

**UNDER**

the Resource Management Act 1991

**IN THE MATTER**

of a request to Kaipara District Council for  
Private Plan Change 81: Dargaville  
Racecourse by the Dargaville Racing Club Inc

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**OPENING LEGAL SUBMISSIONS OF COUNSEL FOR THE APPLICANT**

**22 March 2023**

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## INTRODUCTION

- 1.1 These legal submissions and the evidence to be presented are in support of the application by Dargaville Racing Club Inc (“Racing Club” and “Applicant”) for private plan change 81 (“PC81”) to the operative Kaipara District Plan (“operative plan”) with respect to the former Dargaville Racecourse (“the racecourse”) located on the corner of SH14 and Awakino Point North Road.
- 1.2 While the land owner and Applicant is the Racing Club, PC81 has been developed collaboratively by the Racing Club together with the Dargaville Community Development Board (“DCDB”) and Te Runanga o Ngati Whatua (collectively, the “Tripartite Group”).
- 1.3 A change of use for the racecourse became inevitable in 2019 / 2020 when New Zealand Thoroughbred Racing announced the closure of the racecourse. The Racing Club decided that this community asset should continue to serve the community into the future. PC81 was developed to assist in addressing the critical housing shortage in Dargaville, and for the proceeds of development to be invested in the newly established Northern Wairoa Fund.
- 1.4 The site is currently zoned Rural in the operative plan, although the western extent of the site is identified within a new urban (industrial) hub at Awakino Point in the Kaipara District Council (“Council”) Dargaville Spatial Plan<sup>1</sup> adopted in May 2020.
- 1.5 PC81 seeks a new Trifecta Development Area (“TDA”) chapter and plan in the operative plan providing for a mix of Light Industrial Area, Open Space Area, Large Lot Residential, General Residential and Neighbourhood Centre with a focus on Hauora – holistic health and wellbeing.
- 1.6 The purpose of PC81 is:<sup>2</sup>
- To deliver viable and sustainable residential and light industrial areas to complement and support the growth of Dargaville.*
- 1.7 The vision for the development is:<sup>3</sup>
- A new community in Dargaville, providing homes, employment and recreation opportunities for people of all ages and all stages of life.*

## TRIFECTA DEVELOPMENT AREA

- 1.8 The TDA chapter and plan now sought by the Applicant contains some differences from the notified TDA chapter and plan. The amendments are outlined in the primary and addendum planning evidence of Ms Anich and are summarised as:

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<sup>1</sup> part of the Kaipara Spatial Plan – Key Urban Areas

<sup>2</sup> PC81 statutory assessment para 117

<sup>3</sup> PC81 statutory assessment para 118

- Amendments to the TDA chapter provisions sought in the Council's section 42A report, in submissions, or minor matters raised in the Applicant's technical evidence.
- Amendment to the TDA plan in response to the location of indicative wetlands on the site, extending the Large Lot Residential Area to the west encompassing approximately 1ha of land previously identified as General Residential Area.

1.9 PC81 now proposes:

- Light Industrial Area ("LIA"): Approximately 9.53ha fronting SH14 and Awakino Point North Road, reticulated, with a minimum site area of 500m<sup>2</sup>.
- General Residential Area ("GRA"): Approximately 22.67ha (after the western extension of the Large Lot Residential Area) fronting Awakino Point North Road, reticulated, with an average site area of 500m<sup>2</sup> and a minimum site area of 400m<sup>2</sup> (controlled activity) or 300m<sup>2</sup> (restricted discretionary activity). A range of housing typologies are enabled, and multi unit residential development (three or more residential units per site) and retirement village living is provided for subject to urban design assessment.
- Large Lot Residential Area ("LLRA"): Approximately 4.44ha (after the western extension into former GRA) located on the elevated land to the north west, on-site serviced, with minimum site area of 4,000m<sup>2</sup> and strict controls on height, colour and reflectivity.
- Neighbourhood Centre Area ("NCA"): Approximately 0.28ha located centrally on the site, reticulated, with minimum frontage of 14m rather than minimum site area, servicing the day to day needs of the TDA.
- Open Space Area ("OSA"): Approximately 5.75ha made up of Hillside OSA on the elevated land, Hauora OSA connected to the NCA, Neighbourhood OSA providing for a pocket park within the GRA, and Blue Green OSA with the dual purpose of stormwater and freshwater management and walking / cycling network.
- Hauora Hub: This denotes the centrally located spatial area on the site within which the NCA and connected Hauora OSA will be established within the GRA.

1.10 It is important to note that PC81 proposes a framework or master plan chapter rather than a "live zoning" scenario. While the extensive reports have established the feasibility for development on the site, trigger provisions require detailed design work to occur in advance of development occurring, enabled through resource consents. The PC81 provisions have been drafted so that development may be subdivision led, land use led, or a combination. Examples of the detailed design triggers include:

- The only land use enabled on the site pre-development is farming.<sup>4</sup>
- Subdivision into “super lots” is enabled to facilitate staging and division of the site in the various spatial Areas.<sup>5</sup>
- Subdivision and land use rules require that:
  - The SH14 / Awakino Point North Road T intersection must be designed and constructed, Awakino Point North Road frontage sealed, and external and internal access planned, when developing the LIA and/or GRA.<sup>6</sup>
  - The pedestrian and cycle link (shared path) to Tuan Street must be designed and constructed when developing the GRA.<sup>7</sup>
  - Extension of wastewater reticulation to the site must be designed and constructed when developing the LIA and/or GRA.<sup>8</sup>
  - Stormwater and freshwater management and delineation of the Blue Green Network and Blue Green OSA must be designed and constructed when developing the LIA or GRA.<sup>9</sup>
  - The spatial location of the NCA, Hauora OSA and surrounding GRA must be delineated by a Comprehensive Development Plan when developing the GRA.<sup>10</sup>
  - A Landscape and Fencing Plan must be prepared for the entire site (perimeter of the site, and interface between LIA and GRA) prior to commencing any activity other than farming on the site.<sup>11</sup>

1.11 This is important because submissions and the Council’s 42A report have raised issues with a lack of certainty, but the answer to much of that criticism is already specified in the provisions. PC81 has established that the development sought is feasible. As with many large greenfields or brownfields developments on long established zoning, the design details will be developed through the enabling resource consents (whether subdivision led or land use led).

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<sup>4</sup> TDA-LU-S1 Farming

<sup>5</sup> TDA-SUB-S1 Subdivision into Super Lots

<sup>6</sup> TDA-LU-S4 and TDA-SD-S10 Transport

<sup>7</sup> TDA-LU-S4 and TDA-SD-S10 Transport

<sup>8</sup> TDA-LU-S5 and TDA-:LU-S11 Three Waters

<sup>9</sup> TDA-LU-S5 and TDA-:LU-S11 Three Waters

<sup>10</sup> TDA-LU-S3 Hauora Hub

<sup>11</sup> TDA-LU-S2 Landscape and Fencing

## 2. EVIDENCE

2.1 The Applicant will present evidence in support of PC81 from:

- Richard Alspach - Committee member of the Racing Club and DCDB
- Andreas Heuser – Economics
- Peter Ibbotson – Acoustics and Vibration
- Simon Cocker – Landscape Architecture
- Meredith Dale – Urban Design
- Henk de Wet – Three Waters
- Don McKenzie - Transportation
- Venessa Anich – Planning

## 3. PROCEDURAL MATTERS

3.1 The Panel has requested comment on the applicability of, and the weight the Panel should put on:<sup>12</sup>

- The National Policy Statement for Highly Productive Land 2022
- Te hau marohiki anamata – Towards a productive, sustainable and inclusive economy; Aotearoa New Zealand’s First Emissions Reduction Plan, 16 May 2022
- Kaipara District Spatial Plan 2050

3.2 These matters are addressed in the following section.

## 4. LEGAL FRAMEWORK

4.1 PC81 is a private plan change.

4.2 Section 73 of the RMA provides that any person may request the Council to change a district plan, and the plan may be changed, in the manner set out in Part 2 of Schedule 1 of the RMA.

4.3 PC81 was lodged by the Applicant on 21 February 2021 and accepted by the Council under clause 25(2)(b) of Schedule 1 on 27 July 2022.

4.4 Clause 29 of Schedule 1 provides that after considering the plan change, undertaking a further evaluation of the plan change in accordance with s32AA and having particular regard to that further evaluation, the Council may *decline, approve, or approve with modifications* the plan

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<sup>12</sup> Second direction of the Hearing Panel dated 3 February 2023

change and must give reasons for its decision.

4.5 Section 74 provides that the Council when changing the district plan:

- Must change the plan *in accordance with* (relevantly):<sup>13</sup>
  - Its functions under s31
  - Part 2
  - Its obligation to have regard to an evaluation prepared in accordance with s32
  - National policy statements
  - The National Planning Standards
- Shall *have regard to*:
  - The proposed regional plan for Northland
  - Any management plans and strategies prepared under other Acts, to the extent that their content has a bearing on resource management issues of the Kaipara district.<sup>14</sup>
  - Any emissions reduction plan and any national adaptation plan made in accordance with ss 5ZI and 5ZS of the Climate Change Response Act 2002.<sup>15</sup>
- Must *take into account* any relevant planning document recognised by an iwi authority and lodged with the Council, to the extent that its content has a bearing on resource management issues of the Kaipara district.<sup>16</sup>

4.6 Section 75(3) provides that a district plan must *give effect to*:

- National policy statements
- The National Planning Standards
- The Northland Regional Policy Statement

### **Section 31**

4.7 The Council's relevant functions under s31 include:

- The establishment, implementation, and review of objectives, policies and methods to:
  - achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district.

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<sup>13</sup> s74(1)

<sup>14</sup> s74(2)b)(i)

<sup>15</sup> S74(2)(d) and (e)

<sup>16</sup> s74(2A)

- ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.
- The control of any actual or potential effects of the use, development, or protection of land, including for the purpose of:
  - the avoidance or mitigation of natural hazards.
  - the maintenance of indigenous biological diversity.
- The control of the emission of noise, and the mitigation of the effects of noise.

## **Part 2**

4.8 The Supreme Court in *King Salmon*<sup>17</sup> determined that the hierarchy of planning documents gives effect to Part 2 of the Act and that, for policy and plan making under the RMA, decision makers should not resort to Part 2 except in three circumstances:

- Invalidity of the higher level documents or provisions
- Incomplete coverage of the field
- Uncertainty as the meaning of certain provisions

4.9 With respect to PC81 no party has identified any of those three circumstances as applying.

4.10 The Supreme Court expressly ruled that reaching an “overall broad judgement” under Part 2 is not appropriate.<sup>18</sup>

4.11 To the extent that any issues of invalidity, incomplete coverage or uncertainty are of concern to the Panel, the PC81 application and planning evidence concluded that PC81 is consistent with Part 2.

## **Section 32**

4.12 The PC81 application included a comprehensive section 32 analysis. That analysis has been expanded in Ms Anich’s planning evidence to assess additional options, as sought in the s42A report. Ms Anich concludes that the objectives of the TDA are the most appropriate way to achieve the purpose of the Act and the provisions are the most appropriate way to achieve the objectives.

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<sup>17</sup> *Environmental Defence Society Inc v The NZ King Salmon Co Limited* [2014] NZSC 38 at [85] to [91].

<sup>18</sup> Planning evidence for Awakino Point Rate Payers Inc

### **National Policy Statements**

4.13 The following are the three National Policy Statements relevant to PC81:

- National Policy Statement for Urban Development (“NPS UD”)
- National Policy Statement for Freshwater Management 2020 (“NPS FM”)
- National Policy Statement for Highly Productive Land 2022 (“NPS HPL”)

#### **NPS UD**

4.14 The NPS UD applies to “urban environments”.

4.15 The Applicant accepts that (as set out in the 42A report and in the PC81 Statutory Assessment) Dargaville is not an “urban environment” and that the NPS UD does not apply to PC81.

4.16 PC81 has however, as a matter of best practice, been prepared to be consistent with the NPS UD.<sup>19</sup>

#### **NPS FM**

4.17 The NPS FM is addressed later in these submissions.

#### **NPS HPL**

4.18 The Panel has requested comment on the applicability of, and the weight the Panel should put on, the NPS HPL.

4.19 The NPS HPL came into force on 17 October 2022, well after PC81 was lodged on 21 February 2022 and notified on 29 August 2022. While retrospective application of legislation is unusual, and the Racing Club considers it to be grossly unfair and hugely inefficient, I submit that PC81 must nevertheless give effect to the NPS HPL for the following reasons.

4.20 Part 4: Timing of the NPS HPL provides that:

*Every local authority must give effect to this National Policy Statement on and from the commencement date ...*

4.21 The NPS applies to Highly Productive Land (“HPL”). Until a regional policy statement containing maps of HPL in the region is operative, the Council must apply the NPS HPL as if references to HPL

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<sup>19</sup> The Environment Court has held in two recent decisions that (when the NPS UD applies) only objectives 2, 5 and 7 and policies 1 and 6 of the NPS UD apply to private plan changes - *Eden-Epsom Residential Protection Society Incorporated v Auckland Council* [2021] NZEnvC 082 (decision dated 9 June 2021) and *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162 (decision dated 26 August 2022). These decisions were issued after preparation of PC81. It is understood that the *Eden-Epsom* decision has been appealed.



were references to land that, as at 17 October 2022:<sup>20</sup>

- (a) is
  - (i) zoned general rural or rural production
  - (ii) LUC 1, 2, or 3 land; but
- (b) is not

4.22 These are addressed in turn:

Zoned general rural or rural production	As the Council has not yet implemented the Zone Framework Standard of the National Planning Standards, a reference in the NPS HPL to a zone is a reference to the “nearest equivalent zone”. <sup>21</sup>	The site is zoned Rural under the operative plan.
LUC 1, 2, or 3 land	<i>“LUC 1, 2, or 3 land means land identified as Land Use Capability Class 1, 2, or 3, as mapped by the New Zealand Land Resource Inventory or by any more detailed mapping that uses the Land Use Capability classification.”<sup>22</sup></i>	The site is identified as containing LUC 2 and LUC 3 land.
Not identified for future urban development	<i>“Identified for future urban development means: (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or (b) identified: (i) in a strategic planning document as an area for commencing urban development over the next 10 years; and (ii) at a level of detail that makes the boundaries of the area identifiable in practice.”<sup>23</sup></i>	The Council does not have a Future Development Strategy.  While the boundaries of the site are identified in the Dargaville Spatial Plan <sup>24</sup> , development of Neighbourhood 7 – Awakino Point is described in the Spatial Plan as projected to start beyond 10 years. <sup>25</sup>

<sup>20</sup> NPS HPL clause 3.5(7)

<sup>21</sup> NPS HPL clause 1.3(4)

<sup>22</sup> NPS HPL clause 1.3(1) definition of “LUC 1, 2, or 3 land”

<sup>23</sup> NPS HPL clause 1.3(1) definition of “identified for future urban development”

<p>Not subject to a Council initiated, or an adopted, notified plan change to rezone it to urban or rural lifestyle</p>	<p>Clause 25(2) of Schedule 1 to the RMA differentiates between private plan change requests which are “adopted” or “accepted” by the Council.</p> <p>Only Council initiated plan changes, and private plan changes adopted by the Council, are exempt from the NPS HPL.</p>	<p>While PC81 was notified prior to 17 October 2022, PC81 was “accepted” not “adopted”.</p>
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4.23 The NPS HPL therefore applies to the site and is addressed later in these submissions.

**National Planning Standards**

4.24 The operative plan was not prepared under the National Planning Standards. The proposed district plan is required to be.

4.25 Given the imminent release of the proposed district plan, PC81 has been prepared to be compliant with the National Planning Standards including with respect to zone descriptions and definitions.

4.26 The PC81 application sets out the spatial planning tools under the National Planning Standards and the reasons for selecting a Development Area (rather than for example a Precinct over a zone, or a Special Purpose Zone) for PC81.

4.27 A Development Area spatially manages an area subject to concept plans, structure plans, outline development plans, master plans or growth area plans in a single chapter which can then be transferred into the proposed district plan.

4.28 The Applicant intends to submit on the proposed district plan to ensure consistency between the TDA and the proposed district plan (such as aligning TDA definitions).

**Plans and Strategies prepared under other Acts**

4.29 The Panel has requested comment on the applicability of, and the weight the Panel should put on the Kaipara District Spatial Plan 2050.

***Dargaville Spatial Plan***

4.30 The “Kaipara District Spatial Plan – Nga Wawata – Our Aspirations” was adopted by the Council in December 2020. A related document “Kaipara Key Urban Areas Spatial Plan” was adopted by the Council in May 2020 and is described in the Forward as “our guide for how we plan for growing the historic towns of Dargaville, Maungatūroto and Kaiwaka”. Part 2 of that document is “The

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<sup>24</sup> Dargaville Spatial Plan section 2.7 map at page 50

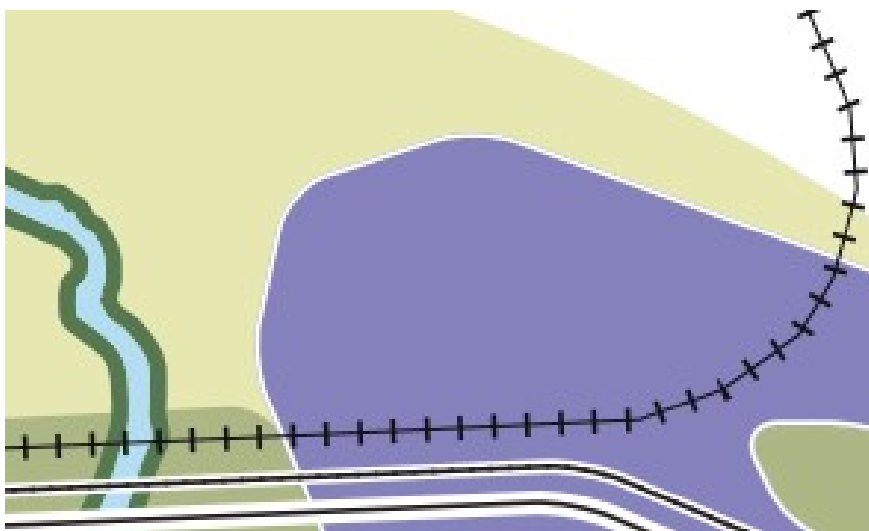
<sup>25</sup> Dargaville Spatial Plan section 2.7 at page 58

Spatial Plan – Dargaville” (“Dargaville Spatial Plan”).

- 4.31 Both the Kaipara District Spatial Plan and the Kaipara Key Urban Areas Spatial Plan are described as providing strategic direction for the development of the imminent proposed district plan.
- 4.32 The Environment Court has held that spatial planning documents similar to the Dargaville Spatial Plan fall within section 74(2)(b)(ii).<sup>26</sup>
- 4.33 The western extent of the Racecourse site is identified within a new urban (industrial) hub at Awakino Point in the Dargaville Spatial Plan:



*2.7 – Neighbourhoods – Dargaville Spatial Plan page 50*



*Part 2 – Dargaville Key Moves - Dargaville Spatial Plan page 40*

<sup>26</sup> *Kiwi Property Holdings Limited v Christchurch City Council* [2012] NZEnvC 92 at [99] – [103] and [109] – [113] and *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162 at [81] – [84]

- 4.34 I submit that it is appropriate for the Panel to place a degree of weight on the Dargaville Spatial Plan. It is the product of extensive community engagement, very recently prepared, and intended to influence the development of the proposed district plan.
- 4.35 The Dargaville Spatial Plan identifies the need for significant new urban (residential and industrial) zoning, and identifies part of that new urban expansion (industrial) onto the Racecourse site in the location identified for LIA in PC81.
- 4.36 Whatever weight is placed on the Dargaville Spatial Plan, the Applicant accepts that ultimately the statutory requirement to give effect to higher order RMA documents such as National Policy Statements means that those will have the greatest weight.

***Growth Area for Dargaville***

- 4.37 Appendix A to the operative plan is the mapped Indicative Growth Area for Dargaville. It is acknowledged that the site sits just outside the Greater Structure Plan Policy Area and outside the Future Residential and Business Growth Area in Appendix A.
- 4.38 The operative plan is now 10 years old and I submit that the more recent Dargaville Spatial Plan supersedes the previously mapped Growth Area.

***Exposure Draft – Proposed District Plan***

- 4.39 The Council has released an exposure draft of its proposed district plan.
- 4.40 A draft proposed district plan has no status prior to notification.<sup>27</sup>

***Climate Change Response***

- 4.41 The Panel has requested comment on the applicability of, and the weight the Panel should put on the First Emissions Reduction Plan 2022.
- 4.42 Any emissions reduction plan and national adaptation plan made in accordance with ss 5ZI and 5ZS respectively of the Climate Change Response Act 2002 are matters to which the Council shall have regard under s74(2)(d) and (e).
- 4.43 These provisions were inserted into the RMA by section 21 of the Resource Management Amendment Act 2020 and came into force on 30 November 2022.
- 4.44 Clause 26 of Schedule 12 to the RMA provides that where a plan change has been publicly notified (but not proceeded to the stage at which no further appeal is possible) before 30 November 2022, the plan change must be determined as if ss74(2)(d) and (e) had not been enacted.

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<sup>27</sup> *Blenheim Centre Ltd v Marlborough District Council* (1997) 3 ELRNZ 204.

- 4.45 PC81 was notified on 29 August 2022, prior to the 30 November 2022 commencement date.
- 4.46 In my submission the Emissions Reduction Plan is therefore not a relevant document for the consideration of PC81.
- 4.47 The evidence from Waka Kotahi in any event concludes that PC81 adequately gives regard to the Emissions Reduction Plan.

***Northland Regional Policy Statement***

- 4.48 The application for PC81 assessed the RPS and concluded that PC81 is consistent with it.

***Proposed Regional Plan for Northland***

- 4.49 The application for PC81 assessed the proposed regional plan and concluded that PC81 is consistent with it.
- 4.50 There are very few remaining provisions of the proposed regional plan subject to appeal. Those that are outstanding include provisions for vehicles on beaches, outstanding landscapes, and significant ecological areas and significant bird areas. To my knowledge all relate to the coastal marine area and are not of relevance to PC81. The most recent version of the proposed regional plan available on the NRC website is updated as at December 2022.

***Iwi Management Plans***

- 4.51 The application for PC81 assessed the iwi management plans for Te Roroa and Te Uri o Hau and concluded that PC81 is consistent with both.

**5. KEY ISSUES RAISED IN SUBMISSIONS, 42A REPORT AND EVIDENCE**

- 5.1 The following key issues have been raised in the submissions and further submissions, the Council's s42A report and the evidence filed:
- Adequacy of tangata whenua consultation
  - Historical land transactions
  - Community and education facilities
  - Highly Productive Land (NPS HPL)
  - Reverse sensitivity
  - Wetlands and freshwater (NPS FM)
  - Seasonal raw water constraints
  - Feasibility of wastewater crossing over Awakino River

- SH14 intersection upgrade
- Feasibility, destination and timing of the pedestrian and cycle link (shared path)

#### **Adequacy of tangata whenua consultation**

- 5.2 Three further submissions have stated that tangata whenua consultation was inadequate.
- 5.3 This matter is addressed in the Council’s s42A report and in the evidence of Ms Anich.
- 5.4 Ms Anich’s evidence summarises the iwi consultation undertaken for the first Cultural Impact Assessment (initiated by Te Runanga o Ngati Whatua) and notes the preparation of the second Cultural Impact Assessment (undertaken by Te Roroa).
- 5.5 The first CIA records that consultation with kaumatua began in June 2021, with several hui with kaumatua and hapū following this initial meeting from July to November 2021.
- 5.6 Ms Anich’s evidence records that CIA mitigation measures were either incorporated into the PC81 provisions or noted in the application for PC81 where the mechanism sits outside the plan change process.
- 5.7 The Applicant is committed to ongoing engagement with tangata whenua.

#### **Historical land transactions**

- 5.8 Three further submissions have raised the matter of historical land transactions and Waitangi Tribunal claims associated with the site.
- 5.9 This matter is addressed in the Council’s s42A report and in the evidence of Ms Anich.
- 5.10 The RMA provides a regulatory framework for regulating the use of land. Title and ownership are matters outside the ambit of the RMA, and the jurisdiction of the Council and the Environment Court.<sup>28</sup>

#### **Community and education facilities**

- 5.11 Submissions have raised sufficiency of community facilities within the TDA, particularly for tamariki and rangatahi.
- 5.12 This matter is addressed in the Council’s s42A report and in the evidence of Ms Dale and Ms Anich.
- 5.13 The TDA was designed to “complement, not compete with, Dargaville”.
- 5.14 PC81 however includes extensive provision for community facilities, including:

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<sup>28</sup> *MacLaurin v Hexton Holdings Ltd* [2008] NZCA 570 at [47], *Ngāti Maru Trust v Ngāti Whātua Orākei Whaia Maia Ltd* [2020] NZHC 2768 at [67], and *Te Whānau a Kai Trust v Gisborne District Council* [2022] NZHC 1462 at [85] and [86].

- The NCA, envisaged to service the day to day needs of residents and workers and contain community services.
- Four types of OSA providing for a range of experiences – the Hillside OSA, Hauora OSA connected to the NCA, Blue Green OSA, and Neighbourhood OSA (pocket park).

5.15 I submit that PC81 strikes the appropriate balance between providing community facilities within the TDA while not competing with Dargaville.

5.16 The Ministry of Education seeks that a school is enabled within the TDA.

5.17 This matter is addressed in the Council's s42A report and in the evidence of Ms Dale, Mr McKenzie and Ms Anich.

5.18 PC81 contemplates home-based childcare in the LLRA and GRA, and an early childhood centre or kohanga reo being located in the NCA. The provisions allow for that.

5.19 In the development of PC81 the Ministry confirmed that there is capacity within the local schools.

5.20 The Ministry has designation powers if it wishes to plan for a new school.

5.21 The Ministry has relied heavily on the exposure draft proposed plan for the provisions sought. The exposure draft has no status and may be amended prior to notification of the proposed district plan.

5.22 I submit that the Ministry's submission should be rejected.

5.23 If the Panel is minded to accept the Ministry's submission and enable a new school within the TDA:

- Ms Anich and Ms Dale are strongly of the view that the LLRA is not an appropriate location for a school.
- Ms Anich considers that, due to the size and function of the NCA, the GRA would be the most appropriate location.
- Mr McKenzie and Ms Anich consider that a school should only be enabled if any additional infrastructure upgrades, beyond those necessary for PC81, are funded by the Ministry.

#### **Highly Productive Land (NPS HPL)**

5.24 Submissions have raised issues with respect to loss of productive land.

5.25 The Council's s42A report identifies that there appears to be highly productive land on the site and the relevant provisions of the NPS HPL require assessment.

5.26 I have addressed the applicability of the NPS HPL to PC81 earlier in these legal submissions.

- 5.27 The Applicant initially sought to commission a site assessment of highly productive land, but was then directed to the Ministry for the Environment’s NPS HPL “Guide to Implementation” December 2022 which states that the definition of “LUC 1, 2, or 3 land” reference to “more detailed” mapping that uses the LUC classification *“is not intended to include site-specific soil assessments prepared by landowners”*.<sup>29</sup>
- 5.28 The Applicant therefore commissioned GIS mapping of LUC 1, 2 or 3 land as mapped by the New Zealand Land Resource Inventory – in accordance with the NPS HPL definition of “LUC 1, 2, or 3 land”- overlaid on the amended Development Area Plan, as summarised in Ms Anich’s addendum evidence.
- 5.29 As LUC 2 and LUC 3 land is mapped within the site, in the addendum evidence Ms Anich evaluates the NPS HPL objective, policy 5, and clause 3.6(4) and (5). Ms Anich concludes that PC81 passes the ‘tests’ in clause 3.6(4) and 3.6(5) and is therefore consistent with policy 5 and the NPS HPL.
- 5.30 The Council’s s42A report refers to NPS HPL policy 6 with respect to rural lifestyle zoning. Ms Anich confirms in her addendum evidence that policy 6 does not apply to PC81 as no rural lifestyle zoning is proposed.
- 5.31 Mr Cook’s evidence for Awakino Point Rate Payers Inc refers to the directions under the NPS HPL to regional councils when highly productive land is mapped on a regional basis. I submit that the government in preparing the NPS HPL made an informed decision to include the transitional provisions which specify how highly productive land is to be defined and identified in advance of regional mapping. That transitional approach is – for better or worse – to rely on the New Zealand Land Resource Inventory mapping.
- 5.32 Mr Cook’s evidence references kumara growing on the Racecourse site. I submit that the photographs indicate that activity taking place within the portion of the site mapped as LUC 4 and therefore not highly productive land and not subject the NPS HPL.
- 5.33 I submit that highly productive land and the NPS HPL has been satisfactorily addressed in the addendum evidence of Ms Anich.

**Reverse sensitivity**

- 5.34 Submissions have raised the risk of reverse sensitivity effects on existing rural activities and productive land.
- 5.35 This matter is addressed in the Council’s s42A report and in the evidence of Mr Ibbotson, Mr Cocker and Ms Anich.

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<sup>29</sup> Ministry for the Environment’s NPS HPL “Guide to Implementation” December 2022 at page 14



- 5.36 That evidence concludes that existing rural noise is not unreasonable, and that a suite of provisions addressing screen planting and fencing and setbacks appropriately manage potential reverse sensitivity effects.
- 5.37 In the addendum evidence Ms Anich addresses policy 9 of the NPS FM which requires that reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land. Ms Anich confirms that the TDA provisions are consistent with this policy.
- 5.38 I submit that NPS HPL policy 9 is now the “highest order” policy addressing reverse sensitivity on rural activities. With reference to *King Salmon*, that policy is expressed as a “manage” rather than a directive “avoid” policy.
- 5.39 I submit that reverse sensitivity has been satisfactorily addressed in the evidence of Mr Ibbotson, Mr Cocker and Ms Anich.

#### **Wetlands and freshwater (NPS FM)**

- 5.40 The Council’s s42A report identifies that the site potentially contains natural inland wetlands engaging the NPS FM.
- 5.41 This matter is addressed in the addendum evidence of Ms Anich which confirms that:
- Six indicative wetlands have been identified on the site by an ecologist.
  - The indicative wetlands require further investigation to confirm whether they are a “natural inland wetland” (after consideration of the exclusions) in accordance with the definition in the NPS FM.
  - That investigation can appropriately be undertaken at the resource consent stage.
  - To ensure a positive outcome for any natural inland wetlands or any other freshwater feature (such as intermittent streams) that may be identified on the site, Ms Anich recommends:
    - An amendment to the Development Area Plan to transfer approximately 1ha of GRA to LLRA in the vicinity of the most westerly indicative wetlands, to ensure all indicative wetlands are located within either the Hillside OSA or the LLRA.
    - Amendments to the TDA provisions to ensure that any wetlands and freshwater features are managed to give effect to Te Mana o Te Wai in accordance with the NPS FM.

#### ***Scope for amendments to PC81***

- 5.42 Case law provides that there is scope to make amendments to a plan change where:
- a) The amendments are within the scope of a submission on the plan change; and

- b) The submission is “on” the plan change.
- 5.43 Amendments are within the scope of a submission if they were “reasonably and fairly raised” in a submission, which is a matter of fact and degree.<sup>30</sup>
- 5.44 Consideration of whether a submission is “on” the plan change requires consideration of the two-limbed *Clearwater* test:<sup>31</sup>
- a) Whether the submission addresses the alterations to the pre-existing status quo advanced by the plan change. This is the dominant consideration. If an amendment sought in a submission was not addressed in the s32 evaluation the amendment is unlikely to meet this first limb.<sup>32</sup>
- b) Whether, if the amendments are made, there is a real risk that people affected by the plan change would be denied an effective opportunity to participate in the process. This second limb deals with procedural fairness. The specific concern is whether the amendment to the plan change sought in a submission would change who the Council considered to be likely to be directly affected and who was notified.<sup>33</sup>
- 5.45 Turning first to submissions, three submissions raised the issue of opposition to high density housing on the site<sup>34</sup>, one submission raised the issue of supporting less housing and more green space,<sup>35</sup> and two submissions raised concerns with respect to management of stormwater and impervious surfaces on site.<sup>36</sup>
- 5.46 I submit that amendments to the Development Area Plan to reduce the density of development and amendments to the provisions to strengthen the management of stormwater and freshwater were “fairly and reasonably raised” in the submissions.
- 5.47 Turning next to whether those submissions are “on” the plan change and the first limb of the *Clearwater* test, I submit that the submissions address the alterations to the pre-existing status quo advanced by the plan change. The status quo zoning is Rural. PC81 seeks a mix of land uses including low density (LLRA) and medium density (GRA) residential areas. The appropriate locations for the various areas on the site was addressed in the s32 evaluation, as was the appropriate stormwater management on site.
- 5.48 Turning finally to the second limb of the *Clearwater* test, Ms Anich in her addendum evidence has assessed the height, setback and density changes associated with the proposal to transfer

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<sup>30</sup> *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at [166]

<sup>31</sup> *Clearwater Resort Ltd v Christchurch City Council* AP 34/02, 14 March 2013 (High Court)

<sup>32</sup> *Palmerston North City Council v Motor Machinists* [2013] NZHC 1290 at [80] to [81]

<sup>33</sup> *Motor Machinists* at [77] and [83]

<sup>34</sup> Submissions 14.1, 15.1 and 18.5

<sup>35</sup> Submission 9.1

<sup>36</sup> Submissions 3.3 and 12.10

approximately 1ha of land from GRA to LLRA. Ms Anich concludes that, in particular due to the significant decrease in density, no persons could be considered adversely affected by the amendment compared to the Development Area Plan as notified.

5.49 I submit that the second limb of the Clearwater is therefore passed, and that the proposed amendments to the Development Area Plan and provisions in response to management of wetlands and freshwater features are within scope.

5.50 In the addendum evidence Ms Anich concludes that the amendments she proposes result in any “natural inland wetlands” or other freshwater features on the site being appropriately provided for in PC81 consistent with the NPS FM.

5.51 I submit that wetlands, freshwater and the NPS FM have been satisfactorily addressed in the addendum evidence of Ms Anich and the amended Development Area Plan and provisions that she recommends.

#### **Seasonal raw water constraints**

5.52 Submissions have raised sufficiency of potable water supply to the TDA.

5.53 The site is already reticulated for potable water.

5.54 The Council’s s42A report identifies that at the time of preparing the report there was insufficient information to determine if measures can be put in place to counteract potential raw water shortages.

5.55 Mr Usmar for the Council has however stated in his memorandum:

*“There is currently no investment signalled in the current Long-Term Plan 2021/2031 to update raw water supply. However, there is a ongoing options project to resolve seasonal raw water supply issues and KDC is committed to finalising options and signalling investment.*

*In terms of the ability of the Dargaville WTP and water supply network to service the land proposed to be re-zoned under PPC81 at present, the only restraint is seasonal raw water supply. Projects to increase the supply to Dargaville WTP over the summer months are currently in the planning phase and KDC expects to progress through the options assessment this year (2023).”*

5.56 This matter is addressed in the evidence of Mr de Wet and Ms Anich.

5.57 Ms Anich confirms in her primary evidence that the PC81 provisions include:

- On-site water supply in the LLRA.
- Reticulated water supply in the remaining zones, with GRA including an enabling provision

providing that water tanks not exceeding 35,000L are a permitted Minor Structure.

- Assessment of raw water constraints through matters of control and discretion for the capacity and availability of infrastructure for subdivision and land use consents.

5.58 Ms Anich has included with her addendum evidence amended provisions which include amending the provisions to clarify that lots and residential units in the GRA must be connected to reticulated water supply, on-site water supply or a combination of reticulated and on-site water supply.

5.59 Mr de Wet confirms that:

- Details of rainwater harvesting and re-use, which would reduce load on the public networks and provide further relief to potential downstream hazards, can be further investigated, developed and designed at resource consent stage.

5.60 I submit that seasonal raw water constraints have been satisfactorily addressed by the Council's evidence, in the PC81 provisions and the evidence of Ms Anich and Mr de Wet.

#### **Feasibility of wastewater crossing over Awakino River**

5.61 The Council's s42A report identifies that the impediment to providing for wastewater disposal and conveyance is the requirement to cross the Awakino River on SH14, noting that at the time of preparing the report there was no confirmation of agreement reached with Waka Kotahi nor preliminary feasibility or consenting assessment.

5.62 The PC81 provisions require extension of wastewater reticulation to the site to be designed and constructed when developing the LIA and/or GRA.<sup>37</sup>

5.63 This matter is addressed in the evidence of Mr de Wet who confirms:

- A proposed wastewater rising main route has been prepared.
- Details of the rising main can be further investigated, developed, and designed at resource consent stage.
- Providing river and stream crossings for utility services is routinely dealt with at resource consent stage.
- It is reasonable to assume that the new industrial zone identified in this location in the Dargaville Spatial Plan will require access to reticulated services.
- The Code for NZ Utilities Advisory Group makes provision for attaching utility services to bridge structures.

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<sup>37</sup> TDA-LU-S5 and TDA-LU-S11 Three Waters

5.64 The Dargaville Spatial Plan (and exposure draft district plan) identifies a new industrial hub at Awakino Point and notes that reticulated wastewater supply is necessary to establish businesses in that location.<sup>38</sup> Extending wastewater reticulation across the Awakino River is a design detail that the Council would have had to resolve in any event.

5.65 I submit that feasibility of the wastewater crossing over the Awakino River has been satisfactorily addressed in the PC81 provisions and the evidence of Mr de Wet.

#### **SH14 intersection upgrade**

5.66 Submissions have raised the safety of the SH14 / Awakino Point North Road intersection and requested that a roundabout be provided.

5.67 Evidence for Waka Kotahi from Mr Collins and Ms Robins addresses this. The Flow report attached to the Waka Kotahi submission described a roundabout as the safest form of intersection control for motor vehicle occupants.

5.68 The Council's s42A report includes a report from Mr Hills concluding that the proposed priority-controlled intersection with speed mitigation measures would adequately mitigate the effects of PC81.

5.69 The s42A report recommends that decisions relating to the final form of the intersection (T intersection or roundabout) can be resolved through the resource consent process.

5.70 This matter is addressed in the evidence of Mr McKenzie who confirms:

- The PC81 provisions propose a T intersection upgrade.
- The proposed T intersection upgrade provides equivalent safety outcomes compared to a roundabout.
- The proposed upgrade is consistent with treatment elements recognised and implemented across the state highway network nationally.
- The design can be further refined to optimise the speed calming effect through the detailed design process.
- The proposed upgrade does not preclude future upgrades, including Waka Kotahi retrofitting the intersection to a roundabout at a later date.

5.71 Section 32 requires an examination as to whether the PC81 provisions (including the provisions specifying a T intersection upgrade) are the "most appropriate" way to achieve the PC81 objectives.

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<sup>38</sup> Dargaville Spatial Plan – Neighbourhood 7 Awakino Point – page 58

- 5.72 In the context of s32 the High Court has confirmed that “appropriate” means “suitable” and there is no need to place any gloss upon that word by interpreting “most appropriate” as meaning “superior”.<sup>39</sup>
- 5.73 In the context of s108 (under which conditions of consent for subdivision or development will ultimately be imposed):
- Conditions must be imposed for a planning purpose rather than an ulterior one (however desirable it may be in the public interest), must fairly and reasonably relate to the development, and must not be unreasonable.<sup>40</sup>
  - Where satisfactory access can be provided but the roading authority prefers the more expensive formation for the benefit of the community, it should not be entitled to recover the extra cost from the developer.<sup>41</sup>
- 5.74 I submit that Waka Kotahi seeks a “superior” intersection form (a roundabout) for the benefit of the wider community which goes beyond the most appropriate (suitable) intersection form to mitigate the effects of PC81.
- 5.75 The Dargaville Spatial Plan (and exposure draft district plan) identifies a new industrial hub at Awakino Point. Upgrading of the SH14 intersection will have to be resolved by the roading authorities in any event.
- 5.76 The Applicant agrees with Waka Kotahi that it is not appropriate, as indicated in the Council’s s42A report, to defer a decision on intersection form until resource consent stage. The PC81 provisions propose a T intersection upgrade. The submission from Waka Kotahi seeks a roundabout. The issue is squarely before the Panel and it is most efficient to make a decision now.
- 5.77 Mr McKenzie’s evidence is clear that a T intersection upgrade as specified in the PC81 provisions appropriately mitigates the effects of PC81 and is therefore the “most appropriate” provision.
- 5.78 I submit that the appropriateness of a T intersection has been satisfactorily addressed in the PC81 provisions and the evidence of Mr McKenzie.

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<sup>39</sup> *Rational Transport Society Inc v New Zealand Transport Agency* High Court Wellington CIV-2011-485-2259, 15 December 2011

<sup>40</sup> *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112 at [61]

<sup>41</sup> *Gracefields and Co Ltd v Kaipara District Council* Decision A35/98, 22 April 1998 (Environment Court)

**Feasibility, destination and timing of the pedestrian and cycle link (shared path)**

- 5.79 The Council's s42A report identifies that further detail of the feasibility of the pedestrian and cycle link (shared path) within existing road reserve is required.
- 5.80 The evidence from Mr Collins for Waka Kotahi also identifies that further detail of the shared path is required, particularly at the SH14/Awakino Point East Road intersection.<sup>42</sup>
- 5.81 The submission from NTA seeks that the shared path terminate at Selwyn Park rather than Tuna Street as proposed in PC81. Mr Marshall's evidence for NTA seeks termination at either Selwyn Park or Finlayson Park Avenue.
- 5.82 Ms Robins' evidence for Waka Kotahi supports termination of the shared path at Tuna Street as proposed in PC81.
- 5.83 Mr Cook's evidence for Awakino Point Rate Payers seeks that the PC81 provisions be amended so that the shared path is required when developing the LIA as well as the GRA.
- 5.84 The PC81 provisions require that the pedestrian and cycle link (shared path) to Tuna Street is designed and constructed (terminating at Tuna Street) when developing the GRA.<sup>43</sup>
- 5.85 This matter is addressed in the evidence of Mr McKenzie who confirms:
- The Dargaville Spatial Plan identifies a shared path along SH14 about 200m southwest of the site.
  - A shared path feasibility plan has been prepared.
  - A shared path between the site and the existing footpath infrastructure at the Tuna Street intersection is feasible.
  - The provision of the shared path to Tuna Street is appropriate to mitigate the effects associated with PC81. The existing footpath connecting Tuna Street to Selwyn Park is sufficient to provide the active mode connection from PC81 to Dargaville town centre.
  - Details of the shared path can be addressed through the detailed design phase at resource consent stage.
- 5.86 Mr McKenzie has concluded that an extension of the shared path beyond the termination point proposed by the Applicant, as an upgrade of the existing footpath network from Tuna Street into the town centre as sought by NTA, exceeds the appropriate mitigation for the effects of PC81.

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<sup>42</sup> It is unclear whether Mr Collins had reviewed Attachment 4 to Mr McKenzie's evidence, the Shared Path Feasibility Plan.

<sup>43</sup> TDA-LU-S4 and TDA-SD-S10 Transport

- 5.87 As for the intersection upgrade, I submit that if an infrastructure provider seeks that the Applicant upgrade existing public infrastructure in excess of that which is the “most appropriate” (meaning suitable, not superior) for public benefit then the infrastructure provider cannot require the Applicant to fund that benefit.
- 5.88 Mr Cook’s evidence does not provide any s32AA analysis of the costs and benefits, efficiency and effectiveness of requiring the shared path to be designed and constructed when developing the LIA (rather than only the GRA).
- 5.89 The Integrated Transportation Assessment which accompanied the PC81 application identified development of the GRA as the appropriate trigger for provision of the shared path.
- 5.90 I submit that the feasibility, route and timing of the shared path has been satisfactorily addressed in the PC81 provisions and the evidence of Mr McKenzie.

## **6. CONCLUSION**

- 6.1 PC81 seeks to address the critical housing shortage in Dargaville and the shortage of flat flood-free industrial land via a new Trifecta Development Area chapter and plan providing for a mix of Light Industrial Area, Open Space Area, Large Lot Residential, General Residential and Neighbourhood Centre with a focus on Hauora – holistic health and wellbeing.
- 6.2 In addition to addressing the need for housing and light industrial land in Dargaville, PC81 offers significant community benefits as the proceeds of development are to be invested in the newly established Northern Wairoa Fund.
- 6.3 PC81 locates the Trifecta Development Area on an area of land identified in the recent Dargaville Spatial Plan as within a new urban (industrial) hub at Awakino Point.
- 6.4 PC81 has been thoroughly assessed under s32 of the Act and against the higher order matters to which it must give effect.
- 6.5 The Applicant’s evidence is that the effects of PC81 have been appropriately addressed in the provisions.
- 6.6 PC81 is worthy of approval.



**Sarah Shaw**

Counsel for Dargaville Racing Club Inc  
22 March 2023