

**Before the Independent Hearing Panel**

**In the Matter** of the Resource Management Act 1991 (**RMA**)

**And**

**In the Matter** of an application for Private Plan Change 84 (**PC84**) to rezone 218.3ha of land at Tara Road, Cove Road, Moir Street and Old Waipu Road, Mangawhai

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**Legal Submissions on behalf Mangawhai Hills Limited**

**Dated 22 May 2024**

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## Introduction

1. These submissions are filed on behalf of Mangawhai Hills Limited (**MHL**), the applicant for Private Plan Change 84 (**PC84**) to the Kaipara District Operative District Plan (**ODP**).
2. PC84 seeks to rezone 218.3 ha of Rural Zone land bounded by Cove Road, Tara Road, Moir Road and Old Waipu Road (**Site**) to Mangawhai Hills Development Area (**MHDA**). At the time of writing MHL owns approximately 152 ha of the Site.
3. The Site comprises 25 parcels of land<sup>1</sup> and has road frontages to Cove Road to the North, Tara Road to the west, and Old Waipu Road to the east. The Site's southern boundary partially adjoins Moir Street and existing neighbouring residential lots.
4. There is limited utility in repeating the extensive descriptions of the proposal in the application documentation and supporting evidence. I do say that the Site is land well suited to the outcome proposed and the Applicant's proposed provisions are an output of detailed assessment and analysis by experienced technical experts.
5. The MHDA contains bespoke provisions and introduces a suite of objectives, policies and rules which guide and manage future development. The development enabled by PC84 is broadly consistent with the Mangawhai Spatial Plan 2020. The provisions also address site-specific constraints by appropriately managing ecological, landscape, amenity and infrastructure matters.
6. I draw particular attention to MHL's commitment to a sustainable development with heavy emphasis on ecological outcomes alongside provision for housing and modest community hubs. Just over half of the site (approximately 112 ha) will be set aside for ecological restoration.

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<sup>1</sup> AEE Appendix 2.

7. As noted in the s 42A Report,<sup>2</sup> PC84 was accepted by Kaipara District Council (**Council**) pursuant to cl 25(2)(b) of Schedule 1 to the RMA on 26 July 2023 and publicly notified on 29 August 2023. A total of 76 submissions were received.
8. In my submission, the proposed plan change:
  - a. Gives effect to the relevant statutory documents including the:
    - i. New Zealand Coastal Policy Statement 2010 (**NZCPS**);
    - ii. National Policy Statement on Urban Development 2020 (**NPS-UD**);
    - iii. National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
    - iv. National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**);
    - v. National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**);
    - vi. National Environmental Standard for Freshwater (**NES-FM**); and
    - vii. National Environmental Standard for assessing and managing contaminants into soil to protect human health (**NES-CS**).
  - b. Gives effect to the Northland Regional Policy Statement 2016 (**RPS**); and
  - c. Is the most appropriate means of achieving the purpose of the RMA by reference to s 32 of the Act.
9. The plan change application and supporting evidence lodged on behalf of MHL comprehensively address the proposed rezoning and proposed

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<sup>2</sup> Note all references to the s 42A Report in this submission are a reference to the updated s 42A Report dated 22 April 2024.

provisions and conclude they are the most appropriate method to achieve the purpose of the RMA.

10. The s 42A Report prepared by Mr Clease on behalf of the Council supports PC84, subject to further assessment of the geotechnical, transport and wetland matters identified in that report.<sup>3</sup> MHL has provided further evidence engaging with these matters. Rebuttal evidence from Mr Clease acknowledges that those matters have now been satisfactorily addressed.
11. The rebuttal evidence lodged on behalf of Council records a high level of alignment with MHL. In summary, there is agreement that PC84 is appropriate subject to the minor refinements identified in Attachment 1 to Mr Cleases's rebuttal evidence.
12. The only significant areas of disagreement remaining as between the Applicant and Council's s 42A team relate to limited aspects:<sup>4</sup>
  - a. The imposition of a minimum lot wastewater control;
  - b. Consenting requirements for indigenous vegetation clearance and the inclusion of a provision requiring a bat survey;
  - c. The need for additional road connections;
  - d. Finalisation of rules relating to community hubs; and
  - e. Whether the refinements to the proposed provisions supported by Mr Clease in rebuttal are necessary.<sup>5</sup>
13. I note shortly before completing these legal submissions I received a copy of the opening legal submissions by Counsel for Council. Mr Bangma's submissions are detailed and therefore in the interests of brevity and to avoid excessive repetition I have adjusted my opening accordingly (and thus will refer to Mr Bangma's opening where appropriate).

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<sup>3</sup> Section 42A Report at [336] – [348].

<sup>4</sup> Mr Bangma's summary of outstanding matters in his Opening is at [1.7].

<sup>5</sup> Rebuttal Clease at [4.33].

14. The differences in position as between the only submitter to lodge evidence (Berggren Trustee Co. Limited) and MHL are also narrow. At the time of writing there is the prospect that these matters will be resolved further by commencement of hearing. Accordingly I make no detailed response to those issues in these legal submissions, recording in any event that the matters raised are primarily considerations to be addressed through evidence rather than issues requiring legal interpretation. In that regard MHL has lodged rebuttal evidence.

## **Evidence**

15. Evidence in Chief (**EiC**) in support of PC84 was lodged by:
  - a. Mr Buhagiar (Geotech);
  - b. Mr Delaney (Ecology);
  - c. Mr Falconer (Urban Design);
  - d. Mr Fontein (Corporate);
  - e. Mr Kelly (Transport);
  - f. Ms Neal and Ms McGrath (Planning);
  - g. Mr Osborne (Economics); and
  - h. Mr Rankin (Civil).
16. Rebuttal statements of evidence have been prepared by Mr Kelly, Mr Rankin and Ms Neal and Ms McGrath. Chester Consultants have also prepared a flood risk assessment and a draft stormwater management plan.<sup>6</sup> These statements respond to matters raised by submitters in evidence.

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<sup>6</sup> Mr Rankin and his team prepared these reports.

## Statutory Framework

17. As noted above, MHL's private plan change request was accepted for processing by Council under cl 25 of Schedule 1 to the RMA which signifies that the Council officers accepted that PC84:
  - a. Was not frivolous or vexatious;
  - b. Was in accordance with sound resource management practice; and
  - c. Would not make the AUP inconsistent with Part 5 of the RMA.
18. The relevant statutory framework is set out in the s 42A Report.<sup>7</sup> Subsequent sections in that report include analysis of the relevant policy statements, national environmental standards and regulations, ODP provisions, other relevant legislation, plans and strategies. The relevant statutory framework is also comprehensively assessed in the AEE<sup>8</sup> and in the planning evidence of Ms McGrath and Ms Neal.<sup>9</sup> I make some further observations below.
19. PC84 is to be considered pursuant to Part 1 of the First Schedule to the Act. As confirmed in *Colonial Vineyard Limited v Marlborough District Council*,<sup>10</sup> the plan change will therefore be determined having regard to the matters outlined in sections 31, 32 and 72 to 76 of the RMA, to the extent these are relevant to PC84.
20. In terms of the relevant provisions of the RMA, the Panel needs to be satisfied that PC84:
  - a. Is in accordance with:
    - i. The Council's functions as set out in section 31 of the RMA;

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<sup>7</sup> At [13] – [21].

<sup>8</sup> AEE sections 6 and 7.

<sup>9</sup> At [28] – [30].

<sup>10</sup> [2014] NZEnvC 55 (EC), at [17].

- ii. The purpose and principles in Part 2 of the RMA; and
  - iii. The Council's duty under section 32 of the RMA.
- b. Gives effect to:
- i. Any relevant national policy statement;
  - ii. Any relevant national environmental standard; and
  - iii. The relevant provisions of the RPS.<sup>11</sup>

21. Clause 10(2) of Schedule 1 to the RMA provides that after considering PC84 and matters raised in submissions, the Panel must issue a decision on the provisions and matters raised in submissions, which includes the reasons for accepting or rejecting those submissions.

22. As experienced Commissioners you will be familiar with the relevant statutory approach. To summarise, the relevant statutory provisions are:

- a. Section 31 of the RMA sets out the functions of district councils. Those include the establishment and implementation of objectives, policies and methods to achieve integrated management of the natural and physical resources of the district for the purpose of giving effect to the RMA.<sup>12</sup> Relevantly, that section also includes the establishment and implementation of objectives, policies and methods to ensure sufficient development capacity for housing and business land,<sup>13</sup> and the control of any actual or potential effects of the use, development, or protection of land.<sup>14</sup>
- b. Section 32 refers to the purpose of the Act and goes on to require identification and assessment of benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including

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<sup>11</sup> Section 75(3) of the Act.

<sup>12</sup> Section 31(1)(a).

<sup>13</sup> Section 31(1)(aa).

<sup>14</sup> Section 31(1)(b).



specific reference to opportunities for economic growth that are anticipated to be provided or reduced and employment that are anticipated to be provided or reduced.

c. Sections 72 to 76 outline the purpose, contents, and rules of district plans as well as the matters to be considered by territorial authorities.

d. Part 2 of the RMA, the sustainable management purpose, and integrated management are considerations interwoven into the required analysis of the proposed plan provisions.

23. Returning to s 32, in exercising its functions under the RMA, the Council is required to undertake evaluations and further evaluations of objectives, policies and other methods in accordance with that section of the Act.

24. Section 32 requires an evaluation of the extent to which each objective is the “most appropriate” way to achieve the purpose of the RMA and of whether the provisions in a proposal are the most appropriate way to achieve those objectives. That second evaluation is required to be undertaken by identifying other reasonably practicable options for achieving the objectives, assessing the efficiency and effectiveness of the provisions in achieving the objectives and summarising the reasons for deciding on the provisions.

25. While section 74(1)(b) of the Act provides that plans must be developed “in accordance with” the provisions of Part 2, the Supreme Court decision in *King Salmon*<sup>15</sup> makes clear that when developing plans, if there is no ambiguity in the higher order planning documents there is generally no need to undertake an assessment against Part 2 of the RMA.<sup>16</sup> However, there are several ‘caveats’ to this general rule, which include:<sup>17</sup>

a. There may be instances where the document concerned does not “cover the field” and the decision maker will have to consider

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<sup>15</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC).

<sup>16</sup> *Ibid*, at [85].

<sup>17</sup> *Ibid*, at [88].

whether Part 2 provides assistance in dealing with the matters not covered; and

- b. If there is uncertainty as to the meaning of particular policies, reference to Part 2 may be justified to assist in a purposive interpretation.

26. In this case I submit that there are no ambiguities or any other reasons that would require recourse to Part 2.

27. Council's legal submissions address the legal framework in section 2. In short, our position is aligned, and to the extent that Mr Bangma covers additional matters of relevance to your consideration I agree with his identification of the relevant provisions.

### **Areas of disagreement with Council's 42A Team**

28. As a preface to addressing considerations before you, I discuss the remaining areas of disagreement as between the Applicant and Council's 42A team. The areas of disagreement are very limited.

#### **Wastewater**

29. The remaining issue relates to the need for a 3000 m<sup>2</sup> minimum lot size where lots are not connected to a reticulated wastewater network (either a Council system or a Community wastewater system) and rely on septic tanks.

30. Mr Bangma's opening summarises the position as:

- a. Mr Cleave considers a 3,000m<sup>2</sup> lot size is appropriate based on Mr Cantrell's evidence, and in particular the potential for septic tanks (if not properly maintained) to result in adverse effects on the Mangawhai Harbour.<sup>18</sup>
- b. Mr Rankin does not support the proposed minimum lot size of

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<sup>18</sup> Rebuttal Cleave, at [4.24] – [4.26].

3,000m<sup>2</sup>, and considers the issue is appropriately addressed if onsite wastewater systems are designed to comply with AS/NZS 1547:2012.<sup>19</sup>

31. The evidence of Ms Neal and Ms McGrath<sup>20</sup> concludes in reliance on Mr Rankin's advice that DEV1-S16, subject to recommended amendments to the standard reference to 'AS/NZS 1547:2012' is more appropriate to effectively manage onsite wastewater design in accordance with the current New Zealand Standard.
32. You will have to make a finding as to the appropriate wording by reference to the difference of opinion above. In my submission Mr Rankin is correct that the standards and rule proposed engage with the issue in the most appropriate way. The potential environmental effect to be managed is properly dealt with through technical design and expert input, taking account of site-specific factors. In contrast, Mr Clease's concern that wastewater infrastructure might not be properly maintained is not resolved simply by a 3000m<sup>2</sup> lot size. Equipment failures are a matter for conditions of consent and/or enforcement steps to manage.

### Roading

33. There is agreement between Council and MHL's expert consultants that formation of a southern roading connection should not be made mandatory as part of development of the first stage of the Site. The reason for this is addressed in detail in evidence of behalf of MHL.<sup>21</sup>
34. Whether an alternative southern roading connection should be illustrated on the Structure Plan has been the subject of evidence of behalf of the Berggren Trust. Council reporting officers suggest it would be beneficial for such an alternative roading connection to be illustrated on the plan. MHL's response is straight forward – illustrating an alternative on the plan is unnecessary. There is no reason to elevate one alternative possibility. It

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<sup>19</sup> EIC Rankin at [49b].

<sup>20</sup> At [125].

<sup>21</sup> Rebuttal Kelly, at [4].

is sufficient to understand that alternatives are possible, and further that the policy and rule framework proposed will ensure that key transportation and multimodal connection outcomes are achieved through subsequent resource consent processes.<sup>22</sup>

35. The remaining matters relate to pedestrian and cycle connections and any upgrade obligation for Old Waipu Road North.

36. Disagreement with respect to pedestrian and cycle connections relates to the type of path and its location and extent.

37. MHL's position is unchanged from the Supplementary Transport Assessment prepared by Mr Kelly.<sup>23</sup> That assessment on page 32 identifies required footpath works on Tara Road as follows:

- a. Extend existing footpath along Tara Road to connect to future internal site footpath/trail network and new road connections as developed (see Figure 19 in the assessment).
- b. If the existing footpath on west side of Tara Road is to be extended, then pedestrian crossing facilities should be provided at new intersections.

38. In contrast, the Council position appears to vary somewhat. I note the following:

- a. The transport hearing report from Commute<sup>24</sup> states at 5.3:

“We recommend that any development accessed off Tara Road should trigger a new footpath between 104 Tara Road and the Tara Road primary road access to the site. This path is shown to be located on the western side of Tara Road, and therefore a primary treatment facility is required to provide an appropriate pedestrian crossing facility. Should this development occur prior to the Moir Street primary road connection

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<sup>22</sup> Rebuttal McGrath and Neal, at [5] – [7]; Rebuttal Kelly, at [3] and [7].

<sup>23</sup> Supplementary Transport Assessment, April 2024 (attached to evidence of Mr Kelly dated 29 April 2024).

<sup>24</sup> Appendix 6 to the s 42A Report.

then this path should be a widened to a shared path.”

- b. The rebuttal of Ms Gasson refers to pedestrian and cycle connectivity toward Moir Street at [4.2] – [4.6] and [4.39(a)]. The summary position at [4.39] refers to “a shared path on Tara Road between 104 Tara Road and a new primary road connection onto Tara Road”.
- c. Thus the rebuttal continues to refer to the same geographic extent of the Tara Road path as identified in the initial Commute report (which aligns with the opinion of Mr Kelly<sup>25</sup>), and I infer that the reference to a shared path only is not intended to replace the proposition in the report that a shared path is required if a primary road connection to Moir Street is not in place but otherwise a footpath is appropriate.
- d. I also note the reference to 104 Tara Street as the starting point and the path being located on the western side, reflect that the existing footpath on the western side currently terminates opposite 104 Tara Street. In other words what is being proposed is an extension of that path to the north up the western side until it is opposite the Tara Road primary road access to the Site at which point a crossing is required.
- e. Mr Clease appears to have interpreted the above proposition differently. In his rebuttal he states: “Ms Gasson recommends that this should be provided as a shared path along the section of Tara Road between Moir Street and the site’s primary road intersections”.
- f. I observe that Moir Street is a substantial additional distance to the south from 104 Tara Street. Mr Clease’s apparent suggestion is a shared path extending all the way from Moir Street to the Tara Road primary road access to the Site.

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<sup>25</sup> There is also agreement about a pedestrian crossing.

39. Commencing with the extent of path, the expert evidence is clear that any path to be constructed on Tara Street should extend from opposite 104 Tara Street to the Site's primary road connection onto Tara Road. There is no support for Mr Clease's apparent suggestion to extend a shared path all the way to Moir Street - the cost of doing so would be very high, and there is no effects based need for such a substantial piece of infrastructure.
40. That leaves the type of path as a matter for resolution. Mr Kelly adopts the position that the path should be a footpath matching the existing path it will join into. Ms Gasson supports a shared path if a primary road connection to Moir Street is not in place but otherwise agrees a footpath is appropriate.
41. In my submission Mr Kelly's position is the correct one. It appropriately responds to the nature of the existing infrastructure (footpath) it will connect to. It also recognises that the appropriate shared path connection will be to Moir Street, and substantial expenditure on an effective interim shared path is unnecessary.
42. The upgrade obligation for Old Waipu Road North also requires clarity. As the Commissioners will be aware, in proximity to the site there is Old Waipu Road (south) and Old Waipu Road North. These roads are separate, with a greenfields gap in between. There is some consideration in the supporting reports and evidence of the potential for a link to be created joining these roads. However that is not being progressed at this time and Mr Kelly's assessment is that such a link is not required from a road safety or functionality perspective.
43. The upgrade obligation of relevance to this part of my submission relates to Old Waipu Road North. Mr Kelly states at [54] of his primary evidence:
- "Ms Glasson and Mr Hills recommend that any development which results in a new connection onto Old Waipu Road, should be accompanied by the upgrading of Old Waipu Road to a formed road between the new intersection and Cove Road. I agree with this comment and consider that the recommended Precinct Provisions have been set out appropriately to require this upgrade..."

44. Unfortunately the paragraph above contains the potential for confusion because it does not include the word “North” to distinguish the road being referred to. However it is clear which road is being discussed because the sentence goes on to record that the upgrade should occur through to Cove Road - Old Waipu Road North connects to Cove Road, Old Waipu Road does not.

45. The rebuttal statement of Ms Gasson refers to a residual matter being:<sup>26</sup> “Upgrades on Old Waipu Road between Cove Road and any connection to the Plan Change area.” Again, it is clear the word “North” is missing.

46. Based on Mr Kelly’s evidence, there is no disagreement about upgrading of Old Waipu Road North between any new connection onto it (i.e. a connection formed from the Site to Old Waipu Road North) and Cove Road. There may be disagreement as to whether the provisions advanced by MHL sufficiently provide for this outcome to be achieved.

47. However the rebuttal of Mr Clease says:<sup>27</sup>

“...in response to Ms Gasson’s rebuttal I recommend that the structure plan be updated to show the Old Waipu Road primary road extending to Cove Road so there is a clear direction as to the upgrades that will be necessary.”

48. Mr Clease’s statement above is uncertain as to the roading outcome it is addressing. If it is intended to be a reference to Old Waipu Road (south) being extended through to Old Waipu Road North, then MHL disagrees that such an outcome should be shown on the structure plan. With reference to the expert evidence, such an upgrade is not necessary.

## Ecology

49. Mr Bangma’s opening refers to:

- a. The consent status of clearance of indigenous vegetation for track building/maintenance.

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<sup>26</sup> Rebuttal Gasson, at [4.39].

<sup>27</sup> At [4.15].

- b. The necessity for a bat survey forming part of the information requirements under DEV1-REQ6.

50. Mr Delaney agrees that all vegetation removal and earthworks should not be a permitted activity within native vegetation areas and that walking and cycle trails through native vegetation should be designed to minimise adverse ecological effects. That led to amendments to DEV1-R7 and DEV1-R8.<sup>28</sup> The amended DEV1-R8 provides for constrained indigenous vegetation clearance as a permitted activity with respect to walking tracks as follows:

The removal is for the formation and maintenance of walking tracks less than 3 metres wide, provided that manual methods are used that do not require the removal of any indigenous tree over 300mm in girth.

51. The difference of opinion now before you is that Mr Brown (and Mr Clese) say that indigenous vegetation clearance for the purpose of forming walking and cycle trails should be a Restricted Discretionary activity, with maintenance of those trails being a permitted activity.
52. MHL maintains its position that amended DEV1-R8 is appropriate, on the basis of Mr Delaney's advice and adopting a real world approach to assessment meaning there is no real prospect of a plethora of trails being constructed resulting in unacceptable levels of clearance.
53. With respect to bat surveys, Mr Delaney agrees that a bat habitat assessment should be undertaken as part of future consenting processes for any application proposing vegetation removal.<sup>29</sup> MHL's position is that the provisions they have proposed sufficiently address ecological matters and will encompass bat habitat assessment.

### Rules relating to Community Hubs

54. There is general agreement that Community Hubs A – C proposed by MHL are appropriate.

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<sup>28</sup> EIC McGrath and Neal, at [139] – [141].

<sup>29</sup> EIC Delaney, at [87] – [89].



55. Submission 52.1 (Ms Renner) sought inclusion of 110 Moir Street as an additional hub. The evidence of Mr Osborne and Ms McGrath and Ms Neal<sup>30</sup> supports this property being included as a hub with appropriate provision for commercial activities.
56. That leaves matters of detail as to provision wording for the Community Hubs. This will be addressed by Ms McGrath and Ms Neal.

### **Applicability of the NPS-UD To Mangawhai and PPC84**

57. Section 3 of Mr Bangma's opening engages with the NPS-UD and whether it is applicable to Mangawhai. I generally agree with his submissions.
58. With respect to Mr Bangma's 3.8, I concur "intended" could be defined as "planned". I agree that the appropriate timeframe would be the long term defined as meaning between 10 – 30 years.
59. Turning to a dictionary definition, "predominant" is defined as "being the main element".<sup>31</sup> This allows a degree of flexibility – for example it would seem to me to allow for peri-urban areas surrounding more conventional urban zoning to be included.
60. It is also the case that the housing and labour market does not need to be a contiguous area, given the reference to "any area of land" that is or is intended to be "part" of a housing and labour market.
61. At 3.9 Mr Bangma refers to the Hearing Panel finding in the context of Private Plan Change 78: Mangawhai Central that Mangawhai is an urban environment. Although that finding is not binding on you, in my view that the panel was correct in determining that Mangawhai as part of a combined housing and labour market which exceeds 10,000 people. While including Whangarei seems somewhat of a stretch, including Warkworth, Wellsford and Waipu along with Mangawhai would result in a market comfortably exceeding 10,000 people. In my submission Mr Cleese is incorrect in his suggestion that Mangawhai forms a standalone

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<sup>30</sup> EIC McGrath and Neal, at [190] – [193].

<sup>31</sup> The New Zealand Oxford Dictionary.

housing and labour market.

62. Ultimately, if the NPS – UD is engaged and must be given effect to, then there is agreement between Ms McGrath and Ms Neal and Mr Cleese that the plan change as now advanced achieves this outcome.

### **Applicability of the NPS – HPL**

63. Council’s opening legal submissions address this issue at length in section 4. Again I generally agree with this submission.

64. Acknowledging the recent Environment Court decision (*Blue Grass Limited v Dunedin City Council* [2024] NZEnvC 83), in my view the position in short is:

- a. The only land which may potentially be ‘caught’ is a small area of LUC 3 land.
- b. A site specific assessment that the Land Resource Inventory identification of LUC 3 land is incorrect cannot be relied upon because of the Court’s *Blue Grass* decision.
- c. However the exclusion in clause 3.5(7)(b) applies on the basis that at the commencement date, land was “identified for future urban development” for reasons identified by Mr Bangma.

### **Weight of the Chapter 3A Mangawhai Structure Plan Provisions and Growth Area Provisions in the Operative District Plan Compared to the Mangawhai Spatial Plan**

65. I agree with Mr Bangma’s analysis in section 5 of his submission. Of note, I agree the Spatial Plan:

- a. Is relevant.
- b. Must be given consideration but does not necessarily need to be followed.

- c. Should attract relatively limited weight, and it is open to the Hearing Panel to find other zonings are more appropriate in section 32 terms than those identified for the Site in the Spatial Plan.

### **Relevant Legal Requirements - Wastewater and Potable Water Supply**

- 66. I agree with Mr Bangma's analysis in section 6 of his submission.
- 67. I confirm that the NRC has granted the applicant resource consent for a communal on-site wastewater disposal system to service 600 lots. A copy of this consent will be provided to the Panel.
- 68. The matter of whether a minimum lot size of 3000 m<sup>2</sup> is appropriate has already been addressed in this submission.

### **Scope to grant the relief sought in Submission no. 52 by Ms Renner**

- 69. Mr Bangma has addressed this issue in detail in section 7 of his submission. I agree with his analysis. While rezoning the land business commercial would certainly not be within scope, there does appear to be a pathway to rezoning the land Mangawhai Hills Development Zone with a community hub providing for a limited community or commercial space opportunity (subject to resource consent being obtained).

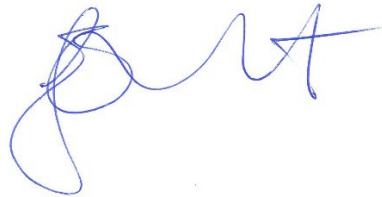
### **Conclusion**

- 70. In my submission, PC84 will deliver positive outcomes for Mangawhai, specifically by enabling housing, ecological restoration, and limited but appropriate growth and expansion of business and employment opportunities through the community hubs.
- 71. The Site presents an excellent opportunity to enable additional housing in an integrated manner which ensures that any potential adverse effects on the environment are appropriately avoided, remedied, or mitigated.

72. I submit that:

- a. The PC84 provisions proposed by MHL appropriately give effect to all applicable higher order planning instruments (including all national policy statements and national environmental standards, and regional policy statement), and are not inconsistent with any directive objectives, policies or constraints from such higher order instruments. The rules which will apply will appropriately implement the policies.
- b. In terms of s 32 of the RMA, PC84 is the most appropriate means of achieving the purpose of the RMA, and the proposed provisions are the most appropriate ways to achieve the objectives of the ODP.
- c. Approving PC84 would result in amendments to the ODP that accord with the Council's functions under s 31 of the RMA.
- d. Approving PC84 would be consistent with and promote sustainable management of resources, as required by s 5 of the RMA, because:
  - i. Potential adverse effects are appropriately avoided, remedied or mitigated;
  - ii. The proposed PC84 provisions will enable efficient use of land on the Site and its natural and physical resources, which can be undertaken in a manner that ensures appropriate integration of development outcomes and infrastructure provision;

- iii. PC84 will enable communities to provide for their social, economic, and cultural wellbeing and for their health and safety.



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**Jeremy Brabant**

Counsel for Mangawhai Hills Limited

Dated 22 May 2024