

**BEFORE AN INDEPENDENT HEARINGS PANEL OF  
PORIRUA CITY COUNCIL**

**IN THE MATTER**

of the Resource  
Management Act  
1991 (the **Act**)

**AND**

**IN THE MATTER**

of hearing of  
submissions and  
further submissions  
on the Proposed  
District Plan (**PDP**),  
Variation 1 to the  
PDP, and Proposed  
Plan Change 19 to  
the Porirua District  
Plan

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**SUMMARY OF ORAL SUBMISSIONS ON BEHALF OF PORIRUA CITY  
COUNCIL**

**DATED 13 March 2023**

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## MAY IT PLEASE THE PANEL

### Introductory Comments

1. We understand that the Panel will have read the legal submissions for the Council (and other parties), and therefore we do not propose reading the Council's legal submissions out in full. However, there are a few matters that we would like to either emphasise from our submissions, or respond to from the legal submissions filed for the submitters.
2. The Panel is well aware that this hearing stream includes additional procedural complexity as it includes some provisions and submissions from the original proposed district plan (**PDP**) process, and it now also includes the Council's intensification planning instrument (**IPI**).
3. In particular, Hearing Stream 7 includes the residential and commercial / mixed use zones of the PDP, and Plan Change 19 (**PC19**) which relates to the Plimmerton Farm Zone, that was excluded from the PDP. This is because the Council adjusted its PDP hearings schedule to align the PDP / IPI hearings, and to enable relevant topics to be heard together.
4. Although we acknowledge the potential procedural difficulties that hearing parts of the PDP and the IPI together in this hearing stream may create, overall it is submitted that taking this approach will better enable the parties and the Panel to consider the planning framework as an integrated whole. Ultimately this should result in a better strategic planning outcome.
5. Related to this we note that although parts of Hearing Stream 7 are the Council's IPI, and are subject to additional legislative tests and requirements, all of the provisions the Panel is considering need to be considered within the context of the broader Resource Management Act 1991 (**RMA**) framework. The requirements are set out in **Appendix 1** of our written legal submissions.
6. Here we wish to acknowledge the work of the Council Officers in preparing the section 32 and section 42A reports. These are submitted to provide the Panel with a comprehensive analysis supporting the

position the Council has taken. In relation to the IPI the Council has considered the additional statutory requirements that apply and has also addressed the broader RMA requirements.

7. The intention behind the approach the Council has taken in bringing the IPI into Hearing Stream 7, and through its substantive consideration of the provisions now being considered by the Panel, has been to try and ensure an integrated approach is taken with the balance of the PDP .

### **Scope of the IPI**

8. In relation to the IPI, from the outset we wish to acknowledge the importance of section 80E of the RMA. In our submission that provision informs the scope of the IPI.<sup>1</sup>
9. It is clear that the principal focus of the IPI are the matters we have referred to as the “mandatory outcomes”. These are the requirements to:
  - 9.1 Incorporate the MDRS; and
  - 9.2 To give effect to policy 3 of the NPS-UD.
10. We acknowledge that section 80E does provide for related provisions to be included in the IPI, on the proviso that they support or are consequential on the implementation of one of the mandatory outcomes. This proviso is, in our submission, constraining, and we submit that the term “related” is given meaning by its surroundings – ie. the reference to the provisions needing to “support” or be “consequential on” the mandatory outcomes.
11. The consequence is that it is not the case that any submissions regarding related provisions are within scope. To be within scope, we submit that the proposed provision or outcome has to have a particular relationship to a mandatory outcomes.

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1 Refer to paragraphs [3.1] to [3.7] of our written legal submissions.

## Procedure

12. In considering the matters before it in Hearing Stream 7, as discussed in our written submissions the Panel will need to address whether it is making a decision on a PDP submissions, or a recommendation on an IPI submission.<sup>2</sup> Again we acknowledge the section 42A reports and the approach they have taken to identifying submissions as being on either the PDP or the IPI.<sup>3</sup>
13. The importance of the Panel making a distinction in its reports is to ensure that it is clear to the Council the matters it needs to make final decisions on. It also is important for submitters as there is no appeal right attaching to decisions made on submissions on the IPI.

## Qualifying matters under the IPI

14. Qualifying matters are submitted to be an important consideration for the Panel, as they allow a lesser form of density to be incorporated where particular criteria are met. The approach the Council has taken to qualifying matters is broadly explained in section 5 of our submissions, and discussed in detail in the Council's section 32 reports.
15. Kāinga Ora has challenged the approach the Council has taken to qualifying matters, particularly in relation to shading, and height controls in areas adjacent to heritage items and sites of significance to Māori. In response:
  - 15.1 The Council disagrees with Kāinga Ora's position that shading should not be a qualifying matter. Council considers that this matter fits within the "catch all" in section 77I(j) and that it has been justified in accordance with the requirements of section 77L. The justification is set out in the section 32 report, and is discussed further in section 7.18 of the overarching section 42A report.

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<sup>2</sup> Refer to section 4 of our written submissions, in particular from paragraphs [4.7] to [4.26].

<sup>3</sup> Refer to the tables attached to each of the section 42A reports. Noting that separate tables identify the PDP and IPI submissions.

**15.2** Although shading may be considered in the MDRS, the proposed additional shading controls have been specifically considered within the context of the particular sites they have been imposed on. These controls are submitted as assisting the Council in achieving a well functioning urban environment as required by objective 1 of the NPS-UD.

**15.3** The height controls on areas adjacent to heritage items and sites of significance to Māori are clearly possible to be a qualifying matter, as they are section 6 matters. Again significant justification for the Council's approach is set out in the section 32 and 42A reports. We also submit that it is relevant to consider the additional controls within the broader context of the plan review and the wider planning framework that applies to heritage items and sites of significance to Māori.

### **Scope of submissions**

**16.** In our written submissions, scope is discussed in detail in section 6, and specific scope issues are raised in the table at Appendix 2. Members of the Panel will be well aware of potential scope issues given their involvement in other IPI panels, and so we will not go into significant detail on this issue.

**17.** As we have set out at paragraph [6.4] of our written submissions, we consider that the usual tests for scope should apply for determining whether there is scope for a submission. There appears to be agreement with GWRC on this point, and no other submitters have contended that a different approach to scope applies.

**18.** When determining whether a submission point addresses the IPI, the Panel will need to consider whether the submission point implements the mandatory outcomes, or can be properly characterised as a "related provision" to a mandatory outcome. When considering related provisions potentially being sought by a submitter, we consider that there needs to be a connection with a mandatory outcome, as discussed earlier.

19. We note that many of the concerns regarding scope raised on submissions on the IPI comes from submitters not providing sufficient particulars in their submissions to identify the connection between the relief sought, and a mandatory outcome. Therefore, it may be that submitter's evidence resolves some of the scope issues noted in the Councils section 42A reports.

**Specific matters raised by submitters in legal submissions**

20. The matters raised in legal submissions by the submitters are largely considered to be addressed by the Council through its section 32 and 42A reports and in our written legal submissions. We acknowledge some differences in planning opinion appear to remain.
21. However, we note that we do not agree with the approach the Retirement Villages Association and Ryman Healthcare appears to have taken in its submission. While the submission itself acknowledges that the interest of these parties is in relation to "retirement villages in the relevant zones", not general residential activities, the submissions seem to be seeking far broader enablement of additional housing capacity.
22. As discussed in our written submissions from paragraph [9.8], the approach the Council has taken to enable development capacity through the PDP and IPI process more than meets the housing bottom lines incorporated into the RPS. In fact, it provides for double the capacity of the housing bottom line. It is difficult to see how the approach taken by the Council is the "bare minimum" to meet the requirements of the NPS-UD, as is stated in the Retirement Villages Association and Ryman Healthcare submissions.
23. Furthermore, the Council's approach has been to incorporate and give effect to the "mandatory outcomes" in a way that considers the NPS-UD as a whole and within the broader context of the RMA.

- 24.** In relation to the Radio New Zealand submissions, Mr Rory Smeaton has considered the agreements reached during conferencing which occurred late last week. He is currently drafting updated provisions regarding the proposed qualifying matter relating to RNZ's transmission tower.

**Mike Wakefield, Katherine Viskovic, Elizabeth Neilson**

Counsel for Porirua City Council

13 March 2023