

Before the Independent Hearing Panel

UNDER The Resource Management Act 1991 ("Act")

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

Opening position statement on behalf of Anna Noakes and MSBCA Fruhling Trustee's Company Limited

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MAY IT PLEASE THE PANEL

Introduction

1. This opening position statement is presented on behalf of Anna Noakes and MSBCA Fruhling Trustee's Company Limited as trustees of the Fruhling Trust (**Ms Noakes**) being the owners of 157 Potter Road, Tuakau (**the Property**).
2. Ms Noakes has lodged as submission¹ on Variation 3 (**the Variation**) to the Waikato District Council (**Council**) Proposed District Plan (**PDP**) and two further submissions on the Variation. Ms Noakes is not a submitter on either the Hamilton City Council Intensification Planning Instrument (**IPI**) or Waipa District Council IPI.
3. Ms Noakes submission and further submissions are primarily concerned with the management of stormwater resulting from intensification at Pookeno, which is a topic that will be addressed through the hearings later in the year rather than the current hearing that deals with high level strategic issues across all three tier one councils in the Waikato Region.
4. Given that Ms Noakes' interest in the proceedings is confined to Pookeno based stormwater management issues, Ms Noakes is not calling any evidence for this "scene setting" strategic issues hearing. Ms Noakes intends to call expert technical evidence in stormwater engineering and resource management planning at the substantive hearings to be scheduled later in the year.
5. This purpose of this opening position statement is to:
 - (a) the set the scene for Ms Noakes' case to be presented later in the year; and
 - (b) comment on the approach to the qualifying matters, in particular the urban fringe qualifying matter, which is the one strategic issue that has been raised in the Councils' 42A Report² and

¹ Submission number 44.

² Waikato Region Intensification Planning Instruments Themes and Issues report Joint Opening Hearing

strategic planning evidence³ that is relevant to Ms Noakes' submission.

Submitters' position and interest in the Variation

6. The Property is zoned general rural but forms the the Pokeno urban residential area immediately to the east. In other words, the Property *is* the urban rural interface in this area and the Property has the potential to be affected by intensification enabled by the Variation.
7. Although existing urban discharges were consented by the Waikato Regional Council on the basis of attenuation to predevelopment peak flows, the discharges have altered the hydrological conditions on the Property, including the volume, frequency and duration of discharges, the extent of inundation on her property, and the amount of sediment and water quality and that this has resulted in loss of productive land, downstream erosion and damage to farm infrastructure.
8. Involvement in the IPI process cannot address the adverse effects of discharges that have already been consented by the Regional Council. However, Ms Noakes is concerned that the cumulative effects of more intense urban development and increased impervious surface area in the district, which will be enabled by the Variation, will generate and exacerbate adverse stormwater and run-off effects.
9. Ms Noakes position therefore is that, if the Variation is approved then the stormwater management provisions throughout the PDP ought to be amended to ensure that such adverse stormwater effects on properties downstream of proposed developments are appropriately, avoided remedied or mitigated. Specifically, the stormwater provisions of the PDP ought to be amended to address the adverse stormwater effects of more intense development in terms of altered natural flow paths, and altered the hydrological conditions, including the volume, frequency and duration of discharges, the extent of inundation on downstream properties and adverse effects on water quality.
10. To this end, Ms Noakes submissions:

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- (a) support retaining the General Residential Zone on the urban edge of Pokeno and not providing for further intensification of residential land at Pokeno;
- (b) seek that the urban fringe qualifying matter be retained; and
- (c) seek that if the Variation is approved, then the stormwater management provisions in all relevant chapters of the PDP be amended to address the concerns in this submission relating to the adverse stormwater effects of more intense urban development (particularly the adverse stormwater effects of more intense development in terms of altered natural flow paths, and altered the hydrological conditions, including the volume, frequency and duration of discharges and the extent of inundation on downstream properties).

11. The adverse effects of development that would be enabled by the Variation are also of concern to Ms Noakes.

Legal framework

12. The Joint Opening Legal Submissions on behalf of the three councils have set out the legal framework applying to the preparation and hearing of IPIs under the Resource Management Act 1991 (**RMA**) (as amended by the Resource Management Act (Enabling Housing Supply) Amendment Act (**the Amendment Act**)). There are two points in the summary are particularly relevant to the matters to be raised by Ms Noakes:

- (a) Section 80E(1)(b) provides that an IPI may also amend or include stormwater management provisions that support or are consequential on the MDRS or policies 3 and 4 of the NPS-UD. This establishes that the appropriate stormwater management provisions required to address the adverse effects of intensification are fairly within the scope of matters that may be included in an IPI.
- (b) Section 99(1) broadens the scope of the Panel's recommendatory power from the orthodox approach which limits scope to matters that are deemed "on" the plan change provided they are *raised*

in submissions to being bounded by the notified IPI at one end and matters raised in the hearing at the other.

13. This legislative framework means that the Panel wide ranging power to determine what the appropriate approach to managing the stormwater effects of intensification are, which may prove helpful to the Panel given the large number of lay submitters opposing intensification and raising stormwater issues and the potential for there to be a change in what is considered best practice in stormwater management as a result of the recent severe weather events that have occurred between the lodging of submissions and the hearings.

Urban Fringe Qualifying Matter

14. The Variation as notified includes an urban fringe qualifying matter. The purpose of that qualifying matter is to promote an urban form that would concentrate intensification walkable catchment and close to the amenities of town centres. In Pookeno, this was to address concerns that restrictive covenants close to the town centre combined with larger lot sizes on the periphery would mean that market forces would operate to incentivise more intense development toward the periphery (the so called “donut effect”), which would not have the desired urban amenity benefits.⁴
15. The strategic planning evidence on behalf of the Councils records that:⁵

Whilst the Waikato DC does not resile from the planning rationale set out in the section 32 report in support of the Urban Fringe qualifying matter, it reluctantly acknowledges that the deliberately constrained wording of the Enabling Housing Act makes it very challenging for a qualifying matter under section 77(I)(j) to meet the additional legal requirements set out in section 77L. This is ultimately a matter for the hearing panel to consider after having considered submissions and evidence, but Waikato DC will not be bringing evidence to the substantive hearing in 2023 to support the Urban Fringe qualifying matter.

⁴ Refer to discussion in Section 32 Evaluation – Volume 2

⁵ Statement of Evidence of James Ebenhoh for Waikato District Council for Opening Strategic Hearing, para [91]-[93].

Waikato DC is currently assessing whether the removal of this qualifying matter would have an adverse effect on either infrastructure and/or the Waikato River. As a result of this additional work, Waikato DC may need to pursue rules similar to Hamilton City Council or Waipā District Council to ensure that residential capacity can be adequately serviced and not have adverse effects on the Waikato River.

The approach adopted by Waikato DC will be set out in the Hearings Report and evidence for the Waikato DC substantive hearings in mid2023. Waikato DC wanted to signal now however that it will not continue to pursue the Urban Fringe qualifying matter in its current form, so that submitters can decide whether they still wish to be involved in the hearing process and to ensure a more efficient hearings process. However, that is not to say that no additional qualifying matters will be sought for the GRZ in the four towns. Further investigations need to be undertaken. As mentioned above, a number of submissions already seek additional mechanisms to give better effect to Te Ture Whaimana.

16. Ms Noakes considers that WDC's decision not to call evidence in support of the urban fringe qualifying matter is disappointing given that WDC is the party that would be best placed to defend that approach on urban form and planning policy grounds.
17. However, Ms Noakes' reason for supporting of the urban fringe qualifying matter (and corresponding proposal not to upzone and incorporate the MDRS in the area) was because this approach would also help better manage the urban rural interface, particularly in relation to the adverse and cumulative stormwater effects of more intense urbanisation on adjacent rural areas.
18. Ms Noakes considers that if the urban fringe qualifying matter is no included in the Variation then new stormwater qualifying matters and provisions will be required to address the lacuna left by its removal. This matter will be addressed at the substantive hearing later in the year.
19. In the meantime, Ms Noakes is pleased to see that Council is undertaking further analysis to determine whether the removal of the urban fringe qualifying matter would have adverse effects on

infrastructure and that additional qualifying matters may need to be introduced in its place.

20. It is important that Council completes that work promptly and advises submitters on its position and any proposed changes to the Variation as soon as possible so that submitters have an opportunity to consider those changes (and their responses to them) well before any hearing.

'Conclusion

21. Ms Noakes interest in the IPI process is confined to the Waikato PDP and her specific concerns regarding the adverse stormwater effects on adjacent rural land generated by more intense urban development will be addressed at the substantive issues hearing later in the year.
22. However, Council's change in approach in relation to the strategic urban fringe qualifying matter will have implications for stormwater and it is important that submitters know well in advance what changes Council is proposing in response to that strategic change in direction.
23. Ms Noakes asks that the Panel's procedural directions resulting from this hearing include a requirement for the Council to advise on any proposed changes to the Variation as a result of its decision not to defend the urban fringe qualifying matter as a preliminary step in advance of any evidence exchange.



JL Beresford

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MSBCA Fruhling Trustee's Company Limited (as trustees of the Fruhling Trust)

