

17 May 2024

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Dear Ministers,

**New Request for extension to notify Intensification Planning Instrument**

As you may be aware, Variation 3 to the Proposed Waikato District Plan (Variation 3) is Waikato District Council's (Council) Intensification Planning Instrument under section 80E of the Resource Management Act 1991 (Act).

On 27 March 2024 I wrote to you seeking an amendment to a direction issued by the former Minister on 14 May 2022 under section 80L of the Act, which required Council to notify its decisions on the independent hearing panel's (IHP) recommendations by 31 March 2024. Council sought an extension to notify its decisions by 28 June 2024. The key reason for the extension was that there was insufficient time to complete the necessary actions identified in the letter prior to notification as the Council only received the IHP's recommendations on Friday 22 March (being five working days before the due notification date).

The purpose of this letter is to seek a further extension to 6 December 2024. I understand that MfE officials have requested a pause on any decision-making in anticipation of receiving this further request. Accordingly, please treat this letter as a new request to amend the direction under section 80M of the Act.

Council's letter of 27 March was sent three working days after receiving the IHP's recommendations. The letter identified that Council was progressing Variation 3 concurrently with managing a high number of appeals on the Proposed Waikato District Plan (PDP). This parallel process was identified as an important reason for requiring further time before making decisions on Variation 3.

Since then, staff have had time to consider the recommendations and have carefully identified the unresolved PDP appeals (or parts) that will be impacted by the recommendations. Council has also sought legal advice on how to treat (accept or reject) those recommendations that impact on unresolved appeals. In undertaking this careful analysis, Council has written to all affected appellants and met with

a number of them to explain the implications of making decisions on recommendations that are impacted by unresolved appeals.

In summary, Council's legal advice is that:

- Pursuant to clause 107 of Schedule 1 of the Act, there is no right of appeal against Council's decisions on an Intensification Planning Instrument (being Variation 3).
- Clause 36(2) of Schedule 12 of the Act expressly states that any appeals against the underlying proposed district plan are not affected by clause 107 of Schedule 1.
- Pursuant to clause 103 of Schedule 1 of the Act, if all or some of the IHP's recommendations are accepted by Council, then upon notification of the decisions, those recommendations are incorporated into the PDP and the PDP (as altered by those recommendations) are deemed to have been approved and **become operative** in accordance with clause 20.
- Once accepted recommendations (provisions) become operative upon public notification, there is no ability for the Environment Court to subsequently amend those operative provisions through the appeal process on the PDP.
- Therefore, the only mechanism in the Act to ensure the provisions affected by live appeals do not become operative on notification, and thereby preserve appeal rights as intended by clause 36, is for Council to reject the recommendations that impact the appeals.
- This is because clause 103 only applies to the recommendations that are accepted by Council.
- Rejected recommendations will need to be referred to the Minister with a request that a decision be deferred on those matters pending the Environment Court's determination on the appeals so as to preserve appeal rights.

The Council received 66 appeals in total and has been working diligently to resolve the appeals, whilst also advancing Variation 3 through the Intensification Streamlined Planning Process. A number of appellants on the PDP also lodged submissions on Variation 3. Council worked with those parties, where possible, to ensure consistency across both the PDP and Variation 3 outcomes. However, not all appellants were submitters on Variation 3 and the IHP's jurisdiction was limited to making recommendations on matters within the scope of section 80E of the Act.

Whilst significant progress has been made, appeals remain on a number of PDP chapters that are of significance to Variation 3. These include appeals on the Definitions, Strategic Direction, Water wastewater and stormwater, Te Ture Whaimana, Natural Hazards and climate change, Subdivision, Earthworks, Town Centre Zone, Commercial Zone, and Medium Density residential zone and General Residential zone chapters.

Council has decided that if it were to reject the Variation 3 recommendations (provisions) impacted by appeals and notify the balance of the provisions at this stage, it would result in an incomplete framework that would not deliver on enabling MDRS development in the towns subject to Variation 3. This is because the land most likely to be developed for intensification is greenfield areas which will require subdivision consent. However, Variation 3 subdivision rules cannot be notified as the entire subdivision chapter is subject to appeals. The appeal on the Subdivision chapter is awaiting a determination from the Environment Court on another matter which will provide guidance to Council on progressing the appeal. A further risk is that the Variation 3 rules for managing flood risk cannot be notified because the Natural

Hazard chapter is still subject to appeal. This means 3 dwellings on a site could be permitted in a flood risk area.

To ensure the Variation 3 recommendations and PDP provisions can best work together in an integrated way to manage the effects of intensification, Council's policy and consenting staff and legal advisers consider it is more efficient to defer *all* decisions on Variation 3 to a later date to enable more time for the critical appeals impacting Variation 3 to be resolved, or at least significantly narrowed so that a more complete framework can be notified and made operative.

Council considers an extension to 6 December 2024 is required to advance the overlapping appeals taking into account:

- The number of appeals and parties involved (18 appeals and over 20 s274 parties).
- The complex nature of some appeals (appeals against entire chapters).
- Council's resources.
- The Court's limited availability for court assisted mediation.
- Time delays in obtaining technical advice from experts.
- Time required to prepare consent documentation and obtain all parties' signatures.
- Complying with various Court directions.
- The Court's timeframes which are beyond our control (including issuing consent orders).
- The responsiveness of parties and their experts which is outside Council's control.

This timeframe assumes the relevant appeals will be resolved by consent order and that no hearing will be required. Council is confident the majority of impacted appeals can be resolved within this timeframe and will focus its resources on the overlapping appeals.

Accordingly, Council respectfully requests that the timeframe for notification of the Council's decisions on Variations 3 be extended to 6 December 2024. If you require any further information, we will be happy to provide it.

We look forward to hearing from you at your earliest convenience.

Yours sincerely



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