. The “*three waters*” issues raised in para 19 focus on stormwater and flood management:
 - i. Those matters are a function of the extent (percentage) of impermeable surfaces. Those standards are not being changed significantly through PC12 and in any event any

¹² Council Memorandum paras 14-16.

¹³ Council Memorandum paras 17-18.

¹⁴ Council Memorandum paras 19-20.

¹⁵ Council Memorandum paras 21-22.

¹⁶ *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056.

additional development enabled under PC12 will occur over many years. No substantive adverse effect will be immediately apparent or will arise while PC14 is being processed.

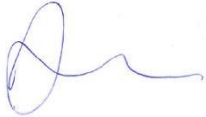
- i. Kāinga Ora considers that the District Plan should address the stormwater and PC12 matters independently . As Kāinga Ora has already submitted, a compact, intensive urban form minimises total impermeable surface (e.g.: by reducing road coverage and by allowing efficient multi storey development that allows more people to live under a given roof area).
 - ii. In that context, there is no need for PC12 to be amended at all in response to the stormwater analysis that Council is wanting to undertake.
- e. The “*transport*” issues raised in para 21 relate to engineering standards and parameters, not whether or to what extent intensification should occur. These are technical matters that will apply most obviously to greenfield areas (whereas PC12 focuses on intensification in existing urban areas). They are likely to involve changes to civil engineering codes of practice as well as District Plan provisions.

Conclusion

9. Given the tight time frames within which you are working, deferring the PC12 hearing this stage would amount to an unreasonable and unnecessary delay and would compromise your ability to discharge your obligations under the IPI process.
10. In the absence of the Minister's decision, Kāinga Ora asks that you:
 - a. Decline the Request and direct that the current timetable remain in place with the matter proceeding to hearing in September; or

- b. Defer your decision on the Request until such time as the Minister's decision is received, but direct that the current timetable (for a hearing in September) remains in place in the meantime.

Dated this 5th day of July 2023



D A Allan – Counsel for Kāinga Ora