

BEFORE THE MATAMATA-PIAKO DISTRICT COUNCIL

Independent Hearing Commissioner(s)

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of hearing submissions and further submissions
in respect of the request by Warrick and Marion
Steffert to change the Matamata-Piako District
Plan (Plan Change 58 – Avenue Business Park)

**STATEMENT OF NATHAN THOMAS SUTHERLAND ON BEHALF OF MATAMATA-
PIAKO DISTRICT COUNCIL (as a submitter)**

PLANNING

21 February 2024

1.0 INTRODUCTION

- 1.1 My name is Nathan Thomas Sutherland. I am the Team Leader – RMA Policy for the Matamata-Piako District Council (“the Council”), a position I have held since May 2023. Prior to this, I was the Council’s Team Leader – Resource Consents. I hold a Bachelor of Applied Science (Environmental Studies) from AUT.
- 1.2 I have nine years’ experience as a planner covering a range of resource consent and policy development matters.

2.0 CODE OF CONDUCT

- 2.1 Although these proceedings are not before the Environment Court, I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and I agree to comply with it. The evidence presented in this statement is within my area of expertise, except where I state that I am relying on information provided by another party. I have not knowingly omitted facts or information that might alter or detract from the opinions I express.

3.0 SCOPE OF EVIDENCE

- 3.1 This evidence has been prepared on behalf of the Matamata-Piako District Council as a submitter on Private Plan Change 58 – Avenue Business Park, which involves a request to rezone approximately 13.4ha of rurally zoned land on the western outskirts of Morrinsville into a bespoke General Industrial Zone (GIZ).
- 3.2 My evidence is focused on the District Plan provisions proposed through the plan change and it will respond to relevant matters raised in the s42A report and the various statements of evidence made on behalf of the applicants.

4.0 BACKGROUND

- 4.1 Private Plan Change 58 – Avenue Business Park involves a request to rezone 13.4ha of rurally zoned land on the urban outskirts of Morrinsville to General Industrial Zone (GIZ). The GIZ does not currently exist in the Operative Matamata-Piako District Plan, instead the nearest comparable zone would be Industrial. In addition to a new zone, the plan change (if granted) would introduce a new set of bespoke District Plan provisions.
- 4.2 The Zone Framework Standard of the National Planning Standards prescribes the zones a district plan may have. The “General Industrial Zone” is consistent with the mandatory directions of this standard. The

concept of national planning standards was introduced as part of the 2017 amendments to the Resource Management Act 1991 (RMA), and the first set of National Planning Standards were released in 2019. Their aim is to bring consistency to the form and structure of council plans and policy statements, making them easier to use and prepare.

- 4.3 The Matamata-Piako District Council is updating its District Plan to align with the directions of the National Planning Standards. As part of this project, the intention is to convert all of the district's current Industrial Zone into GIZ. Should the plan change be granted, it is likely that the area covered by this plan change will become a precinct of the wider GIZ. Precincts enable the application of tailor-made provisions to a particular area within a zone. The District Plan in its National Planning Standards form is expected to be in use in the second quarter of 2024.
- 4.4 The Council submitted on Private Plan Change 58 – Avenue Business Park, making 23 submission points. The majority of these related to the proposed District Plan provisions. Since this submission, the applicants and Council have reached agreement on all but two matters. The parameters of this agreement are outlined in a letter to the applicants' representative, dated 25 January 2024 and attached to the s42A report as Appendix 5. The matters still in dispute are discussed below.

5.0 SUBMISSION POINTS

5.1 Subdivision/Development not in accordance with a Development Area Plan

- 5.2 Points 7 and 18 of the Council's submission disagree with the activity status ascribed to development and subdivision not in accordance with the Avenue Business Park Development Area Plan (ADAP) in the proposed provisions. Proposed Rule GIZ-R1(3) identifies "*Development not in general accordance with a Development Area Plan*" as a discretionary activity. Similarly, Rule 6.3.3(i) requires subdivision within the plan change area to comply with the ADAP. Where it does not, an application would be classed as a discretionary activity under Rule 6.3.3(iii).
- 5.3 The Operative District Plan presently contains five Structure or Development Area Plans. Subject to complying with the relevant Plan, subdivision within these areas is either a controlled or a restricted discretionary activity. However, failure to comply with a Structure or Development Area Plan is a non-complying activity in all cases. Land uses differ slightly as compliance with a Structure or Development Area Plan is a permitted activity standard (rule 3.10), therefore any permitted activity not in accordance with a relevant plan becomes a restricted discretionary activity in accordance with rule 2.2.1.2.

- 5.4 Noting the differences in activity statuses between subdivision and land use activities within a Structure Plan or Development Area Plan in the Operative Matamata-Piako District Plan, the Council agrees with the consistent activity status proposed by the plan change provisions between development and subdivision not complying with the ADAP, given the intention of these rules, regardless of the scenario, is to provide for the orderly and programmed expansion of the underlying Plan area. Therefore, the Council recommends that this consistency be maintained despite any decision made regarding activity status.
- 5.5 The s42A report author does not have a strong preference for one status over another, but on balance, supports non-complying activity status for several reasons including consistency with the District Plan's other Structure Plan/Development Area Plan provisions and certainty for adjacent rural landowners¹. The Council supports the position of the s42A report.
- 5.6 In *Fraser Auret Racing v Rangitikei District Council*², the Environment Court recently reconsidered its approval of two non-complying rules (at the direction of the High Court), which were imposed as part of an appeal involving the rezoning of approximately 65ha of rural land to industrial on the outskirts of Marton. The Court ultimately determined that a discretionary activity status was appropriate in that instance.
- 5.7 Factors that influenced the Court's decision included that very minor deviations from the specified rules, standards and design principles of the development area would become non-complying activities, which would be incongruous with the primary objective of the plan change and that the environment in the vicinity of the plan change area was not of such a vulnerable or delicate nature so as to require the imposition of non-complying status.
- 5.8 From the Environment Court decision alone, it is difficult to determine whether this case would influence the Commissioners consideration. It is unlikely that either activity status would clash with the objectives and policies of the Operative District Plan, but a non-complying activity status would be more aligned with its current Structure Plan/Development Area Plan provisions.
- 5.9 **Development Agreement**
- 5.10 Point 21 of the Council's submission recommended that District Plan provisions relating to a "Development Agreement" be incorporated as part of the plan change. This Agreement is between the Council and a developer, and typically sets out the obligations of a developer (or their

¹ S.42A Planning Report, paragraph 167

² *Fraser Auret Racing v Rangitikei District Council* [2024] NZEnvC 10

successor) in relation to the provision of services, infrastructure and development contributions for the development area. In previous private plan changes, the applicant and the Council have entered into a Development Agreement prior to a decision on the change being made.

- 5.11 In earlier consultation with the applicants, the Council acknowledged that there is likely to be little in the way of off-site infrastructure required to service the ADAP, which may then remove the need for Development Agreement provisions as the obligations of a developer could easily be outlined in the specific plan provisions. At the time, the off-site infrastructure identified related to wastewater reticulation.
- 5.12 Given that the Infrastructure Report – Private Plan Change 58, dated 22 December 2022³ identified two methods of connecting ADAP to the Morrinsville Wastewater Treatment Plant, it was recommended that these be included in ADAP wastewater provisions. Through these, the Council also wanted to identify its preferred option and make it clear that the cost of “servicing” the development area lies with the developer.
- 5.13 The s42A report has recommended that any provisions relating to the above matters be subject to further resolution/refinement⁴. The Council agrees, and has identified some possible options for refinement below.
- 5.14 In the absence of Development Agreement provisions, the Council proposes the following amendments to section 9.6.4 of the Avenue Business Park Development Area Plan.

9.6.4 Three Waters

Wastewater

Subdivision and development within the ADAP will require the following wastewater infrastructure and design considerations, which shall be at the cost of the developer:

- a) *Discharge to the Morrinsville wastewater treatment plant through either:*
- 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 (Council’s preferred option); 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.*

³ Infrastructure Report – Private Plan Change 58 by Tektus Consultants

⁴ S.42A Planning Report, paragraph 247

- 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.*

5.15 In his statement of evidence, Mr Suljic considers that it would not be prudent to identify the final solution through the plan change process⁵. This is also reinforced through Mr Inger's statement of evidence⁶. The Council agrees with this approach, noting that the proposed provisions would only identify its preferred option, not the final solution. Mr Inger also considers provisions requiring the site's wastewater infrastructure to be installed at the developer's expense "*unnecessary and inappropriate*". The Council likewise agrees that a provision to that effect would be unusual, with no other similar provisions in the Operative District Plan.

5.16 Typically, this obligation would be specified in a Development Agreement. If the applicants have a particular aversion to specifying the wastewater connection options and the developer's obligations in the District Plan provisions, then the Council recommends retaining the provisions of section 9.6.4 as currently drafted and instead applying Development Agreement provisions to the Avenue Business Park Development Area Plan. This Development Agreement could then contain this "discretionary" information. The proposed provisions could read:

9.6.6 Development Agreement

Prior to any development or subdivision of the land shown in the Avenue Business Park Development Area Plan (ADAP) the Council and the Developer have a Development Agreement in place, which provides:

- a) *For the obligations of the Developer, as set out in the Development Agreement, which are secured by a first registered encumbrance against the relevant records of title to the land shown in the ADAP;*
- b) *That any purchaser of any balance land not yet developed, must sign a deed of accession in a form approved by Council which will bind future landowners to the performance obligations in the Development Agreement; and*
- c) *The developer or successor will construct upgrades of services and infrastructure required for the subdivision and development of the land shown in the ADAP, which may include external or*

⁵ Suljic, Statement of Evidence, dated 14 February 2024, paragraph 57

⁶ Inger, Statement of Evidence, dated 14 February 2024, paragraph 127

off-site infrastructure, services and/or structures in the four categories set out below. Any Developer Agreement will (where applicable) provide for a proportional contribution to any infrastructure upgrades required to service the ADAP, and any contribution will be balanced against the effects of the development and the needs of the existing environment and future development within Matamata. In addition, a review of Council's Development Contributions Policy may be required to fully inform the funding of, and cost sharing for new infrastructure.

- 5.17 Additionally, since the early discussions between the Council and the applicants, the need for other off-site infrastructure has become apparent. In her Technical Memorandum – Transportation, attached to the s42A report as Appendix 3, Ms McMinn raised safety concerns regarding the recently constructed pedestrian island and the right turn bay at the Avenue Road North/Magistrate Avenue intersection. This intersection would be the sole point of access to the plan change area.
- 5.18 Ms McMinn recommends that the right turn bay on Avenue Road North into Magistrate Avenue be widened to 3m, the pedestrian island be widened to 2m and appropriate tracking curves provided. The applicants' traffic expert has agreed with these recommendations⁷. In addition, Ms McMinn has recommended that the existing footpath on Magistrate Avenue be widened to 3m, and that the requirement for this and the other recommended works be captured through amendments to section 9.6.1 of the Avenue Business Park Development Area Plan.
- 5.19 A Development Agreement could be a more appropriate place for these detailed requirements, leaving the provisions in the Avenue Business Park Development Area Plan to be outcome focused. If the Development Agreement provisions are adopted, it is recommended that the parties enter into the agreement as soon as possible (preferably before the decision) to provide certainty regarding infrastructure cost sharing (if any). This approach would be consistent with prior plan changes. At this time, the Council's position is that the costs of providing the off-site infrastructure enabling this private plan change lie with the applicants. These costs are in addition to Development and Financial Contributions, payable under the Councils DCP and FCP.

6.0 CONCLUSION

- 6.1 The activity status of development/subdivision not in accordance with the ADAP and the Development Agreement provisions of the Avenue Business Park Development Area Plan are matters, which have not been agreed upon by the Council (as a submitter) and the applicants.

⁷ Hills, Statement of Evidence, dated 14 February 2024, paragraph 47

- 6.2 The Council supports the recommendation of s42A report to categorise subdivision and development not in accordance with the ADAP as a non-complying activity, but acknowledges that there are countervailing arguments for discretionary activity status. The s42A report also recommends that section 9.6.4 of the Avenue Business Park Development Area Plan be subject to further resolution/refinement in relation to the wastewater reticulation. The Council has proposed several provisions, which may assist the Commissioners in this matter. However, with the need for other off-site infrastructure becoming more evident, the Council prefers the inclusion of Development Agreement provisions.