

**IN THE MATTER OF**      the Resource Management Act 1991  
**AND**  
**IN THE MATTER OF**      Waikato DC Variation 3.

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**RESOURCE MANAGEMENT ACT 1991**  
**DIRECTION #12**  
**INDEPENDENT HEARING PANEL**

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**Purpose:** The purpose of Direction #12 is to address some remaining scope matters.

**Introduction**

1. As a preliminary matter, and in response to Council's request at paragraph 41 of the legal submissions of 24 March 2023, we refer to paragraph 9 of Direction #11 where we noted:<sup>1</sup>

The Panel confirms that it intends to apply the 2-limb *Clearwater* test ... to questions of scope, adopting what Justice Whata characterised in *Albany North Landowners* as taking a realistic workable approach to what was reasonably and fairly raised in submissions.

2. In paragraph 21 of Direction #10 the Panel issued a timetable for determining the scope of submissions from identified submitters who were seeking rezoning.
3. Subsequently the Panel has been advised that Council no longer seeks to challenge the submission from Greig Developments Limited (submitter 20) at this time, and that Kainga Ora (submitter 106) has withdrawn submission point 106.15.

**Submitters Halm Fan Kong and Howard Lovell**

4. No response was received from submitters Halm Fan Kong (13) or Howard Lovell (27).
5. Council's legal submissions of 24 March 2023 conclude that the submissions from Halm Fan Kong and Howard Lovell fail both limbs of the *Clearwater* tests and therefore should be struck out under s.41D(1)(c) of the Resource Management Act 1991 (**RMA**).
6. With respect to the submission from Halm Fan Kong – to rezone land in Horotiu from General Rural Zone (GRUZ) to MRZ1 or 2 – Council noted that GRUZ is not a "*relevant residential zone*", and it is therefore not required to incorporate the MDRS. Rezoning is a discretionary option under the RMA (Enabling Housing Supply and Other Matters) Amendment Act 2021, not mandatory, and Council has not chosen to do that in Horotiu.
7. With respect to the submission from Howard Lovell - to rezone land in Taupiri from General Residential Zone (GRZ) to Medium Density Residential 1 (MRZ1) - Council noted that Variation 3 did not identify any relevant residential zones<sup>2</sup> for Taupiri. Furthermore, rezoning to MRZ1 (which only applies to Raglan and Te Kauwhata) would neither incorporate the MDRS nor give effect to NPSUD policies 3 or 4. Even if

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<sup>1</sup> The two limbed test essentially being (i) on the plan change, and (ii) there being no material prejudice to potential submitters.

<sup>2</sup> As that term is defined in s.2 of the RMA.  
HCC PC12, WaipāDC PC26, and WaikatoDC Var 3.

the relief sought is incorrectly described, and should be MRZ2, Variation 3 does not rezone any GRZ land to MRZ2 within Taupiri.

8. In addition, the Council notes that the s.32 report has not considered the potential effects of rezoning either piece of land, and that as no zoning changes were notified in these areas in Variation 3 there is a real risk that potential submitters have been denied an effective opportunity to participate in the variation process.
9. In the absence of any contrary submissions from the submitters, we accept Council's reasoning.

### **Submitter Horotiu Farms Limited**

10. Horotiu Farms Limited (HFL), submitter 49, seeks to rezone land in Horotiu from GRZ to MRZ2.
11. Council filed its submissions on 24 March 2023 setting out the reasons its considered HFL's request to be out of scope. HFL then filed reply submissions on 30 March 2023 responding to the points raised by Council.
12. In summary, Council submitted that Horotiu was not considered a relevant residential zone; Variation 3 did not rezone any land in Horotiu; and there is a real risk that persons with an interest in land at Horotiu would be denied an effective opportunity to participate in the variation process. In the Council's opinion, neither limb (and certainly not the second) of the *Clearwater* tests are satisfied. Council therefore recommended that the submission from HFL be struck out under s.41D(1)(c) of the RMA.
13. HFL disagrees. Counsel for HFL submitted that the land is part of an "urban environment" and within a relevant residential zone, as it was recently rezoned GRZ through the recent full plan review process, it is proximate to Hamilton and other relevant urban development, and it is clearly within an area intended to become part of an urban environment.

***urban environment*** means 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.*
14. With respect to the second *Clearwater* limb test, in essence HFL submits that:
    - (a) having been through the current PDP process that confirmed a residential zoning for the land; and
    - (b) in light of the RMA amendment requiring all existing residential zones to be upzoned with MDRS; and
    - (c) HFL's submission clearly signalling that it sought the upzoning,the second *Clearwater* limb is satisfied. Furthermore, HFL notes that one of the most potentially affected landowner, Ports of Auckland, made a further submission opposing the upzoning, which illustrates the point.
  15. HFL notes that whether the Council made the correct decision in not including this residential zone in its intent to incorporate MDRS and NPSUD policies 3 and 4, is a HCC PC12, WaipāDC PC26, and WaikatoDC Var 3.

matter for evidence not scope.

16. In considering the question of scope, we start by noting our understanding that Horotiu is part of the south Waikato District/north Hamilton City urban development corridor. Whether the local authority *intends* Horotiu to become part of an “urban environment”, and whether the Council made the correct decision in not including this site within a zone to which the MDRS applies, are matters that are amenable to clarification through evidence at a substantive hearing.
17. To that we add that uncertainty of scope endures because of Council’s late decision to remove the *Urban Fringe* qualifying matter from Variation 3 without firm knowledge as to what, if anything, is to replace it. It is not entirely fanciful that more residential zones (or parts thereof) open up and which may, then, have a bearing on this question.
18. For those reasons we are not prepared to strike out HFL’s submission at this stage. We think that procedural fairness requires us to leave that matter live pending Council’s evidence on the broader *Urban Fringe* replacement question. The matter of scope (including considerations relating to the second *Clearwater* limb) can then be determined in the round, during the substantive hearing process.
19. The Panel makes the following directions:
  - (1) The submissions from Halm Fan Kong (13) and Howard Lovell (27) are struck out under s.41D(1)(c) of the RMA for the reasons summarised in paragraphs 6, 7 and 8 above.
  - (2) The submission from Horotiu Farms Limited (49) is allowed to continue through the substantive hearing process with both scope and merits considerations to be addressed as part of that process.
20. Any queries or correspondence related to this Direction should be sent through to the Hearing Coordinator, Steve Rice at [steve@riceres.co.nz](mailto:steve@riceres.co.nz) .



David Hill (Chairperson)

Independent Hearing Panel

11 April 2023