

Before Independent Hearing Commissioners

Under the Resource Management Act 1991

In the matter of a submission by NZ Transport Agency Waka Kotahi (submitter 50 and further submitter 10) on the Upper Hutt City Council Intensification Planning Instrument

Legal submissions for Waka Kotahi New Zealand Transport Agency- regarding Upper Hutt City Council Intensification Planning Instrument.

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1 Introduction

1.1 Waka Kotahi, NZ Transport Agency (**'Waka Kotahi'**) lodged submissions¹ on the on the Upper Hutt City Council Intensification Planning Instrument (**'IPI'**). The IPI implements the National Policy Statement on Urban Development (**'NPS-UD'**) and the Medium Density Residential Standards (**'MDRS'**) under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**'HSAA'**).

1.2 Ms Heppelthwaite's evidence sets out the matters covered by the Waka Kotahi submissions and further submissions and her responses to the s42A assessment. Ms Heppelthwaite agrees with the s42A assessment in a number of respects. These legal submissions therefore address:

- a The statutory objectives and functions of Waka Kotahi; and
- b The key outstanding matters between Ms Heppelthwaite and the reporting planner:
 - i Proposed amendments to UFD Strategic Direction to include active transport and public transport;
 - ii Inclusion of a new qualifying matter in relation to the St Patrick's Precinct; and
 - iii Inclusion of noise standards to protect the occupants of new sensitive activities locating adjacent to the State highway from adverse health effects.

2 Waka Kotahi statutory objectives and functions

2.1 The Hearing Panel will be familiar with the statutory objectives and functions of Waka Kotahi. In summary, Waka Kotahi is a Crown entity² with the purpose of delivering transport solutions for New Zealand. The key objectives, functions, powers, and responsibilities of Waka Kotahi are derived from the Land Transport Management Act 2003 (**'LTMA'**). Section 95(1) of the LTMA requires Waka Kotahi to:

¹ Submission number 50 , further submitter number 10.

² Section 93(2), LTMA.

- a Contribute to an effective, efficient, and safe land transport system in the public interest;³ and
- b Manage the state highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with the LTMA and the Government Roding Powers Act 1989.⁴

2.2 The focus of Waka Kotahi includes investment in:

- a Public transport, local roads, pedestrian and cycle networks;
- b The construction, maintenance and operation of the state highway network on behalf of the Government; and
- c The integration of the transport network including with the rail network.

2.3 Section 96(1)(a) of the LTMA also requires Waka Kotahi to exhibit a sense of social and environmental responsibility when meeting its statutory obligations and undertaking its functions under the LTMA. In performing its functions, Waka Kotahi must give effect to the Government Policy Statement on Land Transport 2021/22-2030/31 ('GPS'). The four strategic priorities of the GPS are safety, better travel options, climate change and improving freight connections. A key theme of the GPS is integrating land use, transport planning and delivery. There is also a focus on investment in "providing people with better travel options to access places for earning, learning, and participating in society."

2.4 The Waka Kotahi focus and commitments to greenhouse gas emissions reductions and environmental sustainability are set out in Arataki Our Plan for the Land Transport System 2021-2031 and Toitū Te Taiao Our Sustainability Action Plan.

3 UFD strategic direction

3.1 Ms Heppelthwaite requests changes to include specific reference to 'active transport' in policies NCZ-P1, LCZ- P1, MUZ- P1 and TCZ- P1. These changes reflect the requirement in Objective 1 and Policy 1 of the NPS-UD to create well-functioning urban environments which "have good accessibility... including by way of public or active transport".⁵ Ms Heppelthwaite's proposed change to CZ-

³ Section 95(1)(a), LTMA.

⁴ Section 95(1)(c), LTMA.

⁵ Policy 1(c) of the NPS-UD.

02 to include reference to active and public transport is also required to 'give effect to' Objective 1 and Policy 1 of the NPS-UD.

4 St Patrick's Precinct

- 4.1 Ms Heppelthwaite's evidence explains that the extent of permitted activities currently provided for in the Special Activity Zone that applies to the St Patricks Precinct is very limited. Most activities require at least a controlled activity consent, which provides an opportunity for the transportation effects of development to be assessed and addressed.
- 4.2 As Ms Heppelthwaite points out, Mr Muspratt has confirmed that he is aware of the potential safety effects of development of the precinct and Mr Wignall has agreed that further ITA assessments are required. In Appendix A of her evidence, Ms Heppelthwaite recommends provisions requiring an ITA and a list of matters of discretion. It is submitted that these provisions should be included as a qualifying matter under s77I(e) on the basis that they are necessary to ensure the safe and efficient operation of the state highway network. Alternatively, if the Hearing Panel was satisfied that the proposed provisions do not affect development capacity, it would be appropriate to include them as 'related provisions' under section 80E(b) of the RMA.

5 Noise provisions

- 5.1 As set out in Ms Heppelthwaite and Dr Chiles' evidence, provisions to mitigate the effects of intensification (such as noise) are necessary and appropriate to support the implementation of the MDRS and NPS-UD. The World Health Organisation ('**WHO**') has recognised that noise from transportation networks has the potential to cause adverse health effects on people living nearby.⁶ There is also widespread agreement amongst the acoustic profession that exposure to high levels of sound from road networks can cause health effects including heart disease, hypertension, high annoyance, and sleep disturbance.
- 5.2 Waka Kotahi is responsible for the maintenance and operation of around 11,000km of state highway in New Zealand. It is simply not practicable for Waka Kotahi to mitigate all health effects from state highway noise. The management of noise is a shared responsibility:
- a Waka Kotahi is responsible for managing the noise effects from new and altered roads (largely through designation conditions). Waka Kotahi seeks to

⁶ WHO Guidelines for community noise, 1999; WHO Night noise guidelines for Europe, 2009; WHO Buren of disease from environmental noise, 2011.

internalise noise effects as far as practicable by applying NZS 6806. This standard provides guidance on the assessment of noise, recommended noise criteria and mitigation measures.

- b Landowners and developers are responsible for managing the noise effects of new noise sensitive activities seeking to establish adjacent to existing state highways.⁷

5.3 Waka Kotahi has, for over a decade, been working to ensure that district plans around New Zealand have a rational and consistent approach to road noise issues. The standards requested by Waka Kotahi provide for new or altered noise sensitive buildings within an 'effects area' (a set distance of 100m or within a modelled contour line) as a permitted activity. There is a requirement for acoustic noise mitigation where specified indoor noise standards are not met.⁸ Resource consent is only required where the noise standards are breached and acoustic mitigation is not provided.

5.4 Waka Kotahi has undertaken a comprehensive s32 analysis of its proposed provisions including an assessment of the likely costs. The s32 analysis shows that:

- a Compliance with the proposed noise standards through acoustic mitigation is readily achievable for developments adjacent to the network.
- b The cost of acoustic mitigation has been independently assessed by Acoustic Engineering Services Limited and indicates typically a 0% to 2% increase in construction cost for new dwellings and additions in new materials.

5.5 Waka Kotahi strongly supports the increased housing densities proposed by the MDRS/NPS-UD plan changes. However, Waka Kotahi requests the inclusion of the noise standards to protect the health of new residents who will be coming to an existing noise source. Waka Kotahi's original submission requested the inclusion of the new standard as qualifying matter. Since lodging that submission, further thought has been given to as the appropriate mechanism for giving effect to that relief through the IPI process.

⁷ Waka Kotahi, Guide to the management of effects on noise sensitive land uses near to the state highway network (2015)

⁸ The standards require buildings to be designed/constructed to achieve specific indoor design levels (around 40 dB LAeq (24h)), by providing mechanical ventilation, cooling and heating, etc and a certificate from a qualified professional demonstrating that the standards will be achieved.

- 5.6 Section 80E(b) of the RMA provides that the MDRS process may amend or include related provisions, including objectives, policies, rules, standards, and zones, that **support or are consequential on**:
- a The MDRS; or
 - b Policies 3, 4, and 5 of the NPS-UD, as applicable.⁹
- 5.7 Waka Kotahi submits that the proposed noise rules are required to ‘support’ the MDRS and policy 3 of the NPS-UD in that they will ensure that the health of the communities living in those locations is protected. The rules are ‘consequential’ on the up-zoning since it will enable more dwellings (and other noise sensitive activities) in proximity to road traffic noise on state highways resulting in potential health effects on the future occupants. Section 77G(7) of the RMA provides that “to avoid doubt, existing provisions in a district plan that allow the same or a greater level of development than the MDRS do not need to be amended or removed from the district plan”. The proposed noise rules do not affect the development capacity enabled by the MDRS provisions. They are not ‘density’ standards, rather they are ‘design’ standards that require acoustic mitigation to ensure that indoor noise levels are achieved consistent with protecting the health and well-being of the occupants.
- 5.8 Council may introduce ‘qualifying matters’ that make the MDRS **less enabling of development** for the specific reasons listed in s77I(a) to (i) or because the higher density contained in the MDRS would be ‘inappropriate’ in a certain area (s77I(j)).¹⁰ It is submitted that the noise provisions will not make the MDRS “less enabling of development” for the reasons outlined above. This approach is consistent with that being proposed by Waka Kotahi across all the MDRS plan changes.
- 5.9 For the reasons set out above, Waka Kotahi would prefer to see the standards introduced as a ‘related matter’. However, its primary concern is ensuring that they are included to protect the health of the new communities that are enabled by the plan change. If the Hearing Panel opted to introduce the standards as a qualifying matter, Waka Kotahi does not oppose that approach.

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⁹ Section 80E(1)(b).

¹⁰ Section 77I.

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