

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 12 to the Operative Hamilton
City District Plan

**MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL
REQUESTING DEFERRAL OF HEARING**

Dated 29 June 2023

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MAY IT PLEASE THE INDEPENDENT HEARING PANEL**INTRODUCTION**

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) in accordance with the direction set out at paragraph 5(c) of Panel Direction #15 dated 16 June 2023.
2. On 12 June 2023 HCC wrote to the Minister for the Environment (**Minister**) seeking an extension of the decision deadline (currently 31 March 2024) through to 31 December 2024 (**extension request**). This extension would enable the hearing of Plan Change 12 (**PC12**) to be scheduled after notification of Plan Change 14 (**PC14**) in the first quarter of 2024 and leave sufficient time for HCC to deliver its decision on PC12 within any ministerial deadline.
3. On 26 June 2023 HCC received notice from the Ministry for the Environment (**MfE**) that the Minister is not likely to issue a decision on the extension request until the second half of July 2023. HCC is advised that the MfE staff recommendation was presented to the Minister's Office today.
4. HCC has determined that leaving a decision on the deferral of the hearing until late July is untenable. Furthermore, HCC's position is that regardless of the Minister's decision on the extension request, for the reasons set out below, a deferral of the hearing on PC12 is necessary and in accordance with sound resource management practice.
5. Accordingly, for the reasons set out in this memorandum HCC seeks that the hearing of PC12, currently scheduled to commence on 4 September 2023, be deferred to a later hearing date, likely to be in the second quarter of 2024, with the final date to be set in consultation with all

parties (**deferral**).

BACKGROUND

6. Independently of PC12, HCC has been updating its flood hazard modelling for the City, with the intention that it will notify a Council led plan change to incorporate this new hazard information. That plan change is identified by HCC as PC14 and is expected to be ready for public notification in the first quarter of 2024.
7. Further detail of the flood hazard modelling and the content of PC14 is addressed in the memorandum for HCC dated 15 June 2024 and is not repeated here. It is sufficient to state that the public notification of PC14 will place into the public domain the most up to date, extensive and accurate flood hazard modelling available to HCC.
8. HCC considers that having this information available at the time of hearing evidence on PC12, and when making recommendations and decisions on PC12, represents sound resource management practice, and that this outcome should be pursued.

BASIS FOR DEFERRAL

Integrated decision-making between PC12 and PC14

9. The primary reason for seeking the deferral is to ensure that when the Panel hears the evidence relating to the proposed intensification planning instrument (**IPI**), it is properly informed by the best and most up to date flood hazard information available.
10. In the PC12 hearing the Panel will be considering evidence regarding the proposed spatial distribution of higher residential densities across the City. It should have a clear picture of flood hazards to ensure that areas

at risk of inundation are not enabled for high density residential intensification, or if they are, appropriate planning controls are incorporated to avoid unacceptable risks to people and property.

11. The best and most practical way for the PC12 Panel to be properly informed on flood hazards is to have PC14 publicly notified before the hearing of PC12. This will also ensure that all stakeholders in PC12, including submitters and their expert witnesses, have access to this highly relevant information. In this way, decisions concerning land use and residential densities will be integrated with land use controls addressing flood hazards.
12. Some parties may contend that this integration can still be achieved by proceeding to hear PC12 but defer decisions until after PC14 is notified. However, HCC considers this staggering between hearing evidence on PC12 and then making recommendations and decisions on PC12 would lead to inefficiencies, duplication, unnecessary cost and potentially more delays. Simply put, much of the evidence presented at that early hearing on PC12 may require updating and revising based on the new flood hazard information made available through PC14.
13. The following sections addressing impacts on zone provisions, zoning decisions, three waters and transport provisions illustrate how these inefficiencies arise.

Impacts on residential zone provisions within PC12

14. Although the Operative District Plan (**ODP**) addresses natural hazards through Chapter 22 (not modified by PC12), it is focused on more extreme and less frequent events (i.e., AEP 1:100 events), and fails to fully account for the impact of more frequent and less intense flood events. With the increasing uncertainty brought about by climate change, it is essential to incorporate provisions that consider these less intense

but more frequent flood hazards in the residential zone.

15. To address these flood hazard issues, the residential provisions could encompass a range of measures. This may include stronger requirements for permeable surfaces, landscaped areas, and tree planting to enhance the resilience of residential areas identified as being susceptible to inundation events. Provisions requiring the placement of landscaped areas within a site and incorporating deep permeable soil as part of the landscaped areas can further aid in managing stormwater and reducing the impact of flooding. These approaches can include the integration of sustainable drainage systems and green impermeable surfaces, which provide additional flood mitigation measures while promoting ecological benefits. Evaluating the activity status table within the residential provisions is also necessary to ensure that appropriate measures are in place to address flood hazards effectively.
16. Provisions of this nature are not included within PC12 but may be introduced through PC14. Having visibility over these new residential provisions may be relevant to the Panel at the time it settles on its recommendations on the MDRS related provisions in PC12. Integrating the residential zone provisions in PC12, including any modifications to MDRS, with these flood hazard management provisions will be important. Hearing evidence on the PC12 provisions in isolation to the flood hazard provisions may require the Panel to revisit the PC12 evidence once PC14 is notified. This would be an unnecessary duplication of evidence preparation and hearing.

Impacts on zoning decisions within PC12

17. HCC currently has just over 70% of the city covered by the new flood hazard model and this is expected to be completed by December 2023. Once the full extent of flood hazards, including flood plains, overland flow paths, and depression areas is known, it will likely become

necessary to re-evaluate the proposed residential zoning densities proposed in PC12. There will be some residential zone areas significantly affected by flood hazards, making them unsuitable for MDRS or higher densities.

18. The updated flood hazard modelling identifies previously unknown inundation risks and shows where these risk areas intersect with areas identified for MDRS. Having a clear understanding of these risks at the time the Panel hears evidence on the extent of higher density zone areas is critical. Without this information, there is a risk that the Panel may wish to hear updated evidence once PC14 is notified. Again, this would lead to an unnecessary duplication of hearing time and evidence preparation.

Impacts on 'Three Waters' provisions within PC12

19. The updated flood hazard modelling will also have implications for the provisions outlined in the 'Three Waters' chapter, particularly those provisions addressing stormwater management. The existing stormwater management strategies and infrastructure will require reassessment in light of the updated modelling, and this is likely to be reflected in PC14. The 'Three Waters' chapter will likely require incorporation of additional measures such as increased capacity to handle floodwaters and enhanced water quality management practices. Furthermore, the identification of flood plains and overland flow paths may necessitate the implementation of measures to mitigate potential contamination and the introduction of stricter regulations to protect water quality during flood events.
20. These changes are likely to be introduced through PC14, but again, evidence in relation to these issues will be presented in the context of PC12, but will not be fully informed at the time of hearing. This is likely to require further evidence and a further hearing.

Impacts on transport provisions within PC12

21. The Transport chapter will be impacted by the updated flood hazard model in several ways. First, any changes in flood modelling input, particularly considering climate change, can influence road design parameters. Secondly, flooding can reduce the capacity of swales and stormwater pipes, leading to the need for adjustments in their size, which in turn affects the vertical and horizontal design of roads. Additionally, increased flooding can diminish the retention and attenuation capacity of stormwater management devices, thereby impacting the available area for development. Furthermore, as flood levels rise, the finished floor levels of developments need to be increased, which in turn affects the design of road levels.
22. Transport related evidence presented in PC12 which does not address these matters will require updating once PC14 is notified. Recommended performance standards and rules relating to the provision of transport corridors may not be fit for purpose in certain areas where new hazards have been identified. Again, this may necessitate further evidence and hearing time for PC12.

HCC POSITION

23. HCC considers that the issue of properly integrating residential intensification decisions with the management of known flood hazard risks is a core function of HCC as a territorial authority. Section 31 of the RMA provides:

31 Functions of territorial authorities under this Act

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- (a) the establishment, implementation, and review of objectives, policies, and methods **to achieve integrated management** of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
 - (aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is **sufficient development capacity in respect of housing** and business land to meet the expected demands of the district:
 - (b) **the control of any actual or potential effects** of the use, development, or protection of land, including **for the purpose of—**
 - (i) **the avoidance or mitigation of natural hazards;**
 - ...
- (emphasis added)

24. HCC considers that in order to achieve this integration, decision making on PC12 must be properly informed of flood hazards.
25. There is a genuine risk of inefficiency, unnecessary duplication and additional costs being incurred should the PC12 hearing proceed in September 2023 as currently scheduled. If this occurs, and with PC14 being publicly notified in the first quarter of 2024, to be properly informed, the Panel is likely to revisit any previous draft recommendations on PC12, and call for updated evidence, and a further hearing.
26. Accordingly, HCC's position is that regardless of the Minister's response to the extension request, it seeks to defer the hearing on PC12.
27. Clearly, if the extension request is not granted, and the hearing on PC12 is deferred until after PC14 is notified in the first quarter of 2024, the current deadline of 31 March 2024 for HCC to make its decision on the IPI will not be met by HCC.
28. Compliance with the ministerial direction issued under s 80L of the RMA is a matter for HCC. HCC considers this is a compliance matter for it alone, and not a matter for the Panel to address. HCC takes its statutory compliance seriously and intends to continue dialogue with MfE to address any necessary extension to ultimately deliver its IPI decision

within the required timeframe.

29. Accordingly, HCC invites the Panel to put aside this issue of compliance when considering HCC's request to defer the hearing on PC12, and instead focus on the resource management issues, and the matters of efficiency and duplication identified above. Sound resource management practice dictates that the hearing on PC12 should be deferred and HCC requests that these considerations prevail.
30. HCC recognises that parties affected by this request may seek to comment. Accordingly, HCC respectfully seeks the following directions:
 - a) Any party seeking to address the Panel on the deferral request is to lodge submissions with the Hearing Administrator by 4pm 5 July 2023;
 - b) HCC is to lodge any response with the Hearing Administrator by 4pm 7 July 2023;
 - c) The Panel will issue a determination on the deferral request as soon as possible thereafter.

Dated 29 June 2023



L F Muldowney / S K Thomas
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