

BEFORE THE WAIPA DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Private Plan Change 12 to the Waipa District Plan

**SUBMISSIONS BY COUNSEL FOR WAIPA DISTRICT COUNCIL
23 March 2021**

Introduction

1. The purpose of these submissions is to address the following matters that have arisen during the course of the hearing:
 - (a) The weight to be given to the National Policy Statement on Urban Development (NPSUD); and
 - (b) The scope to include amendments sought by Heritage NZ relating to the Isla Banks historic heritage item.

NPSUD

2. Section 74 of the Resource Management Act 1991 (RMA) requires a territorial authority to prepare and change its district plan in accordance with:
 - (a) its functions under section 31;
 - (b) the provisions of Part 2;
 - (c) the Council's obligations under s32; and
 - (d) a national policy statement, a New Zealand coastal policy statement and a national planning standard; and
 - (e) any regulations.
3. Section 75(3) requires a district plan to give effect to:
 - (a) any national policy statement;

- (b) any New Zealand coastal policy statement; and
 - (c) a national planning standard; and
 - (d) any regional policy statement.
4. The Supreme Court has found that the words “give effect to” simply mean “implement”.¹ The Court stated that this is a strong directive, creating a firm obligation on the part of those subject to it.² However, the implementation of such a directive will be affected by what it relates to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.³
5. The NPSUD was gazetted on 23 July 2020 and came into force on 20 August 2020. The NPS contains high level objectives and policies regarding New Zealand’s urban environments. Policy 2 requires local authorities to provide sufficient development capacity to meet expected demand for housing over the short term, medium term and long term.
6. Policy 8 requires that:
- Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:
- a) unanticipated by RMA planning documents; or
 - b) out-of-sequence with planned land release.
7. Guidance is provided in Part 3: Implementation as follows:

3.8 Unanticipated or out-of-sequence developments

- 1) This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.
- 2) Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
 - a) would contribute to a well-functioning urban environment; and
 - b) is well-connected along transport corridors; and

¹ *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

² *Ibid* at para [77].

³ *Ibid* at para [80].

c) meets the criteria set under subclause (3).

3) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

8. The NPSUD defines “development capacity” as:

The capacity of land to be developed for housing or for business use, based on:

- (a) The zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and
- (b) The provision of adequate development infrastructure to support the development of land for housing or business use.

9. As the NPSUD came into force in August 2020, there has not yet been an opportunity for the regional council to amend its Regional Policy Statement to give effect to the NPSUD. In the absence of specific criteria in the Regional Policy Statement, the Hearing Panel should consider the evidence in respect of:

- (a) Current development capacity within the Te Awamutu urban environment;
- (b) Whether this plan change would add significantly to that development capacity; and
- (c) Whether the plan change:
 - (i) Would contribute to a well-functioning urban environment;
 - (ii) Is well-connected along transport corridors; and
 - (iii) Can be serviced with adequate development infrastructure.

10. These criteria are very similar to the matters requiring consideration under rule 14.4.1.10 of the Waipa District Plan which currently applies to an assessment of whether a deferred residential zone should be uplifted.

11. The relevant provisions of the NPSUD and rule 14.4.1.10 are considered in detail in the evidence of Mr Olliver for the applicant and Ms Palmer, s42A author for the Council.⁴

Submission by Heritage NZ

12. The Isla Banks heritage item is located in Stage 2 of the T2 Growth Cell and is therefore not affected by the proposed rezoning. A further plan change process will be required to rezone Stage 2, and this may include changes to the currently proposed structure plan.
13. However, Heritage NZ wishes to take this opportunity to ensure that any future development of Stage 2 does not adversely affect the heritage item. All parties are agreed that changes to the Heritage Schedule in the Waipa District Plan are outside the scope of Plan Change 12.⁵ However, as the structure plan applies to the whole of the T2 Growth Cell it is within the scope of the plan change to include reference to the heritage item as requested by Heritage NZ (with the minor wording suggested by Mr Olliver in evidence):

Design integration of the Pirongia Road boundary treatment with the retention of the entrance gates associated with heritage item property (Isla Bank Villa).

Dated this 23rd day of March 2021

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⁴ Paragraphs 70 to 93 of the evidence of Mr Olliver and sections 4.3, 4.10 and 5.6 of the s42A report.

⁵ The change to the Heritage Schedule cannot be made in response to submissions on Plan Change 12 as no changes were proposed to the Heritage Schedule by the plan change; accordingly there may be persons who would be affected by the change who have not had an opportunity to make submissions: *Clearwater Resort Ltd v Christchurch City Council* AP 34/02, 14 March 2013, Young J.