

## Before a Hearings Panel appointed by Manawatū District Council

In the matter of                    the Resource Management Act 1991

And

In the matter of                    Private Plan Change 1 to the Manawatū District Plan

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### Memorandum for requestor in response Minute of Hearing Panel

Dated 24 March 2023

Hearing Date 30 May 2023

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#### Introduction

1. This memorandum is filed by Te Kapiti Trust, the requestor for Private Plan Change 1 (**PPC1**), in response to a Minute dated 10 March 2023, issued by the Hearings Panel appointed to hear submissions on PPC1 (**Panel**). The requestor is grateful to the Panel for raising issues early on, and allowing it the opportunity to provide information ahead of the hearing.
2. The issues raised in the Minute are:
  - (a) The applicability of the National Policy Statement on Highly Productive Land (**NPS-HPL**), particularly the application of Policies 3.5 and 3.6 to the PPC;
  - (b) Feasibility of, and approach taken to, stormwater management for the PPC area;
  - (c) Engagement with iwi and hapū.
3. An outline of the requestor's approach to these matters is set out below.
4. The requestor provided a draft of this memorandum to the Council's reporting officer, Mr Batley, on 22 March 2023 and received comments yesterday. These are reflected in the memorandum below where appropriate.

## NPS-HPL

### *Primary position*

5. The requestor agrees that the application of the NPS-HPL will be a key issue for determination by the Panel. The requestor's position is that the NPS-HPL does not apply, but also intends to call evidence that the requirements of clause 3.6(4) NPS-HPL are met such that rezoning is not contrary to Policy 5.
6. Without prejudice to advance different or amended reasons at the hearing, the reasons why the requestor says the NPS-HPL does not apply are summarised as follows:
  - (a) The interim definition of highly productive land, pending the Regional Council mapping exercise, is set out at cl 3.5(7):

Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

    - (a) is
      - (i) zoned general rural or rural production; and
      - (ii) LUC 1, 2, or 3 land; but
    - (b) is not:
      - (i) identified for future urban development; or
      - (ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.
  - (b) As the Manawatu District Plan (**MDP**) does not yet use the National Planning Standards Zone Framework, references to 'general rural or rural production' in cl 3.5(7)(a)(i) are to the nearest equivalent zone (see NPS-HPL, cl 1.3(4)(b)). Having regard to the explanation, objectives, policies and rules that apply to the PPC1 land in the MDP (being a Rural 2 Nodal Area), the nearest equivalent zone is Rural Lifestyle Zone, and not General Rural or Rural Production;
  - (c) In support of this, the land is currently rated under the QV category of 'lifestyle bare land' which supports the position that the nearest equivalent zone is Rural, Lifestyle;
  - (d) LUC 1, 2 or 3 land is defined in the NPS-HPL to mean land mapped as such by the New Zealand Land Resource Inventory "*or by any more detailed mapping that uses the [LUC] classification*". The requestor has provided more detailed mapping (to a 1:15,000 scale) which shows the PPC1 land is LUC Class 4 and 6. The requestor understands that Council have had this LUC report peer reviewed, with a second expert supporting the author's conclusion. The Panel has the discretion to accept this more detailed mapping, which excludes it from the definition;

- (e) The PPC1 land is identified for future development in a strategic planning document (namely the draft District Plan which was adopted by Council resolution) as suitable for commencing urban development over the next 10 years.
  - (f) As such, the first 3 of the cumulative requirements for treating land as highly productive are not met.
7. The requestor recognises that these arguments require reasonably detailed interpretation of the NPS-HPL and related planning documents. In the interests of ensuring the hearing runs as efficiently as possible, the requestor had suggested in its draft memorandum provided to Mr Batley the possibility that the Panel may wish to engage legal advice, which would need to be independent of the Council, and that the requestor's legal opinion could be provided to the Panel's advisor in advance of the hearing. Mr Batley has indicated the Council does not agree such advice is needed, and that if the Panel did wish to engage such advice, it would want to provide its legal opinion as well. If the Panel wish to consider this further, a telephone conference involving myself and the Council's solicitor may be useful.

*Back-up position*

8. If, contrary to the requestor's position, the Panel considers the PPC1 land is highly productive land for the purposes of the NPS-HPL, it will need to consider whether the requirements of 3.6(4) and (5) are met. These provide:
- (4) Territorial authorities that are not Tier 1 or 2 may allow urban rezoning of highly productive land only if:
    - (a) the urban zoning is required to provide sufficient development capacity to meet expected demand for housing or business land in the district; and
    - (b) there are no other reasonably practicable and feasible options for providing the required development capacity; and
    - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
  - (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.
9. The requestor intends to call evidence to satisfy the Panel that these requirements are met. To that end the requestor has been actively engaging with the Council, including Mr Batley, in relation to the district's capacity and demand for housing,

and expects to receive further information from the Council this week. Council's Strategic Planning Programme includes a workstream on 'village growth and intensification plans' reflecting their desire and support for this plan change. It can also be noted that the requestor was specifically requested by Council to pause an application for rural lifestyle subdivision at this location, pending their desire to rezone it to Village Zone

10. The requestor is conscious of the requirements of the NPS-HPL and intends to address this fully at the hearing. Any relevant information will be shared with the reporting officer ahead of the s 42A reporting timeframe.

### **Stormwater management**

11. The Panel's Minute refers to *'the feasibility of the proposed stormwater design and confirming which option is being pursued through the request'*.
12. We assume this refers to the submission by Horizons Regional Council. The requestor's planning consultant, Ms Anstey, contacted the author of the submission, Ms Brown, on 23 February 2023 requesting a meeting to discuss the submission, including to discuss Horizons' feedback on the specific plan change provisions in relation to stormwater management and any potential to improve these; and the additional geotechnical work to support the feasibility of Option B. Ms Anstey offered to have the respective stormwater experts attend, and said *"We see it as highly beneficial to narrow down the issues before going into the hearing and/or potentially agree on any improvements to the plan change that would alleviate Horizon's concerns"*.
13. Ms Brown responded on 16 March 2023 indicating that due to the high workload being experienced by Council staff post Cyclone Gabrielle, their preference is for any further questions to be received by email. A phone call and follow up email was sent 20 March 2023 that summarised the plan change provisions in relation to stormwater management, highlighted the feasibility work for Option B completed by GHD (Section 2.4) and advised on further work being commissioned on Geotechnical feasibility for the Option B location. A request was made to identify any particular relief being sought to the Plan Change provisions to alleviate their concerns.

14. The requestor remains eager to continue discussions with Horizons' experts, because it wishes to understand its concerns, in light of how PPC1 is drafted and is intended to work. In short, the request identifies two possible locations for the stormwater management area (**SMA**), one being Option A, in the vicinity of the existing natural wetland in the area labelled 'Wetland Area' on the proposed Structure Plan,<sup>1</sup> and Option B, being more than 100m from the existing wetland, and located with the rezoned area, being partly within the Open Space/Reserve Area and partly within Areas A & B. The Structure Plan itself does not show either SMA, but rather the location of a SMA is to be determined through application of the planning provisions that will apply to any development within the Rongotea South Development Area (**RSDA**). These include Objective DEV-O2, Policies DEV-P1 and P4, Performance Standards DEV1-S6 and S8 and the rules in Chapter 17 relating to subdivision. As foreshadowed in Ms Anstey's communication with Ms Brown, the requestor is eager to hear from Horizons as to how these proposed provisions might be strengthened to address its concerns.
15. The requestor acknowledges that consent will be required from Horizons at the implementation stage. While naturally Horizons cannot predetermine its assessment of that future application, the requestor is keen to understand the issues raised in the submission regarding the National Environmental Standards on Freshwater Management, particularly with regulation 55, which relates to conditions for permitted activities, which is not applicable. The requestor will continue to seek to engage with Horizons on this matter. Should those efforts be unsuccessful, it may be that directions for pre-hearing meetings and/or expert conferencing would be useful to ensure the hearing is as focussed as possible.
16. Mr Batley has advised that the Council would like to be involved in any further discussion with Horizons and would like to see any further information or technical work produced. There is no issue with that from the requestor's perspective.
17. To the extent that any issues remain outstanding at the time of the hearing, the requestor will call evidence as to the feasibility of both stormwater options and will address the appropriateness of the proposed approach to stormwater management.

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<sup>1</sup> We note that the existing wetland location is expressly supported in the Cultural Impact Assessment prepared by Rāngitane o Manawatū.

## Engagement with iwi and hapu

18. The requestor received advice from the Council at an early stage as to relevant iwi groups, and in accordance with that advice, since May 2022 prior to lodgement of the request, have sought to engage with Rāngitane o Manawatū, Ngāti Kauwhata, Ngāti Ruakawa and Ngā Wairiki Ngāti Apa.
19. An invitation to engage was sent to Rāngitane o Manawatū, Ngāti Kauwhata and Ngāti Ruakawa on 4 May 2022. Follow up emails were sent to Ngāti Kauwhata, and Ngāti Ruakawa (via their shared RMA contact) on June 9, July 11, and August 26, 2022. A further email update was sent 17 March 2023.
20. A conversation and follow up email was sent to Ngā Wairiki Ngāti Apa on 19 July 2022 as the plan change area is at the periphery of their rohe boundaries. There was a verbal indication that they were happy for Rāngitane o Manawatū to take a lead in this instance and there has been no written response to the email communication to date.
21. The requestor understands that Council circulated the plan change application to iwi authorities for comment in accordance with the Schedule 1 (4A) and to date no response has been received.
22. A cultural impact assessment has been prepared by Rāngitane o Manawatū, and this forms part of the request for PPC1. It makes a number of useful recommendations which have been incorporated into PPC1. The requestor received an email from Rāngitane o Manawatū to advise they would not be making a submission on the Rongotea Plan Change as due to the way the parties had been working together, they were comfortable to remain as technical advisors
23. The requestor will continue its efforts at engagement and will provide the Panel with an update on consultation at the hearing. It is noted that no submissions were made by iwi or hapu groups. No comment was received from Mr Batley on this matter.

## Conclusion

24. The requestor appreciates the Panel's efforts to highlight issues early on, so that the requestor can ensure they are addressed appropriately before and at the

hearing. If there are any questions arising, I am happy to liaise with the Hearings co-ordinator to address those.



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Asher Davidson  
Counsel for Te Kapiti Trust  
24 March 2023