

**BEFORE A HEARING COMMISSIONER**

**IN THE MATTER** of the Resource Management Act 1991 (RMA)

**AND**

**IN THE MATTER** of hearing submissions on Plan Change

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**LEGAL SUBMISSIONS OF COUNSEL FOR WARWICK AND MARION  
STEFFERT**

**HEARING FOR PC58**

**7 February 2024**

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## **Introduction**

- 1 These submissions are made on behalf of Warwick and Marion Steffert in regard to their request for Matamata-Piako District Council's ("MPDC's") Private Plan Change 58 – Avenue Business Park ("PC58").
- 2 Private plan change 58 proposes a new industrial area which is located between Avenue Road North and SH26, on the western side of Morrinsville and is approximately 13.4ha in area. The proposal is to rezone the land from Rural Zone to General Industrial Zone ("GIZ").
- 3 The plan change was publicly notified and there are 11 submissions in support of the development on the basis of economic growth within the community. Concerns raised in submissions relate to the scale and nature of effects from industrial activities.

## **Scope of submissions**

- 4 These submissions do not propose to summarise PC58 or the evidence in general terms. Rather we address areas of particular relevance to the decision:
  - (a) Economic Assessments;
  - (b) Landscape effects;
  - (c) Transportation;
  - (d) Noise.

## **Economic Assessments**

- 5 MPDC has undertaken a Business Demand and Capacity Assessment ("BCDA") within its district. That BCDA was updated in late-2023 and provides a basis for considering the supply and demand for industrial land for the horizon relevant to the district plan and beyond.
- 6 Mr Counsell has considered the BCDA and the also the population growth statistics relevant to the Morrinsville area when preparing his economic assessments and evidence. In addition, Mr Counsell has considered the information provided by Mr Chris Steffert regarding interest in the Avenue Business Park Stage One development and plans for the PC58 rezoning. That information describes strong demand for industrial land in Morrinsville. The demand is partly from general growth and economic activity in Morrinsville. Other factors are businesses that require more land

to consolidate their operations and improve efficiency and the cheaper cost of industrial land in Morrinsville compared to Hamilton and other areas.

- 7 Inevitably there is a difference between the estimates of business supply and demand in Morrinsville when considering the BCDA report, the Nera Consulting Report from Mr Counsell and the MPDC peer review report from Mr Colegrave. As articulated by Mr Counsell in his economic assessment addendum:

[T]here are inherent uncertainties in any sort of analysis of supply and demand that attempts to forecast the future, and a risk of a false sense of precision being applied to the supply-demand estimates.<sup>1</sup>

- 8 The economists have the unenviable task of predicting the future industrial needs within our communities. They approach that task by interpreting trends in sales, population and employment and by reviewing the availability of land available for development. Those predictions will take into account a range of factors and the extent to which any one of those factors influences their predictions will vary according to the economic model applied and the data set considered most relevant.
- 9 Mr Counsell and Mr Colegrave agree that there will be a shortfall of industrial land available for development within Morrinsville to meet the predicted demand in the medium-term (within 10 years). The Nera analysis estimates a shortfall of 13ha in Morrinsville. An alternative analysis which Mr Counsell has carried out using the demand estimates from the BDCA identifies a 7.1ha shortfall in the medium-term.
- 10 Most importantly for the Panel, both Mr Counsell and Mr Colegrave agree that there is sufficient medium-term shortfall to satisfy the requirements of cl 3.6(4) of the NPS-HPL that there will be a need for this rezoning to provide sufficient development capacity to meet expected demand for industrial land.
- 11 The Panel can have confidence that there is sufficient evidence on which to justify this rezoning, including the part of the site that contains highly productive land.

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<sup>1</sup> Nera Consulting addendum; 2 February 2024 para 15.

## Landscape effects

- 12 Two submissions were made in regard to landscape and visual effects<sup>2</sup>. The submitters' main concern is the replacement of existing rural views with those of commercial and industrial development.
- 13 With reference to the Hexter submission, we note that there are existing trees which largely conceal the area that is being proposed to be rezoned from many parts of the Hexter property, including the existing dwelling. Those mature trees are on the Hexter property and could be removed at any point as a permitted activity. Mr Hexter has, in fact, indicated an intention to remove the trees in order to avoid ongoing maintenance issues.
- 14 In assessing environmental effects, it important to do so in the context of the existing environment. In *Queenstown Lakes District Council v Hawthorn Estate Ltd*, the Court of Appeal considered whether evaluating effects on the "existing environment" should solely pertain to the current state or encompass the future state. The Court affirmed the latter stance, with certain constraints, determining that assessment of the existing environment involves considering the impacts of both permitted activities (those allowed without specific approval) and the effects of granted resource consents at the time of a particular application is considered.<sup>3</sup> Therefore, the environment relevant to the assessment of this rezoning proposal is the environment that might exist in the future without the trees, together with the environment existing at present.
- 15 The effects on the Davenport property are easier to assess because the Davenports have not indicated any likely changes that would alter views over the PC58 site from their dwelling or elsewhere on their property.
- 16 Ms Soanes has appropriately considered a number of options when assessing the landscape effects from rezoning the site from Rural to Industrial. She considers that there should be guidance within the Avenue Business Park Development Area Plan ("ADAP") to ensure that any subsequent subdivision application properly addresses the landscape mitigation requirements for the new zone.

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<sup>2</sup> Peter Hexter (submission 13); and Warren and Sandra Davenport (submission 8)

<sup>3</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299, at [84].

- 17 In particular, Ms Soanes recommends a 5m wide landscape buffer along the boundary with the Rural Zone, including the Hexter and Davenport properties. Her graphic supplement includes a sample cross-section showing a naturalised planting outcome comprising native and other species that will provide an effective visual screen as the planting becomes established. Ms Soanes notes this boundary treatment will also be consistent with recommendations in the Cultural Values Assessment.
- 18 The provisions in the ADAP require a landscape plan to be prepared and submitted with a future resource application and for the landscaping to be implemented at the time of subdivision. The landscape plan will provide detailed information to address landscape effects.

### **Transportation**

- 19 There are few areas of disagreement between the Applicant/Requester and MPDC in relation to this plan change. One of those areas relates to the required standard of footpaths and cycleways within the new GIZ and surrounding roads.
- 20 The Stefferts are part owners of Stage One of the Avenue Business Park. The resource consent for that industrial subdivision was granted in 2022 and the first titles issued in November 2023. The road to service the subdivision is called Magistrate Avenue. The road has been constructed and vested although it is not publicly accessible by vehicles yet. Magistrate Avenue was designed, built and approved in accordance with the MPDC Development Manual and comprises a brand new road with a brand new 1.5m wide footpath along the northern side of the road.
- 21 As part of the review of this plan change proposal, MPDC's transportation peer reviewer, Ms McMinn, now recommends that the existing, newly created footpath is widened to 3m so as to provide a shared cycle and pedestrian path within the Avenue Business Park Stage One. Within the PC58 site she recommends that there should be a 3m wide shared cycle and pedestrian path on one side of the new spine road and a 1.8m wide footpath on the other. These recommendations are opposed for the reasons set out in Ms Hills' evidence and supplementary evidence.
- 22 The PC58 site is not equivalent to the Ruakura Inland Port. It is a small extension to a newly developed industrial area in Morrinsville. It is not connected to or part of any recreational cycling or walkway system in Morrinsville. It does not adjoin a residential area.

- 23 As noted in Ms Hills' evidence, the cycling and walking activity within the GIZ is going to be overwhelmingly related to employment within the area. That comment is supported by evidence of low levels of non-vehicular traffic in other similar industrial areas. Ms Hills' evidence determines there is no justification for requiring pedestrian and cycling networks to the standard suggested by Ms McMinn, nor is there justification for any upgrade to a newly created footpath that was only consented in 2022 and constructed last year.
- 24 The Applicant/Requester does agree to a minimum standard of 1.8m for the new paths within the PC58 site (one side only), as recommended by Ms Hills. That change would exceed the width required in the MPDC Development Manual but would be consistent with the guidelines in the RITS and is a reasonable compromise given the context of the development.
- 25 Ms Hills also responds to Ms McMinn's recommendation that a pedestrian crossing place on Avenue Road North is specified as part of the ADAP provisions. Ms Hills notes there are a number of matters necessary to consider when determining whether and where a crossing might be located and those matters will depend on the development environment at the time of engineering design. The proposed ADAP provisions already require a pedestrian crossing on Avenue Road North to be provided if it is assessed as being required and feasible at resource consent stage.
- 26 The Applicant/Requester does not oppose the other recommended changes set out in the s 42A report and acknowledges a pre-existing intention to upgrade the Avenue Road North/Magistrate Avenue intersection when/if the PC58 rezoning was approved to enable development of Stage Two to proceed.

### **Noise**

- 27 The other area of disagreement relates to the measurement position for the assessment of noise from activities within the GIZ. This matter has been the subject of recent discussions and a Joint Witness Statement ("JWS") between Mr Cottle and Mr Savory (MPDC's noise peer reviewer).
- 28 The JWS records that Mr Cottle and Mr Savory agree on the numerical noise limits, including several recent amendments that they have discussed.

- 29 The noise experts also agree that there needs to be a mechanism for ensuring that adverse noise effects do not become unreasonable at or within a dwelling outside the ADAP area. However, they have different views as to the method and location for the measurement and assessment of compliance in the Rural Zone to achieve this.
- 30 Mr Cottle considers that noise should be measured and assessed at the notional boundary of rural dwellings that existed in the Rural Zone at the date of notification of PC58. The reason for including a reference date is to avoid the potential for activities in the GIZ to be unduly constrained if a new dwelling were to be built in the Rural Zone closer to the GIZ.
- 31 Mr Cottle's evidence describes the likelihood of noise related reverse sensitivity effects as low. He explains that all adjacent Rural zoned properties have dwellings, including three dwellings on the property to the north. Even if additional dwellings were to be added on properties to the north and west, they are large properties and he notes it would be fanciful to anticipate dwellings being constructed near the boundary of the GIZ when there would be other locations where dwellings could be built further away.
- 32 The JWS includes an updated copy of the Avenue Development Area Plan which identifies existing houses on neighbouring Rural zoned sites. The purpose of this revision is to provide certainty regarding dwelling locations and assist with administration of the noise rule.
- 33 Mr Savory has suggested a different approach which would involve introducing a Noise Control Boundary ("NCB") over adjacent Rural zoned properties where noise from activities in the GIZ would be measured. This would be a bespoke approach for PC58. The NCB would be shown on the planning maps in the district plan.
- 34 Mr Cottle has explained the reasons why he does not agree with this approach in his evidence and in the JWS. A NCB is usually used to control noise from a sole emitter and Mr Cottle envisages compliance monitoring would be problematic. He sees no reason to adopt a different approach for PC58 compared to other similar industrial areas in the district, including Avenue Business Park Stage One. The buffer zone that the NCB would create is relatively small and Mr Cottle considers the likelihood of dwellings being built in this area is low.

- 35 If a new dwelling were to be constructed closer to the proposed GIZ than the existing dwellings, the extent of any noise mitigation would be at the discretion of the person building the dwelling, as is the case elsewhere in the district where Rural Zones adjoin Industrial Zones. Even if a dwelling was built near the GIZ boundary, Mr Cottle anticipates the extent of mitigation would not be overly onerous. His evidence explains that a mechanical ventilation system to allow for closed windows would allow a reasonable internal noise level to be achieved in that situation.
- 36 The noise rule proposed by the Applicant/Requester with amendments agreed in the Joint Witness Statement is as follows:

#### 6:Noise

- (a) The noise rating level (LAeq) as measured at any point within the boundary of any land zoned Residential or Rural Residential, or the notional boundary of any residential unit in the Rural Zone which was existing at (insert PC58 notification date), shall not exceed:
- (i). 55 dB LAeq Monday to Saturday – 7am to 10pm, and
  - (ii). Sunday and public holidays – 9am to 6pm, or and 40 45 dB LAeq at all other times, and
  - (iii). The L<sub>max</sub> maximum level shall be not exceed 65 75 dB LAFmax between 10pm to 7am.
- (b) The noise rating level (LAeq) as measured at any point on the boundary within the GIZ shall not exceed 65 dBA-LAeq. The maximum level shall not exceed 95 dB LAFmax between 10pm to 7am.
- (c) The noise must be measured in accordance with the requirements of NZS6801:2008 – Acoustics – Measurement of Environmental Sound and assessed in accordance with the requirements of NZS6802:2008 Acoustics – Environmental Noise.
- (d) Ancillary residential units located within the GIZ shall be designed, insulated or constructed and maintained to ensure that:
- (i) noise received shall not exceed 35 dB LAeq in bedrooms and 40 dB LAeq to all other habitable spaces from noise not on the same site; and
  - (ii) if windows are required to be closed to achieve the noise limits in clause (i) above, the building must be designed and constructed to provide an alternative means of ventilation in accordance with Clause G4 of the New Zealand Building Code; and
  - (iii) an acoustic design report prepared by an appropriately qualified practitioner confirming compliance with clause (i) and (ii) above must be submitted to Council as part of resource or building consent application.
- (e) Noise mitigation for noise sensitive activities refer to Rule 5.2.9.

Also refer to section 5.2

#### Submitter Evidence

- 37 We note that Calcutta Farms has sufficient concern regarding the introduction of a NCB to warrant expert evidence from Ms Drew. We



agree that such an approach would likely have implications for other industrial sites, including the PC57 development, and that a consistent approach to measurement of noise from industrial areas is more appropriate than a bespoke NCB.

- 38 Mr Sutherland has also provided evidence in support of the submission from MPDC. In relation to his comments regarding Development Agreements, we note that the funding of infrastructure is a separate issue to the plan change process. It is unclear at this point whether a Development Agreement will be needed at all and if it is then what the specifics of it might be.
- 39 Matters such as the upgrade of the Avenue Road North/Magistrate Avenue intersection and the connection to the wastewater reticulation are likely to be addressed as conditions of consent. We understand that conditions were imposed for similar infrastructure for the Avenue Business Park Stage One development without a Development Agreement being required.
- 40 In any case, the Applicant's/Requester's proposal already recognises that the provision for off-site infrastructure and services may be subject to a Development Agreement and/or development contributions (Appendix 9.6). That is as far as the plan provisions need to go.
- 41 Mr Sutherland also addresses the activity status proposed for subdivision and development proposals that do not comply with the ADAP. The Applicant/Requester considers it is appropriate to identify specific non-compliances that would compromise the integrity of the sub-zone or result in unacceptable adverse effects on the environment and assign those with non-complying status. For example, in the ADAP a failure to meet the minimum lot size or to provide a water meter would be a non-complying activity and all other variables would trigger discretionary status.
- 42 We also note the recent Environment Court decision in *Fraser Auret Racing v Rangitikei District Council*.<sup>4</sup> In that decision the Court accepted that a non-complying status is a more restrictive pathway to consent but that does not mean there is less scrutiny of actual and potential adverse effects under s 104 for a discretionary activity. The Court said:

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<sup>4</sup> [2024] NZEnvC 10.

Section 104 contains no limitations on effects matters which can be brought into consideration when considering applications for (fully) discretionary activity consents nor on the scrutiny to which such effects might be subject by a consent authority which has a statutory obligation to assess actual and potential effects appropriately.<sup>5</sup>

- 43 The Court went on to find that discretionary status was appropriate given the lack of any special landscape or other features on adjoining land that would make that neighbouring vicinity more delicate or vulnerable to change.
- 44 The *Fraser* case concerned an industrial plan change where the activity status for activities not in general accordance with a Development Area Plan was on appeal. While *Fraser* had an earlier procedural history, the issue to be determined was the appropriateness of 2 non-complying rules and the associated requirement for public notification. The Court's discussion on that point is relevant and useful.
- 45 We accept that the District Plan otherwise imposes a rule that makes any non-compliance with a structure plan a non-complying activity, however this is a new plan change. A discretionary activity classification would afford unlimited discretion and would not create any plan integrity issues, as stated in Mr Inger's evidence. It is also entirely appropriate to reflect recent decisions from the Environment Court in the plan change regarding activity status. It is not sufficient to ignore the Court's views on the basis of plan integrity, particularly in circumstances where the general industrial zone provisions are not applicable to new industrial zone areas such as those proposed in PC 58 and PC 57.
- 46 Mr Sutherland also proposes a change to the wording of Rule 9.6.4. to provide more detail regarding the infrastructure that will be required. His wording is consistent with the wastewater infrastructure options set out in Mr Suljic's evidence and is therefore accepted by the Applicant/Requester as follows:

#### **9.6.4 Three Waters**

##### **Wastewater**

*Subdivision and development within the ADAP will require the following wastewater infrastructure and design considerations:*

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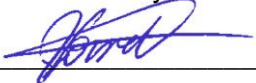
<sup>5</sup> *Fraser* para 24.

- a) *A connection and discharge to the Morrinsville wastewater treatment plant, including:*
- a. *A connection to the 150mm diameter gravity main in the Avenue Business Park Development, which conveys wastewater to the existing pump station on Avenue Road North; or,*
  - b. *A connection to the 200mm diameter gravity main at the intersection of Avenue Road North and Thames Street; or,*
  - c. *An alternative option as agreed with Council.*
- b) *Confirmation that the wastewater treatment plant and existing mains network has capacity to accommodate wastewater from the ADAP;*
- c) *A pump station within the ADAP; and*
- d) *An internal reticulation network.*

### **Evidence**

- 47 The Applicant/Requester has obtained expert reports that address soil contamination and geotechnical suitability of the site. Those reports have not been contested by any party and the relevant experts have not provided briefs of evidence. Both Mr Holland (Geotechnical engineering) and Mr Gibbins (Soils Contamination) are available to answer questions and can appear virtually if required.
- 48 The following witnesses have provided briefs of evidence:
- (a) Chris Steffert (on behalf of Applicant);
  - (b) Jeremy Hunt (Agribusiness: AgFirst);
  - (c) Kevin Counsell (Economics: Nera Consulting);
  - (d) Dali Suljic (Civil Engineering: Tektus Consultants);
  - (e) Joanna Soanes (Landscape Architect: Moffa Miskell);
  - (f) Tara Hills (Transportation Engineering: Direction Traffic Design);
  - (g) Mat Cottle (Acoustics; Marshall Day Acoustics); and
  - (h) Ben Inger (Planning: Monocle).

Date: 23 February 2024



Dr Joan B Forret

Counsel for Warwick and Marion Steffert