

**BEFORE THE INDEPENDENT HEARING PANEL APPOINTED BY THE  
HAMILTON CITY COUNCIL, WAIKATO DISTRICT COUNCIL, AND WAIPĀ  
DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of Variation 3 to the Waikato District Plan

**BETWEEN** **RANGITAHİ LIMITED**

**Further submitter #FS208**

**AND** **WAIKATO DISTRICT COUNCIL**

**Local authority**

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**LEGAL SUBMISSIONS FOR RANGITAHİ LIMITED**

**SCOPE FOR INCLUSIONARY ZONING**

**17 March 2023**

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Submitter's Solicitor  
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 HEARING PANEL****A. INTRODUCTION**

- 1 Rangitahi Limited (**Rangitahi**) submits that there is no scope to introduce provisions relating to inclusionary zoning<sup>1</sup> through the Waikato Intensification Planning Instruments (**Waikato IPIs**), particularly Variation 3 to the Waikato District Plan (**Variation 3**).
- 2 Rangitahi endorses and adopts the legal submissions by The Adare Company Limited (**Adare**) on this issue. The matters addressed in those submissions are not repeated, so these submissions should be read alongside Adare's submissions.
- 3 Rangitahi also submits that:
  - (a) Variation 3 is more confined than Plan Change 12 to the Hamilton City District Plan and Plan Change 26 to the Waipa District Plan in that Waikato District Council decided not to include a financial contributions chapter under section 77T of the RMA.
  - (b) Rangitahi's interest is in provisions of the Waikato District Plan relating to Raglan. Raglan is not an "urban environment" and does not contain "relevant residential zones". Accordingly, neither the medium density residential standards (**MDRS**) nor Policies 3 and 4 of the National Policy Statement for Urban Development (**NPS-UD**) apply to Raglan. In the event that the Panel finds that there is scope for inclusionary zoning provisions in the Waikato IPIs generally, Rangitahi seeks a finding that inclusionary zoning provisions cannot apply to Raglan (or any other area that is not an "urban environment" and does not contain "relevant residential zones").
- 4 Rangitahi seeks that the submission seeking inclusionary zoning provisions is struck out under section 41D of the RMA.

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<sup>1</sup> As sought by Waikato Community Lands Trust, Waikato Housing Initiative, Momentum Waikato, Habitat for Humanity Central Region Limited and Bridge Charitable Trust in submission number 93, submission point 93.1.

## **B. INCLUSIONARY ZONING IS NOT “ON” VARIATION 3**

- 5 For the same reasons as Adare, Rangitahi submits that inclusionary zoning provisions are not “on” Variation 3. The submissions by Waikato Community Lands Trust, Waikato Housing Initiative, Momentum Waikato, Habitat for Humanity Central Region Limited and Bridge Charitable Trust (**the Proponents**) argue otherwise and identify four provisions in Variation 3 that refer to “housing variety”, “housing options” and “housing choice” as indicating that provisions on inclusionary zoning are available.<sup>2</sup> Rangitahi rejects that.
- 6 In terms of the first limb of *Clearwater*,<sup>3</sup> the provisions referred to are identifying housing outcomes sought and do not amount to an assessment of inclusionary zoning provisions. There is no reference to “inclusionary zoning” in the Variation 3 section 32 report.
- 7 Importantly, Variation 3 does not include a financial contributions regime. This was a policy decision by the Council and no assessment of the appropriateness of including a financial contributions chapter is provided in the section 32 report. Rangitahi submits that this heightens the natural justice concerns – not only were inclusionary zoning provisions not contemplated by Variation 3, the type of planning tool (financial contributions) was not contemplated either.
- 8 In terms of the second limb of *Clearwater*, Rangitahi submits that there is a significant risk that affected persons would be denied an opportunity to participate in the planning process. Only four further submissions were made in response to the Proponents’ submissions.<sup>4</sup> This demonstrates that almost no-one in the Waikato District contemplated that inclusionary zoning provisions could arise through Variation 3.

## **C. INCLUSIONARY ZONING SHOULD NOT APPLY AT RAGLAN**

- 9 In the event that the Panel finds that there is scope to introduce inclusionary zoning provisions, Rangitahi seeks a finding that the

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<sup>2</sup> At [22]-[26].

<sup>3</sup> *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

<sup>4</sup> Rangitahi Limited, Kāinga Ora, Ryman Healthcare Limited, and Retirement Villages Association of New Zealand Incorporated.

provisions cannot apply to Raglan (or other areas that are not “urban environments” or do not contain “relevant residential zones”).

10 The IPIs have a narrow statutory purpose of rapidly accelerating the supply of housing where the demand for housing is high. That is achieved (for tier 1 local authorities) by implementing the MDRS and giving effect to Policies 3 and 4 of the NPS-UD.<sup>5</sup>

11 Importantly:

(a) The MDRS only apply to “relevant residential zones”.<sup>6</sup> Relevant residential zones exclude areas that are:

predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000, unless a local authority intends the area to become part of an urban environment

(b) Raglan’s population was 3,279 in the 2018 census and nothing suggests that Waikato District Council intends Raglan to become part of an urban environment. Variation 3 identifies the relevant residential zones as being in Huntly, Ngāruawāhia, Pōkeno and Tuakau.<sup>7</sup>

(c) Policies 3 and 4 of the NPS-UD only apply to tier 1 “urban environments”.<sup>8</sup> An urban environment is an area of land that:

(a) is, or is intended by the specified territorial authority to be, predominantly urban in character; and

(b) is, or is intended by the specified territorial authority to be, part of a housing and labour market of at least 10,000 people

(d) Again, nothing suggests that Waikato District Council intends Raglan to be an urban environment. Rather, the planning maps for Variation 3 identify Raglan as an area “not subject to Variation 3”.

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<sup>5</sup> RMA, s 80E.

<sup>6</sup> RMA, s 77G(1).

<sup>7</sup> Variation 3, page 2.

<sup>8</sup> NPS-UD, Policies 3 and 4.

- 12 Rangitahi submits that financial contribution provisions (like the inclusionary zoning provisions) cannot be applied, through an IPI, to areas that the MDRS and Policies 3 and 4 do not apply to. To do so would be to extend the reach of IPIs beyond their statutory purpose of rapidly accelerating housing in high growth areas.

**D. CONCLUSION**

- 13 For the reasons in Adare's submissions and outlined above, the Proponents' submissions seeking inclusionary zoning provisions are beyond the reach of an IPI and are not "on" Variation 3. They are therefore beyond scope and should be struck out pursuant to section 41D(1)(c) of the RMA.

**Dated this 17<sup>th</sup> day of March 2023**



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**M J Doesburg**  
Counsel for Rangitahi Limited