

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Variation 3 to the Proposed Waikato
District Plan

**STATEMENT OF EVIDENCE OF JAMES DYLAN EBENHOH
FOR WAIKATO DISTRICT COUNCIL FOR OPENING STRATEGIC HEARING**

Dated 20 December 2022

TOMPKINS | WAKE

Bridget Parham (Bridget.Parham@tompinkswake.co.nz)
Jill Gregory (jill.gregory@tompinkswake.co.nz)

Westpac House
Level 8
430 Victoria Street
PO Box 258
DX GP 20031
Hamilton 3240
New Zealand
Ph: (07) 839 4771
tompinkswake.com

INTRODUCTION

1. My full name is James Dylan Ebenhoh (Jim).
2. I am the Planning and Policy Manager at Waikato District Council (“Waikato DC”) and have been in this role for over four years. I have a Bachelor of Arts (Social Studies) *magna cum laude* from Harvard University, and a Master of Public Policy and Urban Planning from Harvard Kennedy School in the United States.
3. Prior to my current role I was the Group Manager: Planning, Community and Environment at Westland District Council for nearly five years and was a planning and sustainability manager at Kapiti Coast District Council for six years prior to that. I have also been a strategic planning advisor for Wellington City Council and was a policy analyst at Housing New Zealand (as it then was), ECONorthwest (a consulting firm in the United States) and Dunedin City Council. I am a full member of the New Zealand Planning Institute and the American Institute of Certified Planners.
4. My team is responsible for the development of Variation 3 to the Waikato Proposed District Plan (“V3”). V3 is Waikato DC’s Intensification Planning Instrument (“IPI”) prepared in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (“Enabling Housing Act”).

CODE OF CONDUCT

5. I have read the Environment Court Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and agree to comply with it. I confirm that the opinions expressed in this statement are within my area of expertise except where I state that I have relied on the

evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

SCOPE OF EVIDENCE

6. The purpose of my evidence is to outline the strategic planning rationale for Waikato DC's approach to the Enabling Housing Act as notified under V3 to the decisions version of Proposed Waikato District Plan 2022 ("PDP-DV"). My evidence will address the following matters:
 - (a) A brief description of the make-up of the Waikato District, describing our towns and villages;
 - (b) What a well-functioning urban environment looks like in the Waikato District;
 - (c) The Proposed Waikato District Plan ("PDP") process underway at Waikato DC;
 - (d) The development of V3 in response to the Enabling Housing Act, including its scope;
 - (e) The approach to qualifying matters generally in V3; and
 - (f) Waikato DC's position on the notified 'Urban Fringe' qualifying matter.
7. Whilst my evidence refers to some submissions, it does so in a high-level way to signal where further work is required to be undertaken. I do not make any recommendations on submissions, other than to signal Waikato DC's position on the notified Urban Fringe qualifying matter. The

s 42A report and statements of evidence for the substantive hearing will address each submission.

EXECUTIVE SUMMARY

8. The Waikato District is a largely rural district that has been included as a tier 1 local authority under the National Policy Statement on Urban Development 2020 (“NPS-UD”) due to its high growth, particularly in parts of the district close to Auckland and Hamilton. Even before the NPS-UD and its predecessor came into force, residential capacity was being increased through both Council initiated and private plan changes in response to actual and forecast growth. In making decisions on the PDP, the Independent Hearing Panel (“PDP Panel”) ensured there was sufficient supply of residential housing in the Waikato District to give effect to the requirements of the NPS-UD and to meet its primary objective to provide for well-functioning urban environments. The PDP-DV achieved this by introducing a Medium Density Residential Zone (“MRZ”) located within the walkable catchments of town centres. This location meant the currently weak demand for this housing type is able to support, and be supported by the town centres, and motor vehicle travel is not required.

9. As the PDP-DV already exceeds the market feasible supply of residentially zoned land, there is no urgent need for additional housing capacity in the district. However, in response to the mandated Enabling Housing Act, Waikato DC was required to introduce a variation. V3 as notified included an “Urban Fringe” qualifying matter to protect the well-functioning urban form provided for in the PDP-DV and to tailor the intensification requirements to achieve the best possible outcome for the district’s qualifying towns.

10. As a result, the supply of market feasible land under V3 with the Urban Fringe qualifying matter is now three and a half times greater than the total projected demand over the long term. A number of submitters have challenged the legality of the Urban Fringe qualifying matter. If that qualifying matter is removed as discussed in my evidence, the feasible supply exceeds demand by almost seven times. Whilst this exceedance is likely to be reduced in response to submitters seeking additional provisions to better give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River (“Te Ture Whaimana”) and other qualifying matters, the supply is still expected to far exceed the supply under V3 as notified.

THE WAIKATO DISTRICT

11. The Waikato District is a strategically significant area between two of the fastest-growing metropolitan centres in New Zealand – Hamilton and Auckland. The 2022 population of the district was around 88,900.¹ The district acts as a key enabler of connections through the “Golden Triangle”. The Golden Triangle is the economic zone encompassing Auckland, Hamilton, and Tauranga. The golden triangle generates over 50% of New Zealand’s gross domestic product and is home to over 50% of the country’s population.² Given this area’s population and consumer base, the Waikato District offers strong locational advantages for employment and residential activities, which has driven the demand for a greater quantum and intensity of urban development in the district.

Taangata Whenua

12. The Waikato River runs through the district and continues to be a source of physical and spiritual sustenance for taangata whenua and mana

¹ Stats NZ, July 2022 Subnational population estimates.

² Waikato 2070, page 9.

whenua. This includes Waikato-Tainui, 33 hapuu, 68 marae, and maataawaka who reside in the Waikato District. The relationship of Waikato-Tainui with the Waikato River cannot be underestimated as it is said to lie at the heart of their identity as well being a major influence on their spiritual, cultural, historic and physical wellbeing. To Waikato-Tainui, the Waikato River is their Tuupuna Awa, an ancestor. Prior to European settlement, Maaori settlements and paa sites were formed along the river, with in-land trade routes at key strategic locations, including Pookeno, Tuakau, Rangiriri, Meremere, Taupiriri, and Ngaaruawaahia.

13. Tuurangawaewae Marae in Ngaaruawaahia is the current seat of the Kiingitanga movement. The Marae was established in the 1920s and 1930s by Te Puea Heerangi, a granddaughter of King Taawhiao. The growth and form of Ngaaruawaahia, and other towns within the Waikato River catchment, is influenced by Waikato-Tainui and the aspiration of their people.
14. Iwi aspirations for growth and the protection of waahi tapu sites and areas of significance form a crucial part of strategic planning in all of the district. As I will describe below, Waikato-Tainui have been actively involved in the strategic planning through the Future Proof growth management project and Hamilton to Auckland corridor project, which in turn identifies areas within the district that Waikato-Tainui have aspirations for.
15. Te Ture Whaimana is the statutory document under the Waikato-Tainui Raupatu Claims (“Waikato River”) Settlement Act 2010 that applies to the Waikato River and activities within its catchment affecting the Waikato River. Te Ture Whaimana is the primary direction-setting document for activities that affect the Waikato River and encompasses the vision for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring

and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

16. The evidence of Dr Davey for Hamilton City Council explains the legal status of Te Ture Whaimana in resource management plan making and resource consent decisions, and the requirement for 'betterment' for the Waikato River.

Our Towns and Villages

17. The towns and villages of the Waikato District had experienced largely stagnant, and sometimes declining, growth for many decades. However, over the last 10 years the district has experienced between 1.5% and 4% population growth year-on-year. Continued growth in Auckland and Hamilton, together with the completion of the Waikato Expressway, have created demand for residential, commercial and industrial land in the district. Under the Operative Waikato District Plan ("ODP"), this increase in demand has resulted in increasing land values and land supply issues and to developer-led private plan changes to the ODP to enable urban development, specifically in Te Kauwhata, Pookeno and Raglan.
18. Even with faster-paced urban growth, the district remains over 90% rurally zoned and accommodates significant rural activity. The district's economy is still based around the primary sector. The district's main urban towns of Ngaaruawaahia, Huntly, Te Kauwhata, Pookeno, Tuakau, and Raglan developed from Maaori pre-settlement villages to support the surrounding rural industries and communities. They are therefore predominantly characterised by lower-density development in the form of single detached dwellings on single sites.
19. Ngaaruawaahia, Huntly, Pookeno, and Raglan have developed beyond their earlier roles as rural service towns. They now have other local employment opportunities, including a tourism and holiday home

economy in Raglan. However, there is also an increasing level of commuting between these larger towns and Hamilton or Auckland metropolitan areas, due to their location at the northern and southern reaches of the district.

20. Outside of these towns, remaining residential activity is focused in smaller settlements that maintain a rural connection including: Taupiri, Gordonton, Matangi, Tamahere, Meremere, Te Kowhai, Horotiu, and Whatawhata.
21. The six main urban towns are experiencing change as a result of population growth and the demand for housing, and Waikato DC has strategically focused growth into these towns rather than the smaller settlements or ad hoc rural lifestyle developments. It is estimated that nearly a quarter of the district's dwelling demand in 2020 was spread across Pookeno and Tuakau.³ Another 19% is estimated in Ngaaruawaahia.⁴ As discussed below, the PDP-DV has responded to this dwelling demand and provided additional residential capacity through rezoning land within these urban towns, and changes to provisions. The district is beginning to see the introduction of more variety of residential development, including terraced housing.
22. It is however important to remember that the towns of the Waikato District are not metropolitan or city centres like Auckland or Hamilton. The commercial centres of the towns provide limited, but developing, employment opportunities, and many of the towns are within a reasonable commuting distance of Hamilton or Auckland, meaning that residents are often leaving the district for their employment. The towns have limited internal public transport networks, but do have bus connections into both Auckland for the northern towns and Hamilton for the more southerly towns. The Te Huia train service currently stops in

³ NPS-UD Housing Development Capacity Assessment Future Proof Partners, Market Economics, July 2021, Section 3.3.1.

⁴ Ibid.

Huntly on its daily commute between Hamilton and Auckland. The six main urban towns do not each necessarily have the full range of community or commercial services that might be expected of larger towns and cities, such as large supermarkets, public pools, community centres or libraries.

Policy Context

23. Since 2007 Waikato DC has been a member of Future Proof, a collaborative project that originally started between local government and taangata whenua to consider how the subregion consisting of the districts of Hamilton City Council, Waikato DC and Waipā District Council should develop over the next 30 years. The evidence of Dr Davey for Hamilton City Council describes the background to Future Proof, including its subsequent reviews. Later in this evidence I will discuss the outputs of the 2022 Future Proof Strategy (“FP Strategy”) relevant to Waikato DC.
24. Waikato DC also adopted Waikato 2070 Growth and Economic Development Strategy on 19 May 2020 (“Waikato 2070”).⁵ Waikato 2070 takes a longer-term view to guide growth and economic development in Waikato District for the next 50 years out to 2070. Waikato 2070 is a non-Resource Management Act 1991 document that includes 50-year development plans for the district’s towns, indicating locations for short, medium and long-term growth. Timing wise, Waikato 2070 was adopted during the PDP process and is referred to in the PDP decision on medium density residential rezoning.⁶
25. Waikato 2070 also informed the 2021 NPS:UD Housing Development Capacity Assessment (“2021 HDCA”) for Waikato District, which identifies long-term plan-enabled capacity. The outputs of the 2021 HDCA in turn informed the FP Strategy.

⁵ <https://www.openwaikato.co.nz/waikato-2070/>

⁶ Decision Report 15 – Medium Density Residential Zone, page 5 and 12.

WELL-FUNCTIONING URBAN ENVIRONMENTS IN THE WAIKATO DISTRICT

26. The district's vision in Waikato 2070 is for liveable, thriving, and connected communities,⁷ meaning:
- (a) Liveable communities are well-planned and people-friendly and provide a range of housing options. Communities feel a shared sense of belonging both for their local community and for the district;
 - (b) Thriving communities are engaged in local democracy and community-led projects, and local businesses can provide local based- employment;
 - (c) Connected communities have all the necessary social and physical infrastructure in place. Physical connections occur through multi-modal transport networks, and digital connectivity ensures rapid information sharing and engagement.
27. In addition to enabling housing within the district, the vision requires the Waikato DC to provide the necessary infrastructure and community services to support that residential development. Like many districts in New Zealand, Waikato needs to carefully manage infrastructure capacity, funding and service delivery and the location of urban development in a co-ordinated and efficient manner.
28. The FP Strategy is focused on achieving compact and concentrated growth, to achieve well-functioning urban environments based around transit-orientated developments and connected centres.⁸ Seven transformational moves for change are identified for the sub-region, including the following which are relevant for Waikato District:

⁷ Waikato 2070, page 8.

⁸ Future Proof Strategy, page 36.

- (a) Iwi aspirations – enhancing the environmental health and wellbeing of the Waikato River while supporting iwi and mana whenua to embrace social and economic opportunities. Waikato-Tainui have a specific emphasis on Hopuhopu (the north of Ngaaruawaahia) and in the longer term at Meremere.
 - (b) A radical transport shift – creating a multi-modal transport network.
 - (c) A strong and productive economic corridor – including between Hamilton central city and Horotiu and Ngaaruawaahia.
 - (d) Thriving communities and neighbourhoods – enabling quality denser housing that coexists in harmony with our natural environments.⁹
29. The PDP, notified in 2018, has been the primary vehicle for Waikato DC to meet the growth needs of the district, and ensure that sufficient development capacity is available to meet predicted demand and is located in the right locations and supported by sufficient infrastructure.
30. Our urban environments are important, and Waikato DC has, through the above strategies, carefully considered what well-functioning urban environments should look like for our district.

DISTRICT PLAN REVIEW PROCESS

31. Waikato DC commenced a full review of the ODP in 2014. The review occurred in two stages. Stage 1 was notified on 18 July 2018 and involved all but one chapter. Hearings relating to submissions on Stage 1 were held between October 2019 and July 2021. Stage 2 (natural hazards and

⁹ Future Proof Strategy, pages 37-38.

climate change) was notified on 27 July 2020 with hearings held in May 2021.

32. Waikato DC received over 1,000 submissions and 10,000 submission points on the notified PDP, and more than 46 hearings were held in person and online before the PDP Panel. Three separate decisions on the PDP were issued as follows:

(a) The decision regarding the Raglan landward navigation beacon was notified on 31 July 2020 and no appeals were received;

(b) The decision on the Ohinewai rezoning – Sleepyhead Estate- was notified on 21 May 2021. Appeals on this decision were resolved by way of consent orders dated 25 February 2022;

(c) Decisions on all remaining topics were notified on 17 January 2022 (“remaining PDP decisions”). In total, 67 appeals and over 250 interested party notices were filed with the Environment Court in respect of the remaining PDP decisions.

33. A significant amount of technical work was undertaken by both the Waikato DC and submitters to ensure the PDP Panel had all the necessary information to consider the issues in contention. Unsurprisingly, one of the biggest areas of contention was providing for sufficient growth opportunities within the district and zoning.

Notified PDP and Relevant National Direction in 2018

34. Waikato DC acknowledged that the ODP did not provide sufficient land for projected growth calculations. There was a shortage of both residential and business zoned land in the ODP.

35. Analysis from the 2017 Housing Development Capacity Assessment (“2017 HDCA”) indicated that the ODP alone would result in a shortfall in zone capacity of 6,363 dwellings in the long-term (2017-2046). The 2017 HDCA acknowledged however that additional capacity was anticipated to be achieved through the district plan review process and the strategic growth work being undertaken by Waikato DC.¹⁰
36. To address the shortfall in zone capacity, the notified PDP therefore zoned greenfield areas to provide for additional urban development, in particular around Pookeno, Tuakau, and Te Kowhai.
37. When Stage 1 of the PDP was notified in 2018, the relevant national policy statement was the NPS for Urban Development Capacity 2016 (“NPS-UDC”). The NPS-UDC identified Waikato DC as a high-growth urban area, and required the PDP to provide:
 - (a) A range of housing choice;
 - (b) Efficient use of land and infrastructure; and
 - (c) For current and future people and communities.
38. The policies in the NPS-UDC required additional margins of development capacity over and above the projected demand of 20% in the short (within 3 years) and medium term (3-10 years) and 15% in the long term (10-30 years).
39. The 2017 HDCA estimated that the district had a total number of 25,400 dwellings in 2017, and the demand for additional dwelling is projected to be around 16,900 dwellings by 2046, under a medium growth scenario.¹¹

¹⁰ Housing Development Capacity Assessment 2017 Future Area, Market Economics, July 2018, Section Figure 79.

¹¹ Housing Development Capacity Assessment 2017 Future Area, Market Economics, July 2018, Section 3.2.

At that time, it was estimated that that an additional 2,600 dwellings were needed over the short term, and up to 5,900 by 2026.

40. At the time the PDP was notified, the Waikato DC considered it gave effect to the NPS-UDC as it provided for an additional 14,000 dwellings in residential and village zones.¹²

Submissions Received on the PDP

41. Over 30% of all submissions on the notified PDP were requests for rezoning, and the majority of these sought more enabling zoning compared to the notified zoning. Kāinga Ora's submission specifically requested the inclusion of a medium density residential zone within 800 metres of the town centres. The notified PDP did not include a medium density residential zone.
42. The zone sought by Kāinga Ora was designed to give effect to NPS-UDC and enable apartment, terrace housing and multi-unit developments, thereby enabling higher intensity development than typically found in the notified Residential Zone. The spatial extent of the new zone was proposed to be located within the urban settlements of Tuakau, Pookeno, Te Kauwhata, Huntly, Ngaaruawaahia and Raglan. The proposed spatial extent of the zone was based on detailed analysis by Kāinga Ora of each town and site utilising ground truthing, slope analysis, walking catchment analysis, and natural hazard analysis. It was deliberately proposed close to town centres, strategic transport corridors and in proximity to community services and amenities.¹³

¹² Waikato District s32 Growth Area Topic, Market Economics, July 2018, Page 22 (Appendix 2 to the Strategic Direction and Management of Growth section 32 report).

¹³ Kāinga Ora's analysis was limited to the areas within the scope of their original submission to the PDP, which proposed a radius of 400-800 from the relevant centre, depending on the size of that centre.

National Policy Statement on Urban Development 2020

43. Prior to the submissions on zoning being heard by the PDP Panel, the Government introduced the NPS-UD to replace the NPS-UDC. The NPS-UD came into force on 20 August 2020. The NPS-UD required Waikato DC to have demand +20% plan-enabled, infrastructure-ready and feasible housing supply in the short and medium term.
44. The section 42A framework report prepared for the PDP rezoning hearings was based on draft figures obtained from a Market Economics 2020 assessment, that identified 4,932 feasible dwellings in the ODP and a requirement for an additional 8,800 to 10,450 dwellings to comply with the NPS-UD.¹⁴ Demand for dwellings in the years between notification and the hearings had increased.
45. Council officers and independent experts identified the potential for additional capacity to be provided if the zoning requests asked for in submissions, including the Kāinga Ora proposal for a medium density residential zone, were accepted by the PDP Panel. Other submitters were asking for additional urban development on greenfield land and the up-zoning of existing urban zones.
46. Although district plans have a 10-year life, the land use pattern and infrastructure they enable reach well beyond 10 years. When considering zoning requests in submissions, it was important for the PDP Panel to look beyond the 10-year life of the plan and err on the side of more zoned capacity rather than less.¹⁵ By taking a longer-term view, the PDP could provide certainty in respect to settlement patterns and future infrastructure investment.

¹⁴ Section 42A Zone Extents Framework Report, January 2021, page 3.

¹⁵ Decisions on up-zoning are subject to the scope of the notified PDP and submissions on it, including those made by Kāinga Ora.

47. Analysis of the zoning supported by the Waikato DC reporting officers in their s 42A reports indicated that sufficient capacity would be enabled in line with the NPS-UD.¹⁶ The graph below is taken from the supplementary s 42A report showing that there was marginally enough supply (light grey) in the combined notified PDP and the s 42A recommendations compared with the expected demand (dark grey).¹⁷

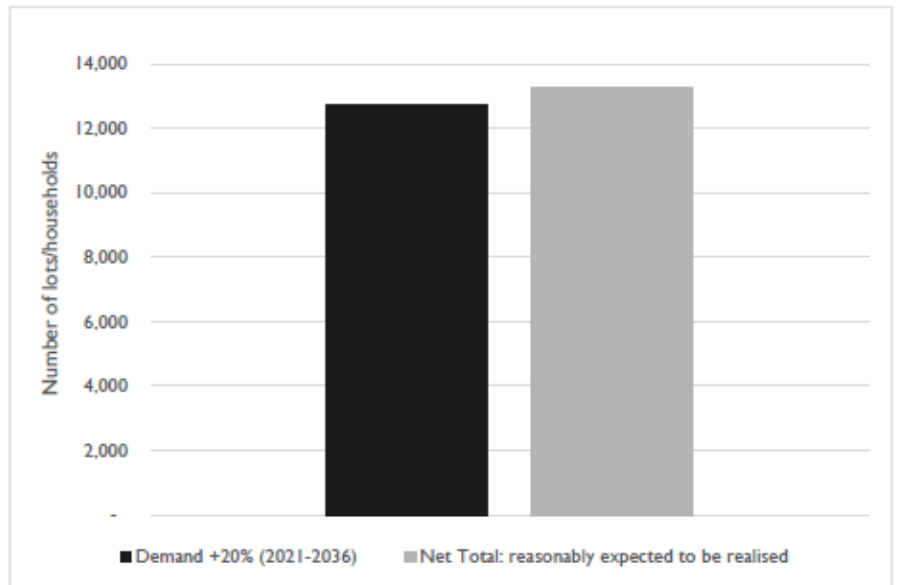


Figure 1. District-wide housing analysis: household demand (+20%) (2021-2036) vs 'reasonably expected to be realised' supply

48. This supplementary evidence on behalf of the Waikato DC identified a risk, based on this limited headroom, of not providing enough zoned land for urban development if only the rezoning supported by the reporting officers was adopted by the PDP Panel.¹⁸

The PDP Decisions

49. The PDP Panel adopted a medium density residential zone proposed by Kāinga Ora. Called the MRZ, it was applied to sites within a walkable

¹⁶ Section 42A Zone Extents Supplementary Evidence, April 2021, page 25.

¹⁷ Section 42A Hearing 25: Framework Report supplementary evidence, 28 April 2021, page 5

¹⁸ Section 42A Zone Extents Supplementary Evidence, April 2021, page 25.

catchment of the Town Centre zone in each of the six towns identified above. The PDP Panel noted that¹⁹:

Overall, we consider inclusion of the MDRZ as part of the suite of zones in the PDP will assist in giving effect to the growth management and urban outcomes in the NPS-UD and RPS.

50. In reference to all the residential zoning decisions, the PDP Panel noted:²⁰

39. ...We also note that our decisions on the Residential Zone provisions are closely related to our findings on the introduction of a Medium Density Residential Zone (MDRZ).

40. Notwithstanding, we acknowledge that at the time of writing, the government has released the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the Bill). The Bill is designed to improve housing supply by enabling more medium density homes within those areas identified as a Tier 1 council, which includes Waikato District Council. The Bill is scheduled to be enacted in mid-December 2021.

41. While we are cognisant of the proposed legislative changes, we consider that it is appropriate that we determine the provisions of the Residential Zone based on the information and evidence that we have received to date. Our decisions will therefore provide a cohesive planning framework upon which the Council can later promulgate a plan change to align the district plan with the new medium density residential standards, once legislated.

51. The catchment of the MRZ in the PDP-DV varied between 400m² and 800m² depending on the physical characteristics such as slope, natural hazards, connectivity and location of cadastral boundaries.²¹ The rules in the MRZ introduced by the PDP Panel are very similar but not identical in all respects to the MDRS under the Enabling Housing Act. Like the MDRS, the zone permits three dwellings up to 11m height on one site. A table comparing the MDRS as incorporated in V3 with the PDP-DV MRZ is set out below:²²

¹⁹ Decision Report 15 – Medium Density Residential Zone, page 13.

²⁰ Decision Report 14 – Residential Zone, page 14.

²¹ Section 32 Report - Volume I, September 2022, 4.5, page 29.

²² Variation 3 Section 32 Report, Volume 1, September 2022, p 30.

Table 1: Comparison of MDRS and PDP-DV MRZ standards

Feature	PDP Medium density residential zone	Variation 3 Medium density residential zone 2
Number of houses on a site as a permitted activity	3	MDRS (3)
Maximum height	11m	MDRS (11m) Same maximum height but different allowances for additional height
Height in relation to boundary	30 + 45°	MDRS 4m + 60°
Setbacks	Front 1.5 metres Side 1 metre Rear 1 metre	MDRS Front 1.5 metres Side 1 metre
Maximum building coverage	45%	50%
Outdoor living space Above ground Ground level	Different requirements	MDRS Requirements for above ground and ground level
Outlook space	Not present	MDRS
Windows to street	Not present	MDRS
Landscaped area	Not present	MDRS
Minimum residential unit size	35m ² for studio dwellings; And 45m ² for one or more bedroom dwellings.	Not included
Fence height	<ul style="list-style-type: none"> • Be no higher than 1.5m if solid; • Be no higher than 1.8m if: • Visually permeable for the full 1.8m height of the fence or wall; or • Solid up to 1.5m and visually permeable between 1.5 and 1.8m 	<ul style="list-style-type: none"> • Be no higher than 1.5m if solid; • Be no higher than 1.8m if: • Visually permeable for the full 1.8m height of the fence or wall; or • Solid up to 1.5m and visually permeable between 1.5 and 1.8m
Ground floor internal habitable space	Garages shall occupy less than 50% of the ground floor space internal to buildings on the site	Garages shall occupy less than 50% of the ground floor space internal to buildings on the site

52. The PDP Panel also accepted rezoning of land beyond that recommended by the reporting officers, and this ensured that the risk of potential non-compliance with the NPS-UD, based on the limited headroom described above, was avoided. Based on a preliminary assessment by Market Economics, the PDP-DV provides for 47,000 additional plan-enabled

dwelling district wide in the long term, 32,500 of these are in Ngaaruawahia, Huntly, Pookeno, and Raglan.²³

53. The Waikato DC considered that the decisions on the PDP complied with the NPS-UD and not only provided sufficient capacity for residential and business growth but also well-functioning urban environments.
54. More than 67 appeals were lodged against the remaining PDP decisions and approximately one third of these appeals sought rezoning, either new greenfield areas or upzoning. There is, therefore, the opportunity to provide additional growth through the resolution of the appeals. This opportunity exists for some (but not all) appeals notwithstanding the National Policy Statement on Highly Productive Land (“NPS-HPL”) that came into force on 17 October 2022, due to an exemption provided for in clause 3.5(7)(b)(i) or (ii).

Housing Choice in the PDP-DV

55. In addition to providing for increased housing capacity, the PDP-DV contains a district wide strategic objective which ensures the availability of a variety of housing types to meet the community housing needs.

SD-04 Housing Variety- A variety of housing types are available to meet the community’s housing needs.

56. This strategic objective provides the framework for the following different zone objectives and anticipated housing outcomes:
 - (a) The General residential zone objective 5 is to ensure “residential activities remain the dominant activity in the zone.” It is therefore a permitted activity for:
 - i. Residential units and a minor dwelling (subject to lot size);

²³ Unreported Market Economics, long term plan enabled capacity, December 2022.

- ii. Minimum lot size of 450m²; and
 - iii. Retirement villages.
- (b) The Medium density zone objective 1 is to “achieve greater housing choice for the community in response to changing demographics and housing needs”, and provides for as a permitted activity:
- i. Apartments;
 - ii. Terrace housing;
 - iii. Duplexes;
 - iv. Up to three residential units per site; and
 - v. Minimum Lot size of 200m².
- (c) Papakaainga Development on Maaori Freehold land and Treaty settlement land no matter what the zone. Permitted activity for:
- i. Any configuration of housing with no restriction on number of residential units which could be 3 by 3 housing (subject to building and effects rules).

FUTURE PROOF 2022

57. The FP Strategy identifies spatial locations in Waikato District for both residential and business growth, both within existing urban areas and new potential areas. The FP Strategy seeks to focus growth in defined areas that enable good accessibility between housing, jobs, community

services and natural and open spaces. The FP Strategy identifies minimum housing targets for Waikato District and density targets for identified urban enablement areas within the district.

58. Pookeno, Tuakau, and Huntly are identified as urban environments under the NPS-UD and have a net target density of 25-35 dwellings per hectare in defined intensification areas, and 20-25 dwellings per hectare in greenfield locations. Ngaaruawaahia is identified for more intensive development of 30-50 dwellings per hectare within defined intensification areas, and 20-25 in greenfield locations. Raglan, Te Kauwhata, Taupiri and Horotiu are not classified as 'urban environments'. Ohinewai, classified as part of the Huntly urban environment, has a greenfield target of 20-25 dwellings per hectare. It is important to note these density targets are not time bound, the FP Strategy states these targets are "to be achieved over time."²⁴
59. The minimum housing targets for Waikato District in the FP Strategy are 6,900 dwellings in the short to medium term (2020-2030) and 11,200 dwellings in the long term (2030-2050), together totalling a housing bottom line of 18,100 dwellings. Preliminary indications are that the PDP-DV will provide long-term district-wide plan-enabled capacity of 47,000 with a commercially feasible capacity 32,800. In the short term (2020-2023), the 2021 HDCA informing the FP Strategy indicated a shortfall in capacity in Waikato District. However, the short-term assessment was only informed by the ODP provisions. As mentioned above, the PDP-DV provides capacity for an additional 32,500 plan-enabled dwellings in Ngaaruawaahia, Huntly, Pookeno, and Raglan in the long term, 21,600 of these being commercially feasible. 22,900 of these plan-enabled dwellings would be in the short term, with 3,000 of them being commercially feasible.

²⁴ Future Proof Strategy 2022, June 2022, page 95. I note that Plan Change 1 to the Waikato Regional Policy Statement as notified removed statements about these not being time bound. However, Waikato District Council has submitted in opposition to this.

SUMMARY OF CAPACITY IN DISTRICT

60. Waikato DC has engaged Market Economics to assess residential capacity under a range of scenarios:

- (a) The PDP-DV zones and standards;
- (b) The PDP-DV zones with the MDRS applied (without any changes to underlying zoning or any qualifying matters);
- (c) V3 with qualifying matters (excluding the Urban Fringe qualifying matter addressed below).

61. At this stage the data is preliminary and will be confirmed and set out in detail in evidence for the substantive hearing of the IPI in 2023. A summary of the data is provided in Tables 2 and 3 below. The tables below set out the supply and demand figures under previous Capacity Assessments, and commercially feasible capacity created in Pookeno, Tuakau, Huntly and Ngaaruawaahia under the specified scenarios.

Table 2: supply and demand figures under previous Capacity Assessments

Source/Scenario	Supply ²⁵ or demand ²⁶	Short-term (1-3 years)	Medium-term (3-10 years)	Long-term (10-30 years)
Housing Development Capacity Assessment 2017 Future Proof Area – Waikato District ²⁷	Supply (commercial feasible capacity)	7,000	9,500	13,000
	Demand (with margins)	3,100	7,100	19,400

²⁵ Excluding redevelopments and accounting for infrastructure constraints.

²⁶ The change in methodology explains the difference in housing demand.

²⁷ All figures based on the ODP.

NPS-UD Housing Development Capacity Assessment; Future Proof Partners, Market Economics, 30 July 2021. ²⁸	Supply (commercially feasible capacity)	2,600	13,100	26,400
	Demand (with margins)	1,700	4,800	11,200

Table 3: Short-, medium- and long-term capacity – PDP-DV, MDRS & Variation

3²⁹

Source/Scenario	Supply or demand	Short-term (2021-2024)	Medium-term (2021-2031)	Long-term (2021-2051)
Decisions version of the PDP ³⁰	Supply (commercial feasible capacity)	3,000	13,300	21,600
Decisions version of PDP with MDRS applying to relevant residential zones ³¹ (no rezoning)	Supply (commercial feasible capacity)	4,800	29,600	43,700
Variation 3 (includes rezoning) with qualifying matters (including Urban Fringe qualifying matter) ³²	Supply (commercial feasible capacity)	3,500	14,900	26,300

²⁸ ODP forms the zoning framework for the short-term. The Proposed District Plan (“PDP”) is used to assess medium-term capacity. In the long-term, the assessed area is defined by a combination of the PDP zoning structure and the urban expansion and zoned areas contained within the Waikato 2070 strategy document.

²⁹ These refer to the four urban settlements across which MDRS is applied: Pokenoo, Tuakau, Huntly and Ngaaruawaahia.

³⁰ These figures are the growth enabled by the map and zone provisions set out in the decisions version of the PDP, which includes the medium-density residential zone in the four larger towns.

³¹ These figures are the growth that would be provided for if the Medium Density Residential Standards were applied to the PDP Decisions Version zones with no Qualifying Matters.

³² These figures are the growth that would be provided for if the Medium Density Residential Standards were applied to the PDP Decisions Version zones, and if all qualifying matter in variation 3 were then applied.

Source/Scenario	Supply or demand	Short-term (2021-2024)	Medium-term (2021-2031)	Long-term (2021-2051)
Variation 3 (includes rezoning) with qualifying matters (excluding Urban Fringe qualifying matter) ³³	Supply (commercial feasible capacity)	4,900	30,000	44,800
Demand (including Margin) for HBA 2021.		1,200	3,200	5,800

COUNCIL'S RESPONSE TO ENABLING HOUSING ACT – VARIATION 3: ENABLING HOUSING SUPPLY

62. Having been through a comprehensive full district plan review in the preceding eight years to provide for additional housing supply in the district, Waikato DC was disappointed by the introduction of the Enabling Housing Act and a mandated requirement, without any consultation, to provide for the additional housing supply beyond the carefully considered PDP-DV zoning and related rules which already give effect to the NPS-UD.
63. The Enabling Housing Act came into force on 21 December 2021, less than one month before the release of the bulk of the PDP decisions. Having spent millions of dollars on the plan review up to that point, with extensive community consultation and with nearly 70 appeals to resolve, Waikato DC was forced to immediately turn its focus to the new legislation and its response. This diverted important budget and staff resources away from the appeals process. The result is that we are now in the unique position of having to resolve appeals on the PDP-DV while at the same time managing a variation that was not required in the district

³³ These figures are the growth that would be provided for if the Medium Density Residential Standards were applied to the PDP Decisions Version zones, and if all but the Urban Fringe qualifying matter were then applied.

due to the substantive work undertaken through the PDP review to provide for growth as required by the NPS-UD.

64. Waikato DC considers that the growth enabled by the PDP-DV zoning created well-functioning urban environments, giving effect to the key objective of the NPS-UD. The zoning was reflective of a desire to create compact towns, where density was focused around the town centres and within walkable catchments of key community services. Policy 3(d) of the NPS-UD applied to Waikato DC and requires buildings heights and densities within and adjacent to town centres that was commensurate with the level of commercial activity and community services. The PDP-DV provides for this outcome, by concentrating an appropriate level of density within an easily walkable catchment (around 800 m) around the town centres. With limited public transport and small town centres (largely rural based), the spatial extent of the new MRZ was commensurate with those outcomes.
65. While Waikato DC is sympathetic to the national concerns about housing affordability and supply (particularly as the Waikato District includes some of the lowest socio-economic areas in the country), the supply enabled by the PDP-DV in the four towns subject to V3 (32,500 plan enabled and 21,600 commercial feasible capacity) already exceeded the assessed demand for the entire district under the NPS-UD (11,000) .³⁴ The PDP-DV zoning and rules ensured that the eventual form of development reflected the overall vision for the district of liveable, thriving and connected communities.
66. If demand for growth in the future exceeded the +20% margin provided for in the PDP zoning decisions, then plan changes could be introduced to extend the MRZ around the town centres over time. This approach would allow the district's towns, which have only been experiencing growth in the last decade, to start growing gradually from the centre outwards. At

³⁴ Unreported Market Economics, update from the 2021 HDCA, December 2022.

the same time, an increase in population in and around these centres would lead to increased public transport options and more mature business offerings, employment opportunities and more community services. Such an approach to growth and the national housing supply shortage is more sustainable for a currently rural district like Waikato District. It would enable incremental changes in the urban environment, allowing communities to adapt to housing intensification over time rather than having it being forced on them.

67. Instead, imposing rapid changes onto communities will have detrimental impacts on their current levels of urban amenity. Waikato District's towns have very little medium density housing at present. Having MDRS potentially located throughout the full extent of a town could result in many neighbourhoods having to come to grips with changes that are not necessary from a supply and demand perspective and which would be most efficiently located centrally.
68. The benefits of intensive developments depend on them being sufficiently concentrated in appropriate locations to support the viability of centres and sustainability of the pattern of urban form. It is, therefore, important to ensure that it is concentrated in the right locations that function together with central areas rather than being dispersed through opportunistic development in peripheral locations.
69. In addition to amenity impacts, by allowing medium density housing some considerable distance from already small and struggling town centres in our largely rural district, the legislation also risks stranding more new residents in areas of car dependency rather than in more central locations where they could support and be supported by the services offered by town centres.
70. In imposing the MDRS requirements, presumably targeted for large metropolitan areas, on relatively small towns within a largely rural district, and casting aside generally accepted planning principles of

enabling the greatest density in and around centres, the Enabling Housing Act may damage the already vulnerable reputation of medium density housing in New Zealand. This has considerable potential to undermine its viability in the eyes of developers, prospective residents and Councils for years to come. It is important that medium-density housing is located in the right location for each community.

71. Furthermore, not all relevant residential zones in the district will be developed at MDRS densities, particularly within the short-term as the market is not yet well established and the demand is small. It is likely a significant portion of the development will occur at current densities, and that more intensive development patterns will develop over time.
72. Modelling of areas zoned General Residential Zone (“GRZ”) in the PDP-DV indicates that in many locations it is still feasible to develop detached dwellings on single sites. This shows that the GRZ still provides for growth in many areas.
73. Waikato DC notified V3 with a qualifying matter named ‘Urban Fringe’. The Urban Fringe reflects the intent of Policy 3(d) of the NPS-UD to provide for intensity of residential development commensurate with the size and function of the town centres. Waikato DC considered that V3 should continue to encourage intensive residential development within walkable catchments of the town centres, for the reasons summarised above. I will return to the Urban Fringe later in my evidence.

Which Towns Does V3 Apply To?

74. The Enabling Housing Act required tier 1 territorial authorities to incorporate the MDRS into every ‘relevant residential zone’. This does not include towns with resident populations of less than 5,000 in the 2018 census, unless a council intends for that town to become part of an ‘urban environment’. The NPS-UD provides the following definition of urban environment:

any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- (a) is, or is intended to be, predominantly urban in character; and
- (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

75. Three towns in Waikato District had populations over 5,000 in the 2018 census: Ngaaruawaahia (6,261), Huntly (8,324) and Tuakau (5,016). In order to determine whether any other towns should be included, Waikato DC adopted the recent work done in the 2022 FP Strategy as this work responds directly to the NPS-UD and is supported by robust analysis. The FP Strategy identified Pookeno as a ‘tier 1’ urban environment. Pookeno was therefore included in V3’s relevant residential zones.
76. The submission on V3 from Kāinga Ora asks for the MDRS to be extended to walkable catchments within the townships of Raglan and Te Kauwhata. While Raglan and Te Kauwhata are identified as existing urban areas, the FP Strategy does not identify these towns as ‘urban environments’ as that term is defined in the NPS-UD. In addition, economic analysis supporting the FP Strategy and V3, indicate that there is already sufficient residential capacity within Raglan and Te Kauwhata in the PDP-DV.³⁵ These towns already have a MRZ in the town centres, as a result of the acceptance of Kāinga Ora’s submission on the PDP. Therefore, the outcome sought for V3 by Kāinga Ora is already provided for.
77. In addition, the work undertaken by PWC for the Ministry for the Environment, forecasts a decrease in demand for dwellings in the Waikato District because of V3, with more development attracted to Hamilton City, with the capacity enabled by their Plan Change 12.³⁶ We do not consider, therefore, that any additional capacity needs to be provided in Raglan or Te Kauwhata.

³⁵ Section 32 Evaluation Volume I, Appendix 2, July 2022, page 13

³⁶ Section 32 Report Volume I, September 2022, 4.4.1, page 48.

78. I note the submission by the Ministry of Housing and Urban Development states it considers V3 has been correctly applied to all relevant residential zones in the district.

Introduction of a High-Density Residential Zone in Huntly and Ngaaruawaahia and Height Overlay in the Same Town Centres

79. Kāinga Ora has also requested a new High density residential zone for the towns of Huntly (within 800 metre walkable catchment of the town centre) and Ngaaruawaahia (within 400 metre walkable catchment of the town centre), with a height limit of 22 metres. Accompanying this, the submission also seeks a height overlay for the business town centre zone in these two towns to allow for building heights to be proportionate to the High-density residential zone, with a height limit of 24.5 metres.
80. Waikato DC does not consider that allowing up to 6 storeys of development within and adjacent to the Huntly and Ngaaruawaahia town centres is commensurate with the level of commercial activity and community services in these towns, as required by Policy 3(d) of the NPS-UD. The Kāinga Ora submission would result in development that is out of character of these towns and is not supported by the FP Strategy, which identifies sufficient capacity for residential demand in the medium and long term for both towns, although a short-term shortfall is expected.³⁷

APPROACH TO QUALIFYING MATTERS GENERALLY

81. For the majority of qualifying matters, V3 carries forward the standards developed through the PDP process.³⁸ The Enabling Housing Act allows

³⁷ Future Proof Strategy 2022, June 2022, p 89-91.

³⁸ Natural character of water bodies and margins, ONFs and ONLs, significant vegetation and habitats, sites or areas of significance to Maaori, historic heritage, natural hazards, National Grid setback, Te Ture Whaimana, setbacks from State Highways and Main Truck Rail Line, reverse sensitivity, notable trees.

Waikato DC to vary the MDRS to reduce the level of enabled development to the extent necessary to accommodate a qualifying matter. These standards, which in most cases are a setback between an important feature (for example wetland) or infrastructure with reserve sensitivity concerns (for example wastewater facilities), have been thoroughly tested through the PDP Schedule 1 process.

82. The V3 qualifying matters that do not have corresponding provisions in the PDP include: setbacks from the gas pipeline (although this is sought in an appeal); and the Urban Fringe.
83. I acknowledge that there is a range of approaches to qualifying matters in the submissions on V3. The substantive hearing will consider the specific qualifying matters and whether they are sufficiently justified under the Enabling Housing Act. I will specifically comment on three of the qualifying matters below, which have been raised in the Themes and Issues Report prepared for this hearing.³⁹

Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River

84. A qualifying matter under the Enabling Housing Act may include a matter required to give effect to Te Ture Whaimana. Te Ture Whaimana is common to all three Waikato Councils and forms an important part of the district planning in the sub-region in general. The evidence of Julian Williams for Hamilton City Council sets out the cultural and statutory significance of Te Ture Whaimana to the region. I adopt Mr Williams' evidence in this regard and therefore do not repeat it here.
85. V3 includes standards from the PDP relating to setbacks from waterbodies, impervious surfaces and subdivision standards ensuring

³⁹ Waikato IPI's Opening Hearing Themes and Issues Report, December 2022.

dwellings can be appropriately serviced for three waters. All of these standards are required in order to give effect to the central focus of Te Ture Whaimana to restore and protect the health and wellbeing of the Waikato River for future generations.

86. Waikato DC has received submissions seeking additional mechanisms be added to V3 to give effect to Te Ture Whaimana. Waikato DC is committed to working with those submitters to discuss what those mechanisms might be and how they could be incorporated into V3 within the framework of the Enabling Housing Act.

Tuurangawaewae Marae and Viewshafts

87. Submissions have been received asking for additional areas to be added to sites or areas of significance to Maaori, or for a new qualifying matter to be included to:

- (a) Protect the Tuurangawaewae Marae and surrounds; and
- (b) Provide for protected viewshafts of Taupiri Maunga and the Hakarimata Range from Tuurangawaewae Marae.

88. As above, Waikato DC is committed to working with these submitters to discuss what those mechanisms might be and how they could be incorporated into V3 within the framework of the Enabling Housing Act.

Urban Fringe Qualifying Matter

89. As discussed above, the Urban Fringe qualifying matter was developed from the work on the PDP-DV and the supporting 2021 housing and the supporting 2021 HDCA that shows that Waikato District has sufficient capacity to satisfy the requirements in the NPS-UD without the need for a blanket application of the MDRS across all relevant residential zone

(subject to qualifying matters). Several submitters have questioned whether the Urban Fringe qualifying matter gives effect to the Enabling Housing Act, which requires tier 1 local authorities to incorporate the MDRS into all relevant residential zones, which includes the GRZ in Huntly, Ngaaruawaahia, Pookeno and Tuakau.

90. Waikato DC fully supports the planning and urban design rationale behind the Urban Fringe qualifying matter. A well-functioning urban environment comprises of compact urban towns with intensification close to the town centres and lower density further out. These have been well-established planning and urban design principles for many years. Unfortunately, the Enabling Housing Act turns these well-established planning principles on their head and disregards the planning merits upon which the Urban Fringe qualifying matter is based.
91. Whilst the Waikato DC does not resile from the planning rationale set out in the section 32 report in support of the Urban Fringe qualifying matter,⁴⁰ it reluctantly acknowledges that the deliberately constrained wording of the Enabling Housing Act makes it very challenging for a qualifying matter under section 77(l)(j) to meet the additional legal requirements set out in section 77L. This is ultimately a matter for the hearing panel to consider after having considered submissions and evidence, but Waikato DC will not be bringing evidence to the substantive hearing in 2023 to support the Urban Fringe qualifying matter.
92. Waikato DC is currently assessing whether the removal of this qualifying matter would have an adverse effect on either infrastructure and/or the Waikato River. As a result of this additional work, Waikato DC may need to pursue rules similar to Hamilton City Council or Waipā District Council to ensure that residential capacity can be adequately serviced and not have adverse effects on the Waikato River.

⁴⁰ Section 32 report – Volume II, September 2022, 11.4, page 78.

93. The approach adopted by Waikato DC will be set out in the Hearings Report and evidence for the Waikato DC substantive hearings in mid-2023. Waikato DC wanted to signal now however that it will not continue to pursue the Urban Fringe qualifying matter in its current form, so that submitters can decide whether they still wish to be involved in the hearing process and to ensure a more efficient hearings process. However, that is not to say that no additional qualifying matters will be sought for the GRZ in the four towns. Further investigations need to be undertaken. As mentioned above, a number of submissions already seek additional mechanisms to give better effect to Te Ture Whaimana.

CONCLUSION

94. Market Economics' preliminary assessment of V3 as notified confirms that the feasible residential capacity created by the PDP-DV in the four towns subject to the MDRS is already in excess of the demand (including the 20% margin) assessed under the NPS-UD by 150% in the short-term, 316% in the medium-term, and 272% in the long-term. This feasible capacity is increased further under notified V3 to 192% in the short-term, 366% in the medium-term, and 353% in the long-term. These exceedances will increase further to 308%, 838% and 672% respectively if the Urban Fringe qualifying matter is not included.
95. While the Waikato District's towns are maturing, the district remains a predominantly rural district, with a focus on ensuring liveable, thriving, and connected communities. The PDP-DV provides sufficient capacity for the district in a way that gave effect to both the NPS-UD and the sound planning principles of focusing intensification in and around town centres. Put simply, the PDP-DV already provides for intensification in six of the district's largest towns in a sustainably managed way.
96. Waikato DC has been actively involved in strategic planning for the sub-region, where agreed targets and dwelling numbers have been

established in the FP Strategy and are now being incorporated into the Waikato Regional Policy Statement via Plan Change 1 – National Policy Statement on Urban Development 2020 and Future Proof Strategy Update, which was notified on 18 October 2022. The PDP-DV provided the first step to achieving those targets over the longer term 30-year horizon.

97. While Waikato DC sought to continue a compact intensification approach under V3 as notified, it now accepts that the Enabling Housing Act disregards those sound planning principles, and it is difficult to achieve our desired outcomes within the constrained and onerous framework of the legislation.

James Dylan Ebenhoh

20 December 2022