

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 26 to the Operative Waipā District Plan, Proposed Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan (**the Waikato IPIs**)

**MEMORANDUM OF COUNSEL FOR THE ADARE COMPANY LIMITED
REGARDING INDEPENDENT HEARING PANEL DIRECTION #5**

17 January 2023

PO Box 2401 AUCKLAND 1140
Tel +64 9 300 2600
Fax +64 9 300 2609

WYNN WILLIAMS

Solicitor: Mike Doesburg
(mike.doesburg@wynnwilliams.co.nz)

MAY IT PLEASE THE PANEL

- 1 This memorandum is filed on behalf of The Adare Company Limited (**Adare**). Adare made a submission and further submissions on Plan Change 12 to the Operative Hamilton City District Plan (**Plan Change 12**).¹
- 2 The purpose of this memorandum is to:
 - (a) respond to the Joint Memorandum of Counsel for the Councils dated 22 December (**Joint Memorandum**) and the Direction of the Independent Hearing Panel (**Panel**) dated 23 December; and
 - (b) seek further directions for the preliminary hearing regarding additional issues that are invalid or beyond the scope of Plan Change 12.

Overview of issue

- 3 The Councils' Themes and Issues report identified five "common themes" intended to be considered at the preliminary hearing.² The fifth common theme is "out of scope matters", with one of those matters being "inclusionary zoning/affordable housing provisions".³
- 4 The identification of such issues as "out of scope" is appropriate as:
 - (a) Intensification Planning Instruments (**IPIs**) serve a narrow statutory purpose and do not provide jurisdiction to make wholesale changes to District Plans;⁴ and
 - (b) Plan Change 12 (and the other Waikato IPIs) as notified did not include "inclusionary zoning/affordable housing provisions" and therefore the submissions seeking such provisions are not "on" the plan change.
- 5 Adare opposed submissions seeking "inclusionary zoning/affordable housing provisions", including:

¹ Original submission number 243. Submission numbers for further submissions are not yet available.

² Themes and Issues report at [4.3] and Table 1 heading.

³ Themes and Issues report at [4.32] - [4.34], [4.46], and [4.47].

⁴ RMA, ss 80G and 80E.

- (a) Waikato Community Lands Trust, Bridge Housing Charitable Trust, Waikato Housing Initiative, Habitat for Humanity Central Region, Momentum Waikato – submission number 298.1; and
 - (b) Waikato Housing Initiative – submission numbers 287.2, 287.3, 287.4, 287.5, 287.6.
- 6 The Councils' Joint Memorandum sought (among other things) that the Panel determine whether there was scope for certain submissions seeking rezoning in advance of the preliminary hearing.⁵ The Panel issued directions to that effect on 23 December 2022.⁶ The Joint Memorandum did not request that the scope for the “inclusionary zoning/affordable housing provisions” be determined at the same time.
- 7 For the same reasons as set out in paragraph 11 of the Joint Memorandum, it is appropriate that the scope of the submissions seeking “inclusionary zoning/affordable housing provisions” are determined in advance of, or at, the preliminary hearing. In particular:
- (a) If the issue of scope is not determined until the substantive hearing, Adare and other parties will be put to the cost of preparing evidence and legal submissions on the merits of such provisions, which may ultimately be unnecessary.
 - (b) A wide range of issues are raised by the Waikato IPIs and submissions on them. There is much to resolve before the Panel makes its recommendations and the Councils notify their decisions (due 31 March 2024).⁷ It is in all parties' interests to determine the scope issue early to potentially allow more time for other issues.

Directions sought

- 8 For the reasons above, Adare respectfully seeks directions from the Panel that:
- (a) Any party who considers that submissions seeking “inclusionary zoning/affordable housing provisions” are beyond the scope of Plan Change 12, provide written legal submissions to the Hearing

⁵ Joint Memorandum at [10] and Appendix 2.

⁶ Independent Hearing Panel Direction #5 dated 23 December 2022.

⁷ The Resource Management (Direction for the Intensification Streamlined Planning Process to Hamilton City Council, Waikato District Council, Waipā District Council and Rotorua District Council) Notice 2022.

Coordinator setting out their reasons for their position by 10 February 2023;

- (b) Submitters seeking that “inclusionary zoning/affordable housing provisions” be added to Plan Change 12 are to provide written legal submissions to the Hearing Coordinator in support of their relief being within scope by 17 February 2023;
- (c) The Councils and any party who provided legal submissions in accordance with (a) above are to provide written submissions in response to the Hearing Coordinator by 24 February 2023;
- (d) Subject to any requirement for a scope hearing, the Panel will issue a determination on each submission/affected submission point by 3 March 2023.

Administrative matters

- 9 Similar directions may be appropriate for Waikato District Council Variation 3 and Waipa District Council Plan Change 26, however Adare is not a submitter in relation to those IPIs.
- 10 This Memorandum has been copied to counsel for Hamilton City Council and the submitters referred to in paragraph 5.



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M J Doesburg
Counsel for The Adare Company Limited