

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

AND of an application for resource consent by Vaco Investments (Waipu Project) Limited to establish a retail, commercial and industrial activities at 47 Millbrook Road in Waipu

**STATEMENT OF EVIDENCE OF MICHAEL ROBERT CAMPBELL
(PLANNING)**

DATED 2 OCTOBER 2024

1.0 INTRODUCTION AND QUALIFICATIONS

- 1.1 My name is Michael Robert Campbell. I am a director and planner at Campbell Brown Planning Limited, a firm of planning consultants. I hold the qualification of Bachelor of Resource and Environmental Planning with Honours from Massey University. I am a full member of the New Zealand Planning Institute.
- 1.2 I have over 20 years of experience in resource management and planning. My experience has included work in both the private and public sectors, and has encompassed a full range of resource management matters including the preparation and assessment of resource consent applications.
- 1.3 Prior to establishing Campbell Brown Planning Limited in November 2010, I was employed by the former Waitakere City Council as Group Manager: Consent Services.
- 1.4 In my current role at Campbell Brown Planning Limited, I am involved in a variety of public and private planning projects involving resource management policy development as well as the preparation of resource consent applications.
- 1.5 I have appeared as a witness at Council hearings and before the Environment Court on numerous occasions, relating to both resource consent and district plan change matters.
- 1.6 Of particular relevance to these proceedings is my extensive experience in the preparation, assessment, and determination of applications for resource consent.
- 1.7 I appear to present evidence on behalf of Mr Richard Cole and the Waipu Ratepayers' and Residents' Association ("WRRRA") in respect of the resource consent application by Vaco Investments (Waipu Project) Limited (the "Applicant") to establish retail and commercial activities at 47 Millbrook Road in Waipu. Mr Cole and the WRRRA lodged submissions opposing the application. I am authorised to provide this evidence on behalf of Mr Richard Cole and the WRRRA.
- 1.8 In the course of preparing my evidence I have read and carefully considered the application and relevant background documents, the expert evidence of the various witnesses called by the Applicant, and the comprehensive updated section 42A report prepared by the Council's reporting planner (Mr Hartstone).
- 1.9 I have complied with the Environment Court's Expert Witness Code of Conduct (set out in Clause 9 the Court's 2023 Practice Note) in the preparation of this evidence and I agree to comply with it while giving oral evidence at this hearing. Except where I state that I am relying on the evidence of

another person, this written evidence is within my area of expertise. To the best of my knowledge, I have not omitted to consider any material facts known to me that might alter or detract from the opinions expressed in this evidence.

1.10 I record that I own land in the Waipu area, some 10km from the application site. I am not a member of the WRRRA. I do not consider that this precludes me from appearing as an expert planning witness.

2.0 SCOPE OF EVIDENCE

2.1 My evidence will address the proposal in the context of the relevant statutory matters, including the objectives, policies, and rules of the Whangarei District Plan (“DP”) and the other relevant matters set out in section 104 of the RMA.

2.2 My evidence will cover the following matters:

- (a) Description of the site and proposal;
- (b) Planning context;
- (c) Relevant statutory requirements;
- (d) Effects on the environment;
- (e) Objectives and policies of the DP;
- (f) Objectives and policies of the Northland Regional Policy Statement;
- (g) National Policy Statement on Highly Productive Land;
- (h) Council growth plans & strategies affecting the Waipu area
- (i) Section 104D;
- (j) Part 2 of the RMA; and
- (k) Conclusion.

2.3 I have taken a relatively efficient approach to the content of my evidence with regard to descriptions of the proposal, the site and surrounds, and the identification of the relevant planning provisions and statutory framework. Where my opinion coincides with that expressed by Mr Hartstone or other expert witnesses, I have stated that in my evidence and rely on their conclusions. I have also limited my consideration largely to the planning matters that I consider are in dispute.

2.4 The main focus of my evidence is on the planning provisions that apply and, including, providing my opinion as to the interpretation of the relevant objectives and policies of the DP and the National Policy Statement on Highly Productive Land.

3.0 DESCRIPTION OF THE SITE AND PROPOSAL

3.1 The irregular shaped site comprises 5.92ha of pastoral land located on northwestern side of State Highway 1, on the corner with Millbrook Road.

3.2 I also note that the site is comprised of soils that are identified as LUC Class 2 (as illustrated in **Figure 1**). I will discuss the significance of this constraint later in my evidence.



Figure 1: Land Use Capability Maps (Source: Landcare Research Manaaki Whenua)

3.3 Further details of the site and existing environment are set out in the Applicant’s AEE report and Mr Hartstone’s s42A report, and I adopt those descriptions.

3.4 The Applicant proposes to establish retail, commercial and industrial activities at 47 Millbrook Road in Waipu. Aspects of the proposed activity include a BP service station, fast food outlets/cafe’s, rural services and supplies, warehousing, marine or vehicle sales, and service, and farming supplies. In establishing the activities there will be construction effects and the construction of a suite of buildings, parking, access, lighting, signage, and landscaping. Hours of operation for the Service station and the fast food outlets are proposed to be 24/7.

3.5 Full details of the proposal are contained in the s42A report,¹ and I accept and adopt that description.

¹ Refer section 42a Report Paras 17-27.

4.0 PLANNING CONTEXT

4.1 The site falls within the **Rural Production Zone** under the DP.

4.2 The DP identifies the purpose of the Rural Production Zone as being:

“The Rural Production Zone (RPROZ) encompasses a large area of the Whangarei District. The purpose of the Rural Production Zone is to sustainably manage the natural and physical resources of the rural area in order to:

- *Protect, sustain and promote rural production activities as well as those activities that support rural communities.*
- *Protect areas of significant ecological and biodiversity values (such as indigenous bush and wetlands).*
- *Enable the rehabilitation of ecological and biodiversity values.*
- *Maintain rural amenity and character.*

The zone comprises a varied array of topography, landforms, landscapes, soil types, biodiversity and catchments. It is important that the ecological and landscape values of the Rural Production Zone are recognised and where appropriate are protected and enhanced. Ecological and landscape values contribute significantly to the rural character and distinctiveness of the Whangarei District. Parts of the Rural Production Zone are located within the coastal environment. The values of the coastal environment are managed by the District Plan’s Coastal Environment provisions as well as the provisions in this section.

The interplay of historical land use and values has resulted in the environmental character that exists in the Rural Production Zone today. This character is made up of the varied natural landforms and natural features, openness, as well as an existing subdivision and development pattern. It is mostly characterised by a working/living environment, with the noises, odours and visual effects associated with a wide range of farming, horticultural, forestry and mineral extraction activities. There is an expectation that rural production activities will be able to continue to operate without onerous or restrictive intervention in the Rural Production Zone.

Rural production activities are important contributors to the Whangarei and Northland economy. The Rural Production Zone includes most of the productive rural land area of the District. It is important that these areas are not compromised for rural production. It is expected that a diverse range of rural production activities will continue to operate and new activities will establish in the Rural Production Zone. Changing demands for existing produce and new markets establishing mean that the provisions for the Rural Production Zone need to be flexible to accommodate current and future production needs.

The Rural Production Zone provides for commercial activities and industrial activities that have a functional need to service rural production activities and/or rural communities or provide location based recreation or tourist activity.

Conflicting land use and reverse sensitivity effects must be carefully managed where the Rural Production Zone interfaces with sensitive activities including habitable buildings in other rural areas

and Residential Zones, and with Business Zones. Where the Rural Production Zone is traversed by existing major infrastructure services, land use conflicts must be managed. Quarrying Resource Areas apply over the Rural Production Zone and Strategic Rural Industries Zones are surrounded by the Rural Production Zone. Providing for mineral extraction activities and strategic rural industries to occur and avoidance of conflicting land use activities is important for their on-going operation.

A history of ad hoc rural living subdivision and development has resulted in a scattered and ad hoc pattern of development across the rural area. Where the rural area abuts Whangarei City, Rural Production Zone will apply. Areas for future urban growth, land use and subdivision development is spatially managed by the Future Urban Zone to maintain options for the continued growth of the city. Where rural living clusters have reached significant density and lifestyle character they have been identified as the Rural Lifestyle Zone to manage the actual and potential reverse sensitivity effects associated with rural living activities occurring in close proximity to rural production activities.

The Rural Production Zone will not support an increased level of clustered rural living development. Consistent with a consolidated pattern of development residential, rural residential and rural living activities are directed to identified rural settlements, the Future Urban Zone or the Rural Lifestyle Zone to protect the productivity, biodiversity and rural character of the Rural Production Zone.

Urban and rural residential types of development can erode the viability of rural productivity and can create reverse sensitivity impacts on productive uses through the visual effect of large scale buildings and incidental structures, increased traffic generation, and loss of amenity including privacy, rural outlook, spaciousness, and quietness, particularly when a new incompatible activity is located near an existing activity, with resulting conflicts..”²

- 4.3 Resource consent is required for a number of different elements of the proposal under the DP provisions relating to the Rural Production Zone, and those provisions that apply on a District-wide basis. The specific matters for consent, and the activity status that applies to each, are set out in the s42A report of Mr Hartstone. I agree with his and the Applicant’s identification of the consent matters. I also concur with Mr Hartstone’s overall conclusion that the proposal requires resource consent as a non-complying activity.

5.0 RELEVANT STATUTORY REQUIREMENTS

- 5.1 Section 104 of the RMA sets out a number of matters that a consent authority must have regard to when considering an application for resource consent.

- 5.2 I consider that the following matters from section 104 are relevant to the consideration of this application:

- a. Any actual and potential effects on the environment of allowing the activity (s104(1)(a));
- b. Any relevant provisions of a national policy statement (s104(1)(b)(iii));

² DP, Part 3: Area Specific Matters – Rural Production Zone (RPROZ)

- c. Any relevant provisions of a regional policy statement (s104(1)(b)(v));
- d. Any relevant provisions of a plan or proposed plan (s104(1)(b)(vi)). And
- e. Any other matter the consent authority considers relevant and reasonably necessary to determine the application (s104(1)(c)).

5.3 Furthermore, I have assessed the application in the context of the s104D gateway test on the basis that the application is for a non-complying activity (refer section 11 of my evidence).

6.0 EFFECTS ON THE ENVIRONMENT

6.1 There are a number of activities that are permitted on the site under the provisions of the DP. I consider that it is appropriate at the outset to consider the extent to which a credible permitted baseline exists, so that effects of the proposal can be assessed in the context of any effects that might arise from permitted activities.³

6.2 In this regard, I consider it is appropriate to acknowledge that the site is located within a productive working environment, where farming activities are permitted and encouraged. Those activities are not devoid of external effects, and some consideration of what might be undertaken on the land as a permitted farming activity is appropriate in my view, including the effects that might be generated.

6.3 I also acknowledge that generous development standards apply in the Rural Production Zone, notably a 10m height limit, 8m boundary setback and a 20% site coverage control. However, I consider that some caution should be applied to accepting the permitted baseline effects that might arise under the development standards, particularly with regard to site coverage and building bulk. Consideration of the permitted baseline is a discretion that is open to the Commissioners. I also note that there are additional constraints on *intensive livestock farming* which restricts buildings and major structures to 2,000m² and a 250 metre setback from the boundary of a separate site that contains a sensitive activity⁴. I note that there are residential activities on the southern side of State Highway One that would mean that buildings associated with intensive livestock farming are not permitted (refer **Figure 2**).

³ RMA, s104(2)

⁴ Refer DP Definitions - *Sensitive Activity* - means, child care and education facilities, residential activity and hospitals.



Figure 2: 250 metre setback from the boundary of a separate site that contains a sensitive activity (Residential)

6.4 For this reason, I do not consider it appropriate to discount the effects of the large commercial industrial buildings as proposed under this resource consent application.

6.5 I have considered the actual and potential effects that would arise from the proposal. I am satisfied, based on the Applicant’s evidence and the Council’s s42A report, that several of the potential effects that are technical in nature would not be significantly adverse subject to imposition of appropriate conditions of consent. These matters include on-site wastewater servicing, erosion and sediment control relating to earthworks, construction effects, storage and use of hazardous substances, ecological, archaeological and cultural matters. My client and some of the other submitters may have a differing perspective on these matters that arise from their local knowledge, but I accept that effects relating to these technical issues can be managed.

6.6 My concerns in relation to environmental effects are primarily related to amenity and rural character, impacts on the Waipu Centre and considerations on traffic safety. I discuss these effects below.

Effects on Rural Character and Amenity

6.7 I consider that amenity and rural character in this location will be adversely affected by a combination of noise, odour, lighting, and visual impacts associated with the proposal.

- 6.8 The proposal will result in adverse landscape and amenity effects on the Rural Production zone, resulting in urban development within the Rural Production zone.
- 6.9 I have reviewed the expert evidence of the two landscape architects being Mr Richard Knott for the Applicant and Mr Peter Kensington for the Council. I prefer the evidence of Mr Kensington regarding the landscape and visual effects of this proposal. I concur with Mr Kensington where he concludes that⁵:
- “I do not agree that “... the development will protect the rural character and amenity of the area”, as is concluded in the Application Assessment. In my opinion, the proposal will not achieve the relevant District Plan objectives RPROZ-03-04 and policy RPROZ-P1.”*
- 6.10 I note that one of the features of the Waipu area is the open rural pastoral flats along the western side of State Highway 1, that reach out to the Mareretu Forest, creating, in my view a distinctive rural character. This character runs from the Brynderwyn Hills through to Whangārei City to varying degrees.
- 6.11 In my opinion, the nature, scale, and operations of the proposed activity is inconsistent with established amenity and rural character of this location. The development proposes a substantial area of buildings, hard stand yard, storage areas, parking and access, signage and lighting. While the development will be partially screened by proposed vegetation, the bulk and nature of the proposed activities will still be evident from locations within the surrounding area.
- 6.12 The Applicant’s Planner, Mr Firth places some emphasis on the fact that this rural environment has in his view, “a distinctive and modified rural character.”⁶ In my opinion, this is a typical rural landscape that is not unique or particularly different from the wider Rural Production Zone in terms of its character and amenity. It is not uncommon for such landscapes to contain a range of built or infrastructure features. The presence of a road is not an unusual element in a rural environment. Indeed, that is a feature that runs through the rural landscape throughout much of New Zealand, and in many respects it facilitates the community’s experience of such landscapes. Neither are things like power lines and buildings unique. In my opinion, the proposed development represents a significant departure from the present landscape character and amenity of this rural landscape.
- 6.13 In my view, the presence of such features does not mean that such environments lose the rural character to the extent that the subject proposal is acceptable. Such features are not unusual in rural New Zealand landscapes and, with respect, I think anyone would struggle to find a John

⁵ Refer to Paragraph 46, expert evidence of Peter Kensington

⁶ Refer EIC of Hamish Firth Paragraph 2.25

Constable style⁷ bucolic rural character in the New Zealand countryside. My point is, this is not a unique landscape, but it is a typical rural landscape that will be impacted by the presence of a range of urban style buildings and activities that will be detrimental to the rural character and amenity what would reasonably be expected in the Rural Production Zone.

- 6.14 Overall, I agree with Mr Kensington that the proposal will not achieve the maintenance (or enhancement) of rural character and amenity and will result in more than minor adverse effects on landscape character and amenity values within the context of the site's Rural Production zoning under the DP.

Transport effects

- 6.15 I remain concerned that the proposal will result in adverse traffic effects, particularly in terms of traffic safety. This section of State Highway One has a long history of traffic accidents. The proposal will not support alternative modes of transport (pedestrian, cycling or public transport). The scale of the proposal effectively creates a new "Centre" which will create a new destination that will draw traffic from the wider Waipū and Langs Beach areas back out onto the State Highway⁸. Traffic effects will be exacerbated during peak holiday traffic periods. I note that Waka Kotahi has opposed the application and I defer to the roading authority in terms of the suitability of these activities.

Positive Effects

- 6.16 Finally, it is also appropriate to consider any positive effects of the proposal. I agree that some limited rural activities would support primary industry and provide employment for local workers. Those are benefits that should be considered alongside the adverse effects. However, in my opinion, the adverse effects of the proposal are more than minor and significantly outweigh those positive effects that would arise.

7.0 OBJECTIVES AND POLICIES OF THE DP

- 7.1 I have reviewed the objectives and policies from the DP that I consider to be of particular relevance in determining the application for the proposed activities.

- 7.2 My discussion in the following paragraphs relates to those pivotal objectives and policies, found in the Rural Production Zone provisions. I have not addressed every DP objective or policy that may have some relevance, rather I have focused on those that relate to the specific zone in question

⁷ Refer EIC of Hamish Firth Paragraph 7.13

⁸ Refer to EIC of Mr. Thompson who states that: "*The proposal is designed to primarily service rural production activities in the general areas of Waipu, Waipu Cove, Langs Beach, and the surrounding rural area.*"

rather than more generally to the District (such as the District-wide and Overlay objectives and policies). I note that Mr Hartstone has addressed the wider policy framework⁹ and I agree with and adopt his conclusions in that regard.

7.3 I consider the relevant objectives and policies for the Rural Production Zone to be:

RPROZ-O1 Rural Land Resources

Identify and protect productive rural land resources for a diverse range of rural production activities.

RPROZ-O2 Land Use Activities

Enable a wide range of rural production activities and provide for commercial activities and industrial activities that support rural production activities and/or rural communities including recreation and tourist based activities to establish and operate in the Rural Production Zone to contribute to the District's economy.

RPROZ-O3 Rural Character and Amenity

Recognise, maintain and where appropriate protect the rural character and amenity of the Rural Production Zone.

RPROZ-O4 Adverse Effects

Avoid adverse effects on productive land resources from residential, rural residential and rural living subdivision and development in the Rural Production Zone.

RPROZ-O5 Fragmentation

Minimise the fragmentation of rural land and promote allotment sizes that facilitate rural production activities other than to protect significant ecological and biodiversity values.

RPROZ-O7 Protection and Enhancement

Encourage protection and enhancement of significant ecology, biodiversity, landscapes and historic heritage.

RPROZ-P1 Rural Character and Amenity

To protect the distinctive rural character and amenity of the Rural Production Zone including but not limited to:

1. *A dominance of natural features including landforms, watercourses and vegetation.*

⁹ Hearing agenda, para 164-190.

- a. *A predominately working rural production environment, including:*
 - i. *The presence of large numbers of farmed animals and extensive areas of plant, vine or fruit crops and areas of forestry.*
 - ii. *Ancillary activities and structures (including crop support structures and artificial crop protection structures) across the landscape.*
- b. *Seasonal activities.*
- c. *A low intensity of development, involving a combination of domestic and rural production buildings and major structures.*
- d. *Varying levels of noise associated with seasonal and intermittent rural production activities.*
- e. *Relatively open space and low density of development.*
- f. *Odours, noise and dust typical of rural activities.*
- g. *Generally low levels of vehicle traffic with seasonal fluctuations.*

RPROZ-P2 Land Use Activities

To protect rural productive land, rural character and amenity and to encourage consolidation of activities within Whangarei City by:

1. *Only providing for commercial activities and industrial activities in the Rural Production Zone where it is demonstrated that the activity:*
 - a. *Has a direct connection with the rural resource and supports rural production activities and/or rural communities, including recreation and tourist based activities.*
 - b. *Requires a rural location for its operational function.*
 - c. *Will minimise the potential for reverse sensitivity effects between incompatible land use activities.*
 - d. *Will contain and manage adverse effects on-site.*
 - e. *Will contribute positively to the economy of the District.*
 - f. *Can meet and fund local infrastructure requirements.*
2. *Not directly regulating outdoor agricultural and horticultural activities, excluding intensive livestock farming.*
3. *Permitting farming and activities ancillary to farming or forestry.*
4. *Requiring larger allotments sizes to retain productive rural options.*

RPROZ-P5 Maintain Amenity and Character

To maintain rural amenity, and character by ensuring that all new buildings and major structures and rural land uses:

1. *Are of a scale and character appropriate to the Rural Production Zone.*
2. *Are sited in a location sufficiently setback from site boundaries to enable privacy, the retention of openness and access to sunlight.*
3. *Avoid ribbon development.*

RPROZ-P8 Subdivision Less than 20ha

To avoid the subdivision of land into allotments less than 20ha unless it is demonstrated that all of the following are achieved:

1. *It does not create a rural residential or rural lifestyle allotment, other than where a Net Environmental Benefit is achieved.*
2. *The subdivision of rural land and associated buildings does not inhibit or restrict the productive potential or reasonably anticipated productive potential of rural production activities.*
3. *The size, shape and arrangement of allotments:*
 - a. *Is a practical size for rural production activities, other than where a Net Environmental Benefit is achieved.*
 - b. *Does not restrict the range of options for the use of production land.*
4. *The viability of the existing rural production activity is not compromised and the existing rural production activity can continue to operate efficiently at the subdivided scale.*
5. *The subdivision and subsequent development will not result in adverse effects on the operation and viability of any adjoining rural production activity or strategic rural industry.*
6. *The subdivision and subsequent development will not require connection to the District's reticulated sewer or an extension or upgrading of any service or road, except where it is in the economic interest of the District and will not compromise the efficient functioning of the District's infrastructure network.*

RPROZ-P11 Location and Design of Subdivisions and Associated Land Developments

To locate and design subdivision and associated land development to avoid urban form and character, maintain rural character and amenity values and protect and enhance environmental features by:

1. *Designing subdivisions to respond to the topography and characteristics of the land being developed.*
2. *Avoiding development on highly versatile soils.*
3. *Identifying building platforms that respond to site topography and environmental characteristics.*

4. *Locating access ways, services, utilities and building platforms where these can be provided without the need for significant earthworks, retaining, benching or site contouring.*
5. *Locating access ways, services, utilities and building platforms where the location is sensitive to and responds to environmental features of the site.*
6. *Ensuring that the subdivision will not create reverse sensitivity effects with respect to existing lawfully established activities.*

7.4 In my opinion, the proposal is contrary to these objectives and policies when read as a whole.

7.5 The objectives and policies make some provision for commercial and industrial activities in the Rural Production Zone especially where the activity has a direct connection with the rural resource and supports primary production activities. In this respect, there is some limited support for *some* of activities of the nature proposed.

7.6 However, there are two important provisos that go hand in hand with the thread of support for the approval of activities in the Rural Production Zone. Firstly, rural industry and commercial activities should maintain rural character and amenity, and avoid adverse effects that are not compatible with rural amenity. Secondly, the rural land resource and versatility of soils should be safeguarded for primary production. In my opinion, these provisos are fundamental policy imperatives that must be satisfied if a proposal is to be consistent with the Rural Production Zone policy framework. The Rural Production zone is a low-intensity rural zone, and is appropriately applied to this site and the wider area given the setting and nature of existing development in this location. The proposed commercial development does not enable the expected outcomes in the Rural Production zone.

7.7 In my opinion, the proposal falls short of achieving the outcomes sought by the objectives and policies. As discussed in section 6 of my evidence, I consider that the nature, scale, and operation of the proposed activities will compromise rural amenity and character. The proposed 'service centre' is predominantly 'urban' and not '*low intensity development*'. I also consider that the loss of highly productive land is significant and therefore contrary to the thrust of these policies.

7.8 I have concerns about how the revised application for a 'rural service centre' would be controlled through consent conditions. As set out in paragraph 185 of the Council S42 report, I also share these concerns about how the proposal will remain consistent with the Rural Production zone 'policies.' I agree that the proposal is commercial (urban) in nature and does not rely on a rural location or zone to function. A number of the proposed uses such as 'Burnsco' and 'Hunting and Fishing' have no direct connection with the rural resource. The nature of the proposed uses are not clearly

defined and, in my opinion, they go beyond what would be reasonably considered to be a 'rural service centre'.

7.9 I am also concerned that in the absence of any distinctive or unique site features, the proposal may set a precedent for similar activities to occur in the future. In my opinion, the land in question is representative of the majority of land located along State Highway One, and there are a number of examples of similar side road corners where a similar argument for such activities to occur in the Rural Production zone exists. Likewise, if this resource consent is granted in its current form, once this new resource has been created, there is the potential for future activity creep to occur on the site and in the adjacent area as the consented activities would form the new existing environment.

7.10 I refer to the relevant objectives and policies in Part 2: District Wide Matters which contains overarching objectives and policies in relation to growth and development in the District.

Objective DGD- 03- Growth seeks to:

Accommodate future growth by:

1. *Enabling urban consolidation and intensification of Whangārei City, the Marsden City Precinct, existing Local Centre and Settlement Zones; while*
2. *Avoiding urban development sprawling into productive rural areas.*

7.11 Policy **DGD-P6 Urban Expansion** seeks to (My Emphasis):

"To avoid inappropriate urban expansion by:

1. *Ensuring that urban development occurs:*
 - a. *In a planned and coordinated manner.*
 - b. *Where appropriate infrastructure and services can be provided, including a range of transport choices.*
2. *Requiring new urban development to be consolidated within or adjacent to Urban Areas and rural settlements.*
3. *Avoiding urban development sprawling into the Rural Area.*

7.12 In my opinion, the proposal does not meet the outcomes sought by this objective and policy and the 'future growth' of areas like Waipu is to be 'enabled' through the 'consolidation and intensification' of the 'existing Settlement zone' and 'urban development avoided in productive rural areas'.

7.13 For the reasons that I have discussed above, I am of the view that the proposal is contrary with the relevant objectives and policies of the PDP.

8.1 OBJECTIVES AND POLICIES OF THE NORTHLAND REGIONAL POLICY STATEMENT

8.1 I have reviewed the Northland Regional Policy Statement (“NRPS”). The NRPS addresses issues across the wider region at a relatively high level. Many of the relevant objectives and policies take a similar approach to those of the DP.

8.2 In my opinion, the proposal is also inconsistent with the Northland Regional Policy Statement, particularly in relation to Part 2.4 which states that: “*Unplanned and un-coordinated development and poor urban design can lead to reduced levels of amenity, higher infrastructure costs, and reduced community wellbeing.*” Objective 3.11 seeks to ensure that: “*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.*”

8.3 This is reinforced by Policy 5.1.1 Planned and Coordinated Development, which I set out below:

Subdivision, use and development should be located, designed and built in a planned and co-ordinated manner which:

- (a) Is guided by the ‘Regional Form and Development Guidelines’ in Appendix 2;*
- (b) Is guided by the ‘Regional Urban Design Guidelines’ in Appendix 2 when it is urban in nature;*
- (c) Recognises and addresses potential cumulative effects of subdivision, use, and development, and is based on sufficient information to allow assessment of the potential long-term effects;*
- (d) Is integrated with the development, funding, implementation, and operation of transport, energy, water, waste, and other infrastructure;*
- (e) Should not result in incompatible land uses in close proximity and avoids the potential for reverse sensitivity;*
- (f) Ensures that plan changes and subdivision to / in a primary production zone, do not materially reduce the potential for soil-based primary production on land with highly versatile soils, or if they do, the net public benefit exceeds the reduced potential for soil-based primary production activities; and*
- (g) Maintains or enhances the sense of place and character of the surrounding environment except where changes are anticipated by approved regional or district council growth strategies and / or district or regional plan provisions.*
- (h) Is or will be serviced by necessary infrastructure.*

Note: in determining the appropriateness of subdivision, use and development (including development in the coastal environment – see next policy), all policies and methods in the Regional Policy Statement must be considered, particularly policies relating to natural character, features and landscapes, heritage, natural hazards, indigenous ecosystems and fresh and coastal water quality.

8.4 My conclusion in relation to the NRPS is effectively the same as my opinion under the PDP, which is not surprising given the alignment between the two documents. I accept that the proposed activity would provide some economic benefits, but consider that these are outweighed by the impacts on rural amenity and character, unplanned and un-coordinated development and poor urban design and by the loss of highly productive soils.

8.5 Much emphasis has been placed on the provision of a rural service centre that will serve the district's rural productive land uses. In my opinion, such an outcome would be better addressed through the provision of such activities in a location that would reinforce and support the District's existing urban nodes. There are areas within the Waipu Village that would, in my opinion, be more appropriate for the provision of a rural service centres that integrates with existing infrastructure and urban form. This would more suitably align with the Regional Form and Development Guidelines, as set out in Appendix 2 of the NRPS.

9.0 NATIONAL POLICY STATEMENT ON HIGHLY PRODUCTIVE LAND

9.1 There are other statutory policy documents that are relevant to the proposal, including the National Policy Statement on Highly Productive Land ("**NPS-HPL**").

9.2 The NPS-HPL is a higher order planning document. Generally, the outcomes sought in a national policy statement will be reflected in the more detailed provisions of the DP given that the DP must give effect to a national policy statement.¹⁰ However, in this case there may be a disconnect because the NPS-HPL only came into force on 17 October 2022 and the DP was already largely treated as operative at that stage.

9.3 The NPS-HPL has a single objective, being that:

"Highly productive land is protected for use in land-based primary production, both now and for future generations."

9.4 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. The proposal would be located on LUC 2 soil, as identified in Figure 1

9.5 I consider that the proposal is not "*land-based primary production*" because the NPS-HPL defines that term as meaning "*production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.*"

¹⁰ Section 75(3)(a) RMA

9.6 The NPS-HPL contains nine policies. Policies 1 and 8 are of particular relevance to the application. These policies state:

Policy 1: *Highly productive land is recognised as a resource with finite characteristics and long-term values for land-based primary production.*

Policy 8: *Highly productive land is protected from inappropriate use and development.*

9.7 Part 3 of the NPS-HPL sets out things that local authorities must do to give effect to the objective and policies (such as those I have noted above). Section 3.9(1) states that “*Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production.*”

9.8 I note that Section 3.9 (2) of the HPL states that a use or development of highly productive land is inappropriate except where at least one of the following applies:

- (a) *it provides for supporting activities on the land:*
- (b) *it addresses a high risk to public health and safety:*
- (c) *it is, or is for a purpose associated with, a matter of national importance under section 6 of the Act:*
- (d) *it is on specified Māori land:*
- (e) *it is for the purpose of protecting, maintaining, restoring, or enhancing indigenous biodiversity:*
- (f) *it provides for the retirement of land from land-based primary production for the purpose of improving water quality:*
- (g) *it is a small-scale or temporary land-use activity that has no impact on the productive capacity of the land:*
- (h) *it is for an activity by a requiring authority in relation to a designation or notice of requirement under the Act:*
- (i) *it provides for public access:*
- (j) *it is associated with one of the following, and there is a functional or operational need for the use or development to be on the highly productive land:*
 - (i) *the maintenance, operation, upgrade, or expansion of specified infrastructure:*
 - (ii) *the maintenance, operation, upgrade, or expansion of defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990:*
 - (iii) *mineral extraction that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand:*
 - (iv) *aggregate*

extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand.

9.9 I have reviewed the list of exceptions and I cannot identify any of them that are applicable to the proposal.

9.10 I note that the Applicant's soils expert, Mr Hanmore states that:

"37. Based on the interim definition for HPL in paragraph 32 the areas of LUC units 3w 2 and 3w 4 will come under the HPL classification. These units make up 4.08ha or 68.9% of the site and are shown in the map below."

9.11 I also note that the Applicant's other rural production expert, Mr Ford states that:

"23. I am of the opinion that the subdivision of 6 ha of HPL will not result in any significant loss of the productive capacity of land in the district and is not significant in the Northland region which contains 127,885 ha of HPL land."

9.12 Section 3.10 of the HPL states that a Territorial Authority may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 if it is satisfied that:

(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and

(b) the subdivision, use, or development:

(i) avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and

(ii) avoids the fragmentation of large and geographically cohesive areas of highly productive land; and

(iii) avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and

(c) the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term 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.

9.13 I consider the area of land that would be removed from land-based production to be significant in the context of the relative paucity of LUC Class 2 and 3 land in the Northland Region. The limited extent of Class 2 and 3 land is illustrated in **Figure 3**. In my opinion, the benefits of the subdivision, use, or development do not outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production. I am further concerned that the identified land characteristics for the subject land do not appear to

differentiate it from similar land that is located within the Waipū and Ruakaka Flats. In the absence of any unique characteristics when compared with that land, I would also be concerned that this application may lead to a precedent effect.

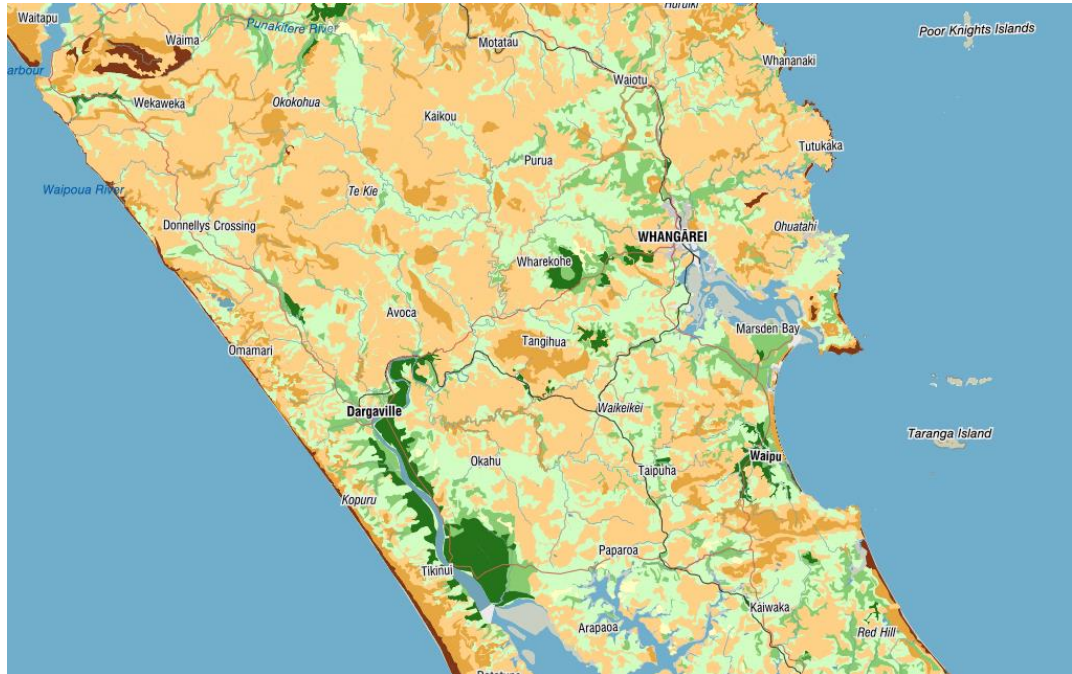


Figure 3: Land Use Capability Maps (LUC Class 2 soils in dark green)

9.14 The NPS-HPL sets a very high bar for the establishment of land use and development, other than land-based primary production or associated activities that support that use. The provisions use directive language such as highly productive land is “*protected*”, and territorial authorities “*must avoid*” inappropriate use and development of highly productive land.

9.15 In my opinion, the proposal is contrary to the NPS-HPL, for the reasons I have outlined.

10.1 COUNCIL GROWTH PLANS & STRATEGIES AFFECTING THE WAIPU AREA

10.1 I note that there have been a number of non-statutory documents that have been prepared to inform the future growth and direction of the Waipū Area. This includes the Waipū Structure Plan, the Waipū Place Making Plan, the Whangārei District Growth Strategy and the Whangārei Future Development Strategy. I consider that these document can be considered under Section 104 (1)(c) as “*any other matter the consent authority considers relevant and reasonably necessary to determine the application.*”

10.2 The Waipū Structure Plan (2003) was part of a series prepared by the Council for its key settlement areas, with plans also produced for Marsden Point and Ruakaka and was in part intended to provide

for ongoing development at Waipū centre direct commercial, industrial and residential activities to the village. Waipū Township seen as is a 'hub' for the wider Bream Bay area, both as a community and service centre, particularly with the school, playschool, sports and recreation facilities and commercial service facilities¹¹.

- 10.3 Under the Waipū Placemaking Plan (2022-23) Outcome 3 sought by that plan is 'Smart Growth', which places emphasis on 'a more compact and well connected Waipū Village'.¹²
- 10.4 The objective of a 'compact and well-connected village environment' also underpins several wider Whangarei District Council district growth strategies, most notably the Whangarei District Growth Strategy 2021 and the Draft Future Development Strategy 2024.
- 10.5 The Whangarei District Growth Strategy 2021¹³ notes that one of the key drivers of the strategy is "avoiding sprawl and focus on new development in and around our urban areas"
- 10.6 A detailed growth strategy for Waipū is outlined on pages 104 and 105. The strategy map on page 105 which follows shows/says it all. No service centre or other urban development is planned for the SH 1 bypass area, with all future development directed to the northeast and southwest of the village.

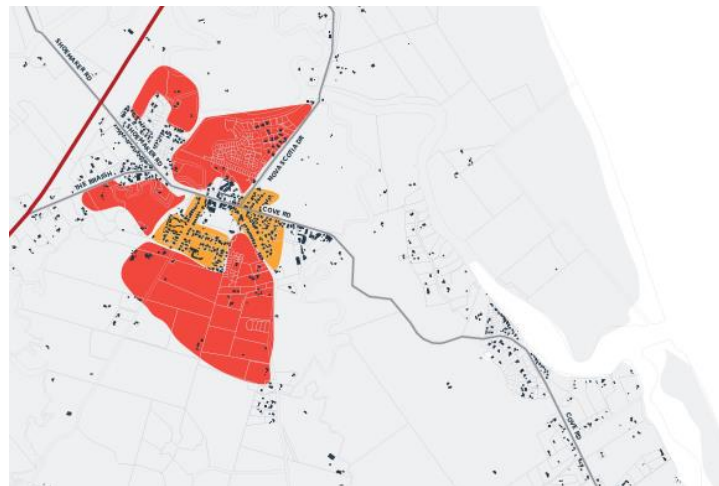


Figure 4: Map of Waipū in the Whangarei District Growth Strategy 2021

- 10.7 The Draft Future Development Strategy 2024¹⁴ for the Whangarei District sets out the roadmap to accommodate growth in the Whangarei District. On page 71 of the Strategy notes that Waipū it is

¹¹ www.wdc.govt.nz/files/assets/public/v/2/documents/council/plans/coastal-structure-plans/waipu-township-structure-plan.pdf

¹² www.wdc.govt.nz/files/assets/public/v/3/documents/have-your-say/placemaking/draft-waipu-placemaking-plan.pdf

¹³ www.wdc.govt.nz/files/assets/public/v/3/documents/council/strategies/growth-strategy.pdf

¹⁴ www.wdc.govt.nz/files/assets/public/v/3/documents/have-your-say/fds/draft-fds-full.pdf

currently experiencing high growth.’ Under the heading of ‘Staging Short Term Years 1-3’ on pages 72-73, it states” “Development within existing urban area of Waipū village”. The ‘existing urban area’ reference is clearly shown in the small inset map. On page 77, the ‘Staging Medium Term Plan Short Term Years 4-10’ has the same directive, i.e. “Development within existing urban area of Waipū village”. It also has a similar inset map. Consistent with ‘Short Term Plan’ map and the earlier Council Plans (Structure and Placemaking) no ‘Waipu Gateway’ or other urban developments along the SH 1 bypass are envisaged.

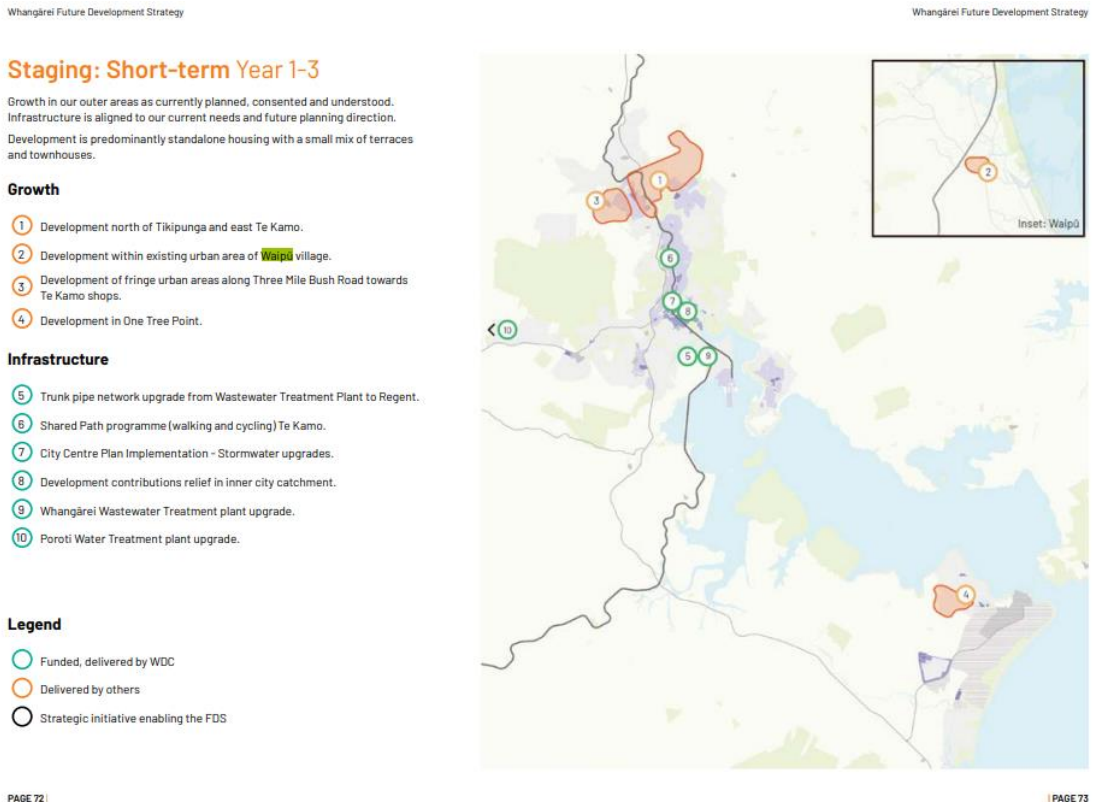


Figure 5: The Draft Future Development Strategy 2024 – Staging: Short Term Years 1-3

10.8 Overall, in my opinion there is a strong basis to support the notion that future commercial and urban development should be directed into the Waipū Centre area rather than out onto State Highway 1.

11.0 SECTION 104D

11.1 As a non-complying activity, consideration must be given to the gateway test contained in s104D RMA. In order for the application to pass the gateway test, the Commissioners must be satisfied that the adverse effects of the activity on the environment will be minor or the activity will not be contrary to the objectives and policies of the PDP. Only one limb of the test needs to be met to provide jurisdiction to grant an application for a non-complying activity.

- 11.2 In this instance, I consider that the effects of the proposal are more than minor. My reasons for reaching this conclusion are set out in section 6 of this brief of evidence.
- 11.3 Whether the activity is contrary to the objectives and policies is perhaps less clear-cut. On the one hand I consider that the proposal goes beyond the nature of industrial development that is envisaged by the objectives and policies of the Rural Production Zone. However, I am aware that case law on this question has set a relatively high threshold for what might be considered as ‘*contrary*’. The Courts have suggested that this term means ‘*repugnant to*’ or ‘*opposed to in nature*’.¹⁵ I consider that the use as proposed would be opposed *in nature* to the outcomes sought by the policy framework. In particular, I note that Policy RPROZ-S2 seeks to avoid the subdivision of land into allotments less than 20 hectares unless it is demonstrated that all of the matters set out in the policy are achieved. I do not consider that all of the matters set out in the policy can be achieved.
- 11.4 As a consequence, I consider that the application is *contrary* to the relevant objectives and policies, (within the meaning that case law has attributed to that term). In my opinion, the application does not pass either limb of s104D and is not eligible to be considered on its merits in accordance with the matters set out in s104.
- 11.5 In the event that the Panel was of the view that the proposal was not ‘*repugnant to*’ or ‘*opposed to in nature*’ and there was scope to grant consent under s104D, I consider that the proposal should be refused in terms of the matters set out in s104.

12.0 PART 2 OF THE RMA

- 12.1 Case law¹⁶ has suggested that in most instances there is no need to refer back to the purpose and principles of the RMA (“**Part 2**”) in determining an application for resource consent in the context of a newly developed plan that appropriately reflects all Part 2 matters. While Part 2 matters can still be considered in these circumstances, the Court has suggested that such assessment is unlikely to add anything.
- 12.2 In this case, I consider that the objectives and policies of the DP have been prepared with due regard to Part 2. I do not see merit in any direct consideration of Part 2 in these circumstances.

¹⁵ *NZ Rail v Marlborough District Council* [1994] NZRMA 70 (HC)

¹⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

13.0 CONCLUSION

13.1 I consider that the proposed activity is inappropriate in this location, and is contrary to the relevant objectives and policies of the PDP, NRPS and the NPS-HPL. I consider that the adverse effects of the proposal are significant (and more than minor in the context of s104D).

13.2 It is my opinion that consent should be refused to the proposal.

Michael Campbell

2 October 2024