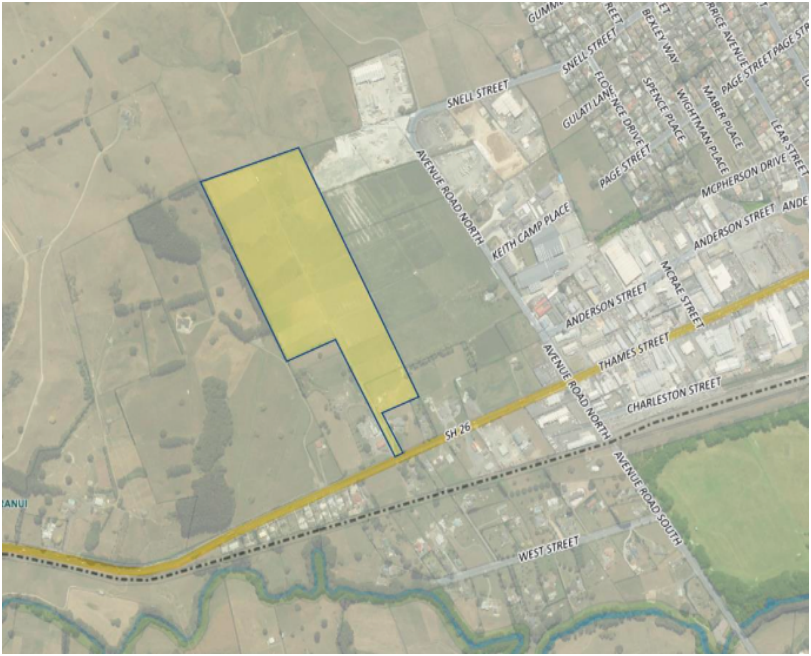


Decision following the hearing of a Proposed Private Plan Change request (PC58 – Avenue Business Park) to the Matamata-Piako District Plan under the Resource Management Act 1991

Proposal

To rezone approximately 13.4 hectares of land located at 2581 State Highway 26 (SH26) Morrinsville, from Rural to General Industrial Zone (GIZ), with a supporting Development Area Plan.

This plan change is APPROVED. The reasons are set out below.

Plan Change No:	PC58
Hearing Panel:	David Hill (Chair) James Whetu
Site address:	2581 State Highway (SH26), Morrinsville 
Legal description:	<ul style="list-style-type: none"> • Lot 1 DPS 78100 (12.65 ha); and • Lot 2 DPS 78100 (1.61ha)
Applicant:	Warwick and Marion Steffert / Steffert Property
Zoning:	Rural Zone
PC Request lodged:	22 December 2022
PC Request accepted:	24 May 2023
Public notification:	15 June 2023

Submissions closed:	17 July 2023
Summary of submissions:	17 August 2023
Further submissions closed:	31 August 2023
Hearing commenced:	Monday 26 February 2024, 9.30 am
Appearances / Attending:	<p><u>Applicant:</u> Warwick and Marion Steffert / Steffert Property represented by¹: Dr Joan Forret (Counsel) C Steffert (Project Manager/Director of Steffert Property Ltd) Ben Inger (Planning) Jeremy Hunt (Soil Resources) Dali Suljic (Civil Engineering) Kevin Counsell (Economics) Tara Hills (Transportation) Joanna Soanes (Landscape & Visual) Matt Cottle (Acoustics)</p> <p><u>Submitters:</u> Nathan Sutherland for Matamata-Piako District Council Kathryn Drew for Calcutta Farms No 2 Ltd Sandra Davenport</p> <p><u>Tabled:</u> Fire and Emergency New Zealand</p> <p><u>Council:</u> Andrew Green (Counsel) Ally van Kuijk (District Planner) Todd Whittaker (Planner and s42A reporting officer) Naomi McMinn (Transport) Neil Savory (Acoustics) Gunasantha Agas (Infrastructure Engineering) Fraser Colegrave (Economics)</p> <p>Patricia Kaumoana, Hearings Co-ordinator</p>
Commissioners' site visit	Tuesday 27 February 2024
Hearing adjourned	26 February 2024
Hearing Closed:	21 March 2024

Introduction

1. This decision is made on behalf of the Matamata-Piako District Council (“**the Council**”) by Independent Hearings Commissioners **David Hill (Chair)**, and **James Whetu**, appointed and acting under delegated authority under sections 34 and 34A of the Resource

¹ Note: other expert witnesses who had filed evidence were excused by the Hearing Panel but were on stand-by.

Management Act 1991 (“the RMA”).

2. The Commissioners have been given delegated authority by the Council to make a decision on submissions on proposed Private Plan Change 58 – Avenue Business Park (“PC58”) to the operative Matamata-Piako District Plan (“the MPDP”) after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing, and evidence presented and representations made during and after the hearing of submissions.
3. PC58 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The private plan change request, under Part 2 of Schedule 1 RMA, was accepted by Council on 24 May 2023 and publicly notified on 15 June 2023 with the initial submission period closing on 17 July 2023 and further submissions closing on 31 August 2023.
5. A total of 14 submissions, including one late submission, were received through the notification process. The Panel agreed to accept the late submission from Andrew Baker (Sub#14) as no one was deemed to be prejudiced by so doing.
6. One further submission was received from Peter Hexter (Sub#13), who lodged a submission in the initial submission process.
7. The s.42A RMA hearing report was prepared by Mr Todd Whittaker with technical reviews from:
 - Neil Savory (Noise);
 - Naomi McMinn (Transportation);
 - Gunasantha Agas (Three-Waters Engineering); and
 - Fraser Colegrave (Economic and Land Supply).
8. That report included as Appendix E a comprehensive submission assessment with recommendations and reasons. The Panel has reviewed those recommendations and reasons and, with the exceptions discussed later in this decision, accepts them. Appendix E is, therefore, to be considered an integral part of this decision *except* as noted below.

Summary of Plan Change

9. The proposed plan change was described in the application² as follows:

The proposal is to increase the industrial land supply in Morrinsville by rezoning approximately 13.4ha of land within the Plan Change site from Rural Zone to General Industrial Zone (“GIZ”).

It is anticipated that the Plan Change site will accommodate a mix of businesses, including industrial businesses as well as non-industrial businesses which are ancillary to industrial activities, support industrial activities or are compatible with industrial activities. Examples of non-industrial businesses which are proposed to be enabled to establish are ancillary retail, ancillary offices, cafes and takeaway food outlets, yard-based retail, building improvement centres, wholesale retail and trade suppliers, veterinary clinics, service stations and ancillary residential units.

The Plan Change proposes including a new Avenue Business Park Development Area Plan (ADAP) in the ODP to guide future development of the Plan Change site. The ADAP is based on a Concept Plan for the Plan

² Monocle. Request for Plan Change 58, at [11].

Change site which was prepared as part of a master planning exercise with input from numerous experts to guide the preparation of this Plan Change request. The ADAP identifies key features of the Concept Plan, including indicative roads, proposed landscaping buffers to rural edges of the site and future locations for wastewater and stormwater infrastructure.

10. Mr Whittaker in the s.42A report³ advised:

In general terms, the proposed GIZ Zone provisions include;

- *A statement of Issues,*
- *A set of objectives and policies which promote industrial activities while managing environmental effects,*
- *Activity lists and associated activity status rules and assessment criteria,*
- *Performance standards to frame and define the scale and nature of land use and subdivision activities, and*
- *Specific infrastructure provisions through a DAP rule mechanism.*

PC 58 also provides for linkage rules and consequential amendments to the other sections of the District Plan including new definitions, which will be specific to the General Industrial Zone.

The DAP provides for:

- *Road connection to Avenue Road North through an existing industrial area which is currently under construction,*
- *A north/south road corridor with connection to the north,*
- *Dedicated stormwater management and utility reserves, and*
- *Landscaping buffer to the western and northern boundary.*

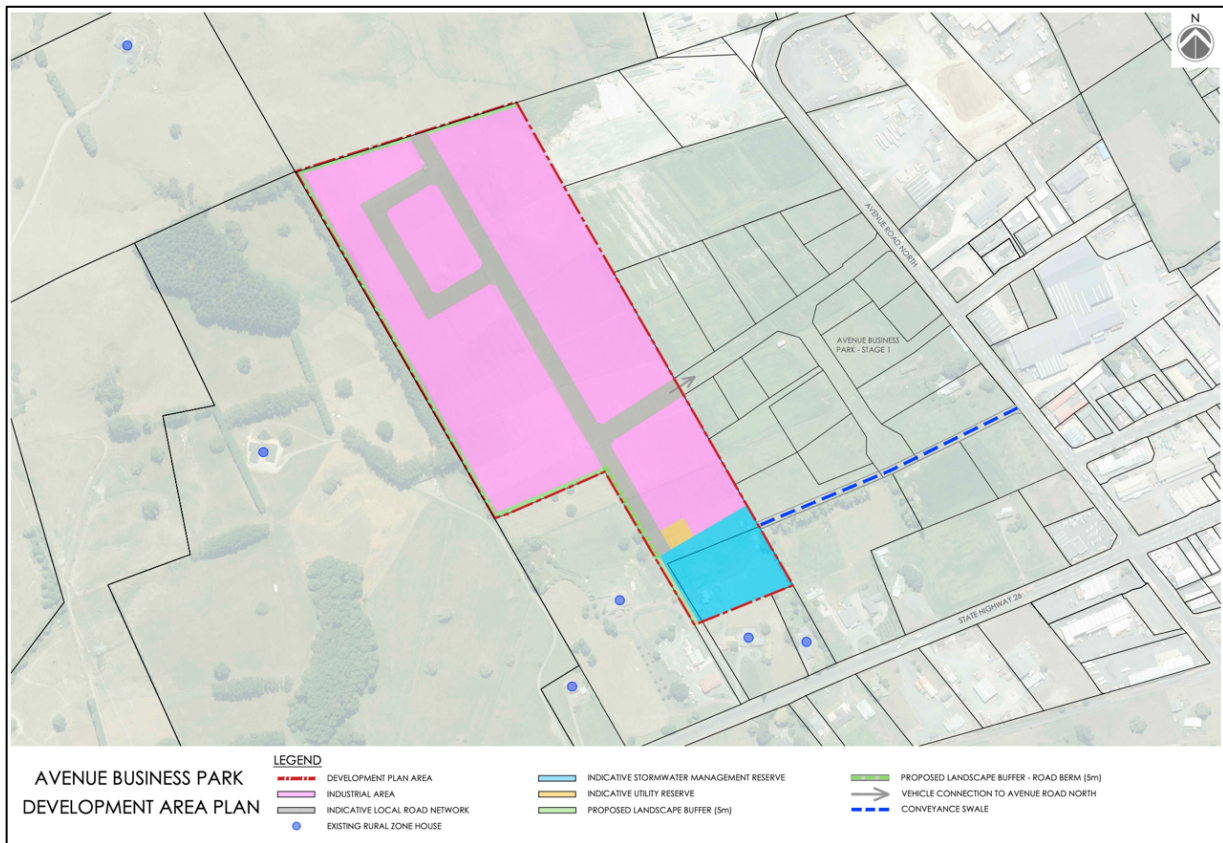
11. It is important to note that a General Industrial Zone (“GIZ”) is not included in the MPDP, only an Industrial Zone. However, the GIZ is prescribed in the Zone Framework Standard Table 13 of the National Planning Standards 2019 (“**the NPStds**”). Currently the MPDP has not been translated into the format prescribed by the NPStds.
12. For consistency with the NPStds, PC58 introduces the GIZ to the MPDP as its own chapter until the MPDP is reviewed and adopts that format.
13. The Avenue Business Park Development Area Plan (“**DAP**”) provided in reply (reproduced over the page) indicatively shows the local road network and connection to Avenue Road North, the stormwater management reserve and conveyance swale, utility reserve, landscape buffers, and the existing rural zoned dwellings.

Neighbouring Context

14. To the east, PC58 adjoins an existing Industrial Zone property. This industrial area comprises approximately 10.7 hectares of land that is zoned Industrial under the MPDP. It is understood that Warwick and Marion Steffert/ Steffert Property Ltd are part-owners of this industrial land, and were involved in its development⁴.
15. As illustrated by the indicative roading in DAP, the two developments are intended to be connected and form a relatively seamless and integrated.

³ S.42A Hearing Report, 7 February 2024, at [22-24].

⁴ Monocle, Request for Plan Change 58 at page [7].



Private Plan Change 57: Calcutta Farms Limited

16. It is important to refer to the proposed Private Plan Change 57 Calcutta Farms Limited (“PC57”), which was lodged and notified prior to PC58. PC57 is also seeking to provide additional industrial land in the district with approximately 41ha of land in Matamata proposed to be rezoned to industrial.
17. PC58 and PC57 shared a number of common elements and mirrored provisions - including the introduction of the GIZ and assessment of industrial land supply/demand across the Matamata-Piako district. It was initially proposed to have PC58 and PC57 heard and determined at the same time through ‘back-to-back’ hearings. However PC57 subsequently sought a deferral of its hearing and was therefore no longer heard alongside PC58.

Hearing Process

18. The hearing commenced on Monday 26 February 2024, with a second hearing day scheduled for Tuesday 27 February 2024, however this second day was not required.
19. The Panel received a report under section 42A of the RMA and the submissions to proposed PC58. All documents were made available to the public on the Council website.
20. The hearing proceeded by way of a mix of in-person and virtual appearances, and enabled submitters to present their concerns personally or through their representatives including expert witnesses and legal counsel.
21. The hearing was adjourned on the day for the purpose of receiving a final set of proposed plan provisions and for the Panel to visit the site and the local surroundings. We record

our gratitude to Ms Kaumoana for her assistance with the site visit.

22. The hearing was closed on 21 March 2024 following receipt of the amended provisions.

Procedural Matters

23. The Panel issued three Minutes giving directions on report, evidence and legal submissions exchange, appearances, and the order of presentations. A number of witnesses were excused as their expert issues were not in dispute – those matters related to soil contamination and geotechnical engineering.
24. The late submission from Andrew Baker (Sub#14) was acknowledged and the Panel agreed to accept the late submission as no one was deemed to be prejudiced by so doing.

Relevant Statutory Provisions Considered

25. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them – and caselaw on the matter is well settled – based around the functions of territorial authorities under s.31, district plan matters under sections 72-76 (and s.74 in particular), and the requirements of s.32 RMA. These were identified by Mr Whittaker in section 5 of the s.42A Report.
26. Dr Forret accepted that those were the relevant provisions.
27. We have nothing further to add to those identified provisions and accept them as being full and sufficient for the purpose.
28. Clauses 10 and 29 of Schedule 1 require that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA.
29. With regard to Section 32AA, we note that Mr Inger undertook that evaluation in section 9 and Attachment 3 of his evidence and that Mr Whittaker reviewed⁵ that evaluation and agreed, as did Ms Drew in her overall assessment, that those further changes satisfied the s.32AA test.
30. Under cl.29(4) Sch1 the consent authority may either decline, approve, or approve the plan change with modifications.

Relevant Statutory Plan Provisions Considered

31. Section 8 of the request application and section 7 of the s.42A report comprehensively identified and addressed the hierarchical suite of statute, policy, plan and regulation provisions. There was no dispute about those matters – noting that Mr Whittaker also included and assessed PC58 against the Hauraki Gulf Marine Park Act 2000 as Morrinsville falls within the Gulf's catchment.
32. It was also noted that the request application, and Mr Inger's evidence, included and assessed PC58 against the:
 - National Policy Statement for Freshwater Management 2020;

⁵ S.42A report, Table 5 at page [17].

- National Policy Statement for Indigenous Biodiversity 2023; and
 - Emissions Reduction Plan and National Adaptation Plan.
33. As those respective provisions and their application were not contested, the Panel has adopted those for our purpose and simply refer the reader to those referenced sections.
34. In summary, the relevant provisions are to be found under the following:
- Hauraki Gulf Marine Park Act 2000.
 - National Policy Statement for Highly Productive Land 2022 (NPS-HPL).
 - National Policy Statement on Urban Development 2020 (NPS-UD).
 - Emissions Reduction Plan and National Adaptation Plan 2022 (ERP + NAP).
 - Waikato Regional Policy Statement 2016 (WRPS), which includes Proposed Plan Change 1.
 - Waikato Regional Plan 2007.
 - National Planning Standards 2019.
 - Matamata-Piako District Plan 2005 (updated 2020).
35. Other references that which the Panel was referred included:
- Ngāti Hauā Environmental Management Plan 2018.
 - Tai Tumu, Tai Pari, Tai Ao - Waikato-Tainui Environmental Plan 2013.
 - Waikato Regional Land Transport Strategy 2011 - 2041 (RLTS).
 - Matamata-Piako District Council Town Strategies 2013 - 2033.
 - Morrinsville Town Strategy (2013 - 2033).

Matters identified in the s.42A Report for further resolution / refinement

36. Mr Whittaker identified⁶ a number of matters in the s.42A report that he considered required further attention. Those being:
- (i) *Inclusion of a new rule mechanism for a Noise Control Boundary (NCB) and associated noise performance standards. This will require an amendment to the planning maps and a specific rule and activity status for noise sensitive activities that may be proposed within the NCB. My initial recommendation is that a Controlled Activity provision is adopted for any activity that would otherwise be a permitted activity and that the Controlled Activity criteria would only require certification that building design and construction standards will ensure compliance with pre-set internal noise levels. Ventilation requirements for this rule will need to be finalised with input from the respective noise experts,*
 - (ii) *Details for the landscape buffer will need to be confirmed with more specificity into the DAP. The width of the landscape yard, maintenance and effective screening/visual mitigation purpose and details of any landscape provision in the road reserve in my opinion all require further clarification and certainty,*
 - (iii) *Strengthening of reference to firefighting standard in Rule 9.6.4 of DAP. Adoption of wording from FENZ submission is generally supported to require all buildings to be designed in accordance with NZ Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008,*
 - (iv) *Clarification in Rule 9.6.4 of DAP that an upgrade of an existing pump station and main in Avenue Road North is the preferred option and that the costs of these upgrades will be at the*

⁶ S.42A Report at [247].

developers cost, with alternate options to be available with agreement from Council,

- (v) *Change of the Activity status rule for activities not in general accordance from discretionary to non-complying with subsequent rule and number changes to GIZ-R1(3) and GIZ-R1(4), and Rule 6.3.3,*
- (vi) *Clarification of key road corridor frontages and landscaping requirements and whether these rules are required for PC 58, and*
- (vii) *Adoption of the additional transportation recommendations to prescribe road and shared path geometry for the DAP roading network and the provision for off-site upgrades to the Avenues Road North intersection and shared path connections and that these costs should lie with the applicant.*

37. That provided a helpful focus for the preparation of evidence and for hearing.

Summary of Evidence and Legal Submissions

38. The s.42A report was circulated prior to the hearing and taken as read.

39. The requestor's expert evidence was pre-circulated and taken as read. As the issues remaining at hearing were very confined the Panel excused the below identified witnesses, simply requiring that they be on stand-by in the event that matters emerged that required an answer from the relevant expert.

- Mr A Holland (Geotechnical);
- Mr Gibbins (Soil Investigation).

40. All information, submissions and reporting for PC58 were, and are, available on Council's website.

41. The legal submissions, evidence and representations heard are summarised below.

For the Requestor

42. **Dr J Forret**, counsel for the requestor, provided legal submission that summarised the issues that the Panel needed to consider and determine. In responding to the submission from the Matamata-Piako District Council, specifically requiring Non-Complying Activity status where there is non-compliance with the Avenue Business Park DAP, Dr Forret referred the Panel to the recent Environment Court decision in *Fraser Auret Racing v Rangitikei District Council* in support of the Discretionary Activity status proposed by the requestor. That is discussed further below.

43. **Mr C Steffert**, Project Manager and Director of Steffert Property, and son of Warwick and Marion Steffert, provided background to the Steffert family's connection to the property and its use, and their interests in PC58, connection with the adjoining industrial property (referred to as Stage 1 of Avenue Business Park), and Morrinsville township.

44. Mr Steffert outlined that PC58 is to enable expansion of the Avenue Business Park (the adjoining industrial property) to provide additional industrial land in Morrinsville to meet future demand based on experience with Stage 1. He noted that PC58 site is well suited for industrial growth, being adjacent to the Stage 1 site, close to other industrial development around Avenue Road North and on the edge of the town, and outlined that the Stage 1 constructed new road, Magistrate Avenue, provides direct access to the PC58 site through the Stage 1 development.

45. Mr Steffert also explained his engagement with Council, neighbouring landowners, Ngāti Hauā, the Morrinsville business community and Waka Kotahi NZ Transport Agency.
46. **Mr J Hunt**, environmental consultant at AgFirst Waikato Ltd, prepared the Versatile Soils Report and provided an overview of his land and soil assessment for PC58; explained his consideration of the NPS-HPL, and comparison of the PC58 Site against other reasonably practicable and feasible options for industrial expansion in Morrinsville.
47. Mr Hunt advised the Panel that there is approximately 7.9 ha of the site that is identified as Highly Productive Land (“HPL”), being rural zoned land within the Matamata-Piako district with a Land Use Capability (LUC) classification 1-3. However he noted that there are significant constraints to its continued and viable use for land-based primary production. In his opinion, the highest and best *rural* use of the PC58 site would be as a low input beef grazing block, akin to a hobby farm.
48. Mr Hunt concluded that, compared with other potential locations, rezoning this site would lead to a smaller overall loss of productive capacity and would avoid fragmentation of other large and geographically cohesive HPL sites in the Matamata-Piako district.
49. **Mr K Counsell**, an economist and Director with NERA, referred the Panel to his MPDC’s Business Demand and Capacity Assessment (“BDCA”) report and its applicability to PC58, and his assessment of the demand for, and supply of, Industrial-zoned land in Morrinsville. Mr Counsell concluded that there is a clear shortfall of Industrial-zoned land in Morrinsville in the medium-term (ranging from 3.7ha – 24.5ha with NPS-UD margin) under the scenarios considered, and in some scenarios there is a shortfall (up to 5.7ha with NPS-UD margin) in the short-term.
50. **Mr D Suljic**, an engineer at Tektus Consultants Ltd, outlined the engineering investigation for PC58 related to earthworks, erosion and sediment control, stormwater and wastewater management, and water supply. Mr Suljic advised that any stormwater management system at PC58 will likely improve the overall drainage in the area as it will operate in accordance with current MPDC’s stormwater servicing standards.
51. In responding to the submission from Fire and Emergency New Zealand (FENZ), Mr Suljic advised that should PC58 be approved, those concerns can be addressed at future resource consent stage through engineering design solutions, and referred the Panel to Appendix 9.6.4 of the PC58 provisions which specifically refers to water supply for firefighting.
52. **Ms J Soanes**, landscape architect with Boffa Miskell, provided an overview of the landscape and visual effects matters relevant to PC58, and explained the role of the 5m wide buffer planting proposed in PC58 as the interface with the adjacent Rural Zone to act as visual screening between properties. The preferred option presented by Ms Soanes was Option 1, is illustrated in the cross-section presented to the Panel. Ms Soanes confirmed that there is no intention to place the planted 5m width landscape buffer on the stormwater management reserve – which will have its own amenity planting⁷.
53. **Ms T Hills**, a traffic consultant at Direction Traffic Design that prepared the Transport Assessment for PC58, outlined transportation matters and the purpose of the DAP in

⁷ Soanes, Statement of evidence, at [7(c)].

illustrating indicative layout and connectivity, and focused her presentation on the areas of disagreement with Council's assessment, specifically the width of the footpath in PC58 and along Magistrate Avenue, and the provision of pedestrian connection and crossing facility on Avenue Road North – which are discussed further below.

54. **Mr M Cottle**, acoustic consultant with Marshall Day Acoustics, explained the rationale for the proposed noise provisions; and evaluated those against the statutory requirements. Mr Cottle concluded that the existing noise environment is controlled by traffic noise from the state highway, the existing industrial zone and the consented Stage 1 development. He did not support the noise control boundary proposed by Mr Savory for Council - which we discuss further below.
55. **Mr B Inger**, consultant planner with Monocle, provided an overview of the historical and procedural background to PC58; explained the rationale for the proposed provisions; and evaluated those against the statutory requirements. Mr Inger noted that he relied upon the technical reports and evidence produced for and submitted with the request. Mr Inger concluded that PC58 satisfies all of the requirements of the planning instruments; is consistent with the relevant provisions of the RMA, including its purpose and principles; and can be accepted and approved in the form requested.

For the Submitters

56. **Ms K Drew**, consultant planner for Calcutta Farms Limited and PC57, highlighted the connection and relationship between PC57 and PC58, and the general support for PC58, and how PC58 has responded to submissions, and the recommendations of the s.42A report. Ms Drew noted that she relied upon the technical reports and evidence produced for and submitted with the request. Ms Drew concluded that PC56 satisfies all of the requirements of the planning instruments; is consistent with the relevant provisions of the RMA, including its purpose and principles; and can be accepted and approved in the form requested.
57. **Mr N Sutherland**, Team Leader – RMA Policy for Council as submitter, focussed on Council's key submission points regarding the requirement for a Development Agreement, and the provision of a Discretionary Activity status for non-compliance with the DAP, which is inconsistent with current non-complying activity provision in the MPDP.
58. **Ms S Davenport**, submitter and adjoining property owner at 2579 State Highway 26 Morrinsville, spoke to her submission and expressed concern related to noise effects and inquired about the role of the landscape buffer. Mr Savory confirmed that the landscape buffer is not intended to and will not mitigate noise effects.

Reply

59. In summary reply, Dr Forret submitted that no compelling resource management reasons were advanced that precluded the Panel approving PC58 as sought. She noted that the requestor rejected a number of proposed requirements including: a widened footpath on Magistrate Avenue, a noise control boundary, the inclusion of a Developer Agreement provision in PC58; and a non-complying activity status for non-compliance with the DAP.

Principal Issues in Contention

60. Having considered the submissions and further submissions received, the s.42A hearing

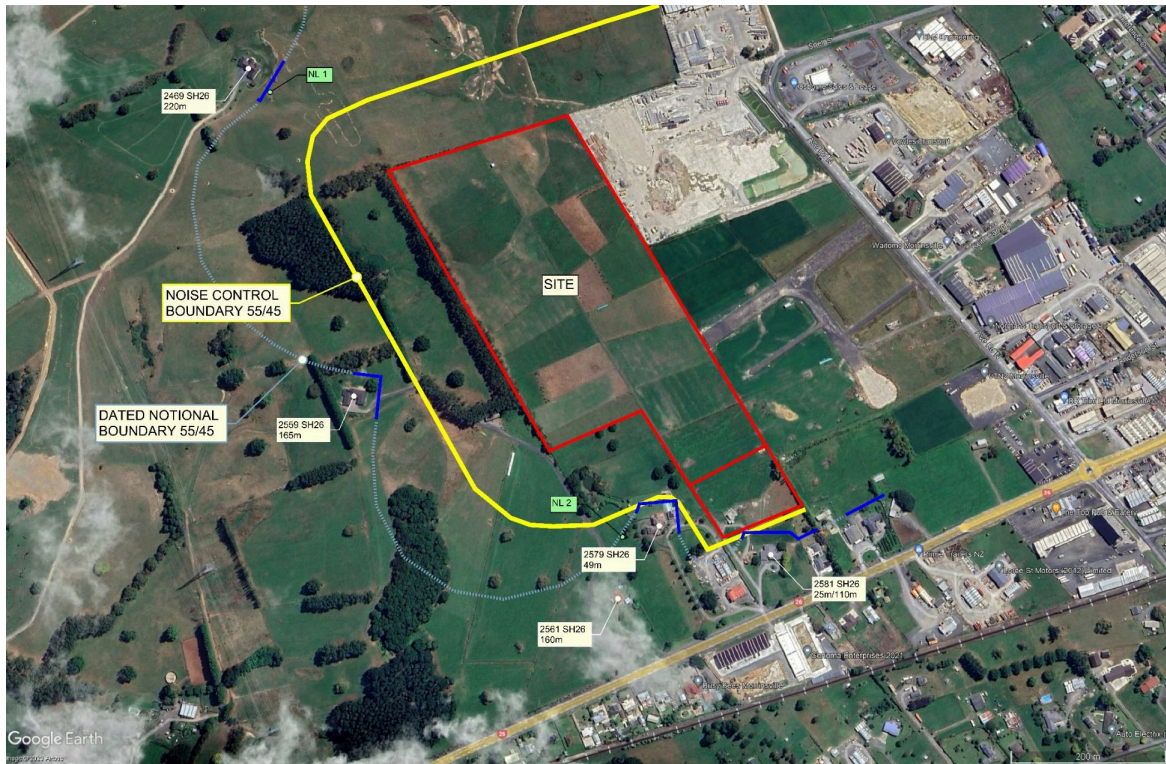
report, the legal submissions, evidence and representations given at the hearing, the Council officers' response and the requestor's reply, the Panel has identified the following principal issues in contention that require determination:

- Noise (includes introducing a Noise Control Boundary),
- Transportation - Walking and Cycling,
- Wastewater, and
- Activity status for non-compliance with the Avenue Business Park DAP.

Findings on the Principal Issues in Contention

Noise

61. In contention was the measurement position for the assessment of actual and potential adverse noise effects arising from activities in the industrial business park.
62. As recorded in the Joint Witness Statement – Noise (the **JWS**) between Mr Cottle and Mr Savory, the Panel notes the agreement on the numerical noise limits - in line with the forthcoming proposed district plan review - and the need for a mechanism for ensuring noise effects are managed.
63. However, whereas PC58 proposes the use of the notional boundary as the method and location for the measurement and assessment of compliance, Mr Savory proposed the establishment of a Noise Control Boundary (the **NCB**). The NCB is not supported by the requestor.
64. Mr Cottle told the hearing that the proposed noise provisions were intended to address some shortcomings in the current MPDP noise rules by adopting the L_{Aeq} parameter required by the National Planning Standards (the **NPStds**).
65. Mr Cottle confirmed that the adjacent properties to the east and north of the PC58 site and in the Rural Zone, contained five dwellings. His opinion was that the inclusion of a reference date as part of the standard notional boundary approach would address reverse sensitivity effects regarding encroachment from any new dwelling built in the Rural Zone adjacent to the PC58 site.
66. Mr Savory's opinion was that the use of reference dating is effectively a NCB and proposed that a bespoke 55/45dB L_{Aeq} NCB be applied. This was supported by Mr Whittaker – and we were told that Council is contemplating this approach in its forthcoming district plan review.
67. Mr Savory contended that a NCB would provide a buffer area around the proposed GIZ and would not impose overly onerous noise rules on Rural Zone properties that do not contain dwellings, and will resolve reverse sensitivity issues by setting a clear locational boundary. The boundary proposed was:



68. Mr Cottle responded that the NCB approach is typically used around one-off facilities such as dairy factories rather than as a broad zone provision where the nature of the industries is as yet unknown.

Finding

- 69. We accept the evidence of Mr Cottle and the updated Avenue Business Park DAP that identifies the specific dwellings. We are satisfied that, at this time, it will assist Council with consistent administration of the MPDP’s noise rule.
- 70. The Panel also notes that Calcutta Farms Ltd expressed concern with the introduction of a NCB, and submitted that a consistent MPDP approach to measurement of noise from industrial areas is appropriate rather than a bespoke NCB.
- 71. During our site visit, the Panel also noted the existing discernible background noise at the PC58 site, and perceived that traffic noise from SH26 dominated in this active industrial area of Morrinsville.
- 72. Finally, we note that if Council decides to pursue a different NCB approach in its district plan review, and is successful, that would provide the appropriate opportunity to introduce that approach across the industrial zone, including into PC58.

Transportation – Pedestrian and Cycle Connections

73. Council had engaged Ms McMinn of Gray Matter to assess transportation effects, with the assessment concluding:

From a transport planning perspective, the proposed industrial zone plan change area is located appropriately contiguous with existing industrial land use and provides connections to the wider arterial transport network.

However, with the current planning provisions proposed, I do not consider that the potential safety effects are acceptable. I consider that the planning provisions need to be amended to adequately

*provide for pedestrians and cyclists and to ensure safety for all users at the intersection with Avenue Road North.*⁸

74. Ms McMinn outlined two measures to address her concerns:
- (a) the establishment of a pedestrian crossing facility and formation standards for footpath and cycleway (3m wide shared path; minimum 1.8m wide footpath), and
 - (b) upgrade of the Avenue Road North and Magistrate Avenue intersection (currently has a 2.1m wide right turn bay and 1.6m wide median refuge).
75. The latter measure (upgrade of the Avenue Road North and Magistrate Avenue intersection) was accepted by the requestor. However, the recommendation for a pedestrian crossing facility on Avenue Road North and formation standards for footpath and cycleway as recommended by Ms McMinn were challenged.
76. In responding to the pedestrian connection matter, Ms Hills advised that a pedestrian crossing facility on Avenue Road North is not practicable at this time because any crossing facility will need to consider swept paths from adjacent accesses at the time of design to check that it is feasible⁹.
77. Similarly, with regard to the provision for a future pedestrian connection between PC58 and State Highway 26 (“SH26”), Ms Hills gave her opinion that it would only be appropriate when the speed limit along SH26 is reduce to 50km/hr, a matter that lies with Waka Kotahi New Zealand Transport Agency¹⁰.
78. With regards to the formation/width of footpaths and the provision for a shared path, within the PC58 site and along Avenue North Road, Ms Hills stated¹¹:

The proposed 1.8m width for paths on new roads within the PC58 site will safely allow a pedestrian to pass a cyclist. On the rare occasion that two cyclists have to pass each other the 1.8m width will allow them to do so at a controlled speed or by using road berms and vehicle entrances. The recently constructed 1.5m width path on Magistrate Avenue will require cyclists passing pedestrians to use the berm and vehicle entrances. I consider this to be acceptable given the existing nature of this path and the relatively low numbers of cyclists and pedestrians predicted at the site....

The provision of paths on both sides of the road is generally required in residential and commercial areas. In these areas there are significant safety benefits obtained through reducing the number of road crossings pedestrians (in particular children/elderly/disabled pedestrians) have to undertake. Residential and commercial areas also have a much greater number of pedestrians and cyclists using these facilities to appreciate these safety benefits. In the PC58 area the number of pedestrians and cyclists will be much less than in a residential or commercial area, with significantly less disadvantaged path users such as children or elderly. For these reasons the provision of a path on one side of the road only is considered to be appropriate.

Finding

79. The Panel acknowledges the acceptance of Council’s recommendation to upgrade the Avenue Road North and Magistrate Avenue intersection and agrees that is appropriate.
80. With respect to Council’s recommendation to:
- (a) provide for a pedestrian crossing facility;

⁸ Gray Matter Memo: Transportation Review at page [2] and S.42A Report at [122].

⁹ Hill, Statement of evidence, at [51].

¹⁰ Hills, Statement of evidence, at [26].

¹¹ Hills, Supplementry Evidence, at [9] and [11].

- (b) increase the width of the existing footpath along Magistrate Avenue to accommodate a 3m wide shared path; and
 - (c) continue the new shared path from Magistrate Avenue into the PC58 site, and provide both a footpath and a shared path on either side of the indicative north-south road.
81. With respect to (a) above, the Panel notes that proposed provision 9.6.2 Walking and Cycling enables the requirement at resource consent stage of a pedestrian crossing on Avenue Road North if it is assessed as being both required and feasible.
82. We also accept Ms Hills' evidence that consideration of a number of technical matters will be taken into account before determining whether and where a pedestrian crossing facility might be located on Avenue Road North.
83. We are satisfied with the approach proposed by the requestor.
84. With respect to (b) above, we observed during the site visit the location/position of existing above ground infrastructure (e.g. street-lighting and water tobies and valves, catchpits and manholes within the consented industrial subdivision (referred to as Stage 1)), and have also reviewed the as-built plans provided by Mr Suljic¹² following the hearing to confirm the location of underground services – which are clearly extensive in the corridor that would be required to accommodate a widened path.
85. The Panel finds that in light of the fact that the infrastructure is in place, both above ground and underground, as well as the formation of Magistrate Avenue and footpath having being designed, constructed and approved in accordance with the Matamata-Piako Development Manual, the recommendation to increase the width of the existing footpath along Magistrate Avenue to 3m is impractical.
86. While we accept the principle that walking and cycling opportunities should be provided where practicable, this is not such a situation. Furthermore we acknowledge Ms Hills' conclusion¹³ to the effect that this is a peripheral industrial zone in which high volumes of cyclists is unlikely.
87. With respect to (c) above, we understood that the proposal is to continue the existing footpath width along Magistrate Avenue into PC58, and then along the indicative north-south road within PC58 to form footpaths on both sides – i.e. a minimum 2m wide shared path on one side, and a minimum 1.8m footpath on the other side.
88. The Panel agrees with Ms Hills that paths as recommended by Ms McMinn are better suited for residential and commercial areas. The area around Avenue Business Park (Stage 1 and PC58) is industrial in nature and activity. The nearest residential neighbourhood is on Page Street which has pedestrian connectivity via Keith Camp Place.
89. The Panel accepts the approach proposed by the requestor.

Wastewater

90. As PC58 will require a new wastewater connection to the public network Mr Suljic had

¹² Avenue North Road Asbuilts – Overall Plan, Rev R5, October 2023, MARKED UP, 28 February 2024.

¹³ Hills, Supplementary statement.

identified two options¹⁴ (in addition to construction of a new wastewater pump station):

- (a) a connection to the gravity reticulation constructed as part of Stage 1 of the Avenue Business Park development; or
- (b) connection to the existing 200mm diameter gravity reticulation located at the intersection of Avenue Road North and Thames Street (State Highway 26).

91. Mr Suljic's preference was for (b) above because¹⁵:

the connection to Stage 1 Avenue Business Park development will likely require an upgrade to the existing pump station on Avenue Road North and result in a serial arrangement of local pump stations.

92. Council's infrastructure engineer, Mr Agas, undertook an assessment of PC58 and advised that while the PC58 area is not currently serviced by Council's three waters services (water, wastewater and stormwater), connection to these services can be achieved due to the proximity of the land to existing infrastructure. However with respect to wastewater, Mr Agas stated that:

The current wastewater treatment plant does not have capacity to treat the wastewater from future growth areas to the required standards without upgrades. MPDC is in the process of preparing an application to renew the existing consent. The application to replace the existing consent will take into account future growth and requirements.¹⁶

93. He also advised¹⁷ that Council had completed a capacity assessment of the wastewater treatment plant for Morrinsville in 2022, and was preparing its wastewater masterplan for Morrinsville with the intent to complete that by mid-2024.

94. In his s.42A report Mr Whittaker noted¹⁸:

An off-site wastewater upgrade has also been identified by MPDC as necessary to serve the future industrial development. Two options have been identified with a preferred option being upgrades to an existing pump station in Avenue Road North with the full funding/construction of the pump station and wastewater main to lie with the Applicant.

95. In his evidence, Mr Suljic stated¹⁹:

Mr Agas considers that the connection [to] the existing pump station on Avenue Road North should be the preferred solution due to the challenges associated with operation and maintenance of infrastructure within a state highway corridor. Although I remain of the opinion that the connection via SH26 is a better engineering solution in this case, I do acknowledge the operation and maintenance difficulties raised by Mr Agas. In my view, it would not be prudent to decide on the final solution through the plan change process. A Best Practicable Option approach should be progressed at the future resource consent stage at which point a more detailed assessment of the relative merits of each option can be provided.

96. Mr Sutherland, in his evidence for Council as submitter, noted that these sorts of matters would typically be covered by a Development Agreement (a DA) with Council, which was his preference, but in the absence of such, proposed that a DA provision is inserted into

¹⁴ Suljic, Statement of evidence, at [35].

¹⁵ Suljic, Statement of evidence, at [37].

¹⁶ Agas, Technical Assessment at [4.2.1].

¹⁷ Agas, Technical Assessment at [4.1].

¹⁸ s.42A Report at [134].

¹⁹ Suljic, Statement of evidence at [57].

PC58. He proposed²⁰ the following provision covering all necessary public infrastructure:

9.6.6 Development Agreement

Prior to any development or subdivision of the land shown in the Avenue Business Park Development Area Plan (ADAP) the Council and the Developer have a Development Agreement in place, which provides:

- a) *For the obligations of the Developer, as set out in the Development Agreement, which are secured by a first registered encumbrance against the relevant records of title to the land shown in the ADAP;*
- b) *That any purchaser of any balance land not yet developed, must sign a deed of accession in a form approved by Council which will bind future landowners to the performance obligations in the Development Agreement; and*
- c) *The developer or successor will construct upgrades of services and infrastructure required for the subdivision and development of the land shown in the ADAP, which may include external or off-site infrastructure, services and/or structures in the four categories set out below. Any Developer Agreement will (where applicable) provide for a proportional contribution to any infrastructure upgrades required to service the ADAP, and any contribution will be balanced against the effects of the development and the needs of the existing environment and future development within Matamata. In addition, a review of Council's Development Contributions Policy may be required to fully inform the funding of, and cost sharing for new infrastructure.*

97. That proposition was rejected by Dr Forret on the ground that it was both unnecessary – since Council has the necessary power to require that at subdivision / development resource consent stage - and was inappropriate as a plan provision – because, in her words, it does not travel forward in perpetuity; once satisfied that is an end to it. We were also told that a DA was not a provision requirement for Stage 1 – although the reason for that was not explained and that situation and its infrastructure needs may have been quite different.

Finding

98. We find that three water services can be provided to the area of PC58 – albeit not necessarily available currently.
99. Council essentially agreed with the requestor that the matter as to which of the two proposed wastewater options should be implemented was best left for determination at the time of subdivision. A revised wastewater provision (9.6.4) has been provided which the Panel accepts.
100. The Panel is not persuaded that a Development Agreement provision is required in the PC58, agreeing with Dr Forret that is a matter that can be addressed in due course when application is made for subdivision and development consents.

Activity Status – Discretionary Activity or Non-Complying Activity

101. In its submission Council had noted that PC58 proposed that non-compliance with the DAP should have a discretionary activity (**DIS**) status. That was at variance with the non-complying activity (**NA**) status provided in the MPDP for structure plan / DAP areas.

²⁰ Sutherland, Statement of evidence, at [5.16].

Council therefore sought a consistent activity status for PC58.

102. In is evidence Mr Sutherland noted that there are five such plans in the MPDP – non-compliance with those plans for subdivision being NC²¹ (otherwise a controlled (**CON**) or restricted discretionary (**RDIS**) activity), but for development an RDIS (because otherwise a permitted activity (**PER**)). He noted that Mr Whittaker, in his s.42A report, had no strong preference but supported NC on balance. He agreed with that position and sought NC for non-compliance with PC58 DAP.

103. Dr Forret rejected that proposition. She cited²² the Environment Court’s decision: *Fraser Auret Racing v Rangitikei District Council* [2024] NZEnvC 10 , in support of her submission that “A discretionary activity classification would afford unlimited discretion and would not create any plan integrity issues²³”. At paragraph [24] the Court said:

Section 104 contains no limitations on effects matters which can be brought into consideration when considering applications for (fully) discretionary activity consents nor on the scrutiny to which such effects might be subject by a consent authority which has a statutory obligation to assess actual and potential effects appropriately.

104. Furthermore, Dr Forret noted²⁴ that:

The Court went on to find that discretionary status was appropriate given the lack of any special landscape or other features on adjoining land that would make that neighbouring vicinity more delicate or vulnerable to change.

105. In response Mr Sutherland accepted²⁵ that:

It is unlikely that either activity status would clash with the objectives and policies of the Operative District Plan, but a non-complying activity status would be more aligned with its current Structure Plan/Development Area Plan provisions.

Finding

106. While the Panel accepts that internal consistency in statutory plans is highly desirable, that is not an iron-clad principle. We note that, in this case, key elements are notated as being *indicative*. Whilst that may be misread to mean that they are optional, that is not the case. It simply provides some flexibility as to placement. Furthermore the number of component elements is actually very limited. This is not a complex plan where some realignment is going to have significant internal or external effects.

107. We are not persuaded that an NC activity status is warranted in this instance and consider the open discretion of a DIS sufficient for the purpose of managing any non-compliance with the DAP.

Statutory Requirements

108. The Panel is satisfied that PC58 meets the required statutory tests and associated requirements. The professional planners involved with the hearing agreed that was the

²¹ Abbreviations required by the standard 10 of the National Planning Standards.

²² Legal submissions at [42].

²³ Legal submissions at [45].

²⁴ Legal submissions at [43].

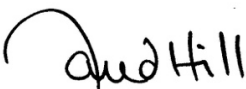
²⁵ Sutherland, Statement of evidence at [5.8].

case. That was not in dispute and, having considered the various analyses, the Panel accepts those conclusions.

109. PC 58 meets the s.5 purpose of the RMA by promoting the sustainable management of the land resource – and which is contiguous with the adjacent developing industrially zoned land.
110. No s.6 matters of national importance or s.8 Treaty of Waitangi principles are engaged.
111. With respect to s.7 other matters, to which particular regard is to be had, PC58 has done so, inasmuch as a private plan change can, in terms of 7(b) – the efficient use and development of land; s.7(c) - the maintenance and enhancement of amenity values; and s.7(f) - maintenance and enhancement of the quality of the environment.
112. A final checkpoint, established through the courts, is the question as to whether a proposed plan change is a better fit with the overall architecture of the Plan than the provisions it seeks to supplant or amend. We find that to be the case, noting that minimal changes are required in the body of the MPDP and bespoke provisions are included to ensure that the industrial interface with the adjacent rural zone does not compromise the latter's essential amenity.

Decision

113. Pursuant to Schedule 1, clauses 10 and 29 of the Resource Management Act 1991, Proposed Plan Change 58 – Avenue Business Park to the operative Matamata-Piako District Plan 2005 is approved for the reasons set out in this decision and with the provisions attached.
114. Submissions on the plan change are accepted and rejected in accordance with this decision and generally as recommended by Mr Whittaker in his s.42A hearing report Appendix 7: Recommendation on Submissions.
115. The summary reasons for the decision are that Private Plan Change 58 – Avenue Business Park:
 - (a) gives effect to the higher order National Policy Statements;
 - (b) gives effect to the National Planning Standards;
 - (c) will assist the Council in fulfilling its statutory functions under s.31 of the RMA;
 - (d) achieves the s.5 Purpose of the RMA by promoting the sustainable management of the land resource;
 - (e) includes only relevant matters and is worded in a way that is clear and concise (per s.18A(b) RMA); and will assist with the effective implementation of the Matamata-Piako District Plan.



David Hill
Chairperson
and for Commissioner James Whetu

Date: 30 April 2024

PC58 – Approved Provisions