

**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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**LEGAL SUBMISSIONS IN REPLY FOR THE APPLICANT**

**8 June 2023**

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## 1. INTRODUCTION

- 1.1 These legal submissions in reply respond to issues raised during the hearing on the application by the Dargaville Racing Club Inc for Plan Change 81 (PC81) to the Kaipara District Plan.
- 1.2 Accompanying these legal submissions are
  - Annexures referred to in the legal submissions; and
  - A full set of the PC81 provisions showing track changes as at Ms Anich's addendum statement plus subsequent amendments as at this Reply.
- 1.3 Rather than address individual submitters and the Council in turn, these legal submissions address each of the common themes that arose throughout the hearing.

## 2. NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE SOILS (NPS HPL)

### ***NPS HPL clause 3.6(4)***

- 2.1 After the hearing - in accordance with Direction 3 of the Panel - the Applicant provided an expert assessment against NPS HPL clause 3.6(4) prepared by Fraser Colegrave, Danielle Chaumeil & Nicholas Keith of Insight Economics (the Insight report).
- 2.2 The conclusion of the Insight report is that PC81 meets the tests in clause 3.6(4) of the NPS HPL from an economic perspective because:
  - PC81 is required to provide short-medium term capacity under the NPS UD;
  - There are no other reasonably practicable and feasible ways to provide the required development capacity elsewhere in Dargaville; and
  - The economic costs and benefits of PC81 far outweigh those of any foregone rural production undertaken on the site.
- 2.3 Submitters Colin and Joanne Rowse and Awakino Point Rate Payers Inc (APRP) have subsequently queried some aspects of the Insight report.
  - *The PC82 land only has 2 owners, not multiple owners (Rowse & APRP)*

Mr Colegrave and Ms Anich have each confirmed that property records show multiple (at least 8) separate property ownerships within the PC82 land.

A multi-party submission by B & N Lowe & Ors on PC82 has directly raised the issue of PC82 proposing "the use and benefit of land outside the ownership of the applicant".<sup>1</sup>

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<sup>1</sup> Submission point 19.24 at paras 98-103

- *Proposed residential development on Ranfurly Street (Rowse & APRP)*

Mr Colegrave has advised that this development was unfortunately not picked up in the Insight report analysis, but that the report's conclusions with respect to satisfaction of the three limbs of NPS HPL clause 3.6(4) have not changed as a result. Mr Colegrave's written response on this point is included as Annexure 1.

- *The Insight report is not based on recent Infometrics population projections (APRP)*

Mr Colegrave has confirmed that, while Infometrics and other organisations produce forecasts, as stated in paragraph 4.2 of the Insight report official Statistics NZ population estimates were used. Further, Figure 3 of the Insight report shows that the June 2022 official population estimate for Dargaville exceeded the official High projection adopted by the Insight report.

- *Expenditure group for "alcoholic beverages, tobacco, and illicit drugs" (Rowse)*

Mr Colegrave has confirmed that this is a specific expenditure category in the Statistics NZ Household Economic Survey.

- *Building consent statistics for Dargaville (APRP)*

The Applicant obtained building consent data for Dargaville from KDC which is included at Annexure 2, showing a total of 22 consents issued in 2021 and 17 in 2022, edited to add strikethrough on addresses outside the Residential zone of Dargaville (three in 2021, five in 2022). In 2021 three consents issued to 96 Awakino Road and one to 38 Bassett Street appear to relate to the Dargaville High School trades academy, and 11 relate to a single subdivision at Sampsons Way. In 2022 a further five relate to Sampsons Way. The building consent data for Dargaville, and particularly for the Residential zone, further demonstrates the current restricted availability of suitable land for new housing.

- *Social housing (APRP)*

The Insight report referenced an anonymised summary of families on the Ministry of Social Development ("MSD") Housing Register showing 128 families seeking public housing in Dargaville as at April 2023.

Subsequent to completion of the Insight report an OIA response was received from MSD which is included at Annexure 3. The OIA response shows that the total number of applications for Public Housing in Dargaville – from both the Housing Register (people not currently in Public Housing) and the Transfer Register (people already in Public Housing seeking to be re-housed) – is 240. This is higher than the number used in the Insight report.

The Applicant does not accept APRP's assertion that "demand for a free or heavily subsidised house is likely to be unlimited". No evidence has been provided to support that statement.

- *Residential subdivision capacity (APRP)*

Mr Cook states that "It appears to APRP that the figures in the economic report may have been manipulated to ensure that it reaches the conclusions that suit the applicant's case for rezoning Highly Productive Land". This is a serious allegation. The Applicant engaged experts to undertake an independent assessment under NPS HPL clause 3.6(4). Bios for the report's authors have been included as Annexure 4. The methodology for the analysis is clearly explained in the report, as are the assumptions that have been made based on guidance documents or the authors' experience. The Applicant strongly refutes the allegation that the report has been manipulated.

### ***NPS HPL mapping***

2.4 Submitters Colin and Joanne Rowse and APRP have, in their response to the Insight report, again queried the accuracy of the LUC mapping of the site and whether site specific mapping should be preferred.

2.5 This was addressed in the Applicant's opening legal submissions.<sup>2</sup> The Applicant initially sought to commission a site assessment of HPL but was then directed to the MfE guide to implementation of the NPS HPL which excludes site-specific soil assessments prepared by landowners. Until HPL is mapped *by regional councils*, the NPS HPL applies a transitional definition of HPL which is "LUC 1, 2 or 3 land" as mapped by the NZ Land Resource Inventory. This is the mapping the Applicant has used.

### ***NPS HPL clause 3.6(5)***

2.6 For completeness, while the Insight report (as directed) focuses on NPS HPL clause 3.6(4), PC81 must also satisfy clause 3.6(5):

*Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.*

2.7 Ms Anich addressed this provision in evidence, assessing the size and location of the HPL on the site relative to surrounding HPL, and the reasons why PC81 has minimised the loss of HPL but cannot be amended to remove urban zoning from the HPL while still achieving a well-functioning urban environment.<sup>3</sup>

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<sup>2</sup> Applicant's opening legal submissions t paragraphs 5.27 to 5.31.

<sup>3</sup> Venessa Anich Appendix 7 to her Addendum statement of evidence.

### **NPS HPL policy 6 – Rural Lifestyle Zone**

- 2.8 NPS HPL policy 6 requires that the rezoning and development of highly productive land as Rural Lifestyle is avoided except as provided in clause 3.10. Ms Anich’s evidence is that policy 6 and clause 3.10 do not apply to PC81 as the LLRA is defined in the NPS HPL as an “urban” zone.<sup>4</sup>
- 2.9 Large Lot Residential Zone and Rural Lifestyle Zone are separately described in the National Planning Standards (referenced in the NPS HPL definition of “zone”).
- 2.10 Mr Cook disagreed on the basis of the proposed 4,000m<sup>2</sup> minimum lot size in the LLRA and relying on the Whangarei District Council (WDC) minimum lot size of 4,000m<sup>2</sup> in its Rural Lifestyle Zone.<sup>5</sup>
- 2.11 The relevant WDC lot sizes are:
- Low Density Residential: 2,000m<sup>2</sup> minimum (rule SUB-R4.1)
  - Large Lot Residential: 1 lot per 5,000m<sup>2</sup> (rule SUB-R3.4)
  - Rural Lifestyle: 2ha average and 4,000m<sup>2</sup> minimum (rule SUB-R11.2)
- 2.12 The National Planning Standards require that district plans apply zones “consistent with the description of those zones” listed in table 13 of the Standards. Those descriptions for Large Lot Residential and Rural Lifestyle are:
- *Large lot residential zone: Areas used predominantly for residential activities and buildings such as detached houses on lots larger than those of the Low density residential and General residential zones, and where there are particular landscape characteristics, physical limitations or other constraints to more intensive development.*
  - *Rural lifestyle zone: Areas used predominantly for a residential lifestyle within a rural environment on lots smaller than those of the General rural and Rural production zones, while still enabling primary production to occur.*
- 2.13 Given the LLRA response to landscape characteristics (elevated landform) and constraints (topography and indicative wetlands) and the 4,000m<sup>2</sup> lot size, the Applicant maintains that the LLRA is not a Rural Lifestyle zone and therefore policy 6 and clause 3.10 of the NPS HPL are not engaged.

### **Quantification of benefits – Castalia report**

- 2.14 At the hearing the Panel queried how benefits were quantified in the right hand column of Table 5.2 of the Economic Impact Assessment prepared by Castalia.
- 2.15 Mr Heuser has provided clarification as to the methodology for quantification of these benefits for the Panel in an email which is attached as Annexure 5.

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<sup>4</sup> Venessa Anich supplementary evidence para 3.2

<sup>5</sup> Evan Cook supplementary evidence paras 3.3 – 3.6.

### ***NPS HPL conclusion***

2.16 The Insight report and Ms Anich's evidence have carefully assessed PC81 against clause 3.6 of the NPS HPL, confirming that the requirements are satisfied. Ms Anich's evidence is that PC81 is consistent with objective 2.1 and policy 5 of the NPS HPL.<sup>6</sup> The NPS HPL is not a "showstopper" or a barrier to the plan change being approved.

### **3. NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT (NPS FM)**

#### ***Wetlands***

3.1 Mr Cook for APRP asserted that the indicative wetlands within the proposed LLRA could create a situation where the land is zoned for development but is "impossible to develop" under the National Environmental Standards for Freshwater (NES F). Mr Cook further stated that regulation 45C of the NES F requires resource consent for vegetation clearance, earthworks and the discharge of water associated with urban development within 100m of a natural wetland.<sup>7</sup>

3.2 The Applicant's ecologist Mr Warden confirmed to the Panel in response to questions that, following the amendments to the NES F, many of the relevant triggers are now 10m (not 100m as stated by Mr Cook).

3.3 Ms Anich recommended including all of the indicative wetlands that are not within the Hillside OSA in the LLRA, and amendments to the provisions to ensure that freshwater features are managed in accordance with the NPS FM, which the Applicant has accepted. It is Ms Anich's opinion that the LLRA and the indicative wetlands can co-exist, through a combination of 4,000m<sup>2</sup> minimum lot sizes, the requirement for a Stormwater and Freshwater Management Plan, and the Blue Green Network.<sup>8</sup>

3.4 Regulation 45C of the NES F provides for the following as restricted discretionary activities in proximity to a natural inland wetland for the purpose of constructing urban development:

- Vegetation clearance within 10m;
- Earthworks or land disturbance within 10m, or within 100m **if** the activity results / is likely to result in the complete or partial drainage of all or part of the wetland;
- Taking, use, damming or diversion of water within 100m **if** there is a hydrological connection **and** the activity will / is likely to change the water level range or hydrological function of the wetland;

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<sup>6</sup> Policy 9 of the NPS HPL is addressed later in these submissions with respect to reverse sensitivity.

<sup>7</sup> Evan Cook supplementary statement of evidence at paras 2.5 to 2.7.

<sup>8</sup> Venessa Anich supplementary evidence paras 2.5 to 2.7.

- The discharge of water into water within 100m **if** there is a hydrological connection **and** the discharge will enter the wetland **and** will / is likely to change the water level range or hydrological function of the wetland.

3.5 Mr Warden’s report also noted that further on-site assessment is required at the time of resource consent to consider whether any of the NPS FM natural inland wetland exclusions apply (that is, whether areas of indicative wetland may be excluded by the statutory definition).<sup>9</sup>

3.6 The Applicant does not accept that Reg 45C renders the LLRA “impossible to develop”. Once the extent of natural inland wetlands is verified on site, the development of the LLRA can be purpose designed to co-exist with the wetlands. The provisions require this to occur.

3.7 At the hearing the Panel asked about roading shown on the Development Area Plan in proximity to the indicative wetlands. Ms Anich confirmed that all roading shown on the Plan is indicative only. The Applicant intends to amend the Plan to refine the indicative roading to remove any suggestion that roading will be in close proximity to wetlands. The Applicant’s GIS consultant (who prepared the Plan and will need to amend it) is overseas due to return next week, and the Applicant therefore proposes to forward the Plan with that minor amendment after this Reply.

### ***Flooding***

3.8 At / following the hearing APRP and Mr & Mrs Rowse referenced surface flooding of the pony club area of the site at various times (1999, 2011, and 2022).

3.9 Mr de Wet has confirmed that his modelling shows existing areas of flooding on the site in depressions that fill due to limitations with existing downstream infrastructure. Mr de Wet’s recommendations for stormwater management of the development take that into account and incorporate on-site stormwater detention and management (within the Blue Green Network).<sup>10</sup>

3.10 The surface flooding effects of concern to the submitters have been assessed and addressed in the provisions.

## **4. REGIONAL POLICY STATEMENT (RPS) – REGIONAL AND URBAN FORM**

4.1 Throughout the hearing the Panel asked questions of the planning witnesses about the RPS provisions relating to regional and urban form.

4.2 The relevant provisions are Issue 2.4 Regional form, Objective 3.11 Regional form, Policy 5.1.1 Planned and coordinated development, and Appendix 2 Regional development and design guidelines.

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<sup>9</sup> Annexed to Venessa Anich supplementary evidence.

<sup>10</sup> Henk de Wet’s s92 response Updated Stormwater Management Report February 2023.

4.3 Objective 3.11 Regional form states:

*Northland has sustainable built environments that effectively integrate infrastructure with subdivision, use and development, and have a sense of place, identity and a range of lifestyle, employment and transport choices.*

4.4 The explanation to the objective includes the following (emphasis added):

*Developing sustainable built environments means consolidating new urban development within and adjacent to existing settlements.*

4.5 The Applicant says however:

- This is one of a number of statements in the explanation to the objective;
- The statement immediately following refers to consolidation as generating “opportunities” (which might also be generated by other means);
- Taken as a whole the objective, its explanation, the implementing policy 5.1.1 and Appendix 2 seek well planned and coordinated development;
- The objective itself does not include an explicit reference to “consolidation” within and adjacent to existing settlements, and “consolidation” does not appear in the policy, its explanation, or Appendix 2;
- There is no “directive language” in the objective, policy or Appendix *requiring or ensuring* consolidation nor *avoiding* outcomes which are not consolidated. There are RPS policies which encourage, require or give weight to consolidation<sup>11</sup>, but policy 5.1.1 does not do so.
- Policy 5.1.1 uses non-directive language – “should” (not must) be located, “guided by” (not implementing or giving effect to) Appendix 2;
- The explanation to the policy provides that *“Some developments will be able to support certain aspects of the guidelines more than others and, in certain situations, some guidelines may need to be traded off against others.”* This is open, not directive, language;
- Appendix 2 Part A clause (c) references development that “should” (not must) “connect well with” (not consolidate or adjoin) existing development to “minimise” (not avoid) the need for urban development in greenfield areas.

4.6 The Insight report establishes that there are so few opportunities for infill or redevelopment in Dargaville that the only reasonably practicable and feasible option to provide the required development capacity in Dargaville is greenfield development.

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<sup>11</sup> RPS policies 4.6.1 Managing effects on the characteristics and qualities natural character, natural features and landscapes, 5.1.2 Development in the coastal environment, and 5.3.3 Managing adverse effects arising from regionally significant infrastructure.



4.7 The three planning witnesses responded to the Panel's questions about urban form and consolidation:

- Mr Cook stated that the relevant RPS provisions are not binary but that consolidated development gives *better* effect to the RPS.<sup>12</sup>
- Ms Cowan stated that (other than the issue of loss of soils which was still to be addressed with respect to the NPS HPL) the plan change is consistent with the RPS policies.
- Ms Anich stated that the site is within an area identified for growth in the Dargaville Spatial Plan, acknowledged the site's location as a "trade off" (in terms of policy 5.1.1) but referenced the shared path connection to town and the well-functioning urban environment proposed. Ms Anich also referred to the Appendix 2 guidelines having been included in Ms Dale's urban design brief for PC81.<sup>13</sup>

4.8 The planning witnesses therefore all agreed that the RPS provisions do not preclude development that is not consolidated against the urban edge.

4.9 The Applicant says that PC81 is well planned and coordinated development which, while not consolidated within or immediately adjacent to Dargaville, is located in an area identified in the Spatial Plan for urban development and well connected to Dargaville - and therefore consistent with these provisions of the RPS.

## 5. REVERSE SENSITIVITY

5.1 Mr Cook's evidence for APRP seeks 50m setbacks in the LLRA and GRA to address reverse sensitivity concerns.<sup>14</sup>

5.2 At the hearing in response to questions from the Panel, Mr Cook stated that he came to the 50m figure based on his experience with the WDC provisions for setbacks from unsealed roads and from road and rail noise control boundaries.

5.3 The WDC state highway and rail control boundaries trigger noise insulation requirements, with one exception to those requirements where the sensitive activity is set back at least 50m - rule NAV.6.5.3 and .4(a). The consent order for state highway and rail noise however confirms that the package of methods is based on a specifically modelled 53dB noise contour from state highways and the rail corridor. The Applicant says that those provisions provide very little relevant assistance in considering potential reverse sensitivity effects associated with rural activities.

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<sup>12</sup> The remainder of Mr Cook's responses to these questions were focused on reverse sensitivity rather than urban form.

<sup>13</sup> Page 11 of the Urban Design Assessment and Appendix 3 to that report

<sup>14</sup> Evan Cook evidence para 4.12.

- 5.4 The WDC setbacks for unsealed roads are 20m in the Rural Lifestyle Zone, and 30m in the Rural Production Zone – rules RLZ-R11.1(b)(ii) and RPROZ-R9.1(b)(i). (The Applicant notes however that PC81 includes a requirement that Awakino Point North Road be sealed from State Highway 14 to the furthest entrance to the GRA/NCA/LLRA, which will significantly reduce dust nuisance).<sup>15</sup> The WDC Rural Lifestyle Zone and Rural Production Zone also include 30m setbacks from forestry – rules RLZ-R11.1(c) and RPROZ-R9.1(b)(ii).
- 5.5 Ms Anich’s evidence is that the proposed combination of zoning layout, Open Space and Blue Green Network, setbacks, screen planting and fencing collectively adequately address the potential for reverse sensitivity and compatibility effects associated with the interface between existing rural productive activities and proposed residential activities.<sup>16</sup>
- 5.6 The Applicant has however carefully considered questions from the Panel about “No Complaints” covenants, and has agreed to volunteer (*Augier* basis) the following requirement in the GRA subdivision rules:
- A No Complaints covenant regarding existing or permitted activity land based primary production activities is proposed to be registered on the Certificates of Title of allotments when located within 30m of Awakino Point North Road or 50m of the north-eastern boundary of the TDA.*
- 5.7 While the Applicant does not consider that the WDC provisions relied on by Mr Cook support a 50m figure, a No Complaints covenant has to be applied to some spatial area and the Applicant has elected to adopt the 50m figure nominated by APRP. The full 50m has been applied to the north-eastern GRA boundary as this boundary directly adjoins Rural land, whereas 30m has been applied to the Awakino Point North Road boundary as the road reserve provides an additional buffer to the Rural land opposite.
- 5.8 The term “land based primary production activities” has been taken directly from NPS HPL Policy 9 “Reverse sensitivity effects are managed so as not to constrain land-based primary production activities on highly productive land” and because it is a defined term in the NPS HPL: “Land-based primary production means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land”.
- 5.9 The phrase “existing or permitted activity” has been chosen in order to adequately capture those activities which are entitled to protection from reverse sensitivity effects.
- 5.10 The No Complaints covenant has not been applied to the GRA north-western boundary because:
- This area of the site adjoins rural lifestyle land use rather than rural production land use;

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<sup>15</sup> TDA-LU-S4.2(e)

<sup>16</sup> Venessa Anich evidence paras 12.1 to 12.20.

- There is a 20m wide pan-handle strip separating the lifestyle properties from the site; and
- The provisions already include a 20m setback requirement for buildings and major structures adjoining the Rural zone.<sup>17</sup>

5.11 The No Complaints covenant has not been applied to LLRA because:

- LLRA is considered to be compatible with adjacent Rural zoning and rural activities;
- This boundary will be landscaped and fenced;<sup>18</sup> and
- The provisions already include a 10m setback requirement for buildings and major structures adjoining the Rural zone.<sup>19</sup>

5.12 The Applicant says that the combination of matters already supported by Ms Anich - zoning layout, Open Space and Blue Green Network, setbacks, screen planting and fencing – together with the volunteered No Complaints covenant collectively satisfy NPS HPL policy 9 by managing reverse sensitivity effects with respect to adjacent Rural zoned land.

## **6. TANGATA WHENUA**

6.1 Representatives of Te Kuihi, Te Houhanga a Rongo Marae and Te Whanau Parore addressed the hearing.

6.2 Concerns about land tenure were addressed in the Applicant's opening legal submissions.<sup>20</sup>

6.3 Another very clear concern for representatives at the hearing was exclusion from the submissions process for this publicly notified plan change.

6.4 The Applicant is confident that representatives from the Council present at the hearing would have taken note of the strong request for the status of Te Kuihi, Te Houhanga a Rongo Marae and Te Whanau Parore in Dargaville to be recognised by the Council in its ongoing processes.

## **7. YOUTH RECREATION**

7.1 Submitters raised concerns about the sufficiency of active recreation opportunities for tamariki and rangatahi within the development, and the Panel asked questions about these matters.

7.2 After the hearing the Applicant commissioned an independent assessment by GLG which was circulated. That assessment concluded that:

- There is significant and adequate provision of passive open space for recreation activity within PC81, including the Hillside OSA, Hauora OSA, Blue/Green OSA and active transport shared path link to Dargaville.

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<sup>17</sup> TDA-GRA-S2(1)(g).

<sup>18</sup> TDA-LU-S2(a).

<sup>19</sup> TDA-LLRA-S2(c).

<sup>20</sup> Applicant's opening legal submissions t paragraphs 5.8 to 5.10.

- The scale of the development does not suggest a need for a dedicated indoor sport and recreation facility.
- Formal sport space should continue to be consolidated in Dargaville and not be provided in a fragmented way across the wider Dargaville area and in this development at its current size.
- Informal active recreation communal space for tamariki and rangatahi is recommended in the Hauora OSA, in a roughly rectangular area of about 3,500m<sup>2</sup> (70m by 50m) to accommodate a combination of paved court area (minimum of 20m by 20m) and a flat open grass area.
- A pocket park (play area) is supported within the GRA, of approximately 500m<sup>2</sup> and located within a short walking distance of residences.

7.3 Submitters Grant and Adrienne McLeod have queried some aspects of the GLG report:

- *The shared pathway cost must be covered completely by the Applicant and undertaken prior to development occurring.*

The provisions address both of these requirements.<sup>21</sup>

- *In the Hauora OSA a 50m by 70m area with 20m by 20m paved area is not sufficient.*

The GLG report has been prepared by independent consultants with expertise in recreation planning. These are their reasoned recommendations for this development.

- *For the pocket park 22.36 metres square is very small.*

The submitter appears to be referring to an area of 22.36m by 22.36m equalling 500m<sup>2</sup>.

The GLG report has been prepared by independent consultants with expertise in recreation planning. These are their reasoned recommendations for this development.

7.4 Ms Anich has prepared minor amendments to the provisions to ensure implementation of the specific recommendations of the GLG report with respect to connecting the shared path to the Blue Green network, informal active recreation communal space for tamariki and rangatahi in the Hauora OSA, and the pocket park in the Neighbourhood OSA (within the GRA).

## 8. FUNDING OF INFRASTRUCTURE

8.1 APRP expressed concern about the provision of infrastructure and specifically required that all development costs must be met by the Applicant.

8.2 Infrastructure provision or upgrade falls broadly into three categories – on-site, to/from the site, and upgrades to supply / treatment facilities.

8.3 The provisions require on-site infrastructure (such as fencing, landscaping, and the Blue Green network), and specific upgraded or extended infrastructure to/from the site (such as the

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<sup>21</sup> TDA-SUB-S10.4(b) and TDA-LU-S4.2(b)

wastewater extension, shared path, and intersection upgrade). Conditions of subsequent resource consents will require this infrastructure to be provided (and funded) by the developer as is usual for land use and subdivision consents.

8.4 Mr Usmar for the Council confirmed at the hearing that long term upgrades to public supply / treatment infrastructure (such as upgrades to the Wastewater Treatment Plant or alternative sources of raw water) are already included in the Council's Long Term Plan (LTP), which is funded by development contributions.

8.5 The Applicant says that the PC81 provisions are sufficiently clear about the requirement to provide on-site infrastructure and specific upgraded or extended infrastructure to/from the site. The provisions do not, and do not need to, address upgrades to supply / treatment facilities as these are addressed in the LTP.

## 9. SH14 INTERSECTION

9.1 The legal framework for determining the "most appropriate" intersection form (in section 32 terms) versus a "superior" form was set out in the Applicant's opening legal submissions.<sup>22</sup>

9.2 A particular focus of the hearing was whether the intersection of State Highway 14 and Awakino Point North Road should be upgraded to a T intersection (as proposed by the Applicant) or a roundabout (as sought by Waka Kotahi).

9.3 The Panel also asked questions of counsel and witnesses as to whether Waka Kotahi as the Road Controlling Authority could essentially "override" the RMA and require a roundabout if the PC81 provisions (and subsequent resource consents) specified a T intersection.

9.4 Following the hearing Waka Kotahi filed a legal memorandum responding to this issue. That memorandum however appears to proceed from the wrong starting point, stating that the proposition is that approval of PC81 is recommended "without a requirement" for a roundabout<sup>23</sup>, rather than the Applicant's proposal in PC81 which is that the plan change specify a T intersection. Nevertheless, the memorandum from Waka Kotahi concludes that (emphasis added):

*Waka Kotahi would exercise its powers and responsibilities under the Government Roding Powers Act and the Resource Management Act independently of the Commissioners' recommendation (and ultimately the District Council's decision) on this aspect of the proposed plan change.*<sup>24</sup>

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<sup>22</sup> Applicant's opening legal submissions at paragraphs 5.71 to 5.74.

<sup>23</sup> Legal memorandum from Waka Kotahi at paragraph 2(a).

<sup>24</sup> Legal memorandum from Waka Kotahi at paragraph 7.

- 9.5 While Waka Kotahi has referenced statutory powers, no case law or analysis has been provided with respect to the contention that Waka Kotahi can unilaterally use its powers to override district plan rules (which have the “force and effect of a regulation”<sup>25</sup>), the conditions of an approved resource consent, or (on appeal) a decision of the Environment Court.
- 9.6 In response to questions from the Panel on this point, Mr Bangma (counsel for the Council) stated that if a Plan provision or resource consent condition specified a form of intersection upgrade and Waka Kotahi refused to allow it to be implemented, a legal challenge would be expected.
- 9.7 The Applicant agrees with Mr Bangma, and says further that this is not something that the Panel needs to concern itself with. If the decision on PC81 were to specify a T intersection upgrade as the Applicant seeks, Waka Kotahi as a submitter has recourse to an appeal to the Environment Court (and vice versa, if the decision were to specify a roundabout). Parties also have recourse to the Environment Court’s declaratory powers, and to the High Court on application for judicial review of administrative decisions if they so wish. The Applicant says that the Panel’s focus in this hearing should be squarely on what is the “most appropriate” intersection form on the evidence.
- 9.8 The corporate evidence for Waka Kotahi made it clear that speed limit reductions are unlikely as only Waka Kotahi can progress these and it cannot or will not do so.
- 9.9 Mr McKenzie for the Applicant and Mr Hills for the Council however both expressed that operational speed reductions are achievable through design components (such as raised tables, signage, planting, making drivers aware of the intersection). Mr McKenzie’s evidence is clear that his opinion that a T intersection is appropriate is not dependent on speed limit reductions.<sup>26</sup>
- 9.10 With respect to intersection form, at the hearing Mr Collins for Waka Kotahi acknowledged the prevalence of T intersections on the state highway network, and accepted that if safe sight distances could be achieved at this intersection he would change his view regarding the requirement for a roundabout.
- 9.11 Mr Hills for the Council stated that a T intersection is appropriate and it is not impractical to achieve the necessary sight distances.
- 9.12 Following the hearing Mr McKenzie has undertaken further work which demonstrates that safe sight distances can be achieved with a T intersection. A memorandum from Mr McKenzie is included at Annexure 6 setting out this assessment. Mr McKenzie concludes:
- The proposed design can satisfy the Waka Kotahi Safe Intersection Sight Distances for the current speed limit and can be practically provided through the road corridor.

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<sup>25</sup> RMA section 76(2).

<sup>26</sup> Don McKenzie supplementary evidence at paragraph 2.6.

- The positioning of roadside trees, swale drain and associated underground infrastructure services, together with District Plan requirements, ensure that available sight distances will be maintained.
- Any future alteration to the speed limits (not proposed or required to support the Plan change) will reduce the required sight distance but are not relied upon to reach his opinion that the proposed T intersection will deliver safe outcomes.

9.13 The Applicant therefore maintains that a T intersection is the most appropriate intersection form on the basis of the evidence.

## 10. SHARED PATH

10.1 Northland Transport Alliance (NTA) seeks that the shared path terminate at Selwyn Park, or at a minimum at Finlayson Park Avenue at the start of the Residential zone. The Applicant proposes to terminate the shared path at Tuna Street, connecting to the existing urban footpath there.

10.2 While Mr Marshall for NTA preferred the Finlayson Park Avenue termination for speed environment and cyclist safety, Mr McKenzie for the Applicant and Mr Hills for the Council agreed that termination at Tuna Street is appropriate. Mr McKenzie noted that the existing width (generally 1.5m) and location is appropriate, and variation in width and location is part of the existing urban network.

10.3 The termination of the shared path was addressed in the Applicant's opening legal submissions.<sup>27</sup> The Applicant maintains its view that termination beyond the connection to the existing footpath at Tuna Street is an upgrade of public infrastructure beyond that necessary to mitigate the effects of the proposal.

10.4 Mr Hills responded to questions from the Panel, stating that the shared path is critical to PC81 and the provisions need to make it clear that the shared path is non-negotiable infrastructure.

10.5 Ms Anich has already proposed an amendment to the provisions with the addition of a further policy (in response to the submission from Waka Kotahi) stating:

*Require the provision of a new pedestrian/cycle link and upgrade of State Highway 14 /Awakino Point North Road intersection through subdivision and development.*

10.6 This is a directive policy ("require"). The provisions then require the shared path to be provided at the time of subdivision within the GRA and prior to occupation of any residential unit in the GRA.<sup>28</sup> The Applicant says that in combination these provisions make it clear that the shared path is non-negotiable infrastructure.

<sup>27</sup> Applicant's opening legal submissions t paragraphs 5.86 to 5.87.

<sup>28</sup> TDA-SUB-S10.4(b) and TDA-LU-S4.2(b)

## 10.7 AMENDED PROVISIONS

10.8 Ms Anich has prepared minor amendments to the provisions, building on the amendments already made in her supplementary evidence, to:

- Incorporate the volunteered No Complaints covenant provisions in the GRA subdivision rules.
- Ensure implementation of the specific recommendations of the GLG report with respect to connecting the shared path to the Blue Green network, informal active recreation communal space for tamariki and rangatahi in the Hauora OSA, and the pocket park in the Neighbourhood OSA (within the GRA).
- Align the PC81 provisions with the PC4 Fire and Emergency NZ (FENZ) provisions.
- Pick up minor amendments and typos.

10.9 Ms Anich's amended provisions are included as Annexure 7.

10.10 As indicated with respect to the NPS FM, the Applicant intends to amend the Development Area Plan to refine the indicative roading in proximity to indicative wetlands. The Plan will be forwarded to the Council after this Reply, once the Applicant's GIS consultant has returned from overseas to make the necessary amendment.

## 11. CONCLUSION

11.1 The Applicant has established that there is a need for residential and light industrial development capacity in Dargaville, and that the only reasonably practicable and feasible option to provide that capacity is PC81.

11.2 PC81 represents a rare opportunity to take a disused community asset - a large flat site in single ownership, above the floodplain, in proximity to Dargaville, and recently earmarked by the Council for urban development – to re-imagine it as a new neighbourhood meeting the immediate need for housing and employment with high quality urban design and environmental outcomes, and to re-invest the development proceeds for community benefit.



**Sarah Shaw**

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8 June 2023