

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

REPLY LEGAL SUBMISSIONS ON SCOPE FOR TRIPLE 3 FARM LIMITED

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MAY IT PLEASE THE PANEL

Introduction

1. These reply legal submissions for Triple 3 Farm Limited address the legal submissions of Waipā District Council in relation to Plan Change 26. At the time of writing, the Panel has not yet issued directions providing for a reply, but the Council has confirmed it has no objection to this reply.¹ Earlier legal submissions for Triple 3 Farm Limited on scope of course remain relevant.

A Holistic Approach

2. Council's legal submissions dated 24 February 2023 argue for a three step test for determining scope, with reference to: (a) section 80E of the RMA; (b) the question of whether the submission is "on" the plan change; and (c) whether the relief falls within the submission. In the Council's submission, the third question is only relevant when the Panel considers recommendations.²
3. I submit that this is not the preferred way to approach the issue of scope. Rather than treating there as being three questions, with two to be determined now and one later, a holistic approach should be taken to the issue of scope, with all issues considered together.
4. To consider Council's last question, it is universally acknowledged that clause 99 of Schedule 1 of the RMA allows the Panel to make recommendations outside the scope of submissions. It would be untoward for the Panel to decline to hear submissions on an issue that it could later make a positive recommendation on. This reinforces that the Panel should not be quick to take the view that a submission discloses "no reasonable or relevant case"³ when the substantive aspects of the submission and evidence in support have not yet been considered.
5. Taking a holistic approach to scope helps avoid the compartmentalisation of issues. Council's first question highlights that a rezoning is possible under an IPI, and this assists the submitter's position on scope.⁴ In considering what it considers its second question, Council gives much weight to the test in *Clearwater*, but not to the difficulties of a strict reading of *Clearwater* in light of the unique statutory regime governing an IPI. It is apparent that a 'business as usual' approach to *Clearwater* cannot be taken under an IPI, as clause 99 of Schedule 1 empowers the Panel to make recommendations outside the scope of submissions, and parties whom the Council may consider affected (noting that Council has not identified any such actual persons) may already be denied an opportunity to participate if the Panel makes such

¹ Legal submissions of counsel for Waipā District Council on Scope, dated 24 February 2023, paragraph 6.

² Legal submissions of counsel for Waipā District Council on Scope, paragraph 10.

³ The wording of section 41D(1)(b) of the RMA, relied upon by the Council at paragraph 31 of its legal submissions on scope.

recommendations. Applying *Clearwater* in a strict manner, and as an independent question rather than holistically, would be contrary to the IPI provisions of the RMA.

Albany North Landowners

6. Legal submissions for the Council point to the *Albany North Landowners* decision,⁵ but this focuses on the Panel's recommendations being a foreseeable consequence of a *submission point*. That is exactly what the submitter is seeking: the Panel's consideration of its submission points.
7. *Albany North* supports the Panel departing from a strict reading of *Clearwater*, as it highlights that non-standard planning processes (in *Albany North*, the PUAP; here, Plan Change 26 and its IPI context) are distinct from discrete variations or plan changes of the kind considered in cases such as *Clearwater*.⁶ *Albany North* also emphasises that a section 32 report is only one relevant consideration among many in weighing whether a submission is on a plan change,⁷ and that a "multilayered" approach to scope is correct.⁸ That is, *Albany North* supports Triple 3 Farm's submission being considered by the Panel in substantive hearings, rather than it being struck out on the grounds of scope.

Conclusion

8. Proper consideration of scope supports Triple 3 Farm's submission being found to be within scope of the IPI, and amenable to further consideration in substantive hearings. Both the statutory regime for the IPI process and *Albany North* support scope for Triple 3 Farm's submission. This will enable further attention to specific aspects of the land parcel, including location, proximity to other residential development, servicing, and infrastructure availability, and will enhance the outcomes sought by Council's IPI.

Dated 28 February 2023



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⁴ Especially in the light of sections 77G and 77N, and the requirement that the IPI give effect to policy 3 of the NPS-UD, which will be considered further in this process.

⁵ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [97], referred to at paragraphs 22-23 of Council's legal submissions on scope.

⁶ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [129].

⁷ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [131]. This tells against the undue attention given to the section 32 report at paragraph 10 of Council's legal submissions on scope.

⁸ *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [135].