

29 March 2023

Kaipara District Council
C/- Independent Hearing Panel of PPC81

Sent via: pwaanders@kaipara.govt.nz

Dear Commissioners,

At the hearing pertaining to Private Plan Change 81, a question was posed to Waka Kotahi as follows:

Does Waka Kotahi, as the road controlling authority, have powers under the Government Roading Powers Act 1989 to prevent a T intersection being constructed if it is determined by Kaipara District Council as the appropriate intersection form to mitigate the effects of the plan change.

We agreed at the hearing to respond to this question as soon as practicable. As such, please find attached memo from Mark Sly, Waka Kotahi Principal Legal Counsel addressing this matter.

We trust this satisfies the Hearing Panel's question.

Yours sincerely



Tessa Robins
Senior Planner
Poutiaki Taiao / Environmental Planning, System Design, on behalf of Waka Kotahi New Zealand Transport Agency.

To Tessa Robins, Senior Planner
From Mark Sly, Principal Legal Counsel, Environment & Property
Date 29 March 2023
Subject Private Plan Change 81 – Road Controlling Authority Powers

1. I understand that during the case for Waka Kotahi at the hearing of the above Private Plan Change request, the Commissioners asked you for more information regarding the powers of Waka Kotahi as a road controlling authority.
2. More particularly, I understand that the Commissioners wish to reflect upon a proposition approximating the following:
 - a. approval of the Private Plan Change is recommended without a requirement that the intersection of Awakino Point North Road and State Highway 14 be upgraded to a roundabout intersection form; and
 - b. notwithstanding the Waka Kotahi position that a roundabout is the appropriate configuration to address the effects of the plan change, the applicant presents its preferred T intersection design to Waka Kotahi for approval.
3. The intersection at issue is depicted in the image below (extracted from the Kaipara District Council online maps). All of the land within the purple boundaries (the delta-wing shape) is Crown land administered by Waka Kotahi for state highway purposes, and subject to a designation (D54) in the Kaipara District Plan.



4. Whilst the Commissioners have jurisdiction under the Resource Management Act 1991 to consider, and make a recommendation on, the appropriate form of mitigation for the intersection by way of plan change provisions, the implementation of that mitigation is subject to separate statutory processes that Waka Kotahi has control over.

5. That is because:

- The intersection works would be on state highway reserve land. As the manager of the state highway network on behalf of the Crown, Waka Kotahi is legally required to provide permission for any works by third parties on such land. Section 61 of the Government Rounding Powers Act 1989 gives Waka Kotahi “*sole powers of control for all purposes, including construction and maintenance, of all State highways under this Act*”, and is the source of Waka Kotahi powers in this context. It is a convictable offence for any person to undertake works within the state highway without Waka Kotahi permission.

Given the broad and absolute language of section 61, Waka Kotahi has sole discretion to give or decline permission for any works within the state highway, including a proposed change to intersection form, road alignment, pavement type, and so on.

- The works are also within the state highway designation and would therefore also require Waka Kotahi approval pursuant to section 176 of the Resource Management Act 1991.
6. Depending on the intersection design presented to Waka Kotahi for approval, if a speed change is required to make the intersection workable and safe, a further process is material. I understand this has been covered in evidence given for Waka Kotahi, but to be clear only Waka Kotahi can legally seek speed changes for state highway corridors. It must do so in accordance with the Land Transport Rule: Setting of Speed Limits 2022, and the process is subject to Government policy direction. Again, I understand that evidence for Waka Kotahi has explained that this part of the state highway network is well outside the recent policy direction governing speed reassessments, and consequently will not be assessed or granted funding for the relevant process in the foreseeable future.
7. In summary, Waka Kotahi would exercise its powers and responsibilities under the Government Rounding 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.