

IN THE MATTER

of the Resource Management Act
1991 ("**the RMA**")

AND

IN THE MATTER

of a submission pursuant to Clause 6
of Schedule 1, of the RMA in respect
of the **Proposed Kaipara District
Plan**

SUBMISSION ON THE PROPOSED KAIPARA DISTRICT PLAN

To: District Plan Team
Kaipara District Council
Email: districtplanreview@kaipara.govt.nz

1. Details of entity making submission

Khans Developments and Investments Limited ('the submitter')
C/- Reyburn and Bryant
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WHANGAREI
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2. General Statement

- 2.1 Khans Developments and Investments Limited cannot gain an advantage in trade competition through this submission. It is directly affected by the plan change. The effects are not related to trade competition.

3. Background

- 3.1 The submitter owns 82.3146ha of land at 1016 State Highway 1 (SH1), Topuni located on the boundary between the Kaipara and Auckland Districts. The site shown in **Figure 1** below.

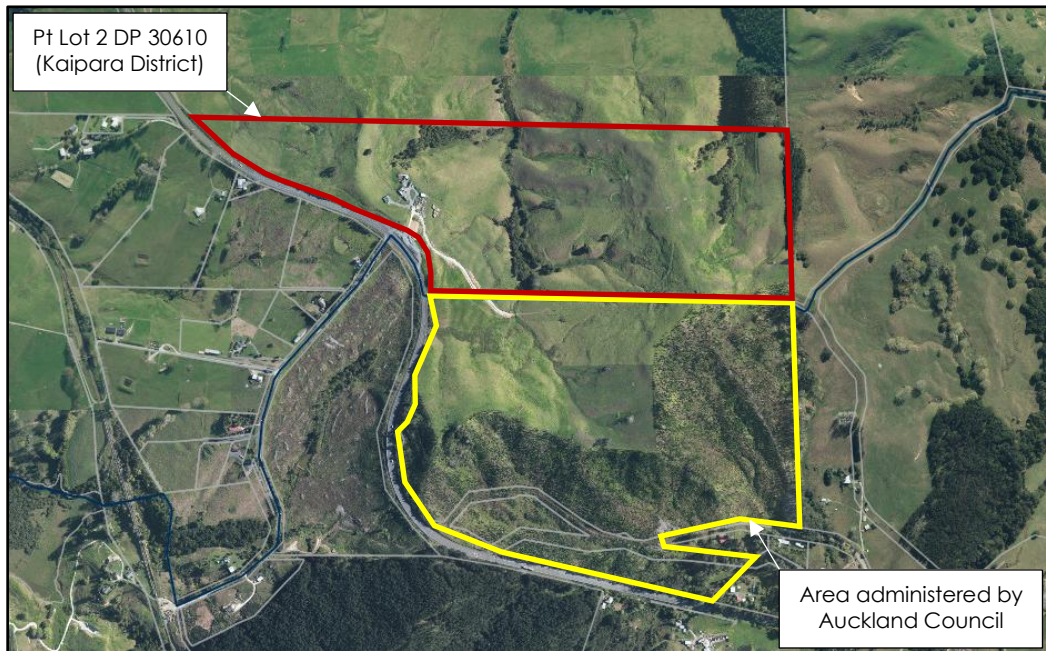


Figure 1: Submitter land.

- 3.2 The title reference of the site is NA11D/1207. Pt Lot 2 DP 30610 comprising 36.5360ha is in the Kaipara District. The other allotments¹ comprising 45.7786ha are in the area administered by Auckland Council.
- 3.3 The site has frontage to SH1. Pt Lot 2 DP 30610 is accessed from SH1 via an existing metalled vehicle crossing and an informal pull-off bay opposite the intersection of SH1 with Ross Road (see **Figure 2** below).



Figure 2: Existing vehicle crossing and informal pull-off bay.

¹ Section 6 Blk VIII Otamatea SD, Part Sections 3 – 5 and 7 – 8 Blk VIII Otamatea SD, Pt Otioro and Te Topuni A2A

- 3.4 Pt Lot 2 DP 30610 is currently zoned 'Rural' in the Operative Kaipara District Plan.
- 3.5 The Proposed District Plan proposes to zone Pt Lot 2 DP 30610 'General Rural'. There are also River Flood Hazard Zones 1, 2 and 3 in the northern part of Pt Lot 2 DP 30610 following an unnamed tributary of the Topuni River, an arm of the Kaipara Harbour. Part of Pt Lot 2 DP 30610 adjoining SH1 is subject to a State Highway Noise Control Boundary.
- 3.6 The proposed new zones and overlay areas are shown in **Figure 3** below.

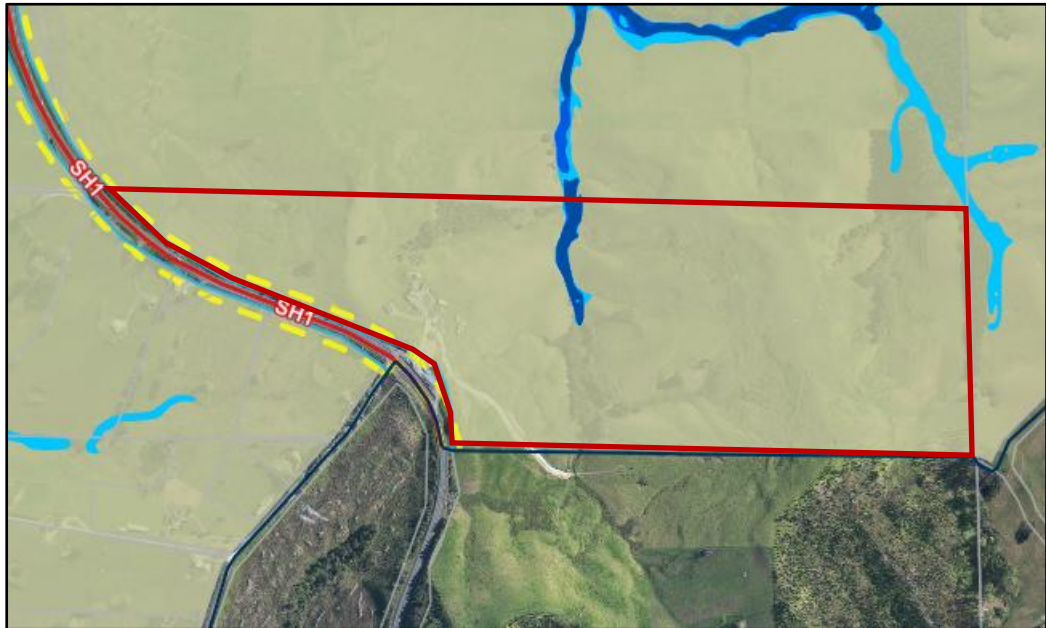


Figure 3: Proposed District Plan Zones (the General Rural Zone is in beige-green, Flood Hazard Areas shown in blue, the State Highway Noise Control Boundary is in a yellow dashed line).).

4. The specific provisions of the Plan Change that this submission relates to are:

- 4.1 The subdivision and land use provisions, and the related definitions.

5. The subdivision provisions and related definitions

General statement

- 5.1 At a general level, the submitter supports the approach taken for subdivision in the General Rural Zone (GRUZ). However, there are issues with the rules and related terminologies that will frustrate the enabling intent of the provisions. This part of the submission focuses on these matters with the overall intention to remove ambiguities and make the plan more user friendly.

Reference to 'allotment' throughout the General Rural Zone subdivision rules

5.2 The various subdivision rules refer to both minimum 'allotment' area and 'net site area', sometimes in the same provision. However, these terms have fundamentally different meanings, as confirmed in the definitions section of the PKDP.²

5.3 By way of example Rule SUB-S1 entitled 'Minimum allotment sizes' specifies the following for the GRUZ.

8. Allotments must have a minimum net site area of 12ha.

5.4 While the intent is understood, the conflating of terminology is confusing. The recently completed amendments to the Whangarei District Plan recognise this fact with the rules referring to minimum 'site' areas, not 'allotments' (see examples below).

SUB-R16 Subdivision in the Rural Production Zone	
1. Activity Status: Controlled	
Where:	
a. Every site has a minimum net site area of 20ha.	
b. Every site can accommodate an identified building area of at least 100m ² on which a residential unit can be built so that there is compliance as a permitted activity with the relevant rules in the District Plan.	

² Definition of allotment in the Proposed Kaipara District Plan (same as s218 RMA):

2. The term allotment means -
 - a. any parcel of land under the Land Transfer Act 2017 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not—
 - i. the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
 - ii. a subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or
 - b. any parcel of land or building or part of a building that is shown or identified separately—
 - i. on a survey plan; or
 - ii. on a licence within the meaning of subpart 6 of Part 3 of the Land Transfer Act 2017; or
 - c. any unit on a unit plan; or
 - d. any parcel of land not subject to the Land Transfer Act 2017.
3. For the purposes of subsection (2), an allotment that is—
 - a. shall be deemed to be a continuous area of land notwithstanding that part of it is physically separated from any other part by a road or in any other manner whatsoever, unless the division of the allotment into such parts has been allowed by a subdivision consent granted under this Act or by a subdivisional approval under any former enactment relating to the subdivision of land.
4. For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.

Definition of net site area in the Proposed Kaipara District Plan:

means the total area of the site, but excludes:

- a. any part of the site that provides legal access to another site;
 - b. any part of a rear site that provides legal access to that site;
 - c. any part of the site used for access to the site;
- any part of the site subject to a designation that may be taken or acquired under the Public Works Act 1981.

Definition of site in the Proposed Kaipara District Plan:

means:

- a. an area of land comprised in a single record of title as per Land Transfer Act 2017; or
- b. an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or
- c. the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title as per Land Transfer Act 2017 could be issued without further consent of the Council; or
- d. except that in relation to each of sub clauses a. to c., in the case of land subdivided under the Unit Title Act 1972 or 2010 or a cross lease system, a site is the whole of the land subject to the unit development or cross lease.

<p>SUB-R15 Boundary Relocation Subdivision in the Rural Production Zone</p> <p>Activity Status: Restricted Discretionary</p> <p>Where:</p> <ol style="list-style-type: none"> 1. All sites: <ol style="list-style-type: none"> a. Are able to accommodate a minimum 100m² building area on which a residential unit can be built so that there is compliance as a permitted activity with all zone, overlay, and district-wide rules. b. Have a minimum net site area of at least 2,000m².

- 5.5 The reference to ‘allotments’ in relation to other subdivision rules in the Proposed District Plan has flow on implications for those rules, including (but not limited to) the ‘Boundary Adjustment’ rule referred to below. Accordingly, the submitter requests that all the subdivision rules (including the General Rural Zone) be amended to refer to sites rather than allotments.

SUB-R1 ‘Boundary adjustments’

- 5.6 Rule SUB-R1 provides for ‘Boundary Adjustments’ where:
- a. The degree of non-compliance with any land use standards is not increased; and
 - b. Boundary adjustments comply with SUB-S1 to SUB-S7.
- 5.7 Boundary Adjustment is defined in the Proposed District Plan as:
- means a subdivision that alters the existing boundaries between adjoining allotments, without altering the number of allotments.*
- 5.8 It is acknowledged that this definition has been taken from the National Planning Standards. However, the problem with this definition is the reference to “*without altering the number of allotments*” which is often not able to be achieved, particularly in rural areas.
- 5.9 Many rural “sites” are made up of multiple “allotments”, often held together by an amalgamation condition(s). When part of one of these allotments is subdivided and transferred to an adjoining site (such is the nature of a boundary adjustment subdivision), this more often than not results in the number of allotments being altered relative to the status quo, sometimes resulting in more lots, and sometimes less (see examples in Attachment 1).
- 5.10 As currently drafted the proposed rule SUB-R1 ‘Boundary Adjustment’ rule can only be used if a subdivision complies with the definition of “Boundary Adjustment”. If a subdivision is unable to comply with the definition because the number of “allotments” is being altered, the ‘Boundary Adjustment’ rule cannot be used and it will default to non-complying activity status – even though there is no ability to comply due to the specific make-up of the titles involved, and no difference in effects. This is a perverse

outcome based on a surveying technicality and is not founded in any real-world effects on the environment or coherent development philosophy.

5.11 Given the flawed definition of boundary adjustment, the submitter seeks the following:

- (1) Delete the definition of “Boundary Adjustment” from the PKDP.
- (2) Change the name of SUB-R1 to “Adjustment of existing sites”.
- (3) Alter the rule as follows (alterations shown in red):

SUB-R1 Adjustment of existing sites

1. Activity status: Controlled

Where:

- a. No new **sites** are created.*
- b. The degree of non-compliance with any land use standards is not increased; and*
- c. Boundary adjustments comply with SUB-S1 to SUB-S7.*

3. Matters over which discretion is restricted:

- a. The matters of control listed in SUB-R1.2; and*
- b. Any adverse effects on existing buildings resulting from the new **site** boundaries.*

- (4) Replace references to allotment with site in SUB-S1 to SUB-S7.

SUB-R4 ‘Small lot subdivision’

5.12 SUB-R4 provides for small lot subdivision where, amongst other things:

- a. The record of title to be subdivided must be dated prior to 28 April 2025.*

5.13 The submitter requests that the date in Clause a. be changed to refer to the operative date of the KDP instead of the current notification date. The Proposed District Plan rules do not have legal effect at the notification date, and so the restriction on the use of the small lot subdivision rule SUB-R4 should not apply until (at the earliest) the rules have legal effect, and more appropriately at the date the District Plan becomes operative.

SUB-R6 ‘Environmental benefit subdivision’

5.14 SUB-R6 provides for environmental benefit subdivision where (amongst other things):

- f. All proposed new environmental allotments are to have a minimum net site area (excluding access legs) of 4,000m².*
- g. The record of title to be subdivided must be dated prior to 28 April 2025.*

5.15 For the same reasons identified above, the submitter requests the following amendments:

*f. All proposed new environmental **benefit sites** are to have a minimum net site area (excluding access legs) of 4,000m².*

*g. The record of title to be subdivided must be dated prior to **[insert operative date]**.*

5.16 Consequential amendments are also required to SUB-S1-SUB-S16 to replacement references to “allotment” with “site.

SUB-P8 ‘Subdivision in the General Rural Zone outside the Mangawhai/Hakaru Managed Growth Area’

5.17 SUB-P8(2) is:

2. Avoids reverse sensitivity effects on primary production activities.

5.18 The submitter considers that absolute avoidance of reverse sensitivity effects will be difficult in some instances, particularly given the enabling provisions in the GRUZ. Accordingly, the submitter suggested that SUB-P8(2) be amended as follows:

*2. **Avoids, remedies or mitigates** reverse sensitivity effects on primary production activities.*

6. The land use provisions for commercial and industrial activities, and related definitions

Overall rationale

6.1 The submitter opposes the approach taken to avoid the establishment of non-rural activities in the General Rural Zone unless they require a rural location. This part of the submission focuses on the provisions of the GRUZ that relate to non-rural activities and proposes changes to enable non-rural activities where they are compatible with primary production activities.

6.2 The Proposed District Plan discourages the establishment of commercial and industrial activities in the GRUZ by requiring resource consent as a non-complying activity under Rule GRUZ-R19 and GRUZ-R20. The Section 32 report justifies this by stating that:

“there are more appropriate zones for these types of activities i.e. Mixed Use, Heavy and Light Industrial, and the provisions in these zones are more enabling than the KDP framework for the rural zone to assist with offsetting this cost.”

- 6.3 While the submitter agrees that there are other zones in the Proposed District Plan that provide for commercial and industrial activities, these are not the only zones where commercial and industrial activities can be located. Commercial and industrial activities can be located amongst primary production activities provided they do not affect the ability of those activities to operate. Commercial and industrial activities established in the rural environment are often located in a small part of a site within a building or a yard that isolates the activity and mitigates its potential adverse effects on surrounding primary production activities. This is recognized in the Operative District Plan, which provides a permitted pathway for commercial and industrial activities to be established in the Rural Zone (provided compliance with area limits and other District Plan rules is achieved).
- 6.4 The submitter requests that the provisions of the GRUZ be amended to enable non-rural activities that are compatible with primary production activities as set in subsequent sections of this submission.

GRUZ-R19 'Commercial activity' and GRUZ-R20 'Industrial activity'

- 6.5 The permitted pathway for commercial and industrial activities established in the Rural Zone under the Operative District Plan allows for commercial and industrial buildings with a maximum Gross Floor Area (GFA) of 5,000m² or 10% of the net site area, whichever is lesser.
- 6.6 The submitter requests that the permitted pathway provided for commercial and industrial activities in the Rural Zone in the Operative District Plan be adopted for the Proposed District Plan. It is requested that GRUZ-R19 is amended as follows:

1. Activity status: Permitted

The establishment of a new, or alteration or expansion of an existing, commercial activity.

Where:

- a. The gross floor area of any building(s) used for the Commercial Activity does not exceed 5,000m² or 10% of the net site area, whichever is the lesser.

2. Activity Status when compliance not achieved: Discretionary

- 6.7 Similarly to GRUZ-R19, GRUZ-R20 should be amended as follows:

1. Activity status: Permitted

The establishment of a new, or alteration or expansion of an existing, industrial activity.

Where:

- a. The GFA of any building(s) used for the Industrial Activity does not exceed 5,000m² or 10% of the net site area, whichever is the lesser.

2. Activity Status when compliance not achieved: Discretionary

- 6.8 A discretionary activity status when compliance is not achieved is considered more appropriate than a non-complying activity status as it recognises that commercial and industrial activities can be located amongst primary production activities provided they are compatible with those activities.

GRUZ-R8 'Rural Industry'

- 6.9 GRUZ-R8 provides for rural industry where the activity area has a maximum GFA of 500m². No more than one rural industry is permitted per site.
- 6.10 For the same reasons identified above, the submitter requests the following amendments to GRUZ-R8:

1. Activity status: Permitted

The establishment of a new, or alteration or expansion of an existing, rural industry.

Where:

- a. The activity area has a maximum GFA of any building(s) used does not exceed 5,000m²; per site or 10% of the net site area, whichever is the lesser;
- b. There is no more than one rural industry per site;
- c. The activity does not include any offensive trade; and
- d. The rural industry is not located on highly productive land.

2. Activity status when compliance with GRUZ R8.1.a, b or d not achieved:

Discretionary

3. Activity status when compliance with GRUZ R8.1.c not achieved: Non-Complying

GRUZ Purpose

- 6.11 The 'Overview' section of the GRUZ sets out the purpose of the zone. It sets out the scope for the objectives and policies, which in turn set the scope for the rules. It includes the following statements on non-rural activities:

"The General rural zone also provides for other activities that support primary production activities and have a functional or operational need to be in a rural environment, such as rural industry."

“Industrial and commercial activities unrelated to primary production, including retail, are not anticipated or enabled in the General rural zone as these are best located in urban areas with appropriate infrastructure. Locating these activities within urban areas also ensures that industrial and commercial activities are separated from potentially incompatible activities.”

- 6.12 The submitter requests that the purpose of the General Rural Zone be amended to enable compatible non-rural activities as follows:

“The General rural zone also provides for other activities that ~~support~~ are compatible with primary production activities, including commercial and industrial activities and have a functional or operational need to be in a rural environment, such as rural industry.”

“Industrial and commercial activities ~~unrelated to primary production, including retail,~~ are ~~not~~ anticipated ~~or~~ and enabled in the General rural zone provided they are compatible with primary production undertaken in the General rural zone ~~as these are best located in urban areas with appropriate infrastructure. Locating these activities within urban areas also ensures that industrial and commercial activities are separated from potentially incompatible activities.”~~

GRUZ-O1 ‘Purpose of the General rural zone’

- 6.13 GRUZ-O1 reiterates the purpose of the GRUZ. Amongst other things, it restricts incompatible activities that do not have a functional or operational need to be located in the rural environment as follows:

3. *Restrict incompatible activities that do not have a functional or operational need to be in a rural environment.*

- 6.14 The submitter requests that GRUZ-O1 be amended to enable non-rural activities that are compatible with primary production activities as follows:

The purpose of the General rural zone is to:

1. *Enable primary production activities;*
2. *Provide for ancillary activities that support primary production; and*
3. *Enable non-rural activities that are compatible with primary production activities; and*
4. ~~*Restrict incompatible activities that do not have a functional or operational need to be in a rural environment.*~~

GRUZ-P1 'Activities that require a rural location'

- 6.15 Unlike GRUZ-O1, GRUZ-P1 enables activities that are compatible with primary production activities. However, it only lists ancillary activities and rural industries.
- 6.16 The submitter requests that GRUZ-P1 be amended to specifically enable industrial and commercial activities that are compatible with primary production activities as set out below. This will ensure GRUZ-P1 is consistent with the overarching objective, GRUZ-O1.

Ensure the General rural zone provides for activities that require a rural location by:

- 1. Enabling primary production activities as the predominant land use;*
- 2. Enabling a range of compatible activities that support primary production activities, including ancillary activities, **commercial activities**, and ~~rural industries~~ **industrial activities**; and*
- 3. Restricting activities on highly productive land that are no reliant on the soil resource of the land.*

GRUZ-P4 'Rural character and amenity values'

- 6.17 GRUZ-O4 sets out that rural character and amenity values associated with a rural working environment are to be maintained in the GRUZ. GRUZ-P4 sets out how to achieve this by specifying the rural character and amenity values of the GRUZ. Among other things it seeks to maintain:

- 1. A predominance of primary production activities;*

- 6.18 The submitter requests that GRUZ-P4 be amended to specifically enable non-rural activities where they are compatible with primary production activities as follows:

Ensure land use activities are undertaken in a manner that maintains the rural character and amenity values of the GRUZ, which includes:

- 1. A predominance of primary production activities, **with some non-rural activities where they are compatible with primary production activities**;*
- 2. Low site coverage and density of buildings and structures; and*
- 3. Typical adverse effects from primary production activities such as odour, noise, dust, heavy traffic movements, fertilizer application, crop spraying and forestry harvesting associated with a rural working environment.*

GRUZ-P5 'Non-rural activities'

6.19 GRUZ-P5 specifically relates to non-rural activities. It requires that they must be avoided in the GRUZ unless they meet a list of three criteria. The three criteria do not provide for compatible commercial and industrial activities not do not relate to primary production activities.

6.20 The submitter requests that GRUZ-P5 be amended to enable non-rural activities that do not have a functional or operational need to be located in the GRUZ but are nonetheless compatible with primary production activities. The amended wording is below:

Avoid ~~Enable~~ non-rural activities in the General rural zone ~~unless~~ provided they:

- ~~1. Have a functional or operational need to locate in the General rural zone;~~*
- 2. Are compatible with primary production activities; and*
- 3. Do not result in the loss of availability and productive capacity of highly productive land, including consideration of the cumulative effects of such losses.*

7. The land use provisions for sites requiring access off of a State Highway

7.1 The submitter supports the approach taken in the Transport (TRAN) Chapter of the Proposed District Plan to allow for new vehicle crossings on to State Highways as a permitted activity.

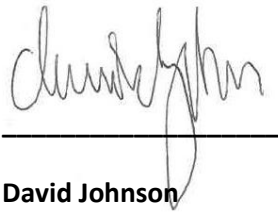
7.2 Rule TRAN-R4.1(e) allows for new vehicle crossings to be constructed on to State Highways provided they comply with the engineering requirements of the New Zealand Transport Agency (NZTA). This rule is efficient and effective as it allows vehicle crossings to be established on to a State Highway provided they are constructed to the appropriate engineering requirements without requiring a resource consent.

7.3 Conversely, requiring a resource consent to establish a new vehicle crossing on to a State Highway would be inefficient and ineffective as it would require separate (second) approval from the KDC after approval had already been obtained from the NZTA, the controlling authority of all State Highways. This would impose additional costs on applicants for resource consent applications to be prepared, lodged, and processed.

8. Relief sought

8.1 That the subdivision provisions for the GRUZ be amended as advanced in this submission; and,

- 8.2 That the land use provisions for the GRUZ be amended as advanced in this submission;
and,
- 8.3 The land use provisions of the Transportation Chapter relating to obtaining access from
a State Highway be retained as notified; or,
- 8.4 Alternative relief with similar effect.
- 9. The submitter wishes to be heard in support of this submission.**

A handwritten signature in black ink, appearing to read 'David Johnson', is written over a solid black horizontal line.

David Johnson

Planning Consultant

On behalf of Khans Developments and Investments Limited

Dated this 30th day of June 2025