

**BEFORE AN INDEPENDENT HEARINGS PANEL
OF THE WAIKATO DISTRICT COUNCIL**

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the proposed Waikato
District Plan (Stage 1)
Hearing 25

**MEMORANDUM OF COUNSEL ON BEHALF OF HYNDS PIPE SYSTEMS LIMITED
AND THE HYNDS FOUNDATION**

DATED: 9 MARCH 2021

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Barristers & Solicitors

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MAY IT PLEASE THE COMMISSIONERS:

1. We act for Hynds Pipe Systems Limited and the Hynds Foundation (together, **Hynds**).
2. We refer to the Hearing Commissioners' minute and directions dated 5 March 2021, and the direction that parties may file memoranda that address whether the procedure set out in the Hearing 25 section 42A Framework Report (**Framework Report**) and, in particular compliance with Lens 1, should be generally adhered to, and, if not, the reasons why.
3. We submit that the way that the Framework Report sets up Lens 1 as a pass-fail test, where a rezoning proposal must either demonstrate overall consistency with the objectives and policies of the Proposed Waikato District Plan (**Proposed Plan**) or be rejected¹, is not legally correct.
4. While it is correct to assess the Proposed Plan provisions (including zoning) against the objectives of the Proposed Plan when undertaking the section 32 assessment², that assessment against the Proposed Plan provisions should not function as a "gateway test" in the way the Framework Report sets it out. A rezoning proposal should still be considered and assessed under the statutory tests, notwithstanding any inconsistencies with the Proposed Plan's objectives and policies, on which the Commissioners' decisions have not been issued.
5. The planning evidence submitted in support of Hynds' rezoning proposal used the Framework Report's Three Lenses as the structure for its assessment. This was to ensure consistency in the approaches taken by the Council and submitter's planning experts. Notwithstanding that, care was taken to ensure that the evidence addressed all the steps that are set out in the Resource Management Act 1991 (**RMA**), and are well supported by case law.
6. A summary of the requirements for assessing district plans or plan changes is provided in the Environment Court's interim decision in *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*.³ This was a reworking and expansion of the earlier *Eldamos* test.⁴

1 Framework Report, at [46].

2 Pursuant to section 32(3) Resource Management Act 1991

3 *Long Bay-Okura Great Park Society Inc & Ors v North Shore City Council* (Decision No. A 78/2008).

4 *Eldamos Investments Ltd v Gisborne District Council* W047/05, 22 May 2005.

7. We have reworked the *Long Bay* approach to reflect the subsequent amendments to the RMA. In our view this sets out the correct approach to take when assessing the Proposed Plan and the amendments sought by the various submissions. The most relevant section to the rezoning proposals is “C. Provisions”.

A *General requirements*

1. *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out - its functions so as to achieve the purpose of the Act.⁵*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.⁶*
3. *When preparing its district plan (change) the territorial authority shall:*
 - a. *have regard to any proposed regional policy statement;⁷*
 - b. *give effect to any regional policy statement.⁸*
4. *In relation to regional plans:*
 - a. *The district plan (change) must not be inconsistent with the regional plan for any matter specified in section 30(1) [or a water conservation order];⁹ and*
 - b. *Must have regard to any proposed regional plan on any matter of regional significance etc;¹⁰*
5. *When preparing its district plan (change) the territorial authority must also:*
 - a. *have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List/Rārangī Korero and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent territorial authorities¹¹;*
 - b. *take into account any relevant planning document recognised by an iwi authority;¹² and*
 - c. *not have regard to trade competition;¹³*
6. *The district plan (change) must be prepared in accordance with any regulation¹⁴ (there are none at present);*

5 Sections 72 and 74(1).

6 Sections 75(3)(a) and (b).

7 Section 74(2)(a)(i).

8 Section 75(3)(c).

9 Section 75(4).

10 Section 74(2)(a)(ii).

11 Section 74(2)(b).

12 Section 74(2A).

13 Section 74(3).

14 Section 74(1)(f).

7. *The formal requirement that a district plan (change) must¹⁵ also state its objectives, policies and the rules (if any) and may state other matters.¹⁶*

B Objectives

8. *The objectives in a district plan (change) are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.¹⁷*

C. Provisions¹⁸

9. *The policies are to implement the objectives, and the rules (if any) are to implement the policies.¹⁹*

10. *The provisions are to be examined, as to whether they are the most appropriate method for achieving the objectives of the district plan, by:*

a. identifying other reasonably practicable options for achieving the objectives;²⁰ and

b. assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:²¹

1. identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment that are anticipated to be provided or reduced;²² and

2. quantifying these benefits and costs where practicable;²³ and

3. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.²⁴

D Rules

11. *In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment²⁵.*

E. Other statutes

12. *Finally territorial authorities may be required to comply with other statutes.*

8. In summary, therefore, while Lens 1 does raise a relevant part of the assessment required under the RMA, it is not the starting point, or a gateway through which

15 Section 75(1).

16 Section 75(2).

17 Section 32(1)(a).

18 Defined in section 32(6), for a proposed plan or change as the policies, rules or other methods that implement, or give effect to, the objectives of the proposed plan or change.

19 Section 75(1).

20 Section 32(1)(b)(i).

21 Section 32(1)(b)(ii).

22 Section 32(2)(a).

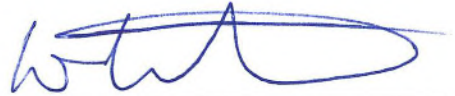
23 Section 32(2)(b).

24 Section 32(2)(c).

25 Section 76(3).

all rezoning proposals must proceed before being assessed against the higher order planning documents and other statutory considerations.

DATED at Auckland this 9th day of March 2021



Bill Loutit / Sarah Mitchell
Counsel for Hynds Pipe Systems Limited
and the Hynds Foundation