

**BEFORE THE INDEPENDENT HEARINGS PANEL: FOR THE PROPOSED
WAIKATO DISTRICT PLAN**

IN THE MATTER OF the Resource Management Act
1991

AND

IN THE MATTER OF hearing submissions and
further submissions on the
Proposed Waikato District Plan

AND

IN THE MATTER OF Hearing 27C – Flood Hazards,
and Defended Areas

**LEGAL SUBMISSIONS ON BEHALF OF MEREMERE DRAGWAY
INCORPORATED IN SUPPORT OF ITS SUBMISSIONS ON THE PROPOSED
WAIKATO DISTRICT PLAN – HEARING 27C FLOOD HAZARDS AND
DEFENDED AREAS**

Dated: 5 May 2021

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MAY IT PLEASE THE PANEL

1. These legal submissions are made on behalf of Meremere Dragway Incorporated (**Meremere Dragway**) in relation to Hearing 27C (Flood Hazards and Defended Areas) which is scheduled to commence on 10 May 2021¹, via Zoom.
2. Meremere Dragway Inc (**Meremere Dragway**) filed a detailed submission (#2150) on Stage 2 of the Proposed Waikato District Plan (**Proposed Plan**) seeking to remove the Flood Plain Management Area (**FMA**) over the land that is protected by the Meremere West Drainage Area (**MWDA**) and to map the land as a Defended Area, and any consequential amendments required.
3. Meremere Dragway continues to oppose the mapping of the land as a FMA as its primary relief. Amendments to the proposed provisions are sought as alternative relief.
4. The land located within the MWDA is protected from Waikato River flooding by a continuous Lower Waikato Waipa Control Scheme (**LWWCS**) stopbank along the river and is drained by the Peters pumpstation at the northern end and the Henrys pumpstation at the southern end. These submissions question the Waikato District Council's (**District Council**) evidential basis for the imposition of the FMA in respect of land protected by the MWDA. Meremere Dragway respectfully submits that the technical information provided by the Waikato Regional Council (**WRC**) is generic and does not justify the imposition of the FMA (considering the significant effect it has on Meremere Dragway's ability to use its land).

The District Plan context

5. A "Defended Area" is defined in the Proposed Plan at section 15.14 as follows:

Means an area identified on the planning maps which could normally flood in a 1% AEP flood event but is protected from flooding by a flood protection scheme managed by the Waikato Regional Council, the Waikato District Council or the Crown.

¹ Pursuant to the Hearing Schedule Meremere Dragway has been scheduled to appear on 12 May 2021.

6. A “Flood plain management area” is also defined in the Proposed Plan at section 15.14 as follows:

Means an area identified on the planning maps which is at risk of flooding in a 1% AEP flood event and is otherwise described as the 1% AEP floodplain.

7. The key distinction between a Defended Area and a FMA is that a flood protection scheme protects land within a Defended Area from a 1% AEP event.

The Section 42A report

8. The District Council’s section 42A report relating to Hearing 27C Flood Hazards and Defended Areas states at paragraph 511:

Meremere Dragway Incorporated [2150.1] seek the deletion of the Floodplain Management Area over the land that is protected by Meremere West Drainage Area and that the land be mapped as a Defended Area. I have discussed this request with the Waikato Regional Council who indicate that this is a drainage area with only a 10% AEP stopbank design. The land is therefore prone to a 1% AEP flood event of the Waikato River. Consequently, I recommend that the submission of Meremere Dragway Incorporated [2150.1] be rejected.

9. Thus, Ms Carter’s (the section 42A report author) justification for rejecting Meremere Dragway’s submission appears to be that a 1% AEP event would overtop the stopbank which allegedly provides protection against only 10% AEP events, that protects the MWDA. Ms Carter advises that she obtained this information via discussions with the WRC.

10. To ascertain the extent and content of Ms Carter’s discussion with the WRC, Meremere Dragway made a Local Government Official Information and Meetings Act 1987 (**LGOIMA**) request of the District Council seeking:

(a) all correspondence and reports, including emails, file notes, internal memoranda and other records of communications between any Waikato District Council personnel, Waikato Regional Council and external parties about Meremere Dragway’s submission on Chapter 15 relating to the request to delete the FMA that is located over the land that is protected by Meremere West Drainage Area; [and]

(b) any other internal documentation held by any Waikato District Council personnel about Meremere Dragway’s submission on Chapter 15 relating to the Meremere West Drainage Area.

11. The District Council’s RM Policy Manager, Will Gauntlett, responded to Meremere Dragway’s request, by email, stating:

“ ...

The response is below. I note that no information has been withheld eg under the withholding grounds in section 7 of LGOIMA.

- Council engaged a consultant planner to assess and make recommendations on submissions on the flooding aspects of Stage 2 of the Proposed District Plan. The consultant is Janice Carter of Barker & Associates.
- Janice has explained that the approach taken was to seek specific comment from Rick Liefiting/Ghassan Basheer of the WRC, or Greg Whyte at DHI, on identified submissions points relevant to their area of expertise as identified in a large excel spreadsheet.
- Janice had a formal meeting with Waikato Regional Council on 5/03/2021. Submission point 2150 was not discussed.
- Between 25th February and 31st March 2021 Janice had various discussions with Rick Liefiting and Ghassan Basheer of the WRC about the Defended areas and the 1% AEP Flood Plain Management Area Extent, on how they were prepared etc. These were informal conversations and no notes were taken. Janice cannot recall submission 2150 being the specific topic in any of these discussions.
- **The response from WRC on submission point 2150.1 was from Rick Liefiting/Ghassan Basheer and is the only specific information Janice received from WRC on submission 2150.1 (attached).**
- No conversations with any other external parties were had outside of WRC and DHI.

There is publicly available documentation on the topic generally including the s42 Report and the Stage 2 s32.

In addition, the following general information received from WRC may be helpful:

Further detailed information on the flood protection schemes and land drainage schemes can be provide at a later date if required. However, the following public links could be provided for further awareness of WRC managed land drainage schemes.

- WRC Land Drainage [Land drainage | Waikato Regional Council](#) – provides good general info including links to Land Drainage management plan and brochure sent tout to Land owners in land drainage areas.
- WRC Regional Hazards Portal [Waikato Regional Hazards Portal | Waikato Regional Council](#) – Flood management Tab shows land drainage areas, stopbanks etc. The Defended areas tab also shows the various defended areas with their respective protection level. ...”

(Emphasis **added**)

12. Relevantly, the only advice that Ms Carter received from the WRC specifically in relation to Meremere Dragway’s submission was from Rick Liefiting² and /

² Team Leader, Regional Hazards and Environmental at WRC.

or Ghassan Basheer³ (see bullet point five). The attachment referred to is an Excel document labelled “Copy of Stage 2 master data for s42As - expert input - Waikato DC submission Regional Resilience Edit”. The technical input from WRC in that document consisted of a single sentence:

This is a drainage area, with only a 10% AEP stopbank so is prone to a 1% AEP flood event of the Waikato River.

13. A screenshot of the WRC document is set out below:

No.	Submitter	Organisation	On Behalf Of	OS Point No.	FS Point No.	Property address	Support/Opportunity	Decision Sought	Reason	Primary Hearing topic	Secondary Hearing topic (if applicable)	Plan Provision	Plan Section	Assigned to:	WRC comments
2150	Meremere			OS 2150.1		Meremere	Oppose	Delete the Floodplain Management Area over the land that is protected by Meremere West Drainage Area and map the land as a Defended Area, AND Any consequential amendments as required.	Meremere West Drainage Area (not operative) is protected from Waikato River flooding by Lower Waikato Waipa Control Scheme stopbank and is drained by two pumpstations. Therefore, falls within Chapter 15.4 definition of "Defended Area". Defended Area consistent	River	0	Maps - River	Maps	Rick/DHI	This is a drainage area, with only a 10% AEP stopbank so is prone to a 1% AEP flood event of the Waikato River.

14. Meremere Dragway acknowledges that WRC provided the District Council with general information relating to flood hazards and that the Waikato Regional Hazards Portal identifies the MWDA as a defended area with only 10% AEP protection.⁴ However, the extent of WRC’s input specifically addressing Meremere Dragway’s submission was a single sentence. No technical detail was provided in relation to the stopbank design or specifications. Meremere Dragway finds this lack of information concerning due to other WRC documents (albeit one in a draft form) stating that stopbanks along the main channel of the Waikato River generally protect from

³ Principal Technical Adviser at WRC.

⁴ The Waikato Regional Hazards Portal can be accessed using the following hyperlink: <<https://waikatoregion.maps.arcgis.com/apps/MapSeries/index.html?appid=f2b48398f93146e8a5cf0aa3fddce92c>>

a 1% AEP flood event.⁵ The stopbank protecting the MWDA bounds the main channel of the Waikato River.

15. Meremere Dragway accepts that it is appropriate to identify land as a FMA where there is probative evidence that that land is within the 1% AEP floodplain after taking into account flood defences. However, Meremere Dragway submits that where the technical advice from the WRC underpins plan rules which have a significant effect on people's ability to use their land, that advice must be established through comprehensive and probative evidence. Meremere Dragway submits that the evidential onus for justifying the imposition of the FMA has not been discharged.
16. It is submitted that there is nothing in the technical information provided by WRC which assesses the LWWCS stopbank design or its capacity to withstand a 1% AEP flood event. It is submitted that this information is not sufficient to justify the restrictions on Meremere Dragway's use of the land.

Primary Relief Sought

17. Meremere seeks the following relief:
 - (a) the deletion of the FMA over the land that is protected by the MWDA and to map the land as a Defended Area; and
 - (b) any consequential amendments required.

Alternative relief

18. In the alternative, Meremere Dragway seeks that a bespoke rule be inserted into Chapter 15 that allows for the Defended Area rules to apply to land located within the MWDA if technical information is provided to the District Council stating that the LWWCS stopbank protects against a 1% AEP flood event (**the Proposed Rule**):

⁵ Waikato Regional Council "Stopbank: a community investment, Information for lower Waikato residents and landowners" (March 2013) at 3 <<https://www.waikatoregion.govt.nz/assets/PageFiles/25470-stopbanks/Lower%20Waikato%20booklet.pdf>>; and Waikato Regional Council "Draft Waikato Regional Council Policy Series 2014/09, Infrastructure strategy 2015 - 2045 - flood protection and control works" (December 2014) at section 4.1 <<https://www.waikatoregion.govt.nz/assets/WRC/Services/regional-services/Infrastructure-Strategy-2015.pdf>>.

“XXX. Activities within the Flood Plain Management Area identified on the planning maps, located within the Meremere West Drainage Area, are to be subject to the Defended Area rules where certification has been provided to the Waikato District Council by an appropriately qualified specialist, with experience in hydrology, that the land is protected from flooding during a 1% AEP flood event by a flood protection scheme managed by the Waikato Regional Council, the Waikato District Council or the Crown”

19. The Proposed Rule would provide further certainty that the LWWCS stopbank protects against a 1% AEP flood event. Without derogating from Meremere Dragway’s primary position, the Proposed Rule would also apply if the LWWCS stopbank were upgraded by WRC to protect against a 1% AEP flood event. This level of protection does not support the imposition of restrictions under the FMA rules on Meremere Dragway’s use of the land. Instead, the Defended Area rules would be more appropriate because the land is a low hazard area by virtue of the stopbank. An information requirement of this nature necessitates an appropriate trigger, and Meremere Dragway proposes certification by an appropriately qualified specialist, with experience in hydrology. It is submitted that this trigger provides adequate certainty that development will be protected from the risk of flooding and is an efficient and effective method to include in the Proposed Plan. The Proposed Rule would greatly reduce Meremere Dragway’s consenting costs in respect of its land located within the FMA, for example:

- (a) Meremere Dragway can carry out ancillary activities and construct accessory buildings as a permitted activity under the Rural provisions (Rule 22.1.2 (P5) relating to Meremere Dragway Activity)⁶ provided it meets the land use rules in Rule 22.2 and the building rules in Rule 22.3. An accessory building is a permitted activity within the FMA if it is constructed without a floor (Rule 15.4.1 P4(1)), otherwise it becomes a discretionary activity (Rule 15.4.3 D1). The type of accessory buildings anticipated to be constructed at Meremere Dragway, such as a mechanical workshop or clubrooms, are likely to

⁶ Bearing in mind the expanded definition of “Meremere Dragway Activity” as recommend by Jonathan Cleese, the Section 42A report author for the Rural Zone, in his rebuttal evidence filed in relation to Hearing 18 (Rural Zone - Landuse) dated 24 September 2020.

require a floor to function so they would therefore be assessed as a discretionary activity under the FMA rules. However, under the Defended Area rules, accessory buildings are permitted activities so long as they are not located within 50m of the toe of a stop-bank where the stop-bank is under the responsibility of the Council, the Waikato Regional Council or the Crown.

- (b) Earthworks in the Rural Zone within a FMA are a permitted activity where the maximum volume of filling above natural ground level is 100m³ per site, and a maximum cumulative volume of filling and excavation of 200m³ per site (Rule 15.4.1 (P8)).⁷ There are also restrictions relating to the height and depth of earthworks. Otherwise, earthworks become a restricted discretionary activity under Rule 15.4.2 (RD1). In comparison, earthworks are permitted activities within Defended Areas (Rule 15.6.1) unless located within 50m of the toe of a stop-bank where the stop-bank is under the responsibility of the Council, the Waikato Regional Council or the Crown (Rule 15.6.3 (D2)). Anticipated activities at Meremere Dragway, such as the establishment of a Go-cart track, will likely require earthworks that exceed the permitted standards specified under the FMA rules.

20. Thus, the Proposed Rule would enable the efficient and effective function of Meremere Dragway by enabling anticipated activities without requiring unnecessary consents.

Conclusion

21. In conclusion, it is submitted that an insufficient evidential basis has been advanced for the proposed FMA in relation to the land protected by the MWDA. In the alternative, changes to the provisions are required in order to achieve a balance in recognising the legitimate interest of Meremere Dragway to use its land for zoned purposes.

⁷ Noting that earthworks are also provided for as a permitted activity in specific situations under Rules 15.4.1 (P6) or (P7).

DATED this 5th day of May 2021

A handwritten signature in blue ink, appearing to read "Andrew Green".

Andrew Green / Ben Cochrane
Counsel for Meremere Dragway Inc