

**BEFORE INDEPENDENT HEARING COMMISSIONS
MAI I NGĀ KAIKOMIHANA MOTUHAKE**

UNDER

the Resource Management Act
1991 ("**RMA**")

AND

IN THE MATTER OF

submissions on the Hamilton,
Waipā and Waikato Intensification
Planning Instruments ("**IPIs**")

**OPENING LEGAL SUBMISSIONS ON BEHALF OF TE TŪĀPAPA KURA
KĀINGA – MINISTRY OF HOUSING AND URBAN DEVELOPMENT**

Dated 10 February 2023

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OPENING LEGAL SUBMISSIONS ON BEHALF OF TE TŪĀPAPA KURA KĀINGA - MINISTRY OF HOUSING AND URBAN DEVELOPMENT

May it please the Commissioners:

1. These opening legal submissions are filed in support of the relief sought in submissions by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (“**HUD**”), on Plan Change 12 to the Operative Hamilton City District Plan and Variation 3 to the Proposed Waikato District Plan.

Scope of the opening hearing – setting the scene

2. Counsel acknowledges the Hearing Panel’s direction that this opening hearing is limited to the presentation of submissions and strategic planning evidence which will, together, provide an overview of the approaches that each of the Councils have taken to the implementation of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“**Act**”).
3. Counsel also notes the desire for a particular focus on qualifying matters, and any departures from the direct application of the MDRS provisions, to help “set the scene” and inform the Panel of the key issues and to assist it in its determination as to how later hearings should be conducted.

An introduction to HUD

4. HUD leads the New Zealand Government’s housing and urban development work programme. It is responsible for strategy, policy, funding, monitoring and regulation of New Zealand’s housing and urban development system. As set out in its submissions on both Plan Change 12 and Variation 3, HUD is working to:
 - (a) address homelessness
 - (b) increase public and private housing supply
 - (c) modernise rental laws and rental standards
 - (d) increase access to affordable housing, for people to rent and buy; and
 - (e) support quality urban development and thriving communities.
5. HUD has a particular interest in Variation 3 and Plan Change 12, stemming from its co-lead role in developing the National Policy Statement on Urban Development (“**NPS-UD**”), the Act and overseeing their implementation.

6. As set out in HUD's submissions on the variation and plan change, the NPS-UD aims to ensure councils better plan for growth and remove overly restrictive barriers to development to allow growth in locations that have good access to services, public transport networks and infrastructure. The NPS-UD intensification policies require councils to enable greater heights and densities in areas that are well-suited to growth, such as in and around urban centres and rapid transit stops.
7. HUD is also responsible for the Government Policy Statement on Housing and Urban Development 2021 ("GPS-HUD"). The GPS-HUD sets a direction for housing and urban development in New Zealand. Its overarching vision is that everyone in New Zealand lives in a home and a community that meets their needs and aspirations.
8. While the GPS-HUD has no formal status under the RMA, it is an important expression of the current Government's policy directives and intentions for urban housing, in the same way as other Government Policy Statements are influential in guiding policy development and implementation on matters such as land transport and health.

HUD's involvement in Variation 3 and Plan Change 12

9. HUD had lodged two very focussed submissions on Variation 3 and Plan Change 12, focussing in particular on the qualifying matters that the Councils are seeking to apply.
10. The requirements of sections 77G and 77I of the RMA (as amended by the Act) will be well-known to the Panel, and are not repeated here.
11. The two issues identified in relation to qualifying matters in HUD's submissions are:
 - (a) for Variation 3, the Urban Fringe qualifying matter; and
 - (b) for Plan Change 12, the Infrastructure Overlay.
12. The relief sought by HUD in relation to those issues is:
 - (a) for Variation 3, the removal of the Urban Fringe qualifying matter and application of the MDRS as required by the RMA across the relevant residential zones within the District; and
 - (b) for Plan Change 12, to carefully review the ambit and scope of the Infrastructure Overlay, to confirm that it only restricts the intensification requirements under the NPS-UD and the application of the MDRS to the extent necessary to achieve the purpose of the Overlay, and to ensure compliance with section 77I of the RMA.

The Urban Fringe qualifying matter

13. At paragraphs 89 to 93 of his evidence, Mr Ebenhoh for Waikato District Council appears to confirm that the Urban Fringe qualifying matter will not be pursued, on the basis that it does not appear to meet the requirements for such a matter under sections 77I and 77L of the RMA. HUD welcomes that acknowledgement, which is consistent with the crux of its submission.
14. Mr Ebenhoh, however, stops slightly short of committing to the removal of the qualifying matter in its entirety, but that it will not continue to pursue it “in its current form”.
15. Counsel submits that the appropriate approach, in circumstances where the District Council has effectively resiled from its position in the section 32 report and the notified Variation, would be to formally withdraw the provisions relating to the Urban Fringe qualifying matter.¹
16. To the extent that other existing qualifying matters (such as Te Ture Whaimana) might apply, that consideration can occur without the Urban Fringe Overlay remaining up for debate. Failing to withdraw the Overlay would result in an ineffective and inappropriate hearings process, whereby parties who might seek to confirm the Overlay find they are left without District Council support, and parties who seek its removal are put to the time, cost and effort of confirming what already appears to have been conceded.
17. No direction is sought from the Panel in that regard, but HUD is signalling that it looks forward to the Waikato District Council confirming its formal position on the Overlay before the hearings process commences in earnest.

The Infrastructure Overlay

18. As HUD identified in its submission, Hamilton City Council has developed an infrastructure overlay it considers necessary to fulfil its commitments under Te Ture Whaimana, which is a listed qualifying matter under section 77I of the RMA. The clear focus appears to be on the need to manage impacts of development on the Waikato River.
19. HUD respectfully acknowledges and supports the evidence provided by Brendon Liggett, Michael Campbell and Philip Osborne on behalf of Kāinga Ora - Homes and Communities, in relation to the breadth of the proposed Infrastructure Overlay and the potentially significant consequences that its application (as notified) could pose for the

¹ For the proposition that part of a plan change or variation can be withdrawn under cl 8D of Sch 1, see *Horticulture New Zealand Inc v Waikato Regional Council* [2017] NZHC 378. See also *West Coast Regional Council v Royal Forest & Bird Protection Society of New Zealand* [2007] NZRMA 32 (HC) at [41].

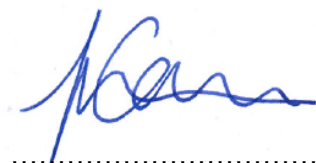
development of well-functioning urban environments within Hamilton City.

20. In HUD's view, particular focus needs to be applied to the proposed provisions to ensure that they achieve the intended policy outcomes under the Act, including an increased delivery of homes and urban development while managing effects to ensure the restoration and protection of the Waikato River.
21. It welcomes, and looks forward to, further dialogue with Hamilton City Council and other submitters through the hearings process as to how these issues may ultimately be worked through, and signals that the application of an Infrastructure Overlay may be a suitable topic for expert conferencing and/or mediation.

Conclusion

22. In summary, HUD welcomes the opportunity to participate in this joint hearings process to bring about positive change for urban development in the Hamilton and Waikato districts.
23. It looks forward to working with the relevant local authorities, submitters, and the Panel towards achieving the policy outcomes directed under the NPS-UD and the Act, and creating a better future for our urban environments.

Dated 10 February 2023



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