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 Plan Change 12 to the Hamilton City District Plan
BETWEEN	**THE ADARE COMPANY LIMITED**
	Submitter #243
AND	**HAMILTON CITY COUNCIL**
	Local authority

LEGAL SUBMISSIONS FOR THE ADARE COMPANY LIMITED

SCOPE FOR INCLUSIONARY ZONING AND AFFORDABLE HOUSING

17 March 2023

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 The Adare Company Limited (**Adare**) submits that there is no scope to introduce provisions relating to inclusionary zoning or affordable housing through the Waikato Intensification Planning Instruments (**Waikato IPIs**). At its simplest, Adare's case is that:

(a) Intensification planning instruments (**IPIs**) and Intensification Streamlined Planning Processes (**ISPPs**) are a one-off, special legislative process with deliberately confined reach – increasing housing supply. That reach does not extend to inclusionary zoning or affordable housing.

(b) While the Panel has power to make amendments to the Waikato IPIs beyond the scope of submissions, it remains constrained by the scope of the IPIs themselves. It cannot accept submissions or make changes that are not "on" the IPIs. Inclusionary zoning and affordable housing provisions are not "on" the IPIs and cannot be introduced by a "submissional sidewind".

2 Adare seeks that the submissions seeking inclusionary zoning and affordable housing provisions are struck out under section 41D of the RMA.

B. THE OUT OF SCOPE SUBMISSIONS

3 The submissions that Adare challenges are:

(a) Waikato Community Lands Trust, Waikato Housing Initiative, Momentum Waikato, Habitat for Humanity Central Region Limited and Bridge Charitable Trust (**Waikato Community Lands Trust & Others**):

(i) Plan Change 12 to the Hamilton City District Plan – submission number 298, submission point 298.1;

(ii) Plan Change 26 to the Waipa District Plan – submission number 64, submission points 64.1 and 64.2; and

(iii) Variation 3 to the Proposed Waikato District Plan – submission number 93, submission point 93.1.

(b) Waikato Housing Initiative:

(i) Plan Change 12 to the Hamilton City District Plan – submission number 287, submission points 287.1, 287.2, 287.3, 287.4, 287.5, 287.6, 287.7, 287.8, 287.10, 287.11, 287.13, 287.14, 287.15, 287.16, 287.17 and 287.18.

4 These submitters are referred to collectively as “the Proponents” for the balance of these submissions.

5 In essence, the submissions seek:

(a) In respect of inclusionary zoning:[1]

(i) The introduction of provisions like those developed by Queenstown Lakes District Council as a variation to its Proposed Plan, but with changes suggested by the Proponents.

(ii) The provisions would require that people subdividing land or undertaking residential development would make a contribution of land or money to the council or affordable housing trusts as follows:[2]

(1) For subdivision of between 1-19 residential lots, a contribution of 5-10% of the sale value of serviced lots.

(2) For subdivision of 21 or more residential lots, the transfer of 5-10% of serviced lots to the Council without compensation.

(3) For subdivision in settlement, rural-residential, resort or special zones, a contribution of 1-4% of the sale value of lots.

---

[1] Waikato Community Lands Trust & Others, submission points 298.1, 64.1, 64.2 and 93.1.

[2] Rule 40.9.1, pages 41-42 of the Hill Young Cooper report attached to the “Joint Submission”.

(4) For residential development, a contribution of 2% of the sales value of units or $150/m^2$ of the net increase in residential floorspace.

(5) A "top up contribution" for development where a contribution was also paid for subdivision.

(iii) If an applicant refuses to make a contribution of land or money, resource consent is required as a discretionary activity.

(b) In respect of affordable housing:[3]

(i) Addition of new objectives, policies and rules (and consequential amendments) in all residential zones to encourage integrated affordability. Integrated affordability is the idea that it is critical to integrate affordable housing throughout communities to ensure that large pockets of "affordable housing" are not created on their own.

C. IPIS HAVE A LIMITED STATUTORY PURPOSE

The scheme for IPIs

Purpose of an IPI

6 IPIs and ISPPs are novel processes, introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**). The Amendment Act was developed with a singular purpose: rapidly accelerating the supply of housing where the demand for housing is high.[4] For tier 1 territorial authorities,[5] the Amendment Act drives housing supply by requiring incorporation of the medium density residential standards (**MDRS**) in relevant residential zones and the implementation of Policies 3 and 4 of the NPS-UD.[6]

---

[3] Waikato Housing Initiative, submission numbers 287.1, 287.2, 287.3, 287.4, 287.5, 287.6, 287.7, 287.8, 287.10, 287.11, 287.13, 287.14, 287.15, 287.16, 287.17 and 287.18.

[4] Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill 2021 83-1, explanatory note.

[5] Like Hamilton City Council, Waipa District Council and Waikato District Council.

[6] Policy 5 of the NPS-UD must be implemented by certain tier 2 and tier 3 territorial authorities, but that is not relevant in the context of the Waikato IPIs.

7 While the ultimate goal of the Amendment Act is to help address some of the issues with housing choice and affordability in New Zealand's larger cities,[7] the Amendment Act does not provide a pathway for planning provisions directly on those issues. As the Panel discussed with Counsel for Hamilton City Council at the preliminary hearing, Parliament's approach with IPIs is focused on housing supply with a hope that positive outcomes will result.

8 The fast-tracked ISPP will deliver IPIs in a compressed timeframe. The Panel needs no reminder of the time-pressure. A key element of the streamlining that the ISPPs bring is the removal of appeal rights. If a council accepts the Panel's recommendations, the planning process ends and the provisions are final.[8] If a council rejects the Panel's recommendations, the final decision lies with the Minister for the Environment, after which the provisions are final.[9] As a matter of fairness, this significant restriction on participatory rights can only be justified because of the narrow purpose and the narrow focus of IPIs.

What can be included in an IPI

9 Section 80E of the RMA directs the matters that must or may be included in an IPI.

10 Section 80E(1)(a) provides that an IPI must:

(a) incorporate the MDRS; and

(b) give effect to Policies 3 and 4 of the NPS-UD in the case of tier 1 territorial authorities.

11 Section 80E(1)(b) provides that an IPI may also amend or include the following provisions:

(a) provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T;

(b) provisions to enable papakāinga housing in the district;

---

[7] Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill 2021 83-1, explanatory note.

[8] Subject only to judicial review – RMA, Schedule 1, cls 107 and 108.

[9] Subject only to judicial review – RMA, Schedule 1, cls 107 and 108.

(c) related provisions, including objectives, policies, rules, standards, and zones, that "support or are consequential on" the MDRS or Policies 3, 4 and 5 of the NPS-UD, as applicable.[10]

12 Related provisions are defined in section 80E(2) to include provisions that relate to any of the following, without limitation:

(a) District-wide matters;

(b) Earthworks;

(c) Fencing;

(d) Infrastructure;

(e) Qualifying matters identified in accordance with 77I or 77O;

(f) Storm water management (including permeability and hydraulic neutrality); and

(g) Subdivision of land

13 Section 80G of the RMA provides that a specified territorial authority[11] must not use the IPI for any other purpose than the uses specified in section 80E.[12]

14 Adare submits that provisions relating to inclusionary zoning or affordable housing are not permissible in an IPI.

Policy 1 of NPSUD is not relevant to an IPI

15 The Proponents rely on Policy 1 of the NPS-UD to support an argument that "affordable housing is part of the NPS-UD and so properly a consideration within the IPI/ISPP process."[13] Respectfully, the argument is not persuasive.

16 The requirement for district plans to give effect to the NPS-UD[14] must be considered in context:[15]

---

10 Again, policy 5 of the NPS-UD is not relevant for the Waikato IPIs.

11 Per RMA section 80F, Hamilton City Council is a specified territorial authority.

12 RMA, s 80G(1)(b). A specified territorial authority also must not notify more than one IPI (s 80G(1)(a)) nor withdraw an IPI (s 80G(1)(c)).

13 Opening submissions on scope for the Proponents dated 10 March 2023, at [7].

14 RMA, s 75(3)(a).

15 *McQuire v Hastings District Council* [2000] UKPC 43, [2002] 2 NZLR 577 at [18]-[19].

(a) The transitional provisions of the NPS-UD require that local authorities amend their plans to give effect to the NPS-UD “as soon as practicable”.[16]

(b) As identified above, the contents of an IPI are statutorily limited. Section 80E of the RMA does not list “giving effect to Policy 1 of the NPS-UD” as one of the permissible uses of an IPI.[17]

(c) Accordingly, it is not reasonably practicable for the entire NPS-UD to be given effect by Hamilton City Council, Waipa District Council or Waikato District Council through their IPIs.

17 Furthermore, a subordinate document (the NPS-UD) cannot lawfully constrain or expand its empowering legislation (the RMA) unless the empowering act expressly allows it to do so. There is no such empowering provision in the RMA. We reject the suggestion that Policy 1 of the NPS-UD means that a power to include provisions mandating affordable housing can be read into sections 80E and 80G of the RMA.

Inclusionary zoning and affordable housing provisions are not allowed in an IPI

18 Turning to the specifics of the Proponents’ relief: the inclusionary zoning and affordable housing provisions do not incorporate the MDRS or give effect to policies 3 and 4 of the NPS-UD:

(a) The MDRS enable the subdivision and use of land for medium density housing, if development standards are complied with.

(b) Policy 3 of the NPS-UD requires district plan provisions to enable certain building heights and densities, relative to their location.

(c) Policy 4 of the NPS-UD enables councils to modify the relevant building height and density requirements under Policy 3 to the extent necessary to accommodate a qualifying matter.

19 Similarly, the inclusionary zoning and affordable housing provisions sought do not enable papakāinga housing under section 80E(1)(b)(ii).

---

[16] NPS-UD, at 4.1.

[17] RMA, s 80G.

20 Finally, the affordable housing provisions sought are demonstrably not financial contributions provisions (or provisions relating to financial contributions) pursuant to section 80E(1)(b)(i).

21 The questions for the Panel are whether:

(a) the inclusionary zoning provisions are allowable financial contributions provision pursuant to section 80E(1)(b)(i); and

(b) the inclusionary zoning and affordable housing provisions are "related provisions" pursuant to section 80E(1)(b)(iii).

Related provisions that support or are consequential (s 80E(1)(b)(iii))

22 The Proponents' submissions do not suggest that inclusionary zoning or affordable housing provisions are "related provisions". Indeed, for the affordable housing provisions, the submissions do not engage with why affordable housing provisions are permissible under section 80E of the RMA. For completeness, Adare submits that neither set of provisions are "related provisions".

23 Section 80E(1)(b)(iii) of the RMA enables IPIs to include "related provisions", including objectives, policies, rules, standards and zones. Section 80E(2) provides a further non-exclusive list of the types of provisions that may be included. The key test for determining whether provisions are "related provisions" is whether the provisions:

> *…support or are consequential on–*
>
> *(A) the MDRS; or*
>
> *(B) policies 3, 4 and 5 of the NPS-UD as applicable.*

24 Neither of the terms "support" nor "consequential on" have been defined by the RMA, the Amendment Act or the NPS-UD. "Support" is relevantly defined in the Merriam-Webster Dictionary as to "assist", "help" or "to hold up or serve as a foundation or prop for." "Consequent" is relevantly defined in the Merriam-Webster Dictionary as "following as a result or effect". This language contemplates a direct connection between proposed plan provisions and the MDRS or Policies 3, 4, or 5. This interpretation is consistent with the purpose of the Amendment Act of accelerating housing supply – provisions that help deliver intensified cities are permissible, such as different infrastructure standards,

earthworks rules or subdivision standards. However, provisions that are not directly related to that task are not permissible.

25 Neither inclusionary zoning nor affordable housing provisions are directly connected to the MDRS or Policies 3, 4, or 5 of the NPS-UD, and therefore cannot be said to be provisions that support or are consequential on the same. Accordingly, they are not "related provisions".

Financial contributions (s 80E(1)(b)(i))

26 Section 80E(1)(b)(i) provides that an IPI may amend or include provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T. Section 77T provides that a specified territorial authority may include or change its financial contributions provisions in its district plan through its IPI.

27 While Adare accepts that the inclusionary zoning provisions are framed as financial contributions, it submits that is not a permissible financial contribution regime under an IPI. The proposed inclusionary zoning provisions provide for the transfer of money or land from subdividers or developers to the Council to attempt to address housing affordability issues. Such a financial contribution regime is unrelated to the purpose and focus of an IPI.

28 The explanatory note to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill states that the Bill clarifies that financial contributions can be charged for permitted activities,[18] and that territorial authorities may amend or include new financial contributions policies through the ISPP, which "will support relevant territorial authorities with the cost of development infrastructure that may be required to incorporate the MDRS." This demonstrates that Parliament intended financial contributions introduced through an IPI to be limited to those which relate to incorporating the MDRS and implementing Policies 3 and 4 of the NPS-UD – that is, contributions responding to the effects of increased housing supply and density. This approach is consistent with the scheme of IPIs and ISPPs addressed

---

18 This clarification is set out at section 77E(1) RMA.

above, which provide for a narrow planning process and curtailed appeal rights.

29 Further, a narrow ability to impose financial contributions through IPIs is consistent with well-established law on financial contributions. Financial contributions must be imposed for a resource management purpose, not some ulterior purpose, and must fairly and reasonably relate to the proposed activity.[19] Requiring all subdivision and residential development to fund affordable housing is an ulterior purpose, unrelated to the activity.

30 If the ability to include financial contributions provisions through an IPI were unlimited, unfair outcomes could result. For example, IPIs do not contemplate changes to business or industrial activities. Owners of business and industrial land (other than those with reverse sensitivity concerns) are likely paying little attention to IPIs and ISPPs. However, if financial contributions provisions could be included *carte blanche* through an IPI, such landowners could theoretically be surprised by a new financial contribution regime for business or industrial development, introduced through a process targeted solely at driving housing supply. This is analogous to the Proponents' proposed regime and is manifestly unfair.

D. INCLUSIONARY ZONING AND AFFORDABLE HOUSING PROVISIONS ARE NOT "ON" PC12

31 On the issue of whether the Proponents' relief is "on" the IPIs, Adare adopts the joint submissions of the Waikato IPI Councils in relation to the available scope of relief on an IPI.[20] In short:

(a) All submissions and relief must be "on" the plan change.[21]

(b) The Panel is not limited to making recommendations which are within the scope of submissions. The Panel may make

---

[19] See, for example, *McNally v Manukau City Council* (2007) 13 ELRNZ 144, citing *Newbury DC v Secretary of State for the Environment* [1981] AC 578 and *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112.

[20] Joint Opening Legal Submissions for the Councils dated 8 February 2023 at [5.1]-[5.5].

[21] RMA, Schedule 1, cl 6(1). As a matter of natural justice, all submissions made under clause 6(1) in relation to a plan change must be "on" that plan change, not a tangential (or wholly unrelated) matter.

recommendations that are related to matters identified by the Panel or any other person during the hearing.[22]

(c) The Panel is only empowered to make recommendations that are "on the IPI".[23]

(d) Whether a matter raised in a hearing is "on" the plan change remains subject to the established tests, including *Clearwater* and *Motor Machinists*.

Applicable law

32 Adare submits that *Clearwater Resort Limited v Christchurch City Council*[24] and *Palmerston North City Council v Motor Machinists Limited*[25] remain the leading cases on whether relief is "on" a plan change. Under the bipartite test in those cases, analysis is required as to whether:

(a) The submission addresses the change to the status quo advanced by the proposed plan change; and

(b) There is a real risk that persons potentially affected by such a change have been denied an effective opportunity to participate in the plan change process.

33 In applying the first limb, consideration is required of the change to the status quo that the plan change brings, along with whether the submission addresses that change.[26] One way of undertaking that analysis is to consider the section 32 report and whether the submission raises matters that ought to have been addressed in that report.[27] Another approach is to consider whether the management regime for a particular resource is altered by the plan change.[28]

34 The second limb requires consideration of whether there are persons that may be affected, but have been denied the opportunity to participate

---

22 RMA, Schedule 1, clause 99(2).

23 RMA, Schedule 1, clause 99(1).

24 *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

25 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.

26 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [80].

27 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [81].

28 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [81].

due to unexpected third party submission on a matter not included in the original plan change.[29]

35 The Proponents' submissions refer to Direction #12 on Plan Change 26 to the Waipa District Plan and suggest that the High Court's decision in *Albany North Landowners v Auckland Council*[30] may allow a departure from a strict reading of *Clearwater* where a bespoke planning process such as the IPIs is involved. We respectfully disagree.

36 *Albany North Landowners* does not distinguish nor modify the *Clearwater* tests. The decision goes no further than identifying that in the context of a full plan review, the failure to provide full assessment of a planning outcome in the section 32 report does not necessarily mean that the first limb of *Clearwater* is failed.[31] Justice Whata's decision simply identifies that the weight placed on a section 32 report when applying the first limb of *Clearwater* is context-specific: the section 32 report may have greater significance on a plan change with limited areal reach than a full plan review.

37 Furthermore, *Albany North Landowners* needs to be read in the context it was decided. The Auckland Unitary Plan was New Zealand's largest ever plan review, comprising a regional policy statement, regional plan and district plan in one document.[32] The Auckland Unitary Plan is distinct from the IPIs as through the Auckland Unitary Plan process, all resource management issues were "up for grabs". In contrast, the IPIs have a narrow purpose and focus.

38 In any event, in *Albany North Landowners* the Court did not depart from either limb of the *Clearwater* and *Motor Machinists* tests and in fact emphasised the importance of the natural justice issues that those cases respond to.[33]

---

29 *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [77].

30 *Albany North Landowners v Auckland Council* [2016] NZHC 138.

31 *Albany North Landowners v Auckland Council* [2016] NZHC 138, at [130]-[135].

32 *Albany North Landowners v Auckland Council* [2016] NZHC 138, at [1].

33 *Albany North Landowners v Auckland Council* [2016] NZHC 138, at [135].

Applying the first limb of the Clearwater *test*

Inclusionary zoning provisions

39 Plan Change 12 (and the other Waikato IPIs) as notified did not include inclusionary zoning provisions.

40 The section 32 report for Plan Change 12 does not assess “inclusionary zoning”. The evaluation includes a table setting out amendments to standards introduced pursuant to section 80E(2) that support or are consequential to the MDRS or Policies 3 – 5 of the NPS-UD. That assessment does not identify any provisions like the Proponents’ relief.

41 Adare acknowledges that in relation to one “Medium Density Residential Precinct” (Te Awa Lakes) the section 32 report notes amendments relating to “affordable housing”. Importantly, those amendments reflect the status quo that applies to residential areas under the Te Awa Lakes Structure Plan. Plan Change 12 is not changing the status quo to introduce affordable housing, rather it restructures the existing affordable housing provisions for Te Awa Lakes into the format of Plan Change 12.

42 The Proponents identify various points in the Plan Change 12 section 32 report as supporting their proposition that inclusionary zoning is “on” PC12. These include references to “housing choice” or providing a range of “housing typologies”.[34] Such references do not assist the Proponents. The various references in the section 32 report to seeking positive effects such as enabling housing choice, or a wider range of housing typologies are simply an assessment of the relative benefits of certain options. That does not amount to assessment of the option of inclusionary zoning.

43 The Proponents also identify:

(a) The background section at 1.3,[35] which states that housing affordability challenges can result from growth. However, that section does not propose inclusionary zoning as a solution to such challenges.

---

34 At [20].

35 At [20a].

(b) Section 2.2 and highlight that it mentions "prices".[36] However this section simply summarises the broad requirements of the NPS-UD in general. It does not suggest that Plan Change 12 should be addressing housing prices.

44 Further to the clear absence of assessment of inclusionary zoning, other documents suggest that Hamilton City Council deliberately excluded inclusionary zoning from Plan Change 12. Hamilton City Council has been investigating inclusionary zoning for some time and, it appears, has resolved to pursue inclusionary zoning through a separate, dedicated plan change at a later date:

(a) In the General Manager's Report to the District Plan Committee on 10 March 2022, the following statement is made under the 'Programme updates' heading:[37]

> The scope of inclusionary zoning in the Plan Change Programme is to investigate options to include an inclusionary zoning concept in the District Plan to support the provision of affordable housing. Should these policy options meet with elected member approval, a resolution will be sought to undertake a separate plan change to include these policies at a later date. The agenda contains a separate report on inclusionary zoning in the [public excluded] section of the meeting.

(b) At a meeting of the District Plan Committee on 4 August 2022, the agenda identified a workstream for "Inclusionary zoning (Further plan changes)" and noted an update would be provided in a public excluded part of the meeting, titled "Inclusionary Zoning – approval to progress plan change".[38]

(c) At a meeting of the Strategic Growth and District Plan Committee on 23 February 2023, the City Planning Manager, Mr Mark Davey, provided an update as follows:

---

36 At [20b].

37 District Plan Committee Agenda for 10 March 2022, General Manager's Report, Item 8, paragraph 41.

38 Item 9.

> *80. Inclusionary zoning is a planning concept that seeks to create affordable housing as development occurs through rules in the District Plan that require qualifying developments to contribute to the provision of affordable housing through land, money or dwelling units.*
>
> *81. Investigating the potential to introduce inclusionary zoning policies into the District Plan is one of the 11 key actions in Council's Housing Strategy and Action Plan, which was approved by the Strategic Growth Committee on 30 March 2021.*
>
> *82. Staff have been working since mid-2021 to develop an evidence base to investigate how inclusionary zoning could be applied in Hamilton. Key findings from this investigative work were reported to the District Plan Committee on 10 March 2022. Following a further update provided to the District Plan Committee on 4 August 2022, the Committee approved staff to progress further work for elected members to consider at the start of the next council triennium.*

45 This further demonstrates that inclusionary zoning is being investigated for inclusion through a future plan change, rather than through Plan Change 12.

Affordable housing provisions

46 The Proponents' submissions assert that the "proposed amendments to objectives and policies in WHI's submission are clearly on the plan change".[39] Adare disagrees.

47 The term "integrated affordability" was not included in the notified version of Plan Change 12. This term was not defined and there was no reference to a definition of "affordability" in Appendix 1.1 of Plan Change 12 as notified. As noted above, while there were references to affordable housing or affordability in chapters affected by Plan Change

---

39 Opening submissions on scope for the Proponents dated 10 March 2023, at [32].

12, these references related to legacy provisions which have been carried through from the District Plan.[40]

48 Similarly, there was no reference to “integrated affordability” in the section 32 report for Plan Change 12. Again, there were references in the section 32 report to “affordable housing” or “affordability”, however these references are not assessing provisions mandating affordability/affordable housing. Rather, affordability is mentioned in the following ways:

(a) identified as a benefit in relation to provisions increasing maximum height limits;[41]

(b) as a cost in relation to the need to increase three waters capacity;[42]

(c) as an objective for the transport network;[43]

(d) as a screening criteria for assessing appropriateness of potential methods for controlling development;[44]

(e) in relation to Te Awa Lakes (for which the District Plan already includes some affordable housing provisions);[45] and

(f) in relation to an analysis of how PC12 compares to the NPD-UD (Objective 2 of which relates to affordability by supporting competitive land and development markets) which states that more mid-high density housing will improve potential for more affordable dwellings to be delivered.[46]

49 Plan Change 12 plainly does not contemplate additional objectives, policies, rules and definitions to implement integrated affordability, as sought by the Proponents.

---

40 E.g., Chapter 3.6A Rotokauri North – “vision” at p 14 and Chapter 23 Subdivision – Policy 23.2.7a(v) and “explanation” in relation to Rotokauri North; Chapter 4 Residential – Objective 4.3.2.4, Policy 4.3.2.4c, and Standard 4.3.4.17 in relation to Te Awa Lakes.

41 Section 32 Report, Appendix 2.3.

42 Section 32 Report, Appendix 2.3.

43 Section 32 Report, Appendix 2.3.

44 Section 32 Report, Appendix 2.5.

45 Section 32 Report, Appendix 3.1.

46 Section 32 Report, Appendix 3.1.

Applying the second limb of the Clearwater *test*

50 Turning to the second limb of *Clearwater*, Adare submits that there is a real risk that people potentially affected by the Proponents' relief would be denied an effective opportunity to participate, if that relief were found to be "on" the IPIs.

51 Any person that subdivides or develops residential land would be affected by the proposed inclusionary zoning provisions. Similarly, any person applying for resource consent in a residential zone would be affected by the affordable housing provisions. However, only a very small number of people have made further submissions in opposition to the Proponents' relief – just four on Plan Change 12, four on Variation 3 and one on Plan Change 26.[47]

52 If the wider Hamilton, Waipa and Waikato District community was aware of the proposed changes, it is likely that many more parties would be involved, including the property development community as well as individuals with aspirations to subdivide or intensify their properties. To provide some context, the variation promulgated by Queenstown Lakes District Council to introduce inclusionary zoning provisions (which the Proponents' provisions are based on) attracted 181 primary submissions.[48]

53 This is a strong indication that many people are unaware and have been caught off guard by the proposed introduction of inclusionary zoning and affordable housing provisions through a "submissional sidewind" on the IPIs.

E. OVERALL JUSTICE FAVOURS THE SUBMISSIONS BEING STRUCK OUT

54 For the reasons outlined above, the Proponents' submissions seeking inclusionary zoning and affordable housing provisions are beyond the

---

47 The Adare Company Limited, Waikato Racing Club Incorporated, Kāinga Ora and Peter John Findlay and Donna Margaret Findlay were further submitters on Plan Change 12. Rangitahi Limited, Kāinga Ora, Ryman Healthcare Limited and Retirement Villages Association of New Zealand Incorporated were further submitters on Variation 3. Kāinga Ora was the only further submitter on Plan Change 26.

48 Further submissions have recently closed and information on the number of further submissions is not yet available.

reach of the IPIs and are not "on" Plan Change 12. They are therefore beyond scope and should be struck out pursuant to section 41D(1)(c) of the RMA.

55 If the Panel finds itself on the fence on this issue, the interests of overall justice weigh in favour of a finding that there is no scope for the Proponents' relief:

(a) If the submissions are struck out, the Proponents can pursue inclusionary zoning and affordable housing provisions through a standard Schedule 1 process, either through a private plan change at any time, or potentially through a future plan change that HCC is investigating. The standard Schedule 1 process will enable robust testing of any proposal, with all the checks and balances that come with full appeal rights.

(b) On the contrary, if the Panel finds the submissions are within scope, Adare and other parties will be put to significant cost to respond to those submissions. If inclusionary zoning or affordable housing provisions are confirmed, there is no right of appeal and the only recourse would lie in judicial review.

56 Adare submits that the submissions should be struck out so that the Panel, submitters and Councils can focus on the core task of the IPIs – enabling housing supply.

Dated this 17th day of March 2023

M J Doesburg
Counsel for The Adare Company Limited