

**BEFORE THE INDEPENDENT HEARING PANEL ON WAIKATO INTENSIFICATION
PLANNING INSTRUMENTS**

IN THE MATTER of the Resource management Act 1991 (the Act)

AND

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

Legal submissions in reply on behalf of Pragma Property Group Limited
regarding issue of scope of submission seeking rezoning of site on Rifle Range
Road
(SUB #219.1)
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MAY IT PLEASE THE INDEPENDENT HEARING PANEL

INTRODUCTION

1. These submissions are made on behalf of Pragma Property Group Limited (“Pragma”) in response to the legal submissions for Hamilton City Council (“HCC” or “Council”), dated 4 May 2023, regarding whether certain submissions are “on” proposed Plan Change 12 to the Hamilton City District Plan (“PC12”). The following submissions should be read alongside the submissions on behalf of Pragma dated 6 April 2023.
2. The submissions for HCC argue that the submission by Pragma Property Group Limited (“Pragma”) in respect of its site on Rifle Range Road fails both limbs of the *Clearwater* test. Those submissions contend that the submissions made on behalf of Pragma argued that “everything is up for grabs” in the context of scope to make submissions to rezone land as part of PC12. That submission incorrectly characterises the submissions for Pragma.
3. Furthermore, the reference to section 77G(4) of the RMA as providing a “more flexible” approach to the test for scope in *Clearwater* does not accurately describe the submissions on behalf of Pragma. The submission for Pragma is that section 77G(4) of the RMA does not preclude a submitter from seeking land be re-zoned to residential. In that regard, the submissions on behalf of HCC, that only a territorial authority may notify a new residential zone, is not based on definitive legal authority and the suggestion that to find otherwise would be an error of law similarly lacks authority in support.¹
4. The purpose of the IPI and PC12 does not equate to “everything” being “up for grabs”. Nevertheless, the ambit of PC12 is broad in the context of the changes being made to the residential zone and other provisions of the Hamilton City District Plan in response to the Resource

¹ Legal submissions for HCC, 4 May 2023, paragraph 15.

Management (Enabling Housing Supply and other matters) Amendment Act 2021 and the National Policy Statement on Urban Development (as amended in 2021).

5. As set out in the submissions for Pragma dated 6 April 2023, the proposed changes are wide ranging, comprehensive, and impact many of the chapters of the District Plan. While there are parts of the District Plan that are not being changed through PC12, the changes that are being made and the purpose of the IPI are wide-ranging. Indeed, the extent of the changes to the residential zones, and others, by PC12 imports a wider purpose of the plan change than a confined and narrow series of changes to the Hamilton City Operative District Plan (“District Plan”).
6. The test in *Clearwater* applies and that is accepted by all Parties. In this respect, contrary to the submissions for HCC, the Pragma submission relating to its site on Rifle Range Road both addresses the extent to which PC12 changes the status quo (the first limb of the *Clearwater* test); and meets the second limb of the *Clearwater* test on the basis that a person potentially affected by the change sought will not be denied an affective opportunity to participate. The reasons for this are further expanded on below.
7. The legal submissions for Pragma dated 6 April 2023 set out the relevant legal tests in *Clearwater* as applied in *Motor Machinists*.² The submissions for HCC similarly identify the test. That is:
 - (a) whether the submission addresses the change to the status quo advanced by the plan change; and

² *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290, Kós J

- (b) whether there is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.³

First limb of the *Clearwater* test

8. Counsel for HCC argues that the Pragma submission does not address the change to the status quo advanced by PC12. With respect, that is incorrect. The Pragma submission does address the change to the status quo, as explained in previous legal submissions and in the submission itself. Relevantly, the nature of the change sought by Pragma falls squarely within a change that is “incidental” or “consequential”. Such a change was expressly contemplated by the High Court in *Motor Machinists* where it stated that zoning extensions are not altogether excluded and that incidental or consequential extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further s 32 analysis is required to inform affected persons of the comparative merits of that change.⁴
9. The land in question is adjacent to an existing residential zone. It is being developed for residential use. It is obviously an incidental or consequential extension of the zoning it is adjacent to. The lack of reference in the section 32 evaluation for PC12 of the Site demonstrates a flaw in the section 32 report – not that the submission is out of the scope of PC12.⁵

Second limb of the *Clearwater* test

10. Contrary to the submissions on behalf of HCC, the scale of the change sought in the Pragma submission, in the context of PC12, would not

³ *Motor Machinists*, at [91].

⁴ *Motor Machinists*, at [81].

⁵ *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191; *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187.

represent an “appreciable change” to the District Plan which a person is precluded from participating in. The fact that the resource consent for the Site was non-notified and that any person could see that the Site was subject to residential development prior to notification of PC12 means that a person would have been “on notice” of the prospect that a submitter would lodge a submission seeking the re-zoning of land to a relevant residential zone.

11. As submitted on 6 April 2023, there is negligible risk that a potentially affected person would be denied reasonable opportunity for participation in the PC12 process. The reasonable interests of potentially affected persons would not be overridden by a “submissional side-wind”⁶.

CONCLUSION

12. The Pragma submission related to the Site on Rifle Range Road is within the scope of PC12. Accordingly, the IHP has jurisdiction to allow the relief sought by Pragma.



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⁶ *Motor Machinists* at [82].

