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

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MEMORANDUM OF COUNSEL FOR HAMILTON CITY COUNCIL

Dated 27 May 2024

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MAY IT PLEASE THE PANEL

INTRODUCTION

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) and accompanies the updated set of draft plan provisions (**updated provisions**) which, under Panel Direction #23 dated 29 April 2024, are required to be filed by 27 May 2024.

2. The updated provisions incorporate edits to the original plan change provisions as notified under Plan Change 12 (**PC12**). The updated provisions respond to submissions received on PC12, and also respond to the Government's announcement on 27 February 2024 that it would be introducing legislative amendments in 2024 to enable Councils to 'opt out' of Medium Density Residential Standards (**MDRS**) requirements if certain criteria are met.

3. It is now apparent that those legislative amendments may not be passed into law by the time PC12 is heard in September 2024, or when the Panel's recommendations are released in the final quarter of 2024. Accordingly, the legal status of parts of the updated provisions must be addressed. This memorandum sets out HCC's position.

Legislative amendments

4. On 27 February 2024 the Minister for Housing and RMA Reform announced details of its 'Going for Housing Growth' policy. Under this policy Councils were encouraged to continue to progress their Intensification Planning Instruments (**IPIs**) to deliver more housing, but recognise that they would soon have the flexibility to 'opt out' of MDRS where Councils can demonstrate they have 30 years of development

capacity available.[1]

5. The announcement indicated that the Minister would report back to Cabinet by March 2024 with further detail on a comprehensive work programme to advance these legislative amendments.

6. The Ministry for the Environment has published detail about the 'Work Programme for Reforming the Resource Management System' which breaks the programme down into the following three phases:

   a) Phase one: repeal the Natural and Built Environment Act 2023 (**NBA**) and Spatial Planning Act 2023 (**SPA**) (now complete);

   b) Phase two: introduce a fast-track consenting regime within the first 100 days, make targeted legislative changes to the RMA in 2024, develop new, or amend existing, national direction under the RMA, and implement the 'Going for Housing Growth' work package;

   c) Phase three: replace the Resource Management Act 1991 (**RMA**) with new resource management legislation based on the enjoyment of property rights, while ensuring good environmental outcomes.

7. The Minister has signalled that phase two will be implemented through two RMA amendment bills. The first has a relatively narrow scope of addressing matters concerning freshwater, marine farming, and significant natural areas, and was intended to be introduced to Parliament in May 2024. The second RMA amendment bill will be

[1] Speech to the Wellington Chamber of Commerce delivered on 27 February 2024; Speech to the Wellington Chamber of Commerce | Beehive.govt.nz

omnibus in nature, and will include the changes necessary to make the MDRS optional for Councils. It is intended to be introduced to Parliament in mid-2024.[2]

8. As the legislative amendments are part of the second bill within phase two, it is uncertain whether the bill will be passed into law by the time of the hearing on PC12 in early September 2024, or when Panel recommendations are released. There is a good possibility it will not.

HCC approach

9. HCC recognises that under the RMA in its current form, s 77G(1) requires it to incorporate the MDRS into relevant residential zones, and that under s 77G(6) it may only make those requirements less enabling if necessary to accommodate a qualifying matter (**QM**).

10. The updated provisions filed with this memorandum contain changes to the notified PC12 provisions addressing Policy 3 of the National Policy Statement on Urban Development (**NPS-UD**) and MDRS matters. Some of these changes respond to submissions and are an adjustment to the Policy 3 implementation, or rely on a qualifying matter to justify the departure from an MDRS standard. These changes are lawful and do not rely on the legislative amendments. There are however a number of changes which cannot be approved for recommendation by the Panel without the legislative amendments being passed into law.

11. The updated provisions fall into three broad categories:

    a) Areas of medium density residential zoning: These areas are a response to Policy 3(d) of the NPS-UD and the amended provisions give effect to Policy 3 while responding to submitter concerns and

[2] March 2024 Ministry for the Environment 'Work Programme for Reforming the Resource Management System' and May 2024 RM Reform update

infrastructure capacity constraints which, if not well managed, will lead to conflict with HCC's obligations in respect of Te Ture Whaimana/The Vision and Strategy (**Te Ture Whaimana**), which is a QM;

b) Number of residential units per site in the general residential zone: The notified provisions enabled three residential units per site, in line with MDRS. Submitter concerns have highlighted the pressure this will place on an already constrained three waters network, and the consequential impacts on Te Ture Whaimana. The amended provisions enable two residential units per site in the general residential zone as a permitted activity; and

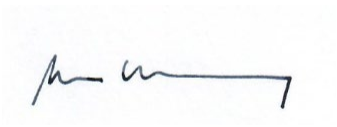
c) Design standards: many submitters identified concerns regarding amenity and design outcomes, as well as impacts on three waters infrastructure. The amended provisions address these matters, and proposed various changes to the MDRS. Some of these changes enhance resilience to stormwater effects, and so serve to respond to Te Ture Whaimana as a QM[3], but some are purely amenity related. [4] These changes rely on the legislative amendments.

12. HCC intends to present evidence in support of the updated provisions, including those that would require legislative amendments. It recognises the Panel's jurisdictional constraints and accepts that if those RMA reforms are not passed by the time the Panel releases its recommendations, the recommendations will not be able to support all elements of the updated provisions.

[3] Building coverage Rule 4.2.5.2.
[4] For example, Building setbacks Rule 4.2.5.6; Building height Rule 4.2.5.4; Height in relation to boundary Rule 4.2.5.5; Public interface Rule 4.2.5.8.

13. HCC's evidence and legal submissions presented at the hearing will address those constraints and timing issues, including clearly identifying those elements of the amended provisions which it recognises as requiring legislative amendment before they can be recommended by the Panel. HCC's evidence will also identify the provisions it endorses if the legislative amendments do not pass into law.

Dated 27 May 2024



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