

Before an Independent Hearings Panel of the Waikato District Council

Under the Resource Management Act 1991

In the matter of the Waikato IPIs – Waikato District Council Variation 3

EVIDENCE OF SARAH NAIRN ON BEHALF OF GDP DEVELOPMENTS LIMITED (PLANNING)

4 July 2023

1. INTRODUCTION

1.1 My full name is Sarah Nairn.

1.2 I am a Senior Planner at TSC in Pukekohe. I hold a Bachelor of Science and a Masters of Planning Practice (Hons) from the University of Auckland.

1.3 My relevant professional experience spans over 20 years in both the private and public sectors in New Zealand and the United Kingdom. In the public sector, I have worked in the policy team at Auckland Council undertaking a wide variety of plan changes to the Auckland City Isthmus District Plan. In this role, I was also part of the team who undertook a review of the Hauraki Gulf Islands District Plan and inputted into the preliminary stages of the Auckland Unitary Plan.

1.4 Within the private sector, I have worked for a range of clients to obtain resource consents for large scale residential subdivisions and other development projects. I have also undertaken private plan changes to rezone land such as Three Kings Quarry in Auckland. I also presented evidence at the Auckland Unitary Plan hearings on a range of issues. These roles have provided me broad spectrum of both policy and resource consent experience in the Auckland and Waikato regions and New Zealand generally.

1.5 I have been providing planning advice to GDP Developments on the appeal by Gerardus Aarts and Yvonne Gemma Aarts to part of a decision of the Waikato District Council (Council) on the Proposed Waikato District Plan (PDP).

2. CODE OF CONDUCT

2.1 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have

complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.

2.2 In preparing this statement of evidence I have read the section 42A Report and the evidence that is relevant to the Subject Site, being Susan Fairgray (economics), Andrew Boldero (stormwater) and Katja Huls (Flooding and Natural Hazard Planning).

3. SCOPE OF EVIDENCE

3.1 This evidence has been structured in the following way:

- Section 4 provides a summary of my evidence;
- Sections 5 and 6 set out the background to the site and the PDP process;
- A summary of the specialist reports prepared to support the rezoning is contained in Section 7;
- The benefits of applying the MDR2 zone to the site as part of variation 3 are contained in section 8;
- Section 9 contains a conclusion.

4. SUMMARY OF EVIDENCE

4.1 The subject site is owned by Gerardus and Yvonne Aarts and is located at 111 Harrisville Road, 900m to the north of the existing Tuakau township.

4.2 The notified version of the Proposed Waikato District Plan (**PDP**) zoned the subject site Residential on the basis that it had been identified as being suitable for residential development in the Future Proof Strategy (as contained in the Waikato Regional Policy Statement) and the Tuakau Structure Plan. Through the deliberation process, the Hearings Panel

decided to remove the proposed Residential zone and instead apply the Rural zone. This decision was not particular to the subject site, but was rather a ‘first principles’, blanket decision that all land containing Class 1 and 2 soils should not be rezoned for residential development. The decision was appealed by the Aarts.

4.3 A review of the National Policy Statement on Highly Productive Land (**NPS-HPL**) has clarified that the inclusion of the subject site in the relevant growth documents means that it does not fall within the definition of Highly Productive Land in the NPS-HPL.

4.4 In addition to addressing the highly productive land issue, GDP have also prepared a range of specialist reports (traffic, three waters, acoustic) in support of zoning the land for residential use.

4.5 The submission by GDP developments to Variation 3 sought to apply the MDR2 zone to the subject site. I consider that the MDR2 zone is the most appropriate zone for the reasons summarised below:

(a) Rezoning the site to MDR2 will increase housing supply by enabling 280 additional residential sites. This is a significant number of dwellings for a township like Tuakau and, as such, make a material difference in terms of housing supply.

(b) Rezoning the land MDR2 will help to create a well-functioning urban environment as:

- It is logical to rezone the subject land as it is only 900m from the town centre and, therefore, will form a “walkable catchment” where residents live in close proximity to retail, transport and other services. Future residents will also have easy access to the school to the north.

- It is efficient to develop the subject land, given that it adjoins existing residential development and therefore has ready access to infrastructure and amenities such a footpath.

Furthermore, the relatively regular shape of the site and the easy contour means that the site can be used efficiently and thereby create a reasonable yield.

- Future residents on the subject land will have a high level of amenity, derived from the easy access to the school and the amenities within the town centre, but also due to the on-site amenity that will be provided through the pocket park, streetscapes and the relatively spacious sites.

(c) Credibility and Statutory Functions

The both Waikato District Council and the Waikato Regional Council have identified the subject site as being suitable and necessary, for residential development in their growth strategies. Therefore, it is not appropriate for the Council to preclude residential development as this would be contrary to the relevant sections of the Resource Management Act which require district councils to give effect to the Regional Policy Statement. It will also detract from the Council's credibility, as the District Plan would be contradictory to Council's own strategies.

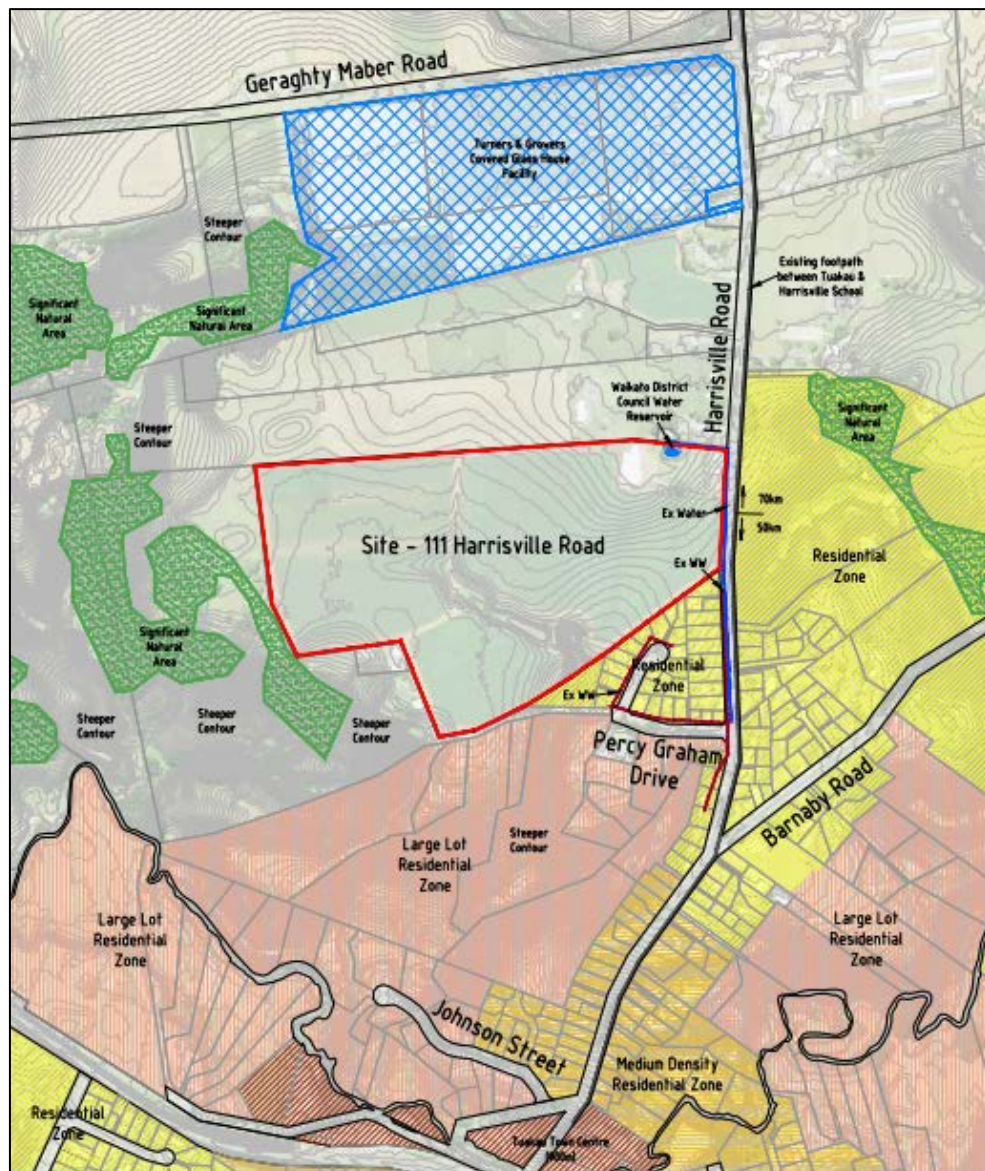
4.6 The specialist reports provided to the Council in relation to the appeal also confirmed the overall suitability of the site for development under the MDRS although there is a constraint in terms of the capacity of the wastewater plant at Pukekohe. The evidence prepared on behalf of the Council indicates that wastewater capacity issues are intended to be addressed through the subdivision consent process. I support that approach but I note that if the Panel preferred, a qualifying matter could be applied instead.

4.7 Overall, I consider that rezoning the subject site to the Medium Density Residential 2 zone (**MDR2**) will have two key outcomes, firstly it will result in a material increase in housing supply in Tuakau – which is the overall intent of the variation. Secondly, it will ensure that the Council

fulfils its statutory functions by giving effect to its own growth strategies and the growth strategy contained in the Waikato Regional Policy Statement.

5. SUBJECT SITE

5.1 The subject site is owned by Gerardus and Yvonne Aarts (The Aarts) and is located at 111 Harrisville Road, Tuakau. The majority of the 21ha site contains class 2e1 soil (NZLRI Maps) and has been used for arable cropping. The site is shown on the plan below:



5.2 It can be seen that the site is to the north of the Tuakau township. Existing residentially zoned land adjoins the southern boundary of the site and is also located on the opposite side of Harrisville Road. There is a footpath in front of the subject site that extends south to the Town Centre (900m). There is also a footpath on the opposite side of the road that extends north to Harrisville School (900m). Public water supply extends along the frontage of the site. Wastewater runs along Harrisville Road as far as the neighbouring residential site.

6. PROPOSED WAIKATO DISTRICT PLAN

6.1 In the former Franklin District Plan the subject site was zoned Rural. The notified version of the PDP zoned the subject site Residential. The basis for the proposed Residential zone was that the site had been identified as being suitable for residential development in the Future Proof Strategy and the Tuakau Structure Plan.

6.2 The Aarts lodged a submission in support of the proposed Residential zone. This submission was supported by the reporting planner primarily because the site had been included in the relevant growth strategy documents.

6.3 Through the deliberation process, the Hearings Panel decided to remove the proposed Residential zone and instead apply the Rural zone. This decision was not particular to the subject site, but was rather a ‘first principles’, blanket decision that all land containing Class 1 and 2 soils should not be rezoned for residential development.

7. APPEAL

7.1 The decision was appealed by the Aarts. A copy of the appeal is attached as **Appendix A**. In order to progress the appeal, legal advice was sought in relation to the National Policy Statement on Highly Productive Land (NPS-HPL) when it was released in September 2022. This advice

confirmed that the inclusion of the subject site in the Waikato 2070 and Future Proof growth documents means that it does not fall within the definition of Highly Productive Land in the NPS-HPL.

7.2 In addition to the above, the following specialist information has been provided to confirm the suitability of the site for residential development:

- Planning summary;
- Three Waters Report;
- Traffic Report;
- Acoustic Report in relation to the proximity to motorcross track;
- A record of consultation with iwi.

7.3 These can be provided on request.

7.4 All the above reports identify that the land is suitable for development under the General Residential zone and that there is sufficient capacity in both the infrastructure and road networks to accommodate the level of development enabled. The acoustic report also identified that the acoustic attenuation should be provided and no-complaints covenants imposed to avoid potential reverse sensitivity effects on the motorcross track.

8. VARIATION 3

8.1 GDP lodged a submission to Variation 3 seeking that the site be rezoned to MDR2. I consider that the MDR2 zone is the most appropriate zone for the site for the reasons summarised below:

(a) Housing Supply

The intent of the NPS-UD and the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 is to increase housing supply in Tier 1 and 2 Local Authorities (Waikato is Tier 1). This

proposal achieves that intent by enabling 280 additional residential sites. This is a significant number of dwellings for a township like Tuakau and, as such, it will make a material difference in terms of housing supply. It is also noted that the relatively flat contour, regular shape of the site and the ease of access to infrastructure connections means that the site can be developed relatively quickly.

(b) Well-Functioning Urban Environment / Placemaking

The other tenet of the NPS-UD is that residential development should occur in the context of a “well-functioning urban environment”. This means that development should occur in a way which is logical, efficient and ensures that residents have a high level of amenity. Applying the MDR2 zone to the subject land meets these criteria as:

- It is logical to rezone the subject land as it is only 900m from the town centre and, therefore, will form a “walkable catchment” where residents live in close proximity to retail, transport and other services. Adding to this is that the site is located just below the Harrisville School, meaning future residents will not only have easy access to the school, but that the school will effectively become a “book end” to the Tuakau settlement.
- It is efficient to develop the subject land, given that it adjoins existing residential development and therefore has ready access to infrastructure and amenities such a footpath. Furthermore, the relatively regular shape of the site and the easy contour means that the site can be used efficiently and thereby create a reasonable yield. This contrasts with other sites that have been zoned Residential in Tuakau which are steeply sloping (the land on the opposite side of Harrisville Road being an example of this);
- Future residents on the subject land will have a high level of amenity, derived from the easy access to the school and the amenities within the town centre, but also due to the on-site

amenity that will be provided through the pocket park, streetscapes and the relatively spacious sites.

(c) Credibility

Both the former Franklin District Council and the Waikato District Council have identified the subject site as being suitable, and necessary, for residential development in their growth strategies. These strategies include the Tuakau Structure Plan, the Future Proof Strategy and Waikato 2070. All of these strategies involved significant public consultation, workshops and were adopted by the Council.

Given the long-established position that the land should be zoned to enable growth, it is not appropriate for the Council to preclude residential development. This is not only contrary to the relevant sections of the RMA which require district councils to give effect to the Regional Policy Statement (which includes a requirement to implement the Future Proof Strategy) but also detracts from the Council's credibility, as the District Plan would be contradictory to Council's own strategies.

8.2 In addition to the above The specialist reports provided to the Council in relation to the appeal also confirmed the overall suitability of the site for development under the MDRS.

8.3 Notwithstanding the overall suitability of the site to provide for growth, the Three Waters specialist report did identify that the number of residential lots enabled on the site should be limited to 280 in response to the capacity of the wastewater plant. After reviewing the evidence of Katja Huls¹, I understand that the preferred approach is to manage wastewater capacity issues through the assessment of the subdivision consent. I support this approach.

¹ Evidence of Katja Huls (Planning – three waters infrastructure and flooding) paragraphs 20-22.

8.4 Notwithstanding, if the Panel would prefer to apply a qualifying matter, the relevant plan provision is contained in **Appendix B** and below is the required assessment of the qualifying matter under section 77(L):

- (i) The site to which the qualifying matter relates is 111 Harrisville Road, Tuakau;
- (ii) The geographic area to which the qualifying matter is to be applied to is the full extent of the site;
- (iii) The advice received from Watercare Services Limited is that 280 is the maximum number of lots that can be accommodated at the Pukekohe Wastewater Treatment Plant. Whilst either a higher or lower limit could be applied, this would not reflect the advice received. I also note that a lower limit would not be appropriate as it would be limiting development to a greater extent than is necessary to accommodate the characteristic.

8.5 A Section 32AA assessment in relation to the new Qualifying Matter is contained in **Appendix C**.

8.6 I also expect that the plan provisions to give effect to the recommendations of the acoustic report will be pulled through to the MDR2 zone. In my view, these provisions do not require the application of a qualifying matter as they do not affect the density of development enabled. For completeness, these provisions are also contained in **Appendix B**.

9. VARIATION 3 AND THE PDP APPEAL PROCESS

9.1 My understanding of the interrelationship between the PDP appeal and the Variation 3 process is that if a consent order is agreed as part of the PDP appeal prior to a decision being made on Variation 3, then the subject site will be automatically zoned MDR2 as part of the Variation 3 process given that the site will have a 'relevant residential' zone at the

time of the decision. I support this approach and consider that this process could work well for the subject site.

10. CONCLUSION

10.1 The submission by GDP Developments seeks to apply the MDR2 zone to the subject site at 111 Harrisville Road, Tuakau. I consider that this submission should be accepted as an additional 280 lots will make a material contribution to housing supply in Tuakau. Furthermore, rezoning the subject site will ensure that the Council is fulfilling its statutory functions by giving effect to the district and regional growth strategy documents including the Tuakau Structure Plan, Waikato 2070 and the Future Proof Strategy (as contained in the Waikato Regional Policy Statement).

APPENDIX A – GDP APPEAL TO PDP DECISION

Before the Environment Court
At Auckland

ENV-2022-AKL-

I Te Koti Taiao O Aotearoa
Tamaki Makaurau Rohe

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal pursuant to clause 14(1) of Schedule 1 of the RMA

Between **Gerardus Aarts and Yvonne Gemma Aarts**
Appellants

And **Waikato District Council**
Respondent

**Notice of appeal to Environment Court against decision on
proposed district plan**

Dated 1 March 2022

Palmer Macauley

Solicitor Acting: **Lisa Baker**
PO Box 576
Kerikeri 0245
T: (09) 407 0000
F: (09) 407 6300
E: lisa@pmlaw.co.nz

Counsel Acting: **Matthew Casey QC / Asher Davidson**
P O Box 317
Auckland 1140
T: (09) 337 0700
E: asher@casey.co.nz

To: The Registrar
Environment Court
Auckland

1. Gerardus Aarts and Yvonne Gemma Aarts (**appellants**) appeal part of a decision of the Waikato District Council (**Council**) on the Proposed Waikato District Plan (**PDP**).
2. The appellants made a submission identified by the Council as Submission Number 688 which, in part, supported the proposed Residential zoning applied to the appellant's land at 111 Harrisville Road, Tuakau (**Land**) in the notified PDP. They also made a further submission identified by the Council as Submission Number FS1200.
3. The appellants are not trade competitors for the purposes of s 308D of the Act.
4. The appellants received notice of the decision on 17 January 2022.
5. The decision was made by Council.
6. The part of the decision that the appellants are appealing is the decision to zone the Land as Rural Zone, rather than Residential Zone. By way of context, the Land is identified as appropriate for residential zoning in the Tuakau Structure Plan, the Future Proof Growth Strategy 2017 and Waikato 2070, was included in the notified PDP as Residential Zone and supported by the Council's s 42A report. Independent Commissioners appointed by the Council to consider submissions on the PDP found that the Land and other areas proposed for residential zoning should not be rezoned on the basis that it was *"inappropriate to rezone high-class soils for residential development"*. It instead rezoned alternative areas on the basis of them having lower class soils.
7. The reasons for the appeal are that the decision to zone the Land Rural Zone:
 - (a) Fails to promote the sustainable management of resources, including failing to enable people and communities to provide for their social and economic wellbeing, and will not achieve the purpose of the RMA.
 - (b) Represents an inefficient use of the Land, contrary to s 7(b) RMA.

- (c) Fails to achieve or give effect to relevant objectives of the PDP, including, without limitation, those relating to growth targets, integration of new development with the provision of infrastructure and seeking a compact urban form that provides for connected and liveable communities.
- (d) Is not in accordance with the Council's functions under s 31 RMA, particularly the Council's function to establish and implement methods to achieve the integrated management of the effects of development of land and physical resources.
- (e) Fails to meet the requirements of s 32AA RMA, including, without limitation, in failing to consider alternatives and to identify and assess the benefits and costs of effects, including economic and social effects, anticipated from the zoning decision.
- (f) Fails to appropriately consider and give effect to the National Policy Statement on Urban Development 2020.
- (g) Fails to appropriately consider and give effect to the Waikato Regional Policy Statement, particularly, but without limitation:
 - (i) Policies relating to the Built Environment, which promote the use of structure planning prior to rezoning, and noting there is a structure plan for Tuakau which identifies the Land as appropriate for residential zoning but no such structure plan for the area the Council zoned in substitution.
 - (ii) Policies related to implementation of the Future Proof Growth Strategy, in that land not identified as appropriate for urban growth has been zoned Residential as a substitute for an area, including the Land, which is identified in Future Proof as being within the urban limits for the Waikato Region and appropriate for such zoning.
 - (iii) In adopting a policy approach of avoiding residential zoning based on soil type, it also fails to give effect to Policy 14.2 which the Regional Policy Statement which explicitly provides that it is not the intention to prevent all urban development on high class soils.

- (h) Is contrary to s 74(2)(b) RMA, in that it disregards relevant non-RMA statutory documents, including Waikato 2070, the Future Proof Strategy and the Tuakau Structure Plan, all of which have been prepared following extensive public consultation.
8. By contrast, granting the relief sought would overcome the issues outlined in paragraph 7 above.
9. The appellants seek the following relief:
- (a) That the Land be zoned Residential Zone.
 - (b) Such other additional or consequential relief as may be required to give effect to primary relief sought.
 - (c) Costs.
10. The following documents are **attached** to this notice:
- (a) A copy of the relevant part of the decision, being Decision Report 28D: Zoning – Tuakau.
 - (b) A list of the names and addresses of persons to be served with a copy of this notice.
 - (c) Copies of the appellants' submission and further submission.

Dated this 1st day of March 2022.



Asher Davidson
Counsel for appellant

Address for service of appellant: PO Box 317, Auckland 1140
Telephone: (09) 337 0700
Email: asher@casey.co.nz
Contact person: Asher Davidson

APPENDIX B – MEDIUM DENSITY RESIDENTIAL 2 ZONE PROVISIONS

MEDIUM DENSITY RESIDENTIAL 2 ZONE

Acoustic Rule

A new rule would be inserted in the land use – building section of the Medium Density Residential 2 zone which states as follows:

MRZ2-XXX Noise – 111 Harrisville Road, Tuakau (Part Allot 34 PSH of Pukekohe)	
<p>(1) Activity Status: PER</p> <p>If the Motorcross Track at Harrisville Road is lawfully operating:</p> <p>(a) All residential units on the site at 111 Harrisville Road, Tuakau (Part Allot 34 PSH of Pukekohe) must be designed to achieve an internal noise level of 40dB $L_{Aeq(1hr)}$ within all habitable spaces (based on the Motorcross noise contours and the noise spectrum in Figures X and X below).</p> <p>(b) Where an internal noise level of 40dBL_{Aeq} (1hr) cannot be achieved with open windows, mechanical ventilation must be supplied to these habitable spaces. The mechanical ventilation system must comply with the performance requirements of Building Code G4.</p> <p>(c) Compliance with this rule shall be demonstrated by providing a design report prepared by a qualified acoustic specialist at the time of building consent.</p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p>The Council's discretion shall be limited to the following matters:</p> <p>(a) Reverse sensitivity effects (noise) in relation to the Harrisville Motorcross Track.</p>

Figure X:



Figure X

63Hz	125Hz	250Hz	500Hz	1kHz	2kHz	4kHz	8kHz
21	22	18	4	0	1	-7	-19

Subdivision

The following rule would be inserted in the Subdivision section requiring a non-complaints covenant at the time of subdivision and to limit the number of Records of Title and residential units due to wastewater capacity.

SUB - RXXX Subdivision – 111 Harrisville Road, Tuakau (Part Allot 34 PSH of Pukekohe)	
<p>(1) Activity Status: RDIS</p> <p>If the Motorcross Track at Harrisville Road is lawfully operating:</p> <p>(a) The total number of Records of Title created for residential units on the site at 111 Harrisville Road, Tuakau (Part Allot 34 PSH of Pukekohe) is limited to 280.</p> <p>(b) A consent notice shall be registered against each Record of Title created for a residential unit which:</p> <p style="padding-left: 20px;">(i) Ensures that not more than one residential unit is located on each Record of Title.</p>	<p>(2) Activity status where compliance not achieved: DIS</p>

- (ii) Prevents the owners and occupiers of the land from complaining about the lawful operation of the Harrisville Motorcross Track.

The Council's discretion shall be limited to the following matters:

- (a) Capacity at the treatment plant for the disposal of wastewater.
- (b) Reverse sensitivity effects (noise) in relation to the Harrisville Motorcross Track.

APPENDIX C – SECTION 32AAASSESSMENT

Section 32aa Assessment – Qualifying Matter Wastewater Constraint

As changes are recommended to incorporate a new qualifying matter over the site at 111 Harrisville Road, Tuakau, an evaluation must be undertaken at a level of detail that corresponds to the significance of the changes.

The following options are considered:

- Option 1 – Apply the MDRS (via MDR2 zone) to the site without other related provisions or a qualifying matter.
- Option 2 – Apply the MDRS (via MDR2) to the site and apply the existing rules (i.e. acoustic attenuation) as a related provision.
- Option 3 – Apply the MDRS (via MDR2) to the site and apply the existing rules (i.e. acoustic attenuation) as a related provision and apply a qualifying matter to avoid potential adverse effects on wastewater capacity.

Option 1 is not considered to be the most effective or efficient as it does not provide for and/or address important features / characteristics of the site such as the need for acoustic attenuation due to the proximity to the motorcross track.

Option 2 is not considered to be the most effective or efficient as it does not address the issue raised in the Three Waters report in relation to the capacity of the wastewater treatment plant at Pukekohe.

Option 3 is considered to be the most effective and efficient option as it acknowledges the need for additional provisions that are required to manage the potential acoustic effects resulting from the proximity to the motorcross track. It also recognises the wastewater constraint arising from the capacity of the wastewater treatment plant at Pukekohe.

The costs of implementing the options to the Council are similar for all options. The costs of implementing each option for the developer are lowest for option 1 and highest for option 3. The environmental costs are highest for option 1 and lowest for option 3.

For the above reasons, I recommend that option 3 is the most appropriate way to achieve the objectives of the proposal. In my view, Option 3 provides the best balance for enabling MDRS outcomes while protecting and providing for the features of the site and the surrounds.