

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY NEW PLYMOUTH DISTRICT COUNCIL**

PPC18/00049

Under the Resource
Management Act 1991
(RMA)

And

In the matter of Proposed Private Plan
Change 49 to the New
Plymouth District
Council/Plan requested
by Hareb Investments
Limited for the rezoning
of land at 2 Johnston
Street, Waitara, New
Plymouth from Rural
(FUD) to Residential A
and Open Space

**OUTLINE OF SUBMISSIONS OF COUNSEL
FOR THE APPLICANT
HAREB INVESTMENTS LIMITED**

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MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONERS

Introduction

1. "... future growth for our city is needed";¹

"... [the proposal] is hugely beneficial for our community and the rezoning should go ahead ... Waitara needs this boost to its economy and infrastructure";²

"Waitara needs new housing. A shortage of accommodation. Be great for our town".³

"[the proposal] is exactly what North Taranaki needs to increase the supply of affordable housing for people trying to get on the property ladder. Its location will boost Waitara";⁴

"The demand for housing in North Taranaki is very tight. Waitara is a great value area and this development will allow many people to get into the housing market";⁵

"... there is a shortage of available residential sections for sale and ... the proposed change will benefit the community by making more land available for new housing. ... New Plymouth is growing North and it makes real sense to have Waitara grow towards New Plymouth. There is real benefit in utilising the existing utility services in the area This land is already held in smaller blocks and adjoins residential land. ... the land is currently designated Future Urban Development so it would make sense to rezone this land to residential";⁶

¹ Submission #1, Aaron Booker, 2 July 2019

² Submission #2, Justine Lehmann, 27 June 2019

³ Submission #4, Gary and Marlene Malcolm, 12 July 2019

⁴ Submission #6, Colin Cameron, 6 July 2019

⁵ Submission #8, Iain Robertson, 17 July 2019

⁶ Submission #17, Jordan Family Trust, undated

2. Located adjacent to the existing Waitara urban boundary, the site is a discrete, well defined parcel of land which is easily developed and able to connect to existing infrastructure⁷. It is a natural extension of the current residential area, as evidenced by its identification as a Future Urban Development (“FUD”) area in 2013.⁸ The proposed private Plan Change (“PC49”) will result in positive effects for the Waitara (and New Plymouth) community. Rezoning the land is appropriate and consistent with Part 2 of the Resource Management Act 1991 (“RMA”); is the most appropriate method of achieving the relevant objectives and policies of the operative New Plymouth District Plan (“District Plan”); will achieve integrated management of the resources of Waitara⁹; and, is the best option¹⁰.

Issue

3. The critical issue requiring determination in this case is whether or not approximately 11.54 hectares of land at 2 Johnston Street, Waitara should be rezoned for Residential development and Open Space (from Rural with FUD overlay), as sought by PC49.
4. In determining that issue, the Commissioners must decide whether or not approving/confirming PC49 to the New Plymouth District Plan will:

⁷ Evidence in Chief (“EIC”) Kathryn Hooper, para 5.2

⁸ EIC Mark Georgeson, para 5.8

⁹ EIC Kathryn Hooper, para 5.2

¹⁰ Under s. 32A RMA; see discussion in Hareb Investments Limited Request for Private Plan Change Application to New Plymouth District Council, Landpro, 13 March 2019 (“the Application”), section 11, pages 81-96; and in s 42A Report on Proposed Private Plan Change 49: Johnston Street, Waitara Rezoning, Hamish Wesney, Boffa Miskell, 30 October 2020 (“Officer’s Report”), paras 8.9-8.18

- (a) assist the Council to carry out its functions under s. 31 RMA so as to achieve the purpose of the RMA¹¹; and will,
 - (b) give effect to any relevant (higher order) national policy statements ("NPS") and the Regional Policy Statement for Taranaki ("RPS")¹²; and,
 - (c) has regard to any management plans and strategies prepared under other Acts¹³; and,
 - (d) takes into account any relevant planning document recognised by an iwi authority¹⁴; and will,
 - (e) be the most appropriate way to achieve the relevant objectives¹⁵ of the District Plan (having regard to other reasonably practicable options for achieving the objectives, the efficiency and effectiveness of the proposal in that regard, and the benefits and costs (of the environmental, economic, social and cultural effects) anticipated from implementation of the provisions of the proposal)¹⁶; i.e. meet the requirements of s.32 RMA - including whether the rules are the most appropriate for achieving the objectives and policies of the plan.
5. It is respectfully submitted that the result of this case should be one that the Commissioners believe best achieves the purpose of the RMA: the sustainable management of natural and physical resources as defined in s. 5(2) RMA.

¹¹ S. 72, 74(1) RMA

¹² S. 75(3) RMA

¹³ S. 74 (2) RMA

¹⁴ S. 74 (2A) RMA

¹⁵ And policies to implement the objectives, and rules to implement the policies

¹⁶ S. 32(1), (2) and 75 RMA

6. Section 5, Part 2 RMA is paramount:

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Private Plan Change

7. Part 2, Schedule 1 of the RMA provides for requests for changes to plans. As such, Parliament has deliberately provided “*any person*”¹⁷ with the right to request a change to a district plan.
8. Case law has established that private plan changes should be considered on their merits. In Countdown Properties (Northlands) Limited v Dunedin City Council¹⁸ the High Court considered a private plan change in the context of the former clause 25, which provided for deferment of a private plan change where a plan review was due within 3 months. The High Court stated:

¹⁷ Clause 21, Part 2, Schedule 1 RMA

¹⁸ [1994] NZRMA 145, at 169

"We entirely agree with the approach of the Tribunal. Clearly, the legislature was indicating that plan changes which had more than minimal planning worth should be considered on their merits, even although sponsored by private individuals, unless sought within a limited period before review".

9. Clause 25 no longer provides for deferment of a private plan change where a plan review is due within 3 months. In my submission, that reinforces the requirement for a private plan change to be assessed on its merits.
10. Subsequent decisions following Countdown Properties (Northlands) Limited¹⁹ have affirmed the above and made it clear that applicants who have requested a private plan change are entitled to a decision on that request in a timely manner.
11. In Hall v Rodney District Council²⁰, the Planning Tribunal applied the principle (from Countdown Properties (Northlands) Limited) to justify determining a private plan change despite the Council indicating that a proposed district plan was likely to be notified. The Planning Tribunal rejected the argument that Mr Hall's appeal should be delayed so that his plan change could be considered in the context of the proposed district plan, once notified; and His Honour Judge Sheppard noted²¹:

"It is our understanding of the law, as illustrated by those two decisions, that on a privately-promoted plan change a judgment needs to be made whether the most appropriate means of achieving the statutory purpose is by the proposed change or by some other method such as on a forthcoming review. A relevant consideration in making that judgment is that the Resource Management Act provides (as the former regime did not) for privately-initiated plan changes, so a general attitude of refusing such changes on the

¹⁹ Supra

²⁰ A78/95 PT, at page 12

basis of a forthcoming review could frustrate the opportunity that Parliament has deliberately made (cf *Countdown*)."

"... Parliament has provided a right for individuals to request plan changes and (unless one of the limited grounds of rejection in clause 25(4) applies) to have them examined and decided on their merits. ... we consider that the history of Mr Hall's efforts to have the planning provisions for his land reconsidered lends strength to his reliance on the right to request a plan change and to have it considered on its merits now rather than postponed for consideration with other, broader, measures."

"For those reasons we do not accept the Regional Council's submission that it would be preferable to wait for a general rural plan change or the new district plan and to consider Mr Hall's proposals in those contexts. In our judgement it would be satisfactory to consider them in the context of the present appeal; and to do so would be consistent with Parliament's deliberate provision for privately-requested plan changes, and its repeal of the former requirement to defer consideration of them within a specified period before a review of the plan is due. We therefore decline to postpone consideration of the appeal on its merits, and proceed to address other issues raised."

12. Similarly, the principle was reaffirmed in Kennedys Bush Road Neighborhood Association v Christchurch City Council where His Honour Judge Treadwell put it this way²²:

"Nowhere in the Act is there a suggestion that the authority, when considering plan changes, must take into account transitional or proposed plans unless one takes a somewhat convoluted approach to the transitional provisions of the Act when construing the definition of "*district plan*" namely s. 373(1) where a transitional plan shall be deemed to be a district plan constituted for the district."

"The provisions of the proposed plan can be taken into account because the provisions of s.74 are mandatory but not exhaustive. ...We nevertheless

²¹ At pages 12-14

²² W63/97 NZEnvC, at pages 19- 21, 27

agree with counsel for the Trust that the proposed plan does not have any particular force when considering an amendment to a transitional plan in that the proposed plan is superseding that transitional plan and the mere fact that the change to the transitional plan has been picked up by the proposed plan does not give it any further force or effect.”

“We simply remind the parties that a person who has commenced proceedings in terms of the RMA is entitled to a determination of those proceedings as soon as is practicable.”

“Put shortly, the Court does not intend to assist what counsel for the Trust described as “*review paralysis*” by standing the matter down until all proceedings under the proposed plan have been determined. ... To us it is clear that the privately initiated change procedures are intended to sidestep this type of paralysis and that applications for a plan change are entitled to expeditious determinations. We agree with the submissions addressed to us by counsel for the Council that the RMA should be viewed as a people Act and people are entitled to consideration without being fettered by rulings leading to an unnecessary and unattainable perfection in procedures. We have support in that particular view from Countdown Properties (Northlands) Limited v Dunedin City Council [1994] NZRMA at 145 where the High Court indicated that plan changes which had more than minimal planning worth should still be considered on their merits even though sponsored by private individuals unless they were sought within a “limited period” before a review. We agree with counsel for the respondent Council that “limited period” is clearly referable to the previous provisions in Clause 25 of the First Schedule which referred to notification of a privately requested plan change when a plan review was due within three months. That provision no longer appears in that clause following amendment. Also, as we have recorded, the legislature has clearly set its mind on an expeditious timetable as evidenced by the provisions of the Schedule relating to private changes.”

“... Of significance Ms Robson referred to the comments concerning postponing directions on this land until the review had been processed and become operative. In that regard she pointed to the significant expression “*at a rate*” in s.5 of the Act when it states that sustainable management means managing the use, development and protection of natural and

physical resources in a way, or at a rate which enables people and communities to provide for their wellbeing. The Court agrees with Ms Robson and with counsel for the Trust that the natural and physical resources as envisaged by s.5 of the Act cannot be developed at an acceptable rate if the type of review paralysis to which we have previously referred takes hold. We consider such stagnation must be resisted if the RMA is to work.”²³

13. These cases support the proposition that a decision should be made on PC49 on its merits now, despite the notification of a proposed district plan.
14. Further, the content of a district plan should be guided by the purpose, principles and requirements of the RMA, not the Council’s (or any other persons) view of what is a *wise use* of a particular site: In Eldamos Investments Limited v Gisborne District Council²⁴, Judge Sheppard stated:

“The purpose of the Act is not to give effect to the Council’s view of the wise use of the land in question. It is the sustainable management of natural and physical resources as described in section 5. All provisions of a district plan, objectives, policies, rules and other methods, have to be in accordance with Part 2, which includes section 5.”

15. It is respectfully submitted that the Commissioners are required to expeditiously seek an optimum planning solution based on the information and options put before them in this case.

²³ At page 27

²⁴ W047/2005, NZEnvC, at para [255]

Assessment of a Private Plan Change

16. The legal matters relevant to consideration of PC49, and the evidence in respect of same, are summarised in the decisions of Long Bay-Oakura Great Park Society Incorporated v North Shore City Council²⁵ and (updated in) Colonial Vineyard Limited v Marlborough District Council²⁶.
17. Those considerations are summarised as follows:

General Requirements

- (a) the District Plan should be designed in accordance with²⁷, and assist the Council to carry out, its functions²⁸ so as to achieve the purpose of the Act²⁹;
- (b) when changing the District Plan, the Council must:
- i. **give effect to any NPS**³⁰, the NZCPS³¹ **or any RPS**^{32,33};
 - ii. have regard to any proposed RPS³⁴;
 - iii. **have regard to any management plans and strategies under any other Acts** and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities³⁵;

²⁵ A078/2008 NZEnvC at para [34]

²⁶ [2014] NZEnvC 55 at para [17]

²⁷ s74(1), RMA

²⁸ s31, RMA

²⁹ ss72, 74(1), RMA

³⁰ National Policy Statement

³¹ New Zealand Coastal Policy Statement

³² Regional Policy Statement for the Taranaki Region

³³ s75(3)(a)-(c) RMA

³⁴ s74(2) RMA

³⁵ s74(2)(b)-(c) RMA

- iv. **take into account any relevant planning document recognised by an iwi authority³⁶;**
 - v. not have regard to trade competition³⁷;
 - vi. be in accordance with any regulation³⁸;
- (c) in relation to regional plans:
- i. the District Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order³⁹; and
 - ii. shall have regard to any proposed regional plan on any matter of regional significance⁴⁰;
- (d) **the District Plan must also state its objectives, policies and the rules (if any) and may state other matters⁴¹;**
- (e) **the Council has obligations to prepare an evaluation report in accordance with section 32 and have particular regard to that report⁴²;**
- (f) **the Council also has obligations to prepare a further evaluation report under s32AA where changes are made to the proposal since the s32 report was completed;**

Objectives

- (g) the objectives of the Plan Change (if any) are to be evaluated to the extent which they are the most appropriate way to achieve the RMA's purpose⁴³;

³⁶ s74(2A) RMA

³⁷ s74(3) RMA

³⁸ s75(1)-(c) RMA

³⁹ s75(4) RMA

⁴⁰ s74(1)(f) RMA

⁴¹ s75(1)-(2) RMA

⁴² Schedule 1, Part 2, Clause 22 RMA

⁴³ s32(1)(a) RMA

Provisions

- (h) **the policies are to implement the objectives, and the rules (if any) are to implement the policies⁴⁴;**
- (i) **each provision is to be examined as to whether it is the most appropriate method for achieving the objectives, by:**
- i. **identifying other reasonably practicable options for achieving the objectives⁴⁵;**
 - ii. **assessing the efficiency and effectiveness of the provisions in achieving the objectives⁴⁶, including:**
 - a) **identifying and assessing the benefits and costs anticipated, including opportunities for economic growth and employment opportunities that may be provided or reduced⁴⁷;**
 - b) **quantifying those benefits and costs where practicable⁴⁸;**
 - c) **assessing the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions⁴⁹;**

Rules

- (j) **in making a rule, the Council shall have regard to the actual or potential effect on the environment of activities, including (in particular) any adverse effect⁵⁰; and**

⁴⁴ s75(1) RMA

⁴⁵ s32(1)(b)(i) RMA

⁴⁶ s32(1)(b)(ii) RMA

⁴⁷ s32(2)(a) RMA

⁴⁸ s32(2)(b) RMA

⁴⁹ s32(2)(c) RMA

⁵⁰ S76(3) RMA

Other Statutes

- (k) the Council may be required to comply with other statutes.

[Emphasis added].

18. In the circumstances of what is in issue in respect of PC49 - the otherwise rather lengthy list of factors to be analysed can, in my submission, be compressed – and are as set out in paragraph 4 above.
19. As noted in Ms. Hooper's evidence⁵¹, PC 49 seeks to add policies and rules and introduce new zoning(s) (via a structure plan); the change does not amend or otherwise introduce any new objectives.
20. Essentially the Commissioners must assess whether the proposed policies and rules are, on balance, the most appropriate⁵² for achieving the objectives of the District Plan and the purpose of the RMA.
21. Additionally, in making a rule, regard must be had to the effects on the environment of activities, particularly adverse effects⁵³.
22. The issues and effects in this case are comprehensively reviewed and addressed in the evidence – which informs the evaluation of PC49 by reference to the relevant considerations summarised in Colonial Vineyard⁵⁴ (and in these submissions).

⁵¹ EIC Kathryn Hooper, paras 6.1-6.7

⁵² or suitable

⁵³ S. 76(3) RMA

⁵⁴ Ibid

Evidence and Effects / Issues

23. My client has called evidence from the following witnesses:

Lay Witnesses

(a) *Matthew Hareb, Director, Hareb Investments Limited.*

Mr Hareb is passionate about Waitara, having previously lived nearby.⁵⁵ The site appealed to him for a number of reasons - including its aspect, proximity to Waitara, easy connectivity with New Plymouth; and frustration with his (slow) infill developments in Waitara. With the FUD overlay implemented in 2013, Mr Hareb purchased in 2016 with the intention of developing⁵⁶.

Demand for housing is far outstripping supply in Waitara, and the site is suitable for a quality greenfield development. Numerous enquiries about purchasing lots post development have already been received, and local real estate agents have reiterated his views⁵⁷.

The land is better suited these days for residential development – and alternative options that he has investigated and trialed have not been/are not economic on the site.⁵⁸

As the (director of the) Applicant in this proceeding, he has genuinely endeavored to meaningfully consult with iwi (and

⁵⁵ EIC Matt Hareb, para 1.2

⁵⁶ EIC Matt Hareb, para 1.3

⁵⁷ EIC Matt Hareb, paras 1.7-1.10; see also the Application, Appendix K

⁵⁸ EIC Matt Hareb, para 1.11

other parties) as is detailed in the Application, his evidence and Ms. Hooper's evidence⁵⁹.

The legal requirements of consultation are fully set out by the Court of Appeal in Wellington International Airport Ltd v Air New Zealand⁶⁰ - where it was held that the word "consultation" did not require that there be agreement between the parties consulting one another - nor did it necessarily involve negotiations towards an agreement, although this might occur particularly as the tendency in consultation was at least to seek consensus. It clearly required more than mere prior notification.

If a party having a power to make a decision after consultation held meetings with the parties it was required to consult, provided those parties with relevant information and with such further information as they requested, entered the meetings with an open mind, took due notice of what was said and waited until they had had their say before making a decision: then the decision was properly described as having been made after consultation.

Mr Hareb is ready, willing and able to satisfy the abovementioned demand (outstripping supply), and considers that his land is the perfect place to provide for the growth of the township – a town that he is committed to, and wants to see thrive.⁶¹

⁵⁹ EIC Matt Hareb, paras 1.12-1.15; the Application, section 10.2; EIC Kathryn Hooper, para 15.12; Supplementary Evidence Kathryn Hooper, paras 3.1-3.5.

⁶⁰ [1993] 1 NZLR 671 (CA), at 672

⁶¹ EIC Matt Hareb, paras 1.3, 1.4, 1.7-1.9, 2.1

Expert Witnesses

(b) *Derek Foy, Economic Consultant, Market Economics Limited.*

Mr Foy's evidence assesses the potential economic and urban form implications of PC49, including the key issues related to economic effects. For all the reasons set out in his comprehensive evidence he concludes that there would be a number of positive economic, social and urban form benefits from PC49 for both Waitara and New Plymouth; therefore representing a positive change to the District Plan⁶².

Growth in household numbers in New Plymouth District has been strong, consequently pressure on land and house prices has resulted. There are few large residential developments in the district underway to accommodate this growth – PC49 would provide a range of lot sizes and dwelling types, and would be a significant greenfield residential development in Waitara – offering a point of differentiation to other locations in the district – with lower land prices assisting to provide for peoples social and economic wellbeing.⁶³

PC49 does not have the same infrastructure and servicing constraints that might affect other potential development areas in the district⁶⁴ – and with the Applicant being ready, willing and able to pursue the development – the proposed new residential lots could readily be brought to market. In his view, Waitara has the capacity to accommodate a portion of the district's future growth and is easily commutable to New

⁶² EIC Derek Foy, para 5.4

⁶³ EIC Derek Foy, para 5.4

⁶⁴ Ibid

Plymouth⁶⁵; and would support and accelerate the reinvigoration and recovery of Waitara⁶⁶.

PC49 would also assist the Council to meet its obligations under the National Policy Statement on Urban Development (“NPS-UD”) (replacing the National Policy Statement on Urban Development Capacity 2016)⁶⁷.

As noted, PC49 would have predominately positive economic, social and urban form effects for Waitara and New Plymouth - and represents a positive change to the District Plan. In Mr Foy’s view, there is very small likelihood of any negative economic effects from PC49 - given its small scale in the context of the quantum of projected district growth.⁶⁸ Ms. Hooper’s evidence also notes these positive effects – and that they are directly applicable to giving effect to the NPS-UD.⁶⁹

Both Mr Foy’s and Ms. Hooper’s evidence notes that the new NPS-UD encourages development (and planning decisions) that will, *inert alia*, improve housing affordability by supporting competitive land and development markets; and decisions that are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments - even if the development capacity is unanticipated by RMA planning documents - or out of sequence with planned land release.⁷⁰

⁶⁵ EIC Derek Foy, paras 5.4, 7.1-7.17

⁶⁶ EIC Derek Foy, para 18

⁶⁷ EIC Derek Foy, paras 5.4, 7.1-7.17; EIC Kathryn Hooper, paras 9.1, 3.13-3.17

⁶⁸ EIC Derek Foy, para 5.4

⁶⁹ EIC Kathryn Hooper, paras 9.1, 9.2

⁷⁰ EIC Derek Foy, paras 7.1-7.17, 12.1; EIC Kathryn Hooper, paras 13.13-13.17

Mr Foy's view, in the facts and circumstances of this case, is that PC49 is a "significant development"⁷¹ in the context of the NPS-UD, specifically encouraged by the NPS-UD.⁷² He further notes that there is strong local demand for new residential lots in Waitara based on the evidence in this case.⁷³

PC49's positive effects for Waitara (and New Plymouth) include:

- increased population, increasing local retail spending and supporting local businesses and organisations;
- increased housing choice;
- more affordable housing than elsewhere in New Plymouth making home ownership available to a broader range of people;
- a range of housing types given different section sizes – permanently increasing housing choice in Waitara.⁷⁴

Conversely there is very little potential for negative economic effects from PC49 (in terms of, for example, adversely affecting residential development occurring elsewhere in New Plymouth).⁷⁵

Commenting on the Officer's Report, Mr Foy agrees with Mr Wesney that PC49 would achieve the objectives in the NPS-UD⁷⁶; Ms. Hooper concurs⁷⁷.

⁷¹ EIC Derek Foy, para 7.10

⁷² EIC Derek Foy, paras 7.1-7.17, 12.1

⁷³ EIC Derek Foy, para 7.12

⁷⁴ EIC Derek Foy, para 8.10; see also EIC Kathryn Hooper, paras 9.1, 9.2

⁷⁵ EIC Derek Foy, paras 8.11-8.13, 12.1

⁷⁶ EIC Derek Foy, paras 10.4, 12.1; Officers Report, para 10.12

⁷⁷ EIC Kathryn Hooper, paras 13.14, 13.15

In Mr Foy's view PC49 is also consistent with the District Plan which identifies the site as a FUD area; in terms of the Proposed District Plan ("PDP") – Mr Foy notes that it has now been superseded by the NPS-UD in this context, and agrees with Mr Wesley that the PDP can be afforded little weight at this time⁷⁸; Ms. Hooper concurs⁷⁹.

In terms of the Officer's comments regarding the loss of productive and versatile land for primary production⁸⁰, Mr Foy notes that any outwards expansion of Waitara would likely lead to some loss of productive agricultural land, and that loss would be no greater for the PC49 area than most or all alternatives. The PC49 site, however, is in a location that is logical for urban expansion (as accepted in the Officer's Report).⁸¹

In this context, Ms. Hooper is of the view that the proposed site is already subject to urban expansion (having been identified for such expansion in 2013 i.e. FUD); and fragmentation and constraints associated with reverse sensitivity. In her view it is unlikely that the PC49 site would be considered significantly "*versatile and productive rural land*"⁸² in terms of the relevant national policy direction set out in her evidence.⁸³

The issue of loss of productive and versatile land for primary production has been previously considered by the Environment Court in the context of plan changes. In Canterbury Regional

⁷⁸ EIC Derek Foy, paras 10.4, 12.1; Officers Report, paras 10.11, 10.35

⁷⁹ EIC Kathryn Hooper, paras 10.13, 10.22, 16.3

⁸⁰ Officers Report, para 10.39

⁸¹ EIC Derek Foy, para 10.4; Officers Report, para 11.21

⁸² EIC Kathryn Hooper, para 16.3 (i)

⁸³ EIC Kathryn Hooper, paras 16.3-16.7

Council v Selwyn District Council⁸⁴, for example, His Honour Judge Treadwell observed⁸⁵ that soil productivity and resource management cannot be divorced from the economic perspective; for a use to continue it must realise an economic return.

Productive land/soil is a resource that must be considered in terms of ss.5 and 7 RMA in relation to both present and future generations – but is only one in a complex of relevant issues that must be balanced against other relevant considerations under the RMA⁸⁶.

In that case, it was held that the inclusion of the subject land within the residential area (for peripheral expansion of the township of Lincoln) - as opposed to retaining it for the foreseeable needs of future generations for food production – was totally inconsequential due to the size of the land in the overall regional context⁸⁷; and that the sustainable management of Lincoln itself was also of importance in terms of the RMA⁸⁸.

It is respectfully submitted that it is open to you to come to similar conclusions in the facts and circumstances regarding this application - and in terms of the sustainable management of the township of Waitara itself.

As Mr Hareb's evidence records, the land is basically only breaking even⁸⁹ – and its loss to farming is of no significant consequence, in my respectful submission, when balanced

⁸⁴ W142/96 NZEnvC

⁸⁵ At page 6

⁸⁶ Supra, at pages 10-12, 24

⁸⁷ Supra at pages 10-12, 21, 24-26

⁸⁸ Supra at page 10

⁸⁹ EIC Matt Hareb, para 11

against its positive values for residential (and open space) purposes.

In conclusion, Mr Foy's evidence is that PC49 would have significant positive effects – minimal adverse/negative effects – would add significantly to development capacity in Waitara, (and New Plymouth district) – would contribute to a well-functioning urban environment – and is consistent with the NPS-UD. PC49 is an appropriate and feasible change to accommodate growth – and is a sound response to accommodating some of the district's growth needs⁹⁰ (albeit a relatively small share).⁹¹

Finally, in the context of this discussion, in my submission there are some useful matters for consideration set out in the Environment Court's decision in Appealing Wanaka Incorporated v Queenstown Lakes District Council⁹² that can be applied in this case as follows:

- time (and timing) is an important element in the assessment of the adequacy of the quantities of sections supplied to the market⁹³;
- market differentiators for land include, in addition to location, topography, size, views, aspect and vegetation⁹⁴;
- sections which differ will usually have different demand/supply relationships – middle and lower income housing sections tend to be more elastic – so a small

⁹⁰ Particularly short to medium term needs; see para 7.13, EIC Derek Foy; Supplementary Evidence Derek Foy, paras 4.3, 5.4, 6.1

⁹¹ EIC Derek Foy, paras 5.4- 10.4, 12.1

⁹² [2015] NZEnvC 139

⁹³ At para [106]

⁹⁴ At para [112]

decrease in price may cause a significant increase in the quantity demanded, and vice versa⁹⁵;

- it is important not to confuse zoning with the quantity of sections actually supplied. Land may be zoned residential but that does not mean it is actually assisting to meet the quantity of sections demanded. Only sections for sale can do that. There is no direct relationship between the number of sections theoretically able to be cut out of land zoned residential and the number of sections actually on the market at any one time⁹⁶;
- a site, while possibly not necessary to meet strict numerical growth predictions when price and all the other factors are disregarded (which in practice they never are), may offer points of difference to other available or potentially available land⁹⁷;
- connected and compact development is an urban design imperative to ensure efficient use of infrastructure, such as roading and services, as well as community facilities, such as schools, employment and commercial centres⁹⁸;
- choice, opportunities, and amenities are important factors for consideration⁹⁹;
- increasing the quantity and range of products supplied potentially reduces the price of products¹⁰⁰;
- any “oversupply” of goods from the point of view of developers is an opportunity or benefit for purchasers; as a general rule - an increase in supply of sections in a market will lead to a lower price and movement in the

⁹⁵ Ibid

⁹⁶ At para [113]

⁹⁷ At para [115]

⁹⁸ At para [124]

⁹⁹ At para [130]

¹⁰⁰ At para [143]

quantity demanded, so that a greater quantity of sections is sold (being of benefit for developers)¹⁰¹.

(c) *Ivan Bruce, Archaeologist.*

Mr Bruce's evidence records that the application site does not contain any recorded archaeological sites, and there are no sites of significance present on the land. The land has been significantly modified by farm development, and there is a low likelihood that archaeological evidence will be encountered in his view.¹⁰²

He and Ms. Hooper note that the requirement for archaeological discovery protocols will be included on any future subdivision consents issued, and the standard monitoring practices associated with large scale development will provide added protection where necessary.¹⁰³

Mr Bruce generally concurs with Mr Wesley's views in the Officers Report - and agrees that the archaeological discovery protocol included in the structure plan is an appropriate response to mitigate against unexpected archaeological discoveries.¹⁰⁴ Ms. Hooper notes that effects on archaeological features are consequently likely to be avoided and/or appropriately managed and mitigated.¹⁰⁵

¹⁰¹ At para [174]

¹⁰² EIC Ivan Bruce, para 5.2; see also EIC Kathryn Hooper, para 9.10

¹⁰³ EIC Ivan Bruce, para 6.1; EIC Kathryn Hooper, para 9.10

¹⁰⁴ EIC Ivan Bruce, paras 7.1-7.3; Officers Report paras 11.153-11.157

(d) *Tim Muller, Environment Scientist, Landpro Limited.*

Mr Muller conducted a Preliminary Site Investigation ("PSI") in terms of assessing and managing contaminants in the soil to protect human health. The PSI confirmed that the land is generally suitable for the residential land use proposed, albeit the site (or parts thereof) has been historically used (inter alia) for horticulture¹⁰⁶.

Once the details of the development are known (i.e. at the subdivision/development stage) further investigation is recommended; and some form of remediation/management will also likely be required for the reasons provided.¹⁰⁷

Having reviewed the Officer's Report (in the context of his expertise) he generally agrees with the Officer's comments therein.¹⁰⁸

In conclusion, Mr Muller finds that there are no soil contamination issues that would preclude PC49, and the site is able to be suitable for the proposed residential zoning and future development.¹⁰⁹

(e) *Cees Bevers, Ecologist, Oecologico Limited.*

Ecological effects of PC49 are addressed by Mr Bevers. He found that the site currently has low ecological value; is ecologically disturbed; few birds species were encountered; no

¹⁰⁵ EIC Kathryn Hooper, para 9.10

¹⁰⁶ EIC Tim Muller, paras 5.3, 6.1, 6.5

¹⁰⁷ EIC Tim Muller, paras 6.5-6.7

¹⁰⁸ EIC Tim Muller, paras 8.1-8.2; Officers Report, paras 11.22-11.24

¹⁰⁹ EIC Tim Muller, para 10.1

fish were detected; no threatened species were found; water quality is currently relatively low.¹¹⁰

The landscaping/planting contemplated by PC49 will, however, benefit the Mangaiti Stream's water quality, provide better cover for wildlife – and enhance biodiversity generally.¹¹¹ Garden plantings that will establish around dwellings will also likely enhance biodiversity in the area.¹¹²

Mr Bevers makes recommendations regarding culvert pipes in the Mangaiti Stream which, combined with appropriate sediment controls at the time of installation, will ensure that potential effects on instream ecology are avoided and mitigated.¹¹³

He concurs with the Officer's views in respect of ecological effects.¹¹⁴

The Open Space area included in PC49's structure plan and the planting and protection thereof is a key mechanism to enhance the ecology of the area – and PC49 (if implemented) will generally provide ecological benefits and opportunities (that do not currently exist).¹¹⁵ As Ms. Hooper notes, such positive ecological effects will provide benefits to the community and future generations.¹¹⁶

¹¹⁰ EIC Cees Bevers, para 5.2

¹¹¹ EIC Cees Bevers, para 5.2, 6.4-6.5

¹¹² EIC Cees Bevers, para 6.6

¹¹³ EIC Cees Bevers, para 6.8

¹¹⁴ EIC Cees Bevers, para 7.1; Officers Report, paras 11.143-11.152

¹¹⁵ EIC Cees Bevers, paras 8.1, 9.1

(f) *Mike Matangi, Engineer, Civil Infrastructure Consulting.*

Mr Matangi's expert evidence covers stormwater management, water supply, wastewater/sewer disposal, compliance with Council's infrastructure standards and responses to submissions and the Cultural Impact Assessment ("CIA").

As Ms Hooper notes, his evidence confirms that the development can proceed with minimal impacts on infrastructure.¹¹⁷

While a hydraulically neutral stormwater system can be provided for the development, options for stormwater management are limited for the reasons provided by Mr Matangi¹¹⁸.

Stormwater quality can be addressed by low impact design (such as rain gardens) – and online (within riverbed) stormwater management solutions are not typically problematic in terms of water quality in Mr Matangi's experience.¹¹⁹

Ms Hooper's evidence records that the Applicant is committed to including provisions relating to low impact stormwater systems (including in response to the CIA), and she has included proposed provisions to reflect that; and to enable a mechanism for review of engineering plans at the time of

¹¹⁶ EIC Kathryn Hooper, para 9.9

¹¹⁷ EIC Kathryn Hooper, para 9.11

¹¹⁸ EIC Mike Matangi, paras 7, 13-23

¹¹⁹ EIC Mike Matangi, paras 42, 43

subdivision¹²⁰. Stormwater matters can be fully attended to at the design stage of any proposed subdivision.

Culverts and bunds within waterways are common practice throughout Taranaki¹²¹; and in my submission are common practice throughout the country.

Mr Matangi's view is that the presence of a bund and culvert within the Mangaiti Stream would not have adverse effects on the waterway, fish life or surrounding environment¹²²; Mr Bevers and Ms Hooper's evidence supports his view.¹²³

Hydraulic water modelling shows that water can be provided to the development to comply with relevant Council standards, including minimum firefighting flows.¹²⁴

Wastewater calculations confirm that the gravity system has adequate capacity to accommodate sewage from the new development (and will comply with relevant Council standards).¹²⁵

All infrastructure within the proposed development can satisfy Council's requirements and relevant standards; and there is the potential for positive effects on the Norman Catchment if required.¹²⁶

¹²⁰ EIC Kathryn Hooper, paras 16.9, 16.10

¹²¹ EIC Mike Matangi, para 48

¹²² Ibid

¹²³ EIC Cees Bevers, para 6.8; EIC Kathryn Hooper, paras 9.9, 16.9

¹²⁴ EIC Mike Matangi, paras 7, 24-26, 30, 31

¹²⁵ EIC Mike Matangi, paras 7, 27-29, 30, 31

(g) *Mark Georgeson, Traffic Engineer, Stantec New Zealand.*

Having considered the transportation related needs and effects of the proposal, Mr Georgeson's evidence confirms that a practical and safe transport outcome can be achieved for all non-vehicle and vehicle users; the development enabled by PC49 can be established appropriately and safely; and, can be achieved in a manner that will be satisfactory to the Council and to Waka Kotahi NZ Transport Agency ("WKNZTA").¹²⁷

Purposeful, good quality pedestrian and cycle connections are included in PC49.¹²⁸ Notably also, in my submission, established bus stops are located near the site - and bus services operate weekly from Monday-Friday - including a commuter service (Waitara/Bell Block/New Plymouth).¹²⁹

Mr Georgeson notes that there are other good outcomes that can be achieved by PC49 (such as a revised speed limit), including the ability to integrate with the surrounding environment.¹³⁰

The new proposed footpath along the length of the sites frontage to Raleigh Street will provide safe and convenient connectivity for pedestrians between the site and the urban boundary of Waitara to the North – which will accommodate both new demand, as well as providing a marked improvement to safety and amenity for those pedestrians currently using the berm of that part of Raleigh Street.¹³¹

¹²⁶ EIC Mike Matangi, paras 7, 30, 31, 51, 52; EIC Kathryn Hooper, para 9.11

¹²⁷ EIC Mark Georgeson, paras 5.3, 8.1

¹²⁸ EIC Mark Georgeson, para 5.3

¹²⁹ See: The Application, Appendix F, Section 3.1, page 4, section 9.5, page 12

¹³⁰ EIC Mark Georgeson, para 6.6

¹³¹ EIC Mark Georgeson, para 6.24

In terms of the WKNZTA's safety concerns about the existing Raleigh Street/SH3 intersection – Mr Georgeson agrees with Ms Hooper that traffic activity of subdivision staging could be adequately controlled through the proposed plan amendments, subject to demonstration that associated traffic additions can be adequately and safely accommodated on the network prior to that roundabout being constructed.

He concurs with Ms Hooper that the proposal will not result in traffic effects that are unacceptable, and which are unable to be managed via the proposed planning framework. Both are also of the view that much of the detail is more appropriately provided at the time of subdivision (as is also identified in the Officer's Report).¹³²

Overall, Mr Georgeson finds that the proposed residential land use contemplated by PC49 can be established to best practice standards in the context of his expertise; aligns well with the relevant objectives and policies of the District Plan; would not compromise the function, safety or capacity of the surrounding road network; and will deliver an appropriate transportation outcome for all modes and users.¹³³

In my submission, the long-term plans for the Raleigh Street/SH3 intersection, including a possible new roundabout at Tate Road, are not matters within the ambit of PC49.

¹³² EIC Mark Georgeson, paras 5.24, 6.27, 6.28, 7.6, 7.7, 7.9, 7.18, 8.1; EIC Kathryn Hooper, paras 9.3, 16.11; Officers Report, paras 11.97-11.100

¹³³ EIC Mark Georgeson, paras 5.3-8.1; the Application, Appendix F, Section 11, pages 16-19, section 12, page 19

The decision of the Environment Court in Landco Mt Wellington Limited v Auckland City Council¹³⁴ is relevant. That decision concerned a private plan change to enable medium/high density residential development on the site of the former Mt Wellington quarry. The proposal provided some 2,400 housing units accommodating approximately 6,000 people. One issue put before the Court concerned effects on the wider traffic network and the proposed Auckland to Manukau Eastern Transport Initiative. In considering the wider traffic network, His Honour Judge Thompson stated¹³⁵:

"We are certainly not sanguine about the traffic situation, but then nobody is. The best that can be said about it is that the expert evidence is that the traffic effects within and immediately surrounding Stonefields can be managed effectively. It is for the Council and the other roading and transport organisations to manage the wider network, and public transport, to cope with the present loads and future growth, wherever in the region that might occur."

The evidence confirms that any traffic effects arising from PC49 and increased traffic can otherwise be managed effectively. Long term plans for the SH3 part of the roading network are matters for the Council (and WKNZTA).

(h) *Richard Bain, Landscape Architect, Bluemarble.*

Mr Bain prepared the Landscape and Visual Impact Assessment, September 2018 ("LVIA") for the proposal¹³⁶ and his further evidence covers site context, character and amenity, effects and proposed mitigation and issues raised in submissions and the Officer's Report.

¹³⁴ A035/2007 NZEnvC, at para [18]

¹³⁵ Ibid

¹³⁶ the Application, Appendix H; EIC Richard Bain, para 4, Annexure A

The LVIA, Structure Plan and Landscape Plan provide a holistic framework to ameliorate potential adverse effects (many of which go above and beyond District Plan permitted activity threshold requirements) as follows¹³⁷:

- Legible and contextually appropriate urban form and mixed lot sizes to avoid monotony, provide for flexible living and integrate well with the surrounding environment;
- Limited road access maintaining legible road layout, and reduced number of property access points (Johnston Street);
- Walking and cycle pathways to create connectivity within the site and with the surrounding environment (including footpath proposed along Raleigh Street);
- Preservation and enhancement of the Mangaiti Stream (and gully) margins as Open Space – providing amenity and potential pathway connections;
- Low height (post and rail) fencing to maintain rural character and provide the optimal rural interface;
- Direct access to Raleigh Street for optimal integration (with the surrounding environment), and mitigation measures to ensure attractive roadsides;
- Maximum number of habitable buildings (one per site);
- Maximum permitted building heights (6 meters);
- Colour and reflectivity controls for roofs and claddings (to blend with rural context);
- Front yard requirements;

¹³⁷ EIC Richard Bain, paras 14, 20, 21

- Absence of lighting and footpaths on Johnston Street and potential finishing treatment for the footpath on Raleigh Street;
- Extensive vegetation planting to enhance the environment, biodiversity and amenity;
- Appropriate cut and fill batter control;
- Walkways within the planted riparian area and Mangaiti Stream margins;
- No amenity planting restrictions (type or height) within the proposed lots;
- Design and landscaping in consideration of perceived potential reverse sensitivity issues¹³⁸.

Responding to the Officer's Report, the recommendations therein have been largely accepted and addressed in Mr Bain's and Ms. Hooper's evidence¹³⁹.

Taking into account the sites proximity to Waitara – the FUD overlay – and the other reasons set out in his evidence – Mr Bain is of the view that PC49 is contextually appropriate and will integrate well with the surrounding environment – while maintaining the essential character of the urban/rural landscape – and preserving and enhancing the gully and Mangaiti Stream. The proposal can be absorbed into the landscape with acceptable character and amenity effects in the circumstances of this case.¹⁴⁰ Ms. Hooper concurs with Mr Bain's views¹⁴¹, and Mr Wesley considers that the impact on visual amenity and landscape will be effectively managed.¹⁴²

¹³⁸ See also EIC Kathryn Hooper, para 9.5

¹³⁹ EIC Richard Bain, paras 23-32; EIC Kathryn Hooper, paras 9.4, 9.6, 16.12, 16.13; Officer's Report, paras 11.106-11.138

¹⁴⁰ EIC Richard Bain, paras 15, 33-36; LVIA, section 9, page 26

¹⁴¹ EIC Kathryn Hooper, para 9.4

¹⁴² Officers Report, para 11.117

Mr. Bain also considers that PC49 is consistent with, and appropriate in the context of, the relevant objectives and policies of the RPS and District Plan¹⁴³. There is significant benefit in using the site for urban development (as contemplated by the FUD) in his view¹⁴⁴; Ms. Hooper concurs¹⁴⁵.

- (i) *Kathryn Hooper, Independent RMA Planning Consultant, Director, Landpro Limited.*

Since late 2017 Ms. Hooper has been involved in preparing the PC49 Application/Request; she also prepared the further information requests responses (with assistance from other experts where required)¹⁴⁶.

Her comprehensive evidence, inter alia, summarises PC49 (including the notification, submissions and consultation process) and covers effects and proposed mitigation, statutory assessment and relevant planning framework, responses to submissions and the Officer's Report and the proposed policies and rules (to be inserted into the District Plan)¹⁴⁷.

In considering and assessing effects (and proposed mitigation) in summary, in my submission, she concludes as follows:

- PC49 will predominately result in positive economic and social effects (and positive effects generally for people, communities and future generations),¹⁴⁸

¹⁴³ LVIA, section 4, pages 7-14

¹⁴⁴ EIC Richard Bain, para 34

¹⁴⁵ EIC Kathryn Hooper, paras 5.2, 9.4, 18.1

¹⁴⁶ EIC Kathryn Hooper, paras 2.1, 2.2

¹⁴⁷ EIC Kathryn Hooper, paras 4.4, 5.1, 7.1-7.7

¹⁴⁸ EIC Kathryn Hooper, paras 5.2, 9.1, 9.2

- Traffic and transport effects will not be unacceptable, and are able to be managed via the proposed planning framework;¹⁴⁹
- Landscape change will be permanent and is unavoidable – but will be effectively managed and is in context with the future urban growth envisaged for this property since 2013 (by the FUD);¹⁵⁰
- Reverse sensitivity effects (which arguably in my submission do not strictly arise in this case at all) will be appropriately managed in the circumstances of this case¹⁵¹. In this context, I note that in Colonial Vineyard¹⁵² the Court found that registration of “no-complaints” covenants was a desirable form of mitigation with sufficient benefits – and since they were volunteered by the applicant, the Court considered that they should be accepted (and did accept them). As you are aware (from Ms Hooper’s evidence)¹⁵³, the Applicant has also volunteered such covenants in this case;
- PC49’s provision of Open Space is a critical component which will protect and enhance the Mangaiti Stream - and provide for public access, active transport modes and recreational opportunities. There are also future potential opportunities to link with the wider surrounding environment - for example, Kinkade Park and the Coastal Walkway extension;¹⁵⁴
- Soil contamination issues are not a preclusion to future residential development (and use);¹⁵⁵

¹⁴⁹ EIC Kathryn Hooper, para 9.3

¹⁵⁰ EIC Kathryn Hooper, para 9.4

¹⁵¹ EIC Kathryn Hooper, para 9.5

¹⁵² Supra, at paras [147]-[149], [168]

¹⁵³ EIC Kathryn Hooper, para 9.5

¹⁵⁴ EIC Kathryn Hooper, para 9.6

¹⁵⁵ EIC Kathryn Hooper, para 9.7

- Revised proposed provisions ensure there is a framework in place to appropriately address cultural effects – and the proposal will have many positive effects in that context;¹⁵⁶
- There is an opportunity to improve the biodiversity of the stream area (and environment generally); low impact stormwater design will ensure water quality is maintained and enhanced; ecological effects will be positive and will provide benefits to the community and future generations;¹⁵⁷
- Effects on archeological features and historic heritage can be avoided, or appropriately managed and mitigated (if required);¹⁵⁸
- The development can proceed with minimal impact on infrastructure;¹⁵⁹- in this regard I note that Powerco's (neutral) submission records that electricity and gas infrastructure can be provided to the development from existing substations and gas pipes respectively (with approximately 0.9km of overhead (power) lines requiring upgrade)¹⁶⁰;
- The scale and the density of the proposal is appropriate – and will offer people diversity of lot sizes and a range of housing types and options – which will assist to meet current (and future) demands – at more affordable prices.¹⁶¹

¹⁵⁶ EIC Kathryn Hooper, para 9.8

¹⁵⁷ EIC Kathryn Hooper, para 9.9

¹⁵⁸ EIC Kathryn Hooper, para 9.10

¹⁵⁹ EIC Kathryn Hooper, para 9.11

¹⁶⁰ Submission # 12, Simon Roche, Powerco Limited, 22 July 2019; at paras 2.1-2.8

¹⁶¹ EIC Kathryn Hooper, para 9.10

Ms. Hooper's evidence provides a detailed statutory assessment and planning framework analysis in assessing the appropriateness of PC49 – much of which is detailed in the Application and (as she notes) has generally been accepted in the Officer's Report.¹⁶²

Significantly in this case, in my submission, the subject site is wholly encompassed by a FUD overlay pursuant to Plan Change 15 (implemented in 2013). That Plan Change was informed by the NPDC's Final Framework for Growth (FFG) March 2008¹⁶³; but, *"has its origins in the Land Supply Review (LSR) which commenced in 2006 in response to recent economic and household growth"*¹⁶⁴.

In my submission that *"response to recent economic and household growth"*¹⁶⁵ was planned and provided for under the abovementioned 2006 Land Supply Review and March 2008 Final Framework for Growth - which identified all of my client's land involved in this proceeding as one of only a few significant areas in the entire New Plymouth District for future urban growth. That was subsequently reinforced by the Council initiated Plan Change 15, developed in response.

As Ms. Hooper notes - Plan Change 15 was tested against Part 2 and section 32 RMA - and all of my client's land has now been subject to the FUD overlay for seven years - and was one of the reasons he bought the land four years ago.¹⁶⁶

¹⁶² EIC Kathryn Hooper, para 10.1-12.3; and Sections 4-7, pages 33-62 of the Application

¹⁶³ EIC Kathryn Hooper, Annexure D, page 1, section 1, para 3

¹⁶⁴ EIC Kathryn Hooper, Annexure D, page 3, section 3, para 1

¹⁶⁵ Ibid

¹⁶⁶ EIC Kathryn Hooper, paras 10.3-10.11; EIC Matt Hareb, paras 1.3, 1.16

It is submitted that it is a significant factor in this case (to be considered and weighed relative to the Application and your decision thereon) that both the District Plan and Plan Change 15 were tested against Part 2 and section 32 of the RMA (and went through a rigorous, robust public process); however the PDP has not – and little weight can be given to it due to its relatively early stage in the process - but also, moreover, for those reasons.

As Ms. Hooper notes, neither have the District Plan or PDP given consideration or effect to the NPS-UD – whereas PC49 has and will.¹⁶⁷

Section 4.2 of the Application¹⁶⁸ thoroughly canvasses the relevant RPS provisions in this case, and finds that PC49 gives effect to, and is consistent with, the relevant objectives and policies. Mr Wesley generally concurs with her analysis.¹⁶⁹

After the Application was lodged¹⁷⁰, Te Atiawa released its draft Iwi Environment Management Plan – Tai Whenua, Tai Tangata, Tai Ao (“IEMP”)¹⁷¹.

Ms. Hooper (and other witnesses for the Applicant where required) has responded in depth to the IEMP¹⁷², and the subsequent CIA, and introduced new provisions (and amendments to provisions and the Structure Plan) that take into account those documents - and Iwi and Hapu’s views therein - to provide a framework for on-going involvement in

¹⁶⁷ EIC Kathryn Hooper, para 10.22

¹⁶⁸ At pages 35-42

¹⁶⁹ EIC Kathryn Hooper, para 11.1; Officers Report, para 10.22

¹⁷⁰ See discussion at section 8, page 62 of the Application

¹⁷¹ EIC Kathryn Hooper, paras 12.1-12.3

¹⁷² Including in the further information response submitted by the Applicant on 24 February 2020

relation to future development¹⁷³ - which, if implemented, it is submitted, will actually be positive in the context of these issues.

Part 2 RMA is thoroughly canvassed in Ms. Hoopers evidence and, as she notes, ss. 6(a), (d), (e) and (f) – 7(a), (b), (c), (f) and (g) – and 8 – are relevant in the circumstances of this case¹⁷⁴; and, in my submission, clearly reinforce the approval of PC49.

It is respectfully submitted that PC49 recognises and provides for the abovementioned s.6 matters of national importance – has particular regard to the abovementioned s.7 matters – and respects and takes into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi under s.8 – for all the reasons she provides.

As noted earlier in these submissions, PC49 will assist the Council to meet its obligations under, and give effect to, the NPS-UD, as observed by Ms. Hooper¹⁷⁵ and Mr Wesley¹⁷⁶.

The National Policy Statement – Freshwater Management (“NPS-FM”) is also relevant in this case due to the Mangaiti Stream and its margins. Ms. Hooper concurs with Mr Wesley’s assessment in respect of same.¹⁷⁷

Noting that the Mangaiti Stream is currently degraded – PC49 will assist to restore balance between water, the environment and the community and, in Ms. Hooper’s view (and my

¹⁷³ EIC Kathryn Hooper, paras 12.1-12.3, 15.1-15.10

¹⁷⁴ EIC Kathryn Hooper, paras 13.1-13.12

¹⁷⁵ EIC Kathryn Hooper, para 13.14

¹⁷⁶ Officer’s Report, para 10.12

¹⁷⁷ EIC Kathryn Hooper, para 14.2; Officers Report, paras 10.13-10.21

submission), is a true example of giving effect to Te Mana o te Wai¹⁷⁸.

Ms. Hooper has provided an in-depth response to submissions¹⁷⁹; and, to the Officer's Report – much of which she concurs with¹⁸⁰. Specific issues which required further response have been dealt with throughout the Applicant's evidence.¹⁸¹

A revised set of policies and rules with an explanation in respect of same is included¹⁸². Overall, as Ms Hooper notes, the policies and rules are responsive to the submissions, CIA and Officer's Report – enabling critical issues of concern to be appropriately addressed within the planning framework in the future – thereby ensuring that PC49 delivers the potential positive cultural, social, ecological and economic effects – without significant adverse impact on the environment.¹⁸³

For all the compelling reasons in her evidence, Ms. Hooper confidently concludes that PC49 is the most appropriate way to achieve the relevant objectives and policies of the District Plan – will give effect to the RPS, NPS-UD and NPS-FM – appropriately takes into account the IEMP – and is consistent with, and is the most appropriate way to achieve, the purpose of the RMA; PC49 is the best option under Section 32 RMA.¹⁸⁴

¹⁷⁸ EIC Kathryn Hooper, paras 14.3, 14.4

¹⁷⁹ EIC Kathryn Hooper, paras 15.1-15.14

¹⁸⁰ EIC Kathryn Hooper, paras 16.1-16.17

¹⁸¹ EIC Kathryn Hooper, paras 16.1-16.17; and see the Applicants evidence generally

¹⁸² EIC Kathryn Hooper, para 17.1, Attachment B; and Supplementary Evidence Kathryn Hooper, Attachment B

¹⁸³ EIC Kathryn Hooper, paras 17.2-17.27

¹⁸⁴ EIC Kathryn Hooper, paras 5.2, 10.1, 10.3-10.11, 11.1, 13.12, 13.14, 14.2-14.4, 15.10, 17.27, 18.2

In my submission, Ms Hooper's analysis is correct – particularly in light of the background and planning context evidence she has provided – and taking into account the community vision for this area of Waitara reinforced by the Plan Change 15 FUD overlay – and the relevant statutory considerations in this case.

Plan Change 49 – Assessment by reference to Colonial Vineyard

Does PC49 assist the territorial authority to carry out its functions in order to achieve the purpose of the RMA?

24. PC49 will provide much needed greenfield residential land for Waitara and New Plymouth and assist economic growth. Ms. Hooper's evidence records that PC49 is consistent with the FUD and studies leading to same, which specifically identified the site as a potential area for urban expansion.
25. The evidence shows that PC49 will control the effects of the use and development of land. It will also achieve integrated management (of the effects of the use, development, or protection of land and associated natural and physical resources of the district) - by enabling an activity that is complementary to existing residential uses - but does not adversely affect nearby rural uses (by controlling any actual or potential effects of the use, development or protection of land).
26. As such, it assists the territorial authority to carry out its functions to achieve the purpose of the RMA - namely the promotion of sustainable management of natural and physical resources¹⁸⁵.

Is PC49 in accordance with the provisions of Part 2 RMA?

27. Ms. Hooper's evidence concludes that PC49 is consistent with the matters relevant under ss. 6, 7 and 8. Sections 6, 7 and 8 inform the RMA's purpose under s. 5.
28. The evidence establishes that PC49 will enable people and communities to provide for their social, cultural and economic wellbeing by providing affordable, diverse, quality new residential sections that will benefit people and communities (and business etc.) within Waitara (and New Plymouth district), and future generations.
29. The retention of open space around the Mangaiti stream will protect it from inappropriate use and development¹⁸⁶ - and public access to the stream is also provided¹⁸⁷ - also recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands and water¹⁸⁸.
30. It is submitted that the proposed layout of private residential lots and open space area will be an efficient use and development of the land¹⁸⁹ (being a finite resource)¹⁹⁰, and will maintain and enhance amenity values¹⁹¹ and the quality of the environment¹⁹².
31. I note that amenity values can be assessed by the Commissioners (in terms of assessing effects on the environment) - who must apply the law objectively in performing

¹⁸⁵ Section 5 RMA

¹⁸⁶ Section 6(a) RMA

¹⁸⁷ Section 6(d) RMA

¹⁸⁸ Sections 6(e), 7(a) and 8 RMA

¹⁸⁹ Section 7(b) RMA

¹⁹⁰ Section 7(g) RMA

¹⁹¹ Section 7(c) RMA

¹⁹² Section 7(f) RMA

these functions, as held by the High Court in Gisborne District Council v Eldamos Investments Ltd¹⁹³.

32. The evidence for my client is that, viewed objectively, the proposal can be absorbed into the landscape with acceptable amenity (and character) effects on the environment¹⁹⁴.
33. PC49 is a sustainable use of the land (and stream) resource. Any adverse effects can be avoided, remedied, or mitigated. In my submission, PC49 meets the provisions of Part 2 RMA - and will promote the sustainable management of natural and physical resources over which it has control.

Does PC49 give effect to any relevant (higher order) national policy statements (“NPS”) and the Regional Policy Statement for Taranaki?

34. PC49 will give effect to the NPS-UD, NPS-FM and the RPS as previously noted.

Does PC49 have regard to any management plans and strategies prepared under other Acts?

35. PC49 appropriately identifies and evaluates other relevant planning documents in this context - which assist to inform PC49 as set out in the Application¹⁹⁵ - and summarised in the Officer's Report¹⁹⁶.

¹⁹³HC GIS CIV-2005-485-001241 [26 October 2005], Harrison J, at paragraph [42]

¹⁹⁴ EIC Richard Bain, paras 33-36; EIC Kathryn Hooper, paras 9.5, 9.6, 13.8, 13.9, 17.27

¹⁹⁵ Application section 7, pages 53-62

¹⁹⁶ Officer's Report, paras 10.40-10.41

Does PC49 take into account any relevant planning document recognised by an iwi authority?

36. It is respectfully submitted that PC49 appropriately takes into account, and factors in, Te Atiawa's IEMP - as canvassed in Mr Hooper's evidence, and these submissions.

Is PC 49 the most appropriate way to achieve the objectives of the District Plan - Does PC49 achieve the objectives and policies of the District Plan?

37. PC49 does not add or amend any objectives. Therefore, it must be assessed by reference to the existing objectives that are relevant.
38. As noted above, Ms. Hooper and Mr Wesley conclude that PC49 is consistent with the relevant objectives and policies of the District Plan.
39. PC49 also adds policies, which support the proposed residential (and open space) use of the site. The evidence establishes that those additions are appropriate.
40. Weighing all the matters outlined in this case, on the totality of the evidence, it is submitted that PC49 is the most appropriate way to achieve / method of achieving the objectives of the District Plan – and that it will achieve integrated management of the resources of Waitara; and, accordingly, PC49 achieves the objectives and policies of the District Plan.

Does PC49 meet the requirements of s.32 RMA - including whether the rules are the most appropriate for achieving the objectives and policies of the plan?

41. In my submission, on the totality of the evidence, PC49 is the best option under s. 32 RMA – and meets the requirements of s.32 RMA.
42. Ms Hooper carried out a detailed s. 32 analysis and evaluation of likely benefits and costs of various options in the Application¹⁹⁷. She concluded that the present proposal provides for a more efficient (and effective) use of the land - than maintaining it as a rural farm (status quo) - or subdividing it into smaller units (in terms of the Rural Environment Area with FUD overlay).
43. PC49 is both necessary and the most appropriate (or suitable) option having regard to its efficiency and effectiveness relative to other means - in that it will provide certainty - maintain environmental standards - and ensure a long-term resource management framework for use of the land after the development is completed.
44. The proposed rules effectively and efficiently implement the policies in PC49 - and are the most appropriate for achieving the objectives and policies of the plan.
45. The control applied by the proposed rules will avoid, remedy, and mitigate any adverse effects on the environment of the future activities that will be allowed - and development controls will further restrict possible adverse effects.

Submissions and Conclusions

46. Each case must be considered and determined on its merits in light of the particular facts and circumstances.
47. In my submission the evidence for the Applicant has established and should lead you to conclude:
- that Waitara is a town with infrastructure and services that can readily accommodate the proposed development at no cost to the community;
 - the subject site is a logical extension;
 - there is presently demand for greenfield sections in the area which is not catered for;
 - PC49 will encourage new urban development which is imaginative in terms of urban design (in terms of range of section sizes etc) – and affordable housing which integrates different activities, such as the network of roads and pathways linking residences and providing for recreational biking and walking;
 - Mr Foy's (and Mr Hareb's and Ms Hooper's) evidence is that development of the PC49 land will be beneficial for the district - particularly in terms of its short to medium term provision of housing for people and communities; it will provide sufficient land for approximately 110 residential houses and a diverse range of residential opportunities – opportunities that are not currently (on the evidence before you) available, or for sale, in any quantity at Waitara;

¹⁹⁷ Application, section 11, pages 81-96

- the lead time from start of the subdivision to properties being placed on the market can be approximately one-two years – and therefore the development of this land and new sections could be readily available within a relatively short time;
- the inclusion of this land within the residential area, as opposed to retaining it for the foreseeable needs of future generations for food production, is totally inconsequential on the facts and circumstances of this case (due to the size of the applicant's land compared with that of the rural environment, and due to the FUD overlay);
- local residents particularly will see a change - but it is respectfully submitted that future generations will not find that change perceptible once buildings have been constructed and plantings established;
- PC49 will provide for both current as well as future generations;
- rezoning the site as a residential (and open space) zone is more likely than not to give considerably more benefits to society than retaining it as rural;
- the District Plan contemplates such rezoning – as per the FUD overlay (which PC49 generally carries out) – and PC49 is designed to fit within the District Plan;
- PC49 maintains a distinction between urban and rural areas through the use of design controls etc in the proposed rules;
- PC49 will create a sense of neighbourhood community and wellbeing by providing for public access to Mangaiti Stream and its margins;
- pending the hearing of submissions, decisions and appeals to the Environment Court in respect of the PDP

(which should be given little weight if taken into account)
 - the desires of those who wish to live in Waitara should not be thwarted;

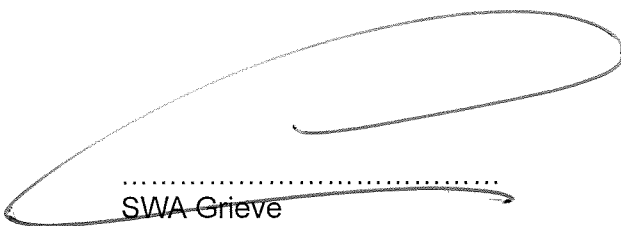
- the applicant is entitled, in terms of the RMA, to a decision.

48. The (majority of) people and community of Waitara and its surrounds that have submitted in the process generally share the applicant's vision that changing the land from rural to residential (and open space) zoning – to pave the way for urbanization of that land – will clearly result in positive impacts on the people and community of Waitara, and its surrounding environment.
49. The content of the District Plan should be guided by the purpose, principles, and requirements of the RMA - not the Council's view of what it thinks is an optimal use of the site.
50. The proposal will respect and enhance the surrounding environment in my submission.
51. Amenity values is a central issue which overlaps with the quality of the environment¹⁹⁸.
52. It is submitted that the applicant has sufficiently addressed the possible adverse effects, and ways to avoid, remedy or mitigate them, to the point where those effects are not an impediment to the granting/approving of the proposal.
53. The proposal will positively affect cultural, social, ecological and economic values, future generations and amenities; and

¹⁹⁸ See definitions of "Amenity values" and the "environment" in s. 2 RMA

respects the character, appearance and amenity of the relevant environment.

54. Similarly, the proposal will achieve integrated management of the resources of Waitara.
55. The adverse effects are not outweighed by the positive effects in the circumstances of this case; and can be adequately and appropriately mitigated (remedied or avoided)¹⁹⁹, thereby fulfilling s. 5(2)(c) RMA.
56. Based on the totality of the evidence in this case, the proposal is clearly not contrary to, and is consistent with, and will give effect to (recognise and provide for, have particular regard to or take into account) the provisions of the relevant statutory instruments to be considered.
57. It is respectfully submitted that the purpose of the RMA and policy statements and superior documents are best met by accepting/granting PC49 in the circumstances of this case – and that there is no good resource management reason to limit the supply of residentially zoned land (and open space) by refusing PC49 in this case.



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SWA Grieve
Counsel for the Applicant

¹⁹⁹ And will be enabled by the plan change provisions – and can be secured through future applications for resource/subdivision consent