

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS IN THE  
WAIKATO REGION**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE WAIKATO**

**UNDER** the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER** of Proposed Variation 3 to the Waikato Proposed  
District Plan (PDP)

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**REPLY LEGAL SUBMISSIONS ON BEHALF OF WAIKATO DISTRICT COUNCIL  
FOR HOROTIU AND ANCILLARY MATTERS HEARING HELD 5 DECEMBER 2023**

**1 February 2024**

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## INTRODUCTION

1. These reply legal submissions are presented on behalf of Waikato District Council ('Council') following the Horotiu and Ancillary Matters Hearing held on 5 December 2023 ('December Hearing'). This was the third Hearing on submissions on Variation 3 to the Waikato Proposed District Plan ('Variation 3').
2. The only legal issue arising from the December Hearing was whether the submission by Horotiu Farms Limited ('HFL') to rezone 34 hectares of land between Great South Road and State Highway 1C in Horotiu was within the scope of Variation 3. This matter was dealt with comprehensively in our legal submissions for the December Hearing dated 21 November 2023.<sup>1</sup>
3. We concluded the HFL submission was within the scope of Variation 3 because it was both:
  - (a) Within the scope of an Intensification Planning Instrument defined in section 80E of the Resource Management Act 1991 ('RMA');<sup>2</sup> and
  - (b) "On" the plan change in accordance with the established bipartite test in *Clearwater*.<sup>3</sup>
4. Scope was not challenged by any party at the December Hearing and was not the subject of any questions from the Hearing Panel.
5. These submissions will briefly:
  - (a) Address the two remaining outstanding issues relating to:

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<sup>1</sup> Legal submissions on behalf of Waikato District Council for Hearing #3 – 5 December 2023 at paragraphs [3] to [27].

<sup>2</sup> Ibid, paragraph [6].

<sup>3</sup> Ibid, paragraphs [17] and [26].

- (i) The recommended exemption to the MRZ2 Higher Risk Flooding Rules; and
  - (ii) Reverse Sensitivity MRZ2–P11 and MRZ2–O6;
- (b) Identify Ms Hill’s preference to now include the new flood modelling maps as a non-statutory layer outside the Waikato Proposed District Plan (‘PDP’).
- (c) Provide an update on the Aarts Appeal (ENV-2022-AKL-00041).

#### **EXEMPTION TO MRZ2 HIGHER RISK FLOOD RULES**

6. HFL and Council have not reached agreement on the proposed wording to the recommended exemption to the Higher Risk Flooding Rules. HFL’s Planner, Mr Collier, seeks to remove the requirement that the hydraulic analysis be “approved by Council” and replace it with a requirement that the analysis instead be “prepared by a suitably qualified person”.
7. Ms Lepoutre does not support this change for the detailed reasons outlined in paragraphs 10 and 11 of the section 42A Closing Statement dated 30 January 2024 (‘Closing Statement’). Ms Lepoutre’s position is supported by Council’s Stormwater Expert, Mr Boldero. A non-complying activity for residential development within the higher flood risk areas reflects the seriousness of such an activity. In our submission it is appropriate, and indeed effective and efficient, that any exemption from the non-complying status be properly considered and approved by Council.

#### **REVERSE SENSITIVITY MRZ2–O6 AND MRZ2–P11**

8. In the Closing Statement, Ms Lepoutre now recommends that the references to the Havelock Precinct in MRZ2–O6 and MRZ2–P11 that were proposed by KiwiRail and Kāinga Ora now be deleted. This is because objective PREC33–O1 and Policy PREC33–P1 and PREC in the Havelock Village Limited consent order specifically provide for the

management of reverse sensitivity. The specific provisions achieve the outcome sought by KiwiRail and Kāinga Ora to limit the specific areas where the use of design controls can be used to manage reverse sensitivity effects. The deletion will also avoid duplication and potential plan interpretation issues.

#### **UPDATE ON FLOOD MODELLING**

9. In the section 42A closing statement of 5 September 2023 Ms Hill recommended including the new flood maps and Flood Density QM<sup>4</sup> on the planning maps in the PDP.<sup>5</sup>
10. Our reply legal submissions dated 29 September 2023<sup>6</sup> advised that following internal discussions at Council involving teams involved in flood management and resource consenting, Council's position was that the non-statutory approach should be adopted for Variation 3<sup>7</sup>. At the time, we acknowledged Council's position differed from Ms Hill's recommendation.
11. In the Closing Statement Ms Hill acknowledges Council now has the tools to effectively manage the non-statutory approach and supports such an approach.<sup>8</sup>

#### **UPDATE ON AARTS APPEAL**

12. At the conclusion of the December Hearing, we asked the Panel to leave the hearing open until the end of January to enable consent orders to issue on the Havelock Village Limited and Yvonne Aarts appeals. The Havelock consent order was issued on 16 January 2024. The consent order is yet to issue on the Aarts Appeal which seeks to rezone the

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<sup>4</sup> The name of the Flood Density QM is recommended to be changed to MRZ2 Flood Risk at paragraph [37] of the section 42A closing statement dated 5 September 2023.

<sup>5</sup> Ibid, paragraph 65-69.

<sup>6</sup> Reply legal submissions on behalf of Waikato District Council for Substantive Hearing held between 26 July and 2 August 2023 (Flood Hazards) dated 29 September 2023.

<sup>7</sup> Ibid, paragraph 33.

<sup>8</sup> Section 42A Closing Statement dated 31 January 2024, paragraph [30].

property at 111 Harrisville Road, Tuakau from General rural zone to General residential zone. The property is also subject to a submission on Variation 3 by GDP Developments Limited ('GDP') which seeks to amend the zone from General rural zone to Medium density residential zone 2.

13. Counsel for GDP filed a memorandum with the Panel dated 30 January 2024 requesting the hearing remain open to enable the consent order to issue. Council supports the request and recommends Counsel for GDP provides a further update to the Panel by 26 February 2024, if it has not issued by that date.

Dated 1 February 2024



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Counsel for Waikato District Council