

BEFORE THE WAIKATO DISTRICT COUNCIL

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF a further submission on **Variation 3: Enabling Housing Supply** to the Proposed Waikato District Plan, under Schedule 1 to the Act

FURTHER SUBMISSION ON VARIATION 3: ENABLING HOUSING SUPPLY

19 December 2022

Counsel Instructed:

Peter Fuller
*LLB, MPlan, DipEnvMgt,
BHortSc.*
Barrister
Quay Chambers
Level 7, 2 Commerce Street
PO Box 106215
Auckland 1143
021 635 682
Email:
peter.fuller@quaychambers.co.
nz

INTRODUCTION/BACKGROUND

1. This is a further submission on Variation 3: Enabling Housing Supply (**V3** or the **Variation**) to the Proposed Waikato District Plan (**PWDP**) and is filed on behalf of Top End Properties Limited (**TEP**).

BACKGROUND

2. With respect to V3, TEP is a landholder in Pokeno with holdings identified as General Residential Zone (**GRZ**). This land has been subject to rigorous masterplanning and technical reporting demonstrating that it is feasible and appropriate for residential development.
3. TEP have been actively involved in the District Plan. Since then, submissions have been lodged and hearings participated in. This has culminated in a Decision by Council that the entirety of the land be rezoned to GRZ. TEP have appealed various parts of the Council decision to the Environment Court.
4. As such, decisions that impact the potential development of urban residential land such as the implementation of the MDRS greatly impact the use of the Submitters land in the future. In turn, the submitter has an interest in V3 greater than the interest the general public has.
5. The primary submissions that TEP support and oppose are identified in the attached table (see **Attachment A**).

HEARING

6. TEP wish to be heard in support of its further submission.
7. If others make a similar submission, TEP would be prepared to consider presenting a joint case with them at any hearing.

Peter Fuller
Barrister
19 December 2022

ATTACHMENT A

Submitter	Submission Point	Summary of Submission	Support or Oppose	Reasons for Further Submission	Decision Sought
Waka Kotahi	29.1	<i>Support the walkable catchment for the medium Density Residential 2 Zone.</i>	Oppose	The use of the walkable catchment is integrated with the urban fringe qualifying matter which doesn't recognise the opportunities afforded by providing higher density development on greenfield sites.	Disallow the submission
Waka Kotahi	29.3	<i>Evaluate the additional option of providing for increased density in the four towns and make any consequential changes.</i>	Support	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the Medium Density Residential Standards (MDRS) is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the submission
Waka Kotahi	29.5	<i>Amend the assessment criteria under TRPT-R4(2) to include a specific requirement for traffic assessments to demonstrate how the proposal mitigates operational greenhouse gas effects.</i>	Oppose	Transport emissions are out of scope with V3. Section 70A of the RMA (as it currently exists) precludes local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents. This approach has been confirmed in the <i>Greenpeace NZ v Genesis Power</i> Supreme Court case.	Disallow the submission
Pokeno Community Committee	41.1	<i>Delete Variation 3 from the proposed district plan.</i>	Oppose	The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (RM-EHS Act) is clear in its requirements that tier 1 territorial authorities notify an Intensification Planning Instrument (IPI).	Disallow the submission
Pokeno Community Committee	41.2	<i>Add Pokeno Special Character as a Qualifying matter in MRZ2-P6.</i>	Oppose	The RM-EHS Act is clear in its requirements for qualifying matters which include (but are not limited to) the preparation of a section 32 evaluation report. No such report accompanies the submission justifying why higher density is inappropriate in Pokeno.	
Pokeno Community Committee	41.3	<i>Add more strict measures to protect current homeowners who may be adjacent to future medium density housing.</i>	Oppose	The RM-EHS Act only provides for making development less enabling where a qualifying matter exists. No such matter has been identified.	
Pokeno Community Committee	41.4	<i>At the least, apply these changes to newly created sections that have not yet been sold to homeowners</i>	Oppose		
Waikato Regional Council	42.3	<i>No specific decision requested, but submission considers there is scope to strengthen policy wording around emissions in the Variation, especially in relation to transport provisions.</i>	Oppose	Transport emissions are out of scope with V3. Section 70A of the RMA (as it currently exists) precludes local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents. This approach has been confirmed in the <i>Greenpeace NZ v Genesis Power</i> Supreme Court case.	Disallow the submission
Waikato Regional Council	42.8	<i>Consider enabling an intermediary density within the areas of the four towns outside of the 800m walkable catchment, for example by providing for two residential units per site as a Permitted Activity. AND Amend the objectives, policies, and rules within the areas of the four towns outside of the 800m walkable catchments subsequently.</i>	Support	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and implementation requirements.	Allow the submission
Waikato Regional Council	42.10	<i>Add new OR Amend objectives, policies, rules, and standards to address climate change and carbon emissions reduction goals in the</i>	Oppose	Transport emissions are out of scope with V3. Section 70A of the RMA (as it currently exists) precludes local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents. This approach has been	Disallow the submission

Submitter	Submission Point	Summary of Submission	Support or Oppose	Reasons for Further Submission	Decision Sought
		<i>context of housing intensification, including consequential amendments to Part 2: District-wide matters.</i>		confirmed in the <i>Greenpeace NZ v Genesis Power</i> Supreme Court case.	
Waikato Regional Council	42.11	<i>Add new policies that seek to avoid, minimise, or reduce the adverse effects of the transport network on adjoining land uses and the wider environment, such as those caused by transport emissions.</i>	Oppose	Transport emissions are out of scope with V3. Section 70A of the RMA (as it currently exists) precludes local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents. This approach has been confirmed in the <i>Greenpeace NZ v Genesis Power</i> Supreme Court case.	Disallow the submission
Waikato Regional Council	42.17	<i>Amend objectives and policies to:</i> <ul style="list-style-type: none"> • <i>Require adverse effects from the construction of the transport network, including embodied and operational greenhouse gas emissions, to be avoided, remedied, or mitigated; and -</i> • <i>Minimise the need to travel and the total distance travelled.</i> 	Oppose	Transport emissions are out of scope with V3. Section 70A of the RMA (as it currently exists) precludes local authorities from considering the effects of greenhouse gas emissions on climate change in plans and consents. This approach has been confirmed in the <i>Greenpeace NZ v Genesis Power</i> Supreme Court case.	Disallow the submission
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.1	<i>No specific decision requested, but submission supports the proposal to not allow further intensification by retaining the General Residential Zone in Pookeno to address qualifying matters.</i> AND <i>Any consequential amendments to other parts of the PDP to address the matters raised in the submission.</i>	Oppose	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and implementation requirements.	Disallow the submission
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.2	<i>No specific decision requested, but submission opposes Variation 3 to the extent that increased housing density enabled by the Variation would generate adverse stormwater effects on downstream catchments.</i> AND <i>Any consequential amendments to other parts of the PDP to address the matters raised in the submission.</i>	Oppose	Variation 3 (V3) only provides for additional plan-enabled capacity in the district. The actual development that will be realised in the future is not known at this stage. Notwithstanding this, future development will be subject to the infrastructure/servicing provisions in the plan and will be assessed in the consenting process which will address cumulative effects (among other relevant matters).	Disallow the submission
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.3	<i>No specific decision requested, but submission opposes Variation 3 to the extent that the Variation goes beyond the central Government directions to promulgate plan changes to incorporate the MDRS and give effect to the NPS-UD and would enable more intense development.</i> AND <i>Any consequential amendments to other parts of the PDP to address the matters raised in the submission.</i>	Oppose	It is considered that V3 does not implement the RM-EHS Act as intended. This is evidenced by the urban fringe qualifying matter which rather than being a targeted matter to specific areas, restricts high density across the district.	Disallow the submission
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.4	<i>Amend the stormwater management provisions throughout the PDP to ensure that such adverse stormwater effects on properties downstream of proposed development are appropriately, avoided remedied or mitigated, in the event that Variation 3 is approved.</i> AND <i>Any consequential amendments to other parts of the PDP to address the matters raised in the submission.</i>	Oppose	V3 only provides for additional plan-enabled capacity in the district. The actual development that will be realised in the future is not known at this stage. Notwithstanding this, future development will be subject to the infrastructure/servicing provisions in the plan and will be assessed in the consenting process which will address cumulative effects (among other relevant matters).	Disallow the submission
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.5	<i>Amend the stormwater provisions of the PDP and Variation 3 to address the adverse stormwater effects of more intense development in terms of altered natural flow paths, and altered hydrological conditions, including the volume, frequency and duration of discharges, and the extent of inundation on downstream properties.</i>			

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		AND Any consequential amendments to other parts of the PDP to address the matters raised in the submission.			
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.6	Amend the PDP to take a consistent approach to stormwater management across the entire plan, with the stormwater management provisions in all chapters amended accordingly. The submission notes that there are provisions governing stormwater management in urban areas throughout the PDP including in the Definitions, Strategic Direction, Water Wastewater and Stormwater, All Infrastructure, Natural Hazards and Climate Change, Subdivision, Earthworks and all Residential Zone chapters of the PDP. AND Any consequential amendments to other parts of the PDP to address the matters raised in the submission.			
Anna Noakes and MSBCA Fruhling Trustee's Company Ltd	44.7	Retain the proposal not to allow further intensification of residential land at Pookeno to address qualifying matters AND Any consequential amendments to other parts of the PDP to address the matters raised in the submission.	Oppose	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and implementation requirements.	Disallow the submission
Synlait Milk Ltd	46.1	Retain the Pookeno planning map as notified, in particular the retention of the General Residential Zoning as shown on the Planning Map. Submission opposes any change from General Residential to Medium Residential Zone 1 or Medium Residential Zone 2 on land adjoining or in proximity of the Heavy Industrial Zone.	Oppose	The RM-EHS Act is clear in its requirements that tier 1 territorial authorities notify an IPI and that this may be less enabling where a qualifying matter/s is/are present.	Disallow the submission
Pookeno Village Holdings Ltd	47.1	Delete Variation 3 from the Proposed District Plan	Oppose	The RM-EHS Act is clear in its requirements that tier 1 territorial authorities notify an IPI.	Disallow the submission
Pookeno Village Holdings Ltd	47.2	That the Council review all land zoned General Residential Zone in the Proposed Waikato District Plan decision, reducing General Residential Zone to give effect to the NPS-UD in a manner that reflects the true residential demand capacity.		The zoning of other landed zoned General Residential Zone is subject to the ongoing appeals process with the Environment Court. A submission seeking to reduce the amount of this land is not within scope of the purpose of V3.	
Ministry of Housing and Urban Development	50.1	Delete the urban fringe qualifying matter and apply the MDRS as required by the RMA across the relevant residential zones. AND Amend to apply the MDRS to all relevant residential zones.	Support	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the submission
Ministry of Housing and Urban Development	50.2	No specific decision requested, but submission considers that Variation 3 correctly identified the residential zones in Huntly, Ngaaruawaahia, Tuakau, and Pookeno as relevant residential zones.	Support	The implementation of the MDRS is correctly limited to occurring within the relevant residential zones of the identified towns.	Allow the submission
Teresa Wine	61.1	Delete Variation 3	Oppose	The RM-EHS Act is clear in its requirements that tier 1 territorial authorities notify an IPI.	Disallow the submission
Teresa Wine	61.2	Add Pookeno special character as a qualifying matter	Oppose	The RM-EHS Act is clear in its requirements for qualifying matters which include (but are not limited to) the preparation of a section 32 evaluation report. No such report accompanies the submission justifying why higher density is inappropriate in Pōkeno.	Disallow the submission
Teresa Wine	61.3	At the least, apply these changes to newly created sections that have not yet been sold to homeowners	Oppose	The RM-EHS Act only provides for making development less enabling where a qualifying matter exists. No such matter has been identified.	Disallow the submission

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Jodie Bell	71.3	Amend MRZ2-S4 setbacks to read as follows: as: (b) This standard does not apply to site boundaries where there is an existing common wall between 2 buildings on adjacent sites or where a common wall is proposed. AND Add a new rule as follows: <u>Common walls are not permitted in MDRZ2 unless the common wall adjoins non-habitable garaging at ground level.</u>	Oppose	Restricting the use of common walls would reduce flexibility in development outcomes as it would constraint residential developments where no garages are proposed. Furthermore, common walls between residential units is not uncommon.	Disallow the submission
Chris Parker	73.1	Delete Variation 3	Oppose	The RM-EHS Act is clear in its requirements that tier 1 territorial authorities notify an IPI.	Disallow the submission
CSL Trust	82.1	Amend to apply the MDRS to all residential land within urban environments of the District, subject to any legitimate qualifying matters. This would apply to Pookeno, Tuakau, Huntly and Ngaaruawaahia. If necessary, a new zone created to accommodate that amendment. This zone could be referred to as General Residential Zone 2 (GRZ2) or similar. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support	The submission seeks relief that implements the MDRS as required by the RM-EHS Act in all relevant residential zones in the district.	
CSL Trust	82.2	Delete the Urban Fringe qualifying matter, which fails to meet the relevant statutory requirements and is inappropriate. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission (which could include the application of the MRZ2 to the full extent over the four settlements that the submitter is seeking MDRS over.	Support		
CSL Trust	82.3	Delete the relevant standards from the GRZ that are being replaced by the MDRS [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support	The submission seeks relief that implements the MDRS as required by the RM-EHS Act in all relevant residential zones in the district.	
CSL Trust	82.4	Add a new rule that any infringement of the MDRS is a restricted discretionary activity [see submission for untracked version of the GRZ chapter]. AND Add matters of discretion based on the equivalent of those from the MDRZ2 proposed in V3. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support		
CSL Trust	82.5	Add a new rule in the GRZ that one to three units are permitted subject to compliance with the MDRS [see submission for untracked version of the GRZ chapter].	Support		

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		AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.			
CSL Trust	82.6	Add a new rule in the GRZ that four or more units are restricted discretionary activity subject to compliance with the MDRS and the remaining standards of the GRZ [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support		
CSL Trust	82.7	Add matters of discretion for four or more units based on the equivalent of those from the MDRZ2 proposed in V3 or the notified Multi-Unit Housing discretions of the Proposed District Plan [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support		
CSL Trust	82.8	Add a rule that for four or more units that any infringement of a MDRS rule is a restricted discretionary activity [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support		
CSL Trust	82.9	Add new subdivision rules for one to three units and four or more units based on the requirements of the MDRS and RM-EHA with the matters of discretion being equivalent to those in the MDRZ2 [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.	Support		
Harkness Henry Lawyers	99.1	Ensure all General Residential Zones have the Medium Density Standards applied as anticipated by the Resource Management Act (Enabling Housing Supply Act and Other Matters Amendment Act) OR In the alternative, if the MDRS is not applied in the General Residential zone, apply the MDRS to 61 Old Taupiri Road, 26 Jackson Steet Ngaaruawaahia, 99 and 99A Ngaaruawaahia Road, Ngaaruawaahia, 18 Rangaimarie Road, Ngaaruawaahia	Support in part	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the first part of the submission

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		<p>AND retain the Medium Density Residential Zone 2 in 15 and 29/33 Galbraith Street Ngaaruawaahia</p> <p>OR</p> <p>if the MDRS is not applied to the General Residential Zone, or the General Residential zone is not rezoned to medium Density Residential 2 Zone, that the Comprehensive Residential development ('CRD' rules are reinstated</p> <p>AND</p> <p>Rezone 99A Ngaaruawaahia Road and 18 Rangimarie Road are rezoned to include the whole property under the one General Residential Zone to avoid having half in the General Residential Zone and half in the Rural Zone.</p>			
Havelock Villages Ltd	105.1	<p>Amend to apply the MDRS to all residential land within urban environments of the District, subject to any legitimate qualifying matters. This would apply to Pookeno, Tuakau, Huntly and Ngaaruawaahia. If necessary, a new zone created to accommodate that amendment. This zone could be referred to as General Residential Zone 2 (GRZ2) or similar.</p> <p>AND</p> <p>Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</p>	Support	The submission seeks relief that correctly aligns with the required implementation of the MDRS.	Allow the submission
Havelock Villages Ltd	105.2	<p>Delete the Urban Fringe qualifying matter, which fails to meet the relevant statutory requirements and is inappropriate.</p> <p>AND</p> <p>Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission (which could include the application of the MRZ2 to the full extent over the four settlements that the submitter is seeking MDRS over.</p>	Support	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the submission
Havelock Villages Ltd	105.3	<p>Delete the relevant standards from the GRZ that are being replaced by the MDRS [see submission for untracked version of the GRZ chapter].</p> <p>AND</p> <p>Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</p>	Support	The submission seeks relief that implements the MDRS as required by the RM-EHS Act in all relevant residential zones in the district.	Allow the submission
Havelock Villages Ltd	105.4	<p>Add a new rule that any infringement of the MDRS is a restricted discretionary activity [see submission for untracked version of the GRZ chapter].</p> <p>AND</p> <p>Add matters of discretion based on the equivalent of those from the MDRZ2 proposed in V3.</p> <p>AND</p> <p>Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</p>			

Submitter	Submission Point	Summary of Submission	Support or Oppose	Reasons for Further Submission	Decision Sought
Havelock Villages Ltd	105.5	<i>Add a new rule in the GRZ that one to three units are permitted subject to compliance with the MDRS [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</i>			
Havelock Villages Ltd	105.6	<i>Add a new rule in the GRZ that four or more units are restricted discretionary activity subject to compliance with the MDRS and the remaining standards of the GRZ [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</i>			
Havelock Villages Ltd	105.7	<i>Add matters of discretion for four or more units based on the equivalent of those from the MDRZ2 proposed in V3 or the notified Multi-Unit Housing discretions of the Proposed District Plan [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</i>			
Havelock Villages Ltd	105.8	<i>Add a rule that for four or more units that any infringement of a MDRS rule is a restricted discretionary activity [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission.</i>			
Havelock Villages Ltd	105.9	<i>Add new subdivision rules for one to three units and four or more units based on the requirements of the MDRS and RM-EHA with the matters of discretion being equivalent to those in the MDRZ2 [see submission for untracked version of the GRZ chapter]. AND Any other such relief, and consequential amendments (including zone and overlay maps, objectives and policies), as considered appropriate to give effect to the points raised in the submission</i>			
Kāinga Ora	106.8	<i>Delete the “urban fringe” qualifying matter. AND Apply the proposed MRZ2 zone (which contains the MDRS standards) to the spatial extent of the GRZ in its entirety within Huntly, Ngaaruawaahia, Pookeno and Tuakau. AND</i>	Support	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the submission

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		<i>Consequential changes and amendments to the provisions and planning maps. AND Any such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in the submission.</i>			
Kāinga Ora	106.10	<i>Amend the zoning of sites [see submission for maps and identification of sites]. AND Any such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in the submission.</i>	Support	The amended zoning maps accurately reflect the requirement of the IPI to upzone land in all relevant residential zones and implement the MDRS.	Allow the submission
Retirement Villages Association	107.3	<i>Review the application of the MDRS to Huntly Tuakau, Ngaaruaawhaia and Pookeno, and in particular the urban fringe qualifying matter AND Review the application of MRZ1 in Raglan and Te Kauwhata.</i>	Support in part	The use of the urban fringe qualifying matter as a blanket approach to restricting the application of the MDRS is contrary to the intention for the use of qualifying matters and the implementation requirements.	Allow the first part of the submission