

Form 5 Submission on notified proposal for policy statement or plan, change or variation

Clause 6 of Schedule 1, Resource Management Act 1991

To Waipā District Council

Name of submitter: **Joshua Sean Marshall**

This is a submission on the following proposed policy statement (*or on the following proposed plan or on a change proposed to the following policy statement or plan or on the following proposed variation to a proposed policy statement or on the following proposed variation to a proposed plan or on the following proposed variation to a change to an existing policy statement or plan*) (the **proposal**):

Proposed Plan Change 26 to Waipā District Plan

I could not gain an advantage in trade competition through this submission.

The specific provisions of the proposal that my submission relates to are:

as further set out in the appendix to this form

My submission is:

see the appendix to this form

I seek the following decision from the local authority:

see appendix to this form

I wish to be heard in support of my submission.

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

Signature of submitter
(*or person authorised to sign
on behalf of submitter*)

Date **26 August 2022**

(A signature is not required if you make your submission by electronic means.)

Electronic address for service of submitter: [REDACTED]

Telephone: [REDACTED]

Postal address (or alternative method of service under [section 352](#) of the Act): **N/A (electronic address provided)**

Contact person: **N/A**

Note to person making submission

If you are making a submission to the Environmental Protection Authority, you should use [form 16B](#). If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by [clause 6\(4\)](#) of Part 1 of Schedule 1 of the Resource Management Act 1991.

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:
- it discloses no reasonable or relevant case:
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:
- it contains offensive language:
- it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

Submissions of Josh Marshall on Proposed Plan Change 26 to Waipā District Plan

Before detailing my submissions on particular provisions, I would like to draw attention to a general statement on page 7 of the IPI which I consider misleading. The introduction states:

The purpose of Proposed Plan Change 26 is to incorporate the medium residential standards as set out in Schedule 3A of the Resource Management Act 1991 into the Waipā District Plan. The proposed plan change will also amend existing provisions in the District Plan to accommodate the new medium density residential standards, including consequential changes to give effect to the legislation.

This statement mentions only one of the several tasks which are legally required of this IPI. Section 77G(1) of the RMA requires every “relevant residential zone” to incorporate the MDRS. However sections 77G(2) and 77N(2) says every residential zone and urban non-residential in an urban environment in the District must give effect to policy 3 of the NPS-UD. Sections 77G(3) and 77N(1) expressly require that the Council use an IPI and the ISPP not only to incorporate the MDRS but also to give effect to policy 3. Since the Council may only ever notify one IPI and use the ISPP once, it follows that policy 3 is legally required to be given effect to through this IPI.

The failure of the IPI drafters to acknowledge this other function in the introduction suggests that this function was not at the forefront of their mind when they drafted the IPI.

I ask the hearings panel to take this into account considering my and other submissions.

Provision	Support / Oppose / Amend	Reasons	Relief Sought
2A.3.3.3(d)	Amend	As drafted this policy could be read as opposing all development in those parts of Te Awamutu. This goes beyond what the objective requires and is inconsistent with the policies in the NPS-UD.	Amend to read: Recognising the mix of villas, bungalows and art deco housing <u>along side other housing</u> in parts of Te Awamutu
2A.3.6	Amend	<p>Cambridge, Te Awamutu and Kihikihi are not the district's only urban environments as defined in the NPS-UD. Even very small settlements will be urban environments if they are primarily urban on character and part of a larger housing and labour market of at least 10,000 people. For example, Ōhaupō meets the definition of an urban environment.</p> <p>The policies in the NPS-UD require a wide range of housing options in all urban environments.</p>	Amend objective to read: To enable a wide range of housing options in Cambridge, Te Awamutu, and Kihikihi, and other urban environments in the District.
2A.4.2.36	Oppose	<p>The courts have ruled multiple times that permitted activity standards must be clear and require no subjective assessment. This standard does not meet the requirement.</p> <p>Firstly, the term "front or side façade" is unclear and undefined. Different people may reasonably differ on what is and isn't a façade.</p> <p>Second, the example diagrams are wholly inconsistent with the wording of the standard. The left hand diagram illustrates a river fronted by front façades and the right hand diagram has a river fronted by side façades. And yet the right hand diagram has a red cross indicating its not compliant for no apparent reason.</p>	Delete standard
15.4.1.1(e) & (l) — matters of control in	Amend	For controlled activities, the plan must specify matters over which control is reserved. Such matters must be clearly	Redraft the matters of control in relation to subdivision in the MDRZ for clarity.

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relation to subsidisation in MDRZ		<p>identified so that relevant effects on the environment can be identified.</p> <p>The matters specified are not clear. They read more like criteria to be met than matters with effects to be considered.</p> <p>For example, considering the first matter, it's not clear what effects are relevant. Is it the effects of the dwelling already there / consented?</p>	
15.4.1A	Amend	<p>Inclusion of the phrase "or the need to obtain written approval from affected parties" is misleading.</p> <p>There is no need (as in legal requirement) to obtain written approval from affected parties. The effect of this rule is to make certain applications non-notified. However, it may still be in an applicant's interest to get written approval.</p> <p>While affected parties don't have the right to submit on a notified application, the consent authority is still required to consider effects on them (s 104). However, if an applicant obtains written approval from that person, the consent authority must disregard the affects on that person (s 104(3)(a)(ii)).</p> <p>This distinction, while subtle, is important. References to written affected party approval should be removed.</p>	Delete "or the need to obtain written approval from affected parties"
Zoning in Karapiro, Pirongia, Ōhaupō and other small urban environments.	Amend	Karapiro, Pirongia, Ōhaupō are not "relevant residential zones" as defined in s 2 of the RMA since they, individually, have fewer than 5,000 residents. This means the IPI is not required to incorporate the MDRS in those locations.	Investigate the compliance of the zoning in Karapiro, Pirongia, Ōhaupō and any other settlements within an urban environment (as

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		<p>However, they are within “urban environments” as defined in the NPS-UD.¹ This is because they are predominantly urban in character and <u>part of</u> housing and labour markets of at least 10,000 (Cambridge’s housing and labour market for Karapiro and Te Awamutu’s and Hamilton’s housing and labour market for Pirongia and Ōhau-pō).²</p> <p>As residential zones and urban non-residential zones in urban environments, this IPI is required to give effect to Policy 3 of the NPS-UD within those settlements (ss 77G(3) and 77N(1)). In particular, this means areas “within or adjacent” to neighbourhood centre zones³ (and others) must be amended to have “building heights and densities of urban form commensurate with the level of commercial activity and community services”. This exercise has not been done. This exercise is mandatory, not discretionary, and must be done for this IPI to be legally compliant.</p> <p>This exercise still needs to be done. It should have been done by the Council before notifying the IPI. As a single submitter, it is beyond my means to undertake this exercise myself now. However, I submit that the hearings panel is legally required</p>	<p>defined in the NPS-UD) for compliance with the policy 3 of the NPS-UD.</p> <p>Where the zoning is not in accordance with policy 3 in those settlements (that is, where building heights and densities of urban form are not commensurate with the level of commercial activity and community services in of adjacent to those settlements) amend the zoning accordingly.</p>

¹ It is important to note that the legal definition of urban environment does not accord with its ordinary meaning. The authors of the IPI have apparently assumed its ordinary meaning.

² The plan change decision on the proposed Sleepyhead estate in Ohinewai, Waikato District, illustrates how small settlements located a distance from larger towns may still meet the definition of urban environment in the NPS-UD.

³ Since the Waipā District Plan has not yet implemented the Zone Framework in the National Planning Standard, clause 1.4(4)(b) of the NPS-UD requires reference to the “nearest equivalent zone”. The Zone Framework Standard in the National Planning Standards defines a “Neighbourhood Centre Zone” as “areas used predominantly for small-scale commercial and community activities that service the needs of the immediate residential neighbourhood.”

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		to see that this exercise is undertaken now before it makes its recommendations on the IPI.	