**BEFORE THE WAIKATO DISTRICT COUNCIL INDEPENDENT HEARING PANEL**

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| **IN THE MATTER** | of Proposed Variation 3, under clause 16A of Schedule 1 of the Resource Management Act 1991, to the Proposed District Plan Change |
| **AND** | |
| **IN THE MATTER** | of submissions by Pokeno West, West Pokeno, CSL Trust and Top End Properties Limited, at Munro and Helenslee Roads, Pokeno (the **Submitters**) |

**To: The Hearings Co-ordinator**
**Waikato District Council**

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**REPLY URBAN DESIGN EVIDENCE OF IAN MUNRO FOR THE SUBMITTERS**

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***20 July 2023***

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**MAY IT PLEASE THE PANEL**

## 1. EXECUTIVE SUMMARY

1.1 My evidence is limited to the issue of vacant fee simple residential allotments on land subject to the MDRS and not otherwise affected by a qualifying matter.

1.2 There is nothing in the RMA to suggest that every vacant fee simple allotment needs to be able to accommodate three permitted dwellings; the relevant permitted activity is "up to" three dwellings, meaning that applicants are free to design vacant fee simple allotments to accommodate one, or two, or three dwellings based on compliance with the MDRS, as they see fit.

1.3 In any event, when considering "density", the RMA measures this by way of dwellings, which based on applicant preferences could range from large 5+ bedroom family houses down to small studio apartments. In this respect, and subject to the minimums I set out below, it is difficult for me to see how almost any vacant fee simple allotment could not plausibly accommodate up to three MDRS-compliant studio apartments.

1.4 A vacant fee simple allotment is by its definition a 'blank palette' and any standards governing these need to ensure that resultant allotments can be reasonably used for the intended purpose, based on the typical and likely user preferences they will be subject to. Plainly, vacant fee simple allotments will be larger than can be demonstrated as viable with the benefit of a detailed development design and this is inherently reflected within the RMA and its different approaches to vacant allotments versus allotments proposed to result from a concurrent land use design.

1.5 The NPS-UD removed the ability of Councils to require on-site car parking for residential activities, but it did not go so far as to seek to discourage such provision; it merely surrendered the matter to the market. But importantly the NPS-UD preserved the ability of Councils to regulate the requirements for parking and access spaces, where they are provided.

This needs to also be recognised when governing the design of vacant fee simple allotments.

1.6 In this light, most of the evidence provided to the Panel regarding potential minimum allotment size is in my view too simplistic, unrealistically narrow in focus, or otherwise more ideological than technical. It variously fails to either:

a) Appreciate that once titled, a vacant allotment becomes subject to the up to three permitted dwellings and then associated re-subdivision, which can then be repeated by way of what I term 'consent stacking' until the maximum density that can be supported by the market is achieved in any event[1]; or

b) Factor in the real-world market demand for car-parking that will exist for effectively every vacant fee-simple subdivision scenario reasonably foreseeable in the district noting that it is not a high-density, mixed-use city but a largely rural district punctuated by small villages and towns (and where highest-density developments capable of supporting car-free lifestyles would be most unlikely to be delivered by way of vacant fee simple allotments anyway); and

c) Understand the need to manage the spacing and cumulative effects of vehicle crossings along streets so as to:

[1] For example, if the local market can justify a 300m2 allotment size, a "consent # 1" subdivision might create a vacant fee simple allotment of 1,500m2. That could be immediately subdivided via "consent # 2" into two x 300m2 allotments and a third on a 900m2 allotment. The land use trigger for that could be as simple as a Certificate of Compliance. Once titled, the 900m2 allotment (containing one permitted dwelling could then be then re-subdivided again ("consent # 3") to add another two dwellings to the 'existing' one (again, possibly via only a Certificate of Compliance), to achieve, in total and across 3 resource consents, 5 x dwellings, each on a 300m2 allotment. This is not a fanciful proposition, and I have seen it already being actioned on many sites within Auckland across the period between the MDRS being introduced and then Auckland Council's PC78 being proposed. In this light, excessive minimum subdivision standards do nothing to stop the total densities provided by the MDRS; they only relate to how much time and cost and resource consenting an applicant must spend to achieve those.

- Ensure footpaths do not become fundamentally unsafe for pedestrians by way of both a lack of meaningful passive surveillance or safety from buildings, and the cumulative frequency of driveways and reversing vehicles along footpaths; and

- Ensure that there is sufficient space along streets between vehicle crossings to accommodate necessary on-street parking, street trees, space for bin storage / public rubbish collections, and for stormwater / rain garden devices.

1.7 In respect of the above, the RMA Schedule 3A provides for standards to manage vacant fee simple subdivisions in Part 1 Cl. 3 that "*provide for as a controlled activity the subdivision of land for the purpose of the construction and use of residential units in accordance with clauses 2 and 4*". Clause 2(2) in turn states that "*there must be no other density standards included in a district plan additional to those set out in Part 2 of this schedule relating to a permitted activity for a residential unit or building*." Nothing in my recommendations is a density standard relating to a permitted activity for a residential unit or building that might limit what the MDRS could accommodate (i.e., up to 3 dwellings); they relate exclusively to controlled activities for subdivision.

1.8 But in any event, clause (3) is also stated as being subject to s.106 of the RMA, which at s.106(1)(c) states that subdivision may be refused in circumstances where "*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision*". In my opinion recognising the real-world fact that almost all, if not actually all, vacant fee simple allotments will require vehicle access and car parking (and I would add to that separate and safe pedestrian access to a building clear of any vehicular parking space or driveway) makes it necessary to include for this in the setting of vacant fee simple allotment subdivision standards for controlled activities (because pursuant to s.106(1)(c) and if

seen as a permissive or reactive matter of case-by-case assessment, a controlled activity cannot be refused consent).

1.9 My recommendations on the minimum vacant fee simple allotment subdivision standards avoid creating the absurd situation where allotment purchasers will seek access (often reasonably so) to titled allotments that cannot be practicably or safely provided.

1.10 The following minimum vacant fee simple allotment standards (I recommend shape factors be used rather than specified minimum areas) should apply in the district to ensure workable and safe real-world built environments eventuate:

**For front sites:**

a) Where an allotment is proposed to be limited to the opportunity for a single-width driveway and associated garage / car parking space, a minimum frontage width of 9.5m should apply.

b) Where an allotment is proposed to be limited to the opportunity for a double-width driveway and associated garage / car parking spaces, a minimum frontage width of 12.5m should apply.

c) A minimum allotment depth of 19.5m should apply.

d) Allotments seeking triple-width vehicle crossings or associated garage / car parking spaces should not be provided for.

NB: Although not relevant to my analysis or recommendations, the above happen to equate to a minimum area range of 185.25m$^2$ – 243.75m$^2$.

**For rear sites (where these are provided for):**

a) A shape factor of 19.5m (minimum) x 13m (minimum), excluding the area required for any access strip or JOAL.

NB: Although not relevant to my analysis or recommendations, the above happens to equate to a minimum area of 253.5m$^2$ exclusive of any access strip / JOAL area.

1.11 I note that the above are based on "everything goes well" allotments that are flat or nearly-flat. Subdivision standards taking into account sloped sites where retaining and other works may be required would justify larger dimensions again (providing for an additional 1.5m in each dimension would in my opinion future proof this). This would equate to 11m – 14m x 21m for front sites (231m2 – 294m$^2$); or 21m x 14.5m (304.5m$^2$) for rear sites.

## 2. INTRODUCTION

2.1 My name is Ian Colin Munro. I am an urban designer and an urban planner. I have approximately 24 years of industry experience in New Zealand and I have the qualifications of a B.Plan (Hons); M.Plan (Hons); M.Arch [Urb Des] (Hons); M.EnvLS (Hons), and M.EngSt [Transport] (Hons). I am a Full Member of the New Zealand Planning Institute.

2.2 I have extensive experience in urban growth planning and management, structure plans and plan change processes, large-scale urban master planning and subdivision design, and the design and assessment of multi-unit / integrated housing developments. I have worked on over 2,500 such projects.

2.3 I have read the Environment Court Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2023 and agree to comply with it. I confirm that the opinions expressed in this statement are within my area of expertise except where I state that I have relied on the evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

## 3. SCOPE OF EVIDENCE AND LIMITATIONS

3.1 I have been given a limited brief to consider the relevant issues and evidence relating to minimum standards for vacant fee simple residential allotments on land not otherwise subject to a qualifying matter ("**vacant fee simple allotments**"). This is in response to the evidence of Mr Tollemache for Havelock Village Ltd dated 4 July 2023 and Mr Wallace for Kainga Ora dated 4 July 2023.

3.2 My evidence and analysis is limited to the issue in the context of the Waikato District and its particular configuration of current, and reasonably foreseeable, built form outcomes. My evidence is in this respect not necessarily applicable to other districts, and in particular is not relevant to the major urban cities where much higher densities of mixed-use, walkable, and passenger-transport-serviced development will be considerations in setting vacant fee simple allotment subdivision standards.

3.3 In preparing my evidence I read the RMA and its MDRS provisions, NPS:UD, Proposed Variation 3, the S.42A report and associated evidence prepared on behalf of the Council, the evidence prepared on behalf of my client, that of Mr Tollemache, and the evidence prepared on behalf of Kainga Ora.

3.4 Notwithstanding the wording of Schedule 3A of the RMA, my experience with large scale urban subdivision is that the most successful and highest-quality outcomes are arrived at when density is designed in from the outset in the most integrated and comprehensive possible way. Deliberately requiring excessive allotments and then fragmenting predictable further intensification into ad-hoc, lot-by-lot infill, which I consider the Council experts are promoting, is the least desirable possible solution. In fact, I am unable to identify a single example from all of my collective experience and observation where a comprehensively-designed "density from the outset" higher density development (including vacant fee simple allotments)

delivered anything other than far superior outcomes to fragmented and 'hodge-podge' suburban infill.

3.5 My 'global' advice to the Panel is that it should identify the smallest-possible vacant fee simple allotment standards it is satisfied can be justified, and then enable that from the outset.

## 4. VACANT FEE SIMPLE ALLOTMENTS

4.1 Although there has been much written to the Panel regarding theoretical densities, the RMA requires this to be measured by way of up to three dwellings per allotment based on compliance with the MDRS. It does not seem to require that each vacant fee simple allotment be capable of accommodating three dwellings. It also seems to matter not whether that is up to three x 5+ bedroom houses or three x small studio apartments, as long as they each comply with the MDRS.

4.2 There is also nothing to stop applicants deliberately 'consent-stacking' to achieve the maximum densities the market will support; once a vacant fee simple allotment has been titled, the title owner is then free to enjoy up to three dwellings on that allotment (possibly only by way of a Certificate of Compliance), and can then readily re-subdivide the allotment again around those. In this respect I have struggled to follow the thinking of the Council's witnesses where they suppose that varying a fee-simple allotment size will change the real-world capacity or achievable densities in those areas, as if applicants are only allowed to seek one resource consent, once.

4.3 Because of this, and with the greatest respect I consider most of the evidence provided regarding potential minimum allotment size and the likelihood of either too-much or too-little density has been too simplistic, narrow in focus, or otherwise ideological rather than technical. A more sophisticated approach is warranted to respond to the new statutory requirements and achieve satisfactory urban form outcomes.

4.4 The key urban design question I asked myself was “what is it that vacant fee simple allotments need to spatially accommodate”?

4.5 The answer is in three parts:

Accommodating the MDRS

4.6 Reasonably providing for and accommodating the MDRS is an obvious starting point and in this respect the analysis of Mr. Cameron Wallace on behalf of Kainga Ora is generally good (for front sites), including, in particular, the provisions he has factored in for achievable floor area in a typical 2-storey dwelling. That aspect of his analysis displays what I consider is a practical and real-world approach.

4.7 I am largely comfortable with his methodology for what it is although I note that the MDRS requires a 4m outlook space from a principal living room, and this is generally associated with outdoor living spaces (although the MDRS do not require a 4m dimension for those). In urban design terms and in observable reality, outdoor living spaces are generally preferred at the rear of a dwelling where there is the greatest privacy (but there are other considerations such as solar access or availability of views). In the first instance, acknowledging this would increase the ‘shape factor’ Mr. Wallace identified from 15m to 15.5m depth (by increasing the 3.5m outdoor living space rear dimension to 4m as an outlook dimension). It is not practical or realistic to base subdivision standards presuming an outdoor space at one end of a house and a principal living room facing the street at the other side (which may also conflict with garaging, a design factor Mr. Wallace did not address).

Recognise the likely and practical need for vehicle access and parking

4.8 The NPS: UD removed the ability of Councils to require on-site car parking for residential activities, but it did not go so far as to seek to discourage such provision; it merely surrendered the matter to the market. But

importantly the NPS:UD preserved the ability of Councils to regulate the requirements for parking and access spaces, where they are provided.

4.9 In my opinion it would be bordering on fanciful to consider vacant fee simple allotments would occur in the Waikato District without at least one car parking space being seen as required, by at least one of the allotment's likely owners over the life of the allotment (which could be 50+ years). It is likely that in some areas, car-free developments could prove market-attractive. But based on how rarely this has occurred across the country to date, I would only expect this to occur infrequently, in the denser and more mixed-use parts of the larger towns and settlements – where vacant fee simple allotments are unlikely to occur anyway in favour of land use consent-led integrated housing developments.

4.10 In respect of the above, the RMA Schedule 3A provides for standards to manage vacant fee simple subdivisions in Part 1 Cl. 3 that "*provide for as a controlled activity the subdivision of land for the purpose of the construction and use of residential units in accordance with clauses 2 and 4*". Clause 2(2) in turn states that "*there must be no other density standards included in a district plan additional to those set out in Part 2 of this schedule relating to a permitted activity for a residential unit or building*." Nothing in my recommendations is a density standard relating to a permitted activity for a residential unit or building that might limit what the MDRS could accommodate (i.e., up to 3 dwellings); they relate exclusively to standards relating to controlled activities for subdivision.

4.11 But in any event, clause (3) is also stated as being subject to s.106 of the RMA, which at s.106(1)(c) states that subdivision may be refused in circumstances where "*sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision*". In my opinion recognising the real-world fact that almost all, if not actually all, vacant fee simple allotments will require vehicle access and car parking (and I would add to that separate and safe pedestrian access to a building

clear of any vehicular parking space or driveway) makes it necessary to provide for this in the setting of vacant fee simple allotment subdivision standards for controlled activities (because pursuant to s.106(1)(c) and if seen as a permissive or reactive matter of case-by-case assessment, a controlled activity cannot be refused consent).

4.12 Where an internal garage is sought for a front site, then this does not of itself require additional allotment area than Mr. Wallace has modelled (although the available net floor space within the building would reduce). But if, for instance in an affordable housing development or where a second parking space was sought (which will also in my opinion be very common in Waikato's vacant fee simple residential allotments), a parking pad in front of the dwelling might be sought. This would require up to 5.5m (which would include the MDRS' 1.5m front yard setback) between the dwelling and the front yard.

4.13 In my opinion the general vacant fee simple allotment standards should provide for reasonably foreseeable parking needs and likely practical outcomes (and applicants could seek consent to vary this where they wish). This has the effect of changing Mr. Wallace's shape factor depth again, from 15.5m now to 19.5m on a front site.

Maintaining minimum functionality and safety along roads

4.14 When considering vacant fee simple allotment subdivision standards it is also necessary to understand the likely cumulative effects of multiple vehicle crossings along streets on pedestrian safety (i.e., avoiding a near-continuous arrangement of parking spaces revering across the footpath). I consider that s.106(1)(c) equally applies to this matter in terms of the cumulative effects of access in terms of its overall "sufficiency" (which can include qualifications relating to adequacy or acceptability).

4.15 It is equally necessary to ensure an allotment pattern that allows for necessary on-street parking, landscaping and street trees (for ecology, not

amenity), space for public rubbish collections, and for storm-water / rain garden devices. Mr. Wallace's modelled example could potentially lead to almost continuous double garages and a near continuous mountable kerb requirement along streets – an outcome I would regard as unacceptable.

4.16 It would not in my opinion be competent to set subdivision standards that then created allotments that could not be reasonably served by vehicle access, where that was desired by an end-user (as will be in my opinion all or almost all instances).

4.17 Where an allotment is proposed to be limited to a single-width driveway and associated parking pad or garage (typically up to 3m), then in my opinion a frontage width for front sites of 9.5m should apply. This provides for 2 x 1m side yards, and a balance of 7.5m for a building. This can in turn accommodate up to a single garage, a standard-width habitable room, and an access corridor / front door space that can have its own direct and safe access to a road separate from a car parking space. This is an important combination, as it provides for:

a) Activation and passive surveillance of streets from a habitable room and obvious front door with sufficient pedestrian access rather than a glorified entry lobby alone.

b) Garaging to occur at a frequency that will not visually or physically dominate the frontage or the footpath (i.e., the driveway will occupy less than half of the frontage width of the dwelling noting that additional flares will widen the driveway relative to the site frontage at the footpath / carriageway edge by up to or more than an additional 1.5m total width).

c) Sufficient space to accommodate a driveway and an outdoor living space at the front together (side by side), if solar access or other considerations warrant that. There is otherwise space to store bins in front of a dwelling clear of a parking pad / garage, or front door. Mr. Wallace's example would not in my opinion be capable of accommodating a single garage / driveway and outdoor living space in front of the dwelling, and in that respect, it is overly restricted and compromised.

d) Space along berms in between driveways to accommodate rubbish bins for collection, street furniture such as light poles, on-street parking and so on, and street trees in a manner that creates safe and functional roads.

4.18 Using the same rationale, where a double-width driveway and associated parking pads or garaging are specified, a frontage width of at least 12.5m should be required.

4.19 Although I have approached the 9.5m and 12.5m dimensions above based on the MDRS and Mr. Wallace's work, I note that they correspond closely with standards I have arrived at previously in Auckland's Drury 1 Precinct – accommodating different pre-MDRS minimum standards (10m x 26m or 12.5m x 26m). Those are operative rules and can be consulted for reference, arrived at after extensive design testing. I note that prior to the MDRS, those Drury 1 precinct rules that I co-authored (with Mr. Tollemache as it happens) provided for the smallest vacant fee-simple allotments in Auckland, and hundreds of dwellings have ben subsequently consented or built following them giving me confidence that the dimensions I have arrived at in this evidence will also prove workable and practical.

4.20 For front sites, this amounts to a minimum frontage width of 9.5m to 12.5m (subject to ongoing mechanisms proposed as part of an application to limit driveway and associated parking pad or garage width) x 19.5m. These are in my opinion the key standards that should apply. Although not relevant to

me or a focus of my work, for completeness these standards would typically equate to lot areas of at least 185.25m$^2$ to 243.75m$^2$.

4.21 For rear sites (where these are to be provided for), different considerations apply. The 19.5m depth remains applicable, and in addition to a yard setback and dwelling, space for on-site vehicle manoeuvring (up to 7m width) is required. This in my opinion warrants a shape factor of 19.5m (minimum) x 13m (minimum). Again, although not particularly relevant to me, this would lead to a minimum area of 253.5m$^2$, exclusive of any access strip or JOAL.

4.22 However, and for completeness, my tests are based on the assumption of flat or generally flat sites that are not otherwise particularly constrained. In reality the standard will apply to a variety of gradients, orientations and conditions. A key concern is where retaining walls to provide flat outdoor living or manoeuvring spaces are required but there the excessive combined height of retaining walls and necessary privacy fences along boundaries means that additional site space is needed to accommodate such retaining walls or batters within sites.

4.23 In the event that the Panel sought to adjust the vacant fee simple allotment standards to better accommodate topographical and site constraints, then in my opinion it could be appropriate to factor-in as much as an additional 1.5m of site area in each dimension to future-proof the issue and make my proposed dimensions more globally workable. This would amend my findings above to:

a) 11m – 14m x 21m for front sites (231m$^2$ – 294m$^2$); or

b) 14.5m x 21m for rear sites (304.5m$^2$, exclusive of any access strip of JOAL area).

4.24 I note that in respect of the Council's suggested 450m$^2$ minimum size, at Expert Conferencing dated 18 July 2023 Mr. Tollemache suggested a

minimum 300m$^2$ vacant lot size for greenfield subdivision (beyond that integrated developments with architectural designs would be required for intensification). I have spoken to Mr Tollemache and understand that this was intended as an alternative to prescribing specific dimensions such as I have identified, and which we both previously recommended in the aforementioned Drury 1 Precinct example. I consider that it is highly desirable to at least specify a minimum frontage width tied to driveway and associated parking / garage width to safeguard the quality and basic functionality of streets, but it would be possible to prescribe a combination of minimum area coupled with minimum frontage width.

**Ian Munro**

*20 July 2023*