

**BEFORE THE INDEPENDENT HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

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

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**MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL ON  
PROCEDURAL MATTERS**

**Dated 22 February 2023**

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## **MAY IT PLEASE THE INDEPENDENT HEARING PANEL**

### **INTRODUCTION**

1. This memorandum of counsel for Hamilton City Council (**HCC**) addresses the key procedural issues arising from the strategic hearing on Plan Change 12 (**PC12**) held in Hamilton on 15, 16, and 17 February 2023.
2. It first addresses the matters which are common to Waipā District Council's (**Waipā DC**) Plan Change 26 (**PC26**) and Waikato District Council's (**WDC**) Variation 3 (**V3**) (collectively with PC12 the **Waikato IPIs**), where a joint approach may be efficient, and then addresses the procedural matters which relate only to HCC, and for which separate and distinct directions are sought.

### **COMMON PROCEDURAL ISSUES**

3. There are two key procedural issues common to each of the Councils which would benefit from a joint approach.

#### **Inclusionary Zoning/Affordable Housing**

4. The first issue concerns those submitters who sought "inclusionary zoning" or similar relief seeking a requirement that intensification developments contribute to an "affordable housing" outcome. Each of the Councils require a determination on whether those submissions are within the scope of an IPI.
5. The background to this scope issue is addressed in the memorandum of counsel for Waipā DC dated 22 February 2023 (**Waipa DC memorandum**) and is not repeated here. Because submissions to each of the Waikato IPIs raise identical or very similar issues and relief, it makes sense for the

Panel to hear and consider submissions on scope jointly. This will avoid procedural inefficiencies and the risk of the Panel not having the benefit of considering the full range of legal submissions at the first hearing of the argument.

6. At paragraph 9 of the Waipā DC memorandum, counsel sets out a proposed timetable for the exchange of legal submissions on this scope issue. HCC confirms that it supports that proposed timetable. Accordingly, HCC seeks that the following timetable directions be approved:
  - a) Any party who considers that submissions seeking inclusionary zoning are beyond the scope of the Waikato IPIs to lodge written legal submissions with the hearing administrator by 5pm 10 March 2023;
  - b) Submissions on behalf of the submitters in support of their relief being within scope to be lodged with the hearing administrator by 5pm 17 March 2023;
  - c) Submissions by the Councils and any other party in response to be lodged with the hearing administrator by 5pm 24 March 2023; and
  - d) Subject to the need for a scope hearing, the Panel will issue its determination by 31 March 2023.

### **Financial Contributions**

7. Both HCC and Waipā DC have proposed a Financial Contributions Chapter within their respective IPIs. While there are some differences, generally the architecture of the provisions is similar between PC12 and PC26, reflecting a collaborative approach to drafting. Each IPI has attracted submissions on the proposed Financial Contributions Chapters,

many of which are common to each IPI.

8. Like the inclusionary zoning scope issue, it makes sense for the Panel to hear and consider submissions on the Financial Contributions Chapter jointly between HCC and Waipā DC. Again, this joint approach will be procedurally efficient, and will allow the Panel to consider the full range of legal submissions at one single hearing of the respective arguments.
9. As set out in the next section of this memorandum, HCC is seeking a topic-based approach to the hearing of substantive matters. The Financial Contributions Chapter would be a discrete topic, and could be heard jointly with Waipā DC's Financial Contributions topic.

## **PROCEDURAL ISSUES RELATING ONLY TO PC12**

### **Remaining scope issues for determination ahead of substantive hearing**

10. In the joint memorandum dated 22 December 2022 filed on behalf of the Councils (**joint memorandum**), HCC identified a number of submissions relating to rezoning that it considered out of scope. In addition, HCC has identified additional submission points for Pragma and Metlifecare Ltd which relate to zoning. The complete list is:
  - a) Waikato Racing Club - submission 266.2.
  - b) Station Corner – submission 233.1.
  - c) Pragma – submissions 182.1 and 219.1
  - d) Te Awa Lakes JV/Horotiu Farms Ltd – submission 249.8.
  - e) Metlifecare Ltd – submission 288.1, 288.42, and 288.8.

f) David and Barbara Yzendoorn – submission 347.1.

g) Sarah J and Zoe G Yzendoorn – submission 201.7.

11. At Appendix 2 to the joint memorandum, HCC identified the relief sought in each submission, and the reason why it considered each submission point to be out of scope.
12. HCC remains of the view that these submissions are out of scope, and seeks a determination on scope ahead of the substantive hearing. In fact, it would be most procedurally efficient to resolve these scope issues ahead of any expert conferencing on PC12, as this would avoid unnecessary expert preparation in relation to submissions deemed out of scope.
13. The substantive hearing for PC12 is scheduled to commence on 4 September 2023. HCC anticipates that all conferencing will need to conclude no later than 1 July, to enable evidence to be exchanged ahead of the hearing.
14. HCC seeks a relatively staggered timetable for the filing of legal submissions on these scope issues. This reflects two factors; first, that HCC will be responding to multiple legal submissions on scope issues in one single set of submissions, and second, the timing constraints of the overlapping hearing of submissions on Plan Change 9 (**PC9**), which will occupy both the Panel and counsel for HCC over this period.
15. Accordingly, HCC seeks the following timetable for the exchange of legal submissions addressing scope on each of the submissions identified in paragraph 10 above:

- a) Submissions on behalf of the submitters in support of their relief being within scope to be lodged with the hearing administrator by 5pm 6 April 2023;
- b) Submissions by HCC and any other party in response to be lodged with the hearing administrator by 5pm 4 May 2023; and
- c) Subject to the need for a scope hearing, the Panel will issue its determination by 9 June 2023.

### **Relationship between PC9 and PC12**

- 16. The hearing of submissions on PC9 commences on 22 May 2022. The Historic Heritage Area (**HHA**) topic will be heard at that time.
- 17. Under PC9, certain areas are identified as having historic heritage status under section 6 of the RMA. These areas are reflected as qualifying matters (**QMs**) in PC12. The status of these areas has not yet been confirmed in PC9, and because decisions on PC9 are able to be appealed to the Environment Court by any submitter, PC9 may not be finally determined until after the intensification streamlined planning process has been completed.
- 18. This creates a level of uncertainty in terms of the status of these QMs. This uncertainty cannot be completely resolved until all appeal rights are exhausted on PC9, which could take some time. But the uncertainty can be reduced considerably by ensuring that decisions on PC9, so far as they relate to the HHAs, are made well before the hearing of PC12 in September 2023. Clearly, moving into hearings on PC12 with decisions on PC9 completed, and the extent of any appeals known, will be very helpful to all parties within an interest in HHA QMs.

19. No directions are sought on this issue. HCC simply signals that the most procedurally efficient way to manage the relationship between PC9 and PC12 is to deliver decisions on the HHA elements of PC9 as soon as possible after the hearing in May 2023.

#### **Mediation/ADR**

20. Subject to timing and resourcing, HCC is open to holding discussions with a submitter where it considers there are procedural efficiencies to be gained, or where there is a clear prospect of a negotiated resolution of a submission point which can be reflected in a joint approach to the presentation of the issue at the substantive hearing.
21. At this stage it has identified one suitable submitter, being Kāinga Ora. Counsel for HCC and Kāinga Ora have conferred and the parties are content to make arrangements between themselves, and do not seek directions regarding mediation or ADR.

#### **Expert witness conferencing**

22. HCC considers that expert conferencing will be necessary to ensure an efficient substantive hearing commencing 4 September 2023. Conferencing should be scheduled to occur within the next few months, to enable the early exchange of expert views, and where possible, agreement to be reached. This timing will allow for an evidence exchange timetable through late July, early August.
23. HCC recommends that the first topic for expert conferencing should be on technical three waters infrastructure matters. Understanding the existing environment is critical to all other topics, and the other experts will benefit from gaining clarity on the technical position.

24. HCC suggests that this conferencing topic be addressed during the week of 1 May 2023, and that all other topics be addressed during the weeks of 12 and 19 June 2023.
25. At this stage, other than establishing these windows for conferencing, HCC does not seek specific directions. Those can issue in April 2023.

### **Section 42A Reporting**

26. Joint witness statements arising from conferencing should be available by late June 2023. After reviewing all joint witness statements arising from expert conferencing, the Section 42A Report authors will provide an updated report with recommendations.

### **Topic based approach**

27. HCC considers that the most efficient way to conduct the hearing will be to address issues topic by topic. Rather than have HCC present its full body of evidence on all issues at the outset, followed by each individual submitter presenting their full case, it will assist the Panel to hear the evidence in topics. This will allow focussed presentations on discrete issues, and will assist the Panel in its deliberations.
28. HCC recommends the following topics be adopted for this purpose:
  - a) Technical three waters network evidence and connections policy:
    - i. Consent limits.
    - ii. Headworks constraints.
    - iii. Network constraints.



- iv. Capacity.
  - v. Connections policy evaluation and relationship with ODP.
- b) Application of Te Ture Whaimana as a QM:
- i. The 'matter' relationship between land use and infrastructure.
  - ii. Examination of areas affected by overlay.
  - iii. Nature of constraints to MDRS achieved by overlay.
  - iv. Testing in section 32 terms.
  - v. Green policies.
- c) Application of HHAs as a QM:
- i. Relationship with PC9.
  - ii. Testing legal effect (section 6) of each HHA.
  - iii. Treatment of special character zones.
- d) Application of Natural Hazards as a QM:
- i. Updating ODP mapping with Floodviewer information.
  - ii. Testing extent of QMs against Floodviewer.
  - iii. Discretion under Clause 99, Schedule 1.

- iv. PC14 relationship.
- e) Application of all other QMs:
- i. Reviewing remaining QMs against statutory tests.
- f) Response to Policy 3 requirements:
- i. City Centre treatment (Stage 1).
  - ii. Medium and High Density Zone changes.
  - iii. Walkable catchments.
  - iv. Measuring commensurate.
- g) Financial Contributions:
- i. Testing purpose, objectives, policies.
  - ii. Methodology for calculating charges.
  - iii. Implementation, collection, enforcement, monitoring.
- h) Plan Provisions (by Chapter):
- i. Density, heights.
  - ii. Setbacks, site coverage, permeability, outlook space, landscaping, height to boundary.
  - iii. Assessment criteria.
  - iv. Transport/mobility provisions.

29. It is intended that this topic structure will also form the basis for expert conferencing. After conferring with the Section 42A Report author it is noted that the Section 42A reporting will be structured more “traditionally” by plan chapter although can be grouped to dovetail where efficient and practicable with this topic list. Given that the topics are overarching in their nature and content and will be relevant to various parts/chapters of PC12, it is inevitable that some of the topics will by necessity need to be addressed in more than one Section 42A report.

#### **DIRECTIONS SOUGHT**

30. HCC seeks the following procedural directions:

#### **Inclusionary zoning/affordable housing**

- a) In relation to the inclusionary zoning/affordable housing submissions, the following timetable is approved:
- i. Any party who considers that submissions seeking inclusionary zoning are beyond the scope of the Waikato IPIs to lodge written legal submissions with the hearing administrator by 5pm 10 March 2023;
  - ii. Submissions on behalf of the submitters in support of their relief being within scope to be lodged with the hearing administrator by 5pm 17 March 2023;
  - iii. Submissions by the Councils and any other party in response to be lodged with the hearing administrator by 5pm 24 March 2023; and

- iv. Subject to the need for a scope hearing, the Panel will issue its determination by 31 March 2023.

**Financial contributions**

- b) Submissions and evidence on the topic of Financial Contributions will be heard jointly with Waipā DC's Financial Contributions topic. That joint hearing will take place during the substantive hearing of PC12 commencing 4 September 2023. The timetable for evidence exchange set out at paragraph 30 f) will apply to this topic also;

**Out of scope rezoning submissions**

- c) In relation to out of scope rezoning submissions, the following timetable is approved:
  - I. Legal submissions on behalf of the submitters in support of their relief being within scope are to be lodged with the hearing administrator by 5pm 6 April 2023;
  - II. Submissions by HCC and any other party in response are to be lodged with the hearing administrator by 5pm 4 May 2023; and
  - III. Subject to the need for a scope hearing, the Panel will issue its scope determination by 5pm 9 June 2023;

**Expert conferencing**

- d) Expert conferencing on the Three Waters topic is to commence in the week of 1 May 2023. Expert conferencing on all other topics will commence in the weeks of 12 and 19 June 2023. A

separate direction from the Panel will be issued on a later date dealing with expert conferencing arrangements;

**Section 42A reporting**

- e) An updated Section 42A Report is to be lodged with the hearing administrator by 5pm 7 July 2023;

**Timetable for exchange of evidence and legal submissions**

- f) In relation to the PC12 substantive hearing, the following timetable is approved:
  - I. Evidence on behalf of HCC is to be lodged with the hearing administrator by 5pm 14 July 2023;
  - II. Evidence on behalf of submitters is to be lodged with the hearing administrator by 5pm 28 July 2023;
  - III. Reply evidence on behalf of HCC is to be lodged with the hearing administrator by 5pm 11 August 2023;
  - IV. All legal submissions relating to the substantive hearing are to be lodged with the hearing administrator by 5pm 31 August 2023.

Dated 22 February 2023



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Counsel for Hamilton City Council