



28 June 2023

To the Mayor and CEO,
Hamilton City Council
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paula.southgate@hcc.govt.nz

This is a formal complaint against you and your council about noncompliance.

I request an explanation from yourselves.

My complaint relates to your information about both Plan Change 9 & 12 provided by Market Economics (ME) to comply with NPS-UD.

The HDCA provided by ME 5th July 2021 has the following statement: (page 23)

“Noted however that the assessments was advised not to apply infrastructure constraints within Hamilton city existing urban areas”.

This assessment therefore does not comply with the legislative requirements under NPS-UD.

On the 21st September 2021, I made a Formal Complaint to you and your council.

This relates to HCC failure to comply with NPS -UDC legislation.

Future proof replied on the 21st of October 2021. **This letter is attached.**

Future proof acknowledged that their assessment did not comply with NPS -UDC.

We now find ME is continuing to provide both inadequate and incorrect information to you and your council, **which does not comply with NPS-UD.**

Your S 32/2.5 Infrastructure Assessment report contradicts most of the ME capacity assessments.

Plan Change 12 is based primarily around the HDCA, prepared by ME. It requires higher density.

There is little demand and unknown costs. It therefore does not make sense.

Furthermore, the HDCA 2021 refers to the Technical report of 2017. Construction costs provided in 2021 are almost identical to the 2017 report. Yet building costs have increased by about 30% in that time, and possibly another 30% since 2021.

I am seeking an explanation from you on these critical items. If the Infrastructure Assessment, as per 32/2.5 shows no capacity, **then all the assumptions in the ME report are questionable.**

Likewise, construction costs. The legislation requires them to be “commercially feasible.”

Yet no “commercially feasible” modelling has been provided.

Your reports state that there will be 3,200 to 12,000 apartments in and around the CBD in the next 6 to 10 years. **But no evidence has been provided of the costs or values as is legally required.**

The ME report states: section 4.3. Hamilton Residential City Capacity. “The rate of intake of capacity within the central city is likely to be lower in the short to medium term” (page 65)

These critical questions need to be answered.

I will be submitting these points and other reports to the Commissioners on Plan Change 9 & 12.

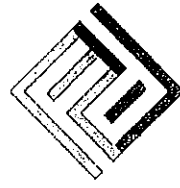
This information will also be forwarded to MfE and other relevant parties who administer NPS -UD.

I would appreciate a prompt reply.

Regards



Colin Jones
AREINZ



Future Proof
Te Tau Titoki

27 October 2021

Colin Jones
Director
Commercial and Industrial Consultants

By email

Tēnā koe Colin,

Complaints in relation to compliance with the National Policy Statement on Urban Development Capacity (NPSUDC) and National Policy Statement on Urban Development (NPS UD)

This letter provides a response to your correspondence dated 21 September 2021 and titled "Formal complaint against Future Proof and your councils as Future Proof Partners". This reply is made on behalf of the Future Proof Local Authorities against whom your complaint has been made. This reply has been considered and endorsed by the Chief Executives or senior managers of Hamilton City Council, Waipa District Council, Waikato District Council, and the Waikato Regional Council.

Your letter of 21 September 2021 requests an independent investigation to ensure legislative compliance. It alleges non-compliance in three parts:

- a. *Not complying with and providing misleading information to Productivity Commission, MBIE/MfE and Elected Members. This relates to both leading up to and the preparation of, the National Policy Statement – UDC (2016)*
- b. *The background documents that Future Proof is using to comply with the National Policy Standard UD (2020) also failed to take into consideration*
 1. *Restrictive covenants*
 2. *Concentrated land ownership*
 3. *Infrastructure pinch points*
- c. *Refusing to provide information that would enable us to understand and challenge the methodology that Future Proof /ME are using.*

Your correspondence refers to several historic requests for information to Hamilton City Council on topics including the Future Proof 2017 and 2020 Housing Development Capacity Assessments (HDCA), the 2020 *Future Proof Housing Study: Demand Preferences and Supply Matters* and other questions related to the provision of data or information from reports as far back as 2010. I am advised that your requests on these topics have been ongoing since 2018 and have been addressed through LGOIMA responses by Hamilton City Council.

Having considered your complaints, the material that you provided, and the obligations of the councils under the NPS UDC and subsequently the NPS UD, I make the following responses to each of the three elements of your complaint. In making these responses I note that I would be very happy to meet with you to discuss this further. Staff from Hamilton City Council and other councils as necessary would also be available to discuss this if that would be helpful.

(a) Not complying with and providing misleading information to Productivity Commission, MBIE/MfE and Elected Members. This relates to both leading up to, and the preparation of, the National Policy Statement – UDC (2016)

You have raised concerns regarding the methodology applied to the 2017 HDCA, particularly the methodology applied to determine dwelling feasibility over time.

At the time of the 2017 HDCA there was considerable national debate over the methodology to be applied and the reliability of the results of the assessments done by a number of local authorities in response to the NPS UDC. There was considerable debate about the relevance of a methodology that did not incorporate a scenario that addressed price growth over time. This was ground-breaking work for most of the local authorities involved. It required the collection and analysis of data that was new to the local authorities. There were data inconsistencies, coverage of some data sets was incomplete.

The methodology that was applied by the Future Proof local authorities was thoroughly addressed and settled with the Ministry of Business Innovation and Employment (MBIE) and the Ministry for the Environment (MfE) in 2018. Their report dated July 2018 (MfE/MBIE report), which evaluates the HDCA's of all high growth urban areas (including the Future Proof HDCA), records that the Future Proof HDCA satisfactorily addresses each of the relevant NPS-UDC policies.

As you know the requirements of the NPS UDC were superseded by the NPS-UD, which replaced the NPS-UDC in August 2020.

The NPS UD requirements for the Housing and Business Development Capacity Assessment (HBA) are different from those in the NPS UDC in several important ways. The assessment now enables councils to apply a price growth scenario in the long term. This is consistent with the methodology applied by Future Proof in the 2017 and 2020 analysis.

"feasible means: ... (b) for the long term, commercially viable to a developer based on the current relationship between costs and revenue, or on any reasonable adjustment to that relationship" (NPS-UD page 6).

Given the conclusions reached in the MfE/MBIE report, the replacement of the NPS UDC by the NPS UD and the different and new requirements of the NPS UD, I consider that an independent review of the HDCA prepared under the NPS UDC is unlikely to provide any insights that would be helpful in

addressing the future requirements of the NPS UD. That work is now historic and has been superseded.

The Future Proof local authorities completed an HBA under the NPS UD in July 2021. That assessment has been reported to the authorities and presented to MfE as is required by the NPS UD. Considerable effort was devoted to ensuring that the methodology that was used for the 2021 HBA complied with the NPS UD. This included input from MfE and the Ministry of Housing and Urban Development (MHUD) through the process.

MfE has commissioned a review of all the 2020/2021 HDCAs. This review will provide commentary on the robustness and accuracy of the assessments and provide feedback on improvements for future assessments. The results of the review will be made publicly available on the MfE website when the review has been completed.

The Future Proof partnership will draw on the findings of this review, and any other relevant evidence of capacity constraints, the uptake of development capacity, planned infrastructure, house prices, construction costs and commercial feasibility, and any other matters as required by the NPS UD to inform the next iteration of the HBA, which must be completed in time to inform the Future Development Strategy and 2024 Long-Term Plans.

Given the timely nature of the MfE review of all HBAs, and the amount of work that is required to progress the next assessments of development capacity, I don't consider that an additional, separate independent review of the 2021 HBA would be a wise use of resources at this time. If the MfE review identifies shortcomings or failings, then the Future Proof local authorities will work to address them.

(b) The background documents that Future Proof is using to comply with the National Policy Statement UD (2020) also failed to take into consideration

- (1) Restrictive covenants**
- (2) Concentrated land ownership**
- (3) Infrastructure pinch points**

I will address each of these matters separately. In doing so I emphasize that any piece of analysis as complex as that required by the NPS UD is based on a wide range of input information and assumptions. It requires long-term projections of a range of different factors that reflect the complex interactions of people, businesses, systems, and processes. There is considerable uncertainty over many of the matters that contribute to the overall assessment.

The population projections reflect fundamental uncertainty over the rate of growth, the level on net international migration and the levels of outward migration from Auckland. This uncertainty is even more acute in the current environment with border restrictions due to Covid 19, but the knowledge that the current restrictions will not last. Since the requirements of the NPS UDC the Future Proof local authorities have invested considerable effort in developing and improving the evidence base to support this work.

The projections of demand for business land are subject to considerable uncertainty over the future of work, the extent to which people will work from home in the future, the scale of the relocation of businesses out of Auckland, and long-term shifts in nature of the economy of the Waikato.

Equally there are uncertainties over the long-term cost of construction materials and the availability of the skilled labour necessary to build the homes for which we are estimating future demand. The current disruption to global logistics chains, the shortage of wood and other construction materials and the shortage of skilled workers may have far longer impacts that have been assumed to date.

Just as important, the very long-term nature of the HBA requires the assessment of the development potential of greenfields land for which there is, as yet no structure plan and only broad assessments of necessary infrastructure. The assumptions that are made with respect to the potential yield of residential developments 20 to 30 years from now are subject to considerable uncertainty.

In considering the HBA, and this response to your complaint I would encourage you to see the matters you have raised in the context of the whole assessment and the levels of material uncertainty that are involved in the whole process. The three issues that you have raised do need to be addressed, but also need to be seen in context.

Restrictive covenants

Future Proof and Hamilton City Council acknowledge that you raised the matter of restrictive covenants approximately three years ago. We acknowledge that this is an issue that needs to be addressed. Hamilton City Council is currently refining analysis that examines the extent and impact of covenants. We expect this work to be incorporated into the next iteration of the HBA for 2024. We are happy to discuss the findings of this work with you when it has been completed.

It is worth noting that the Government Policy Statement on Housing and Urban Development (GPS-HUD), which is central government's vision and direction for housing and urban development, includes a reference to addressing legal and other barriers that may constrain development such as covenants and cross-leases (page 26). This means that in the future there may be a way to remove or limit the impact of restrictive covenants. The first step is to complete the current work to assess the scale, nature and impact of such covenants.

Having looked at this matter I am confident that Hamilton City Council's current work will address this issue and it will be able to be better reflected in the next HBA undertaken by the Future Proof local authorities.

Concentrated land ownership

While Future Proof and the Hamilton City Council have not undertaken assessments of land ownership concentration, this information was previously available on the MHUD website. It is Hamilton City Council's understanding that Hamilton has a high concentration of land ownership of greenfield growth cells. Both land concentration and fragmented land ownership can pose challenges for the speed of the delivery of new greenfield growth cells.

Through the next phase of Future Proof's work, and through Hamilton City Council's review of the Hamilton Urban Growth Strategy (HUGs) we expect to address impediments to the levels of

development that we anticipate. This will need to include engagement with landowners, the development of structure plans, the design and delivery of necessary infrastructure, the delivery of the necessary transport system and public transport services, and other matters. Through this process the Future Proof local authorities will be engaged in the consideration of the concentration of land ownership, and in the potential to use the authorities that Kāinga Ora now has as an Urban Development Authority.

Again, having looked at this matter I am confident that current work will progress our understanding of this issue and it will be able to be better reflected in the next HBA undertaken by the Future Proof local authorities.

Infrastructure pinch points

As a direct consequence of Policy 3 of the NPS UD, it is highly likely that Hamilton City will be required to add even more plan-enabled capacity than that which is assumed in the 2021 HBA. Work to address these matters is progressing as Hamilton City develops the change to its District Plan that is required by the NPS-UD. In addition to the NPS UD requirements, on 19 October 2021 the Government announced changes to the Resource Management Act that will require changes to District Plans to implement new building intensification rules. These new rules will provide the ability to build up to three stories and up to three houses per site without a resource consent. This requirement will further increase development potential across much of Hamilton. The media release relating to this change makes no reference to infrastructure capacity constraints.

As noted in section 4.1.3 of the 2020 Housing Development Capacity Assessment a step change will be needed in infrastructure to meet the capacity requirements from the NPS-UD intensification. Hamilton City Council is examining the nature and scale of infrastructure required to service intensification. Hamilton City Council, and Waikato and Waipa District Councils are actively engaged in developing Detailed Business Cases for the provision of Metro Wastewater Treatment to both the north and the south of metropolitan Hamilton. Future Proof is in the middle of developing a Programme Business Case for Metro Rapid Transit – a key feature necessary to support the step change in intensification required by the NPS UD. This body of work may well identify further pinch points or limitations that will need to be overcome in order to support the levels of growth that are expected. These will then need to be addressed through the next Long-Term Plans in 2024.

It is not reasonable to believe that the Future Proof local authorities could have fully understood all possible infrastructure pinch points for all possible development scenarios in time to complete the HBA. However, the councils are working hard to identify and overcome network limitations. If it subsequently transpires that the infrastructure limitations are more critical than has been assumed or subsequently identified, then we will need to respond accordingly.

Hamilton City Council's 2021-31 Long-Term Plan has set the budget for infrastructure spending over the next 10 years including for water supply, stormwater and sewerage. There is funding included for resilience, reliability and growth-based projects. You can access the Long-Term Plan [here](#) and the information on water infrastructure spending can be found from page 58.

Hamilton City Council's 2021-2051 Infrastructure Strategy also presents commentary on several challenges and issues regarding the growth of the city. You can access the strategy [here](#). A summary

of these challenges is presented on page 6, with more detail on significant forecasting assumptions from page 90.

Having looked at this matter I am confident that current and planned work will significantly advance our understanding of both infrastructure constraints and the level of investment necessary to address them. This will support the next assessment of development capacity, the review of the Future Development Strategy that is required by the NPS UD, and the next council Infrastructure Strategies and Long-Term Plans.

(c) Refusing to provide information that would enable us to understand and challenge the methodology that Future Proof/ME are using

This complaint relates to the provision of aspects of the proprietary methodology that Market Economics has used in undertaking the HBA. Neither Future Proof nor Hamilton City Council have access to the models and other proprietary information referenced in your correspondence. These were not agreed deliverables to be provided for as part of the 2020 HBA or the 2020 Future Proof Housing Study.

For LGOIMA 20362 and LGOIMA 20338/21018, the information requested has also been determined by Hamilton City Council to be commercially sensitive intellectual property of Market Economics and were therefore could not be released on those grounds.

Both the dwelling demand model requested in LGOIMA 20362, and the questionnaire requested in LGOIMA 20338/21018 were not developed specifically for Hamilton City Council or its Future Proof Partners. They were developed by Market Economics for use in analysis for other organisations and were informed by years of nationwide research. Similarly, the Council understands that Market Economics is a supplier to a range of companies, local governments, and central government departments (refer [here](#)), which indicates a high level of confidence in their services within the broader sector.

Having considered this issue I concur with the Hamilton City Council decision that it cannot release information to you that it does not hold, and it cannot release information to you that is deemed to be commercially sensitive and subject to an obligation of confidentiality.

Conclusion

Having considered your complaints, the material that you provided, and the obligations of the councils under the NPS UDC and subsequently the NPS UD, I have reached the view that:

1. Given the conclusions reached in the MfE/MBIE report, the replacement of the NPS UDC by the NPS UD, and the different and new requirements of the NPS UD, an independent review of the HDCA's prepared under the NPS UDC is unlikely to provide any insights that would be helpful in addressing the future requirements of the NPS UD. That work is now historic and has been superseded.

2. A new, independent review of the work undertaken to develop the 2021 HDCA is not warranted at this time. A review is currently being undertaken by MfE and if that raises concerns the Future Proof local authorities will address them.
3. There is substantial work underway to address critical infrastructure issues across the Future Proof area. There is also work underway to address land ownership and restrictive covenants. I am confident that as a result of this, and other work, the next HBA will be a further improvement on the 2021 version.
4. I concur with the Hamilton City Council decision that it cannot release information to you that it does not hold, and it cannot release information to you that is deemed to be commercially sensitive and subject to an obligation of confidentiality.

In closing I reiterate that I would be happy to discuss this with you. I understand the time and effort that you have devoted to examining these issues and the assessments of capacity are important matters of public interest and public policy.

You also have the option of making a complaint to the Ombudsman about the decisions made by the Future Proof local authorities, both in relation to your formal complaint and its decisions on the provision of information under the Local Government Official Information and Meetings Act 1987. Guidance on how to make a complaint can be found [here](#).

Nāku iti noa, nā



Peter Winder
Future Proof Implementation Advisor