

# **SECTION 42A REPORT**

Rebuttal Evidence

## **Hearing 25: Zone Extents Mixed Use Zone - Matangi**

Report prepared by: Betty Connolly

Date: 10 May 2021



## TABLE OF CONTENTS

1	Introduction .....	3
1.1	Background .....	3
2	Purpose of the report .....	3
3	Consideration of evidence received .....	4
3.1	Topics addressed in submitter evidence.....	4
4	Response to submitter evidence.....	4
5	Conclusion .....	8
	Appendix 1: Recommended amendments.....	9
	Amendments to Rules.....	9
	Amendments to Policies.....	9
	Appendix 2 Site map as provided by HNZPT.....	10

# I Introduction

## I.1 Background

1. My full name is Betty Marguerite Connolly. I am employed by Waikato District Council (WDC) as a Policy Planner.
2. I am the writer of the original s42A report for Hearing 25: Zone Extents: Mixed Use Zone-Matangi.
3. My qualifications and experience are set out in the s42A report in section I.1, along with my agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 as set out in section I.2.
4. The text changes as a result of this rebuttal evidence are set out in Appendix I. Changes arising from this rebuttal evidence are shown in blue.

## 2 Purpose of the report

5. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:  
*If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.*
6. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters.
7. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel:

Submitter	Submission number
Amy and Andrew De Langen	977.2
Kitty Burton on behalf of Matangi Community Committee (MCC)	371.9
Andrew Mowbray	563.1
Harry Mowbray for Mowbray Group	404.2
	404.3
	404.5

8. Rebuttal evidence was filed by the following submitters:

Submitter	Submission number
Andrew Mowbray	563.1
Harry Mowbray for Mowbray Group	404.2
	404.3
	404.5
Heritage New Zealand Pouhere Taonga (HNZPT)	FS1323.182
	FS1323.183
	FS1323.185

9. It should be noted that I have not provided rebuttal commentary on evidence where the submitter agrees with the position reached in the s42A report.

### 3 Consideration of evidence received

#### 3.1 Topics addressed in submitter evidence

10. The main topics raised in evidence from submitters that are in disagreement with the recommendations of the original s42A report for Hearing 25: Zone Extents Mixed Use Zone – Matangi include:
- a. Rule for Minor Residential Unit
  - b. Rule for Visitor Accommodation
  - c. Rule for Site Coverage
  - d. Rule for Traffic
  - e. Setting of Extent diagram
  - f. Policies on heritage

### 4 Response to submitter evidence

#### Mowbray Group Limited and Andrew Mowbray

11. Mowbray Group Limited and Andrew Mowbray are the owners of the property subject to this submission, and on their behalf Mr McNutt has lodged rebuttal evidence in response to the recommendations contained in the s42A hearing report. I address these as follows.

#### **Rule for Minor Residential Unit Rule 29.1.1 MMUZ –R15:**

12. In primary evidence Mr McNutt proposed that a rule for a Minor Residential Unit be included in the provisions for the Matangi site (shown as MMUZ-R15 in Appendix 3 Evidence in Chief Fraser McNutt). This would enable one minor residential unit to be associated with each residential dwelling as a permitted activity, provided it did not exceed 70m<sup>2</sup> gross floor area, it must be located within 20m of the primary residential unit and share a single driveway access with the existing residential unit.
13. I did not include this rule when drafting the provisions in my s42A report. In paragraph 56 of my report I state that siting a minor residential unit in a defined area or within 20m of the existing residential unit would be difficult. The other complexity is that the site is unlikely to be subdivided, thus the usual rule enabling one minor residential unit per site cannot apply to Matangi Mixed Use Zone. Mr McNutt in paragraph 6.2 of his rebuttal evidence disagrees and considers that the proposed drafting of the rule does not stipulate the requirement of a site and that the rule is reliant on the requirement that the minor residential unit be located no further than 20m from a primary dwelling.
14. Mr McNutt considers that the proposed cap of 7 dwellings on the site will limit the number of potential minor dwellings and that the inclusion of a rule for minor residential units is in line with evidence of Ms Simonson on wastewater, that provides examples of the scale of development that could be achieved on the site.
15. I can offer no further opinion in regard to the ability of the site to accommodate the additional dwellings in regard to wastewater and storm water, other than what has been provided by Ms Simonson and the peer review undertaken by Beca.

16. I refer to paragraph 57 of my s42A report where I state that the purpose of the MUZM and the proposed provisions allow for 7 dwellings, buildings for visitor accommodation and possible multi-unit development in the future. I reiterate that this is a 5 ha site which will have a mix of business, light industrial, community activity and residential. The site currently is a well-developed business and light industrial area with scattered residential dwellings that are interspersed around the site. In my opinion, the main focus of the site is for business and light industrial activities to be undertaken with residential dwelling and community activities being the secondary purpose. The evidence provided by Mr McNutt has not changed my opinion.
17. Taking the above into consideration, I do not recommend any changes to that proposed in the s42A report on this matter.

#### **Rule for Visitor Accommodation MUZM-RI Permitted Activities PER 11**

18. Mr McNutt in his rebuttal evidence disagrees with my recommendation to restrict the number of buildings used for visitor accommodation to 4 buildings. I am well aware of the vision that Mr Mowbray has for the site and the contribution that the refurbished railway houses make to this vision. However, as stated in my s42A at paragraph 60, this is only one of numerous activities that can occur on site and in my opinion cannot be seen as being “*at the heart of Mr Mowbray’s vision for the site*” (paragraph 6.6 of Mr McNutt’s rebuttal evidence). I do not dispute that Mr Mowbray is passionate about heritage, however in my opinion the use of the railway houses for visitor accommodation is secondary to the overall use of the site, which is for commercial and light industrial activities.
19. In Mr Mowbray’s primary evidence, a map of the site was provided in Appendix 2. This map shows that there are already two existing railway houses (F and G). The legend identifies these as Existing Dwellings. Although it is not clear, I am assuming that these are included in the seven residential dwellings and are not part of the visitor accommodation. Clarification is required as to how these buildings are classified, as the rules for both visitor accommodation and residential dwellings permit buildings up to a specified number. Although the residential dwelling rule is not being considered in this discussion, in the event that buildings F and G (as noted on the map) be considered dwellings, then the permitted standard of seven dwellings, as proposed in the provisions of the s42A report, has already been met.
20. There are another 6 buildings (a mixture of railway and farm cottages shown as - iv, v, vi, vii, viii and ix) which are identified on the attached map as “Future Relocated Heritage Buildings”. Without confirmation from Mr McNutt or Mr Mowbray, I have assumed that these buildings are intended for visitor accommodation.
21. There are also three larger buildings (I, II and III) identified on the attached map that are to be relocated onto the site or already exist on site. It is not known what the intended use of these buildings is.
22. As stated above in paragraph 19 – 21, regardless of how these buildings are classified, the total number of heritage buildings currently on, or proposed to be on site, is eleven. As stated in this rebuttal report and the original s42A report, under the discussions for this rule and the minor residential unit rule, as well as taking into account the uncertainty of intended use of these buildings, I am still of the opinion that 9 buildings as proposed by Mr McNutt is on the higher side for visitor accommodation. It is also noted that at any time any one of these buildings proposed for visitor accommodation could be converted into a residential dwelling without the knowledge of Council, and therefore avoiding the resource consent process. It is worth noting that there is no control over size of buildings used for visitor accommodation. As provided in the s42A report, Appendix 2 - MUZM Mixed Use Zone - Matangi PER 11, the standards for visitor accommodation are: they are not to be located in the Commercial Area; there are to be no more than 4 buildings in total; and maximum occupancy per building shall be 6 guests.

23. I acknowledge the comments provided in rebuttal evidence by Mr Inder in regard to any effects that the number of visitor accommodations would have on the transport network. In Section 2, Mr Inder clarifies that there will be no difference in transportation effects, regardless of the number of activities on site, providing the proposed rules MUZM S7 PER I (a)(ii) and (iii) are administered.
24. Upon further consideration and taking into account what I believe to be the six proposed cottages for visitor accommodation shown as shown as - iv, v, vi, vii, viii and ix on the attached map, I propose that the recommendation in the s42A report be amended to allow for six buildings to be used for visitor accommodation, with a maximum number of six guests per building with the addition of the words “at any one time” for clarity.
25. I therefore recommend amending Rule MUZM-R1 Permitted Activities PER I I to provide for 6 buildings in total with a maximum number of 6 guests per building at any one time.

#### **Rule Site coverage MUZM-S8 PER I**

26. At paragraph 6.12 of his rebuttal evidence, Mr McNutt disagrees with the limiting of site coverage to 60%, given that the current permitted baseline in the Operative District Plan is 70% for industrial-zoned sites. It is worth noting that the Proposed District Plan Industrial Zone rules have no restrictions on site coverage. Mr McNutt goes on to agree that as a Mixed Use Zone, a larger focus should be on onsite amenity, however he still considers that a 70% site coverage is appropriate. It is not clear to me how Mr McNutt can agree that the focus should be on providing a better onsite amenity while still considering that a 70% site coverage is appropriate.
27. I have not been provided with any additional information in regard to the existing site coverage of the property which could make me reconsider my position. Without being provided with this further information I have no reason to reconsider my position and recommend that the rule remain as presented in the s42A report.

#### **Rule for Traffic MUZM-S7 PER I, RDIS 1 and RDIS 2.**

28. Mr Inder provided additional rebuttal evidence in regard to the proposed rule MUZM-S7 PER I (a). He has considered the wording of the rule further and sought amendments to strengthen the rule in accordance with its purpose for identifying when an activity becomes restricted discretionary, thus requiring a resource consent process to be undertaken. Mr Inder considered that these amendments remove ambiguity and reduce the potential for misinterpretation.
29. I am unable to comment from a traffic perspective on these amendments as that is beyond my area of expertise, however I thank Mr Inder for his comments and supporting evidence. As stated, comments on traffic are outside my expertise, however I do have concerns about the use of the words “*typical day*” as proposed by Mr Inder. In my experience, standards need to be clear and unambiguous, and I am concerned that this phrase will leave the standard open to interpretation. I have confirmed with Mr Inder the wording “*peak hour volume*” and have been advised that this is a standard term in transportation assessments, which usually refers to the average hourly flow rate during the critical peak flow period for an activity or road. This being the case, I recommend that amendments be made to the rule as follows.
30. I recommend amending Rule MUZM-S7 Traffic as follows:

PER I	<p>(a) Any permitted, controlled or restricted discretionary activity within the MUZ-M creating:</p> <ol style="list-style-type: none"> <li>1. (i) a maximum <b>individual volume per activity</b> of 250 vehicle movements (vpd) per day; and</li> <li>2. (ii) a cumulative maximum <del>of</del> <b>volume not exceeding</b> 2200 vpd for all activities within the MUZ-M; <del>and or</del></li> <li>3. (iii) a cumulative maximum <del>of</del> <b>peak hour volume not exceeding</b> 330 vehicle movements per hour (vph) for all activities within the MMUZ.</li> </ol>
-------	---

	(b) No more than 1% of the volume limits set out in (a) above to provide for Heavy Commercial Vehicles (HCV) per activity.
--	--

## Heritage New Zealand Pouhere Taonga (HNZPT)

### Extent of heritage setting diagram

31. Paragraphs 100 to 107 of my s42A report respond to HNZPT submission points. Many of their points relate to individual heritage rules, and I acknowledged in the s42A report that decisions on these rules were pending. Leaving rules aside, the focus taken in the s42A report was to address the extent of the heritage setting of this particular site during this hearing, and this rebuttal response takes the same view.
32. I acknowledge Ms McAlley's point in para 2.1 of her rebuttal evidence that an "extent of heritage setting" diagram has been developed ahead of the body of work that is still to be completed in regard to identifying the extents for the registered buildings. This diagram was developed to enable the individual heritage component of the site, being the Glaxo Building, to be addressed within the context of this hearing.
33. HNZPT accept at section 2.2 that the draft extent of heritage setting which has been proposed, "*goes some way to acknowledging the visual access to the primary heritage structure (being the Glaxo building) from the entry and approach towards the historic core of the factory and provides in part a curtilage that will help maintain its integrity of the Glaxo Building.*" They add that they would prefer to have a level of protection for the site that controls the number and positions of new or relocated structures brought onto the site as they have concerns that the number, the type of structure or the placement of such buildings will dilute the authenticity of the site.
34. Mr Mowbray in evidence provided a map which correlates to the map accompanying HNZPT rebuttal evidence. The only difference being that HNZPT have defined areas where they consider specific buildings should be placed, and they consider that placement outside of these areas would be detrimental to the integrity of the site.
35. I note that the rule in regard to visitor accommodation, which I have addressed in paragraphs 18 to 25 above, controls the number of such buildings, although not the placement of such. I acknowledge that HNZPT may have a valid issue in this regard, although the site is still required to operate as a commercial and industrial site. Mr Mowbray would need to consider how any additional development in respect of these cottages should be placed in order to not create an impact on the daily use of the site for existing activities.
36. I am still of the opinion that the extent of the heritage setting for this site, as shown in the diagram included in the s42A, is a sensible and practical defined extent. Mr McNutt in his rebuttal evidence at section 4 agrees with my recommendation. I do not consider that HNZPT have provided any evidence to make me reconsider this extent of the heritage setting and recommend that the diagram remains the same.

### Policy - Introduction

37. Within the introduction to the Mixed Use Zone are the following words:
 

*...The site includes a HNZPT registered building, no 4935 which is also registered under the Waikato District Plan. ...*
38. HNZPT seeks that the word "registered" be changed to "listed", as this acknowledges that HNZPT administers a "list" rather than the previously known "register" of historic places. I agree, and recommend that the wording of the introduction be amended as follows:

The site includes a HNZPT ~~registered~~ listed building, no 4935 which is also registered under the Waikato District Plan.

### **MUZM-PI Range of activities**

39. Part (f) of Policy MUZM-PI Range of activities reads: “Maintain heritage through the repurposing and reusing of existing buildings where possible”. HNZPT seeks an amendment to the policy that looks at maintaining the values of the buildings and surrounds through the appropriate repurposing and reuse of existing buildings. I do not consider that this amendment is appropriate, as the policy as drafted is about providing for a range of activities within the site and maintaining the heritage through repurposing and reusing existing heritage buildings. In my opinion the amendment that HNZPT seeks is more concerned about the heritage values of the buildings and surrounds, rather than providing for the range of activities than can occur while using and repurposing the heritage building appropriately. I am mindful that the objectives and policies for Historic Heritage will apply to this site in any event, and the changes sought by HNZPT may be reflected in the policy provisions under Hearing 14: Historic Heritage.
40. I do not consider that any amendment is necessary and recommend that the policy remain as proposed in the s42A report.

### **MUZM-P5 High Quality Urban Form**

41. Part (d) of Policy MUZM-P5 High Quality Urban Form reads: “Development addresses, responds and is sympathetic to the heritage values of the site.” HNZPT consider that this wording is not detailed enough and seek amendments to the policy to ensure that development is sympathetic and restrained and does not detract from the overall heritage authenticity and integrity of the site and in particular the buildings, structures and spaces associated with dairy manufacturing. I consider that the wording ‘*in particular buildings, structures and spaces associated with the dairy manufacturing*’ could inadvertently restrict development and impose the need for the resource consent process. I am of the opinion that the suite of policies under MUZM-P5 for high quality urban form will address the heritage aspect of the site, given Mr Mowbray’s passion for heritage. As stated in paragraph 39 above, objectives and policies for Historic Heritage will apply to this site in any event. I do consider that some additional wording may be appropriate to provide further direction on the heritage importance of the site when considering future development, and I recommend that amendments be made as follows.
42. I recommend amending MUZM-P5 High Quality Urban Form (d) as follows:
- d. Development addresses, responds and is sympathetic, while not detracting from ~~to~~ the heritage values and integrity of the site.

## **5 Conclusion**

43. As a result of evidence received I have recommended minor changes which are shown in Appendix I to this rebuttal evidence.



## Appendix I: Recommended amendments

### Amendments to Rules

#### MUZM-RI Permitted Activities

Activity		Activity-specific conditions
PER I I	<b>Visitor Accommodation</b>	(a) Buildings are not located in the Commercial Area as shown on the planning maps. (b) There are no more than <del>4</del> <u>6</u> buildings in total. (c) Maximum occupancy per building shall be 6 guests <u>at any one time.</u>

#### MUZM-S7 PER I

PER I	(a) Any permitted, controlled or restricted discretionary activity within the MUZ-M creating: <ul style="list-style-type: none"> <li>(i) a maximum <u>individual volume per activity</u> of 250 vehicle movements (vpd) per day; and</li> <li>(ii) a cumulative maximum <del>of</del> <u>volume not exceeding</u> 2200 vpd for all activities within the MUZ-M; <del>and or</del></li> <li>(iii) a cumulative maximum <del>of</del> <u>peak hour volume not exceeding</u> 330 vehicle movements per hour (vph) for all activities within the MMUZ.</li> </ul> (b) No more than 1% of the volume limits set out in (a) above to provide for Heavy Commercial Vehicles (HCV) per activity.
-------	--

### Amendments to Policies

#### Introduction

...The site includes a HNZPT ~~registered~~ listed building, no 4935 which is also registered under the Waikato District Plan. ...

#### Policy MUZM-P5 High Quality Urban Form

- d. Development addresses, responds and is sympathetic, while not detracting from ~~to~~ the heritage values and integrity of the site.

## Appendix 2 Site map as provided by HNZPT

Areas shown outlined in red identify HNZPT preferred sites for relocated heritage buildings. Based on map provided by Mr Mowbray in evidence.