



24 October 2023

Matamata Piako District Council  
c/- Hope Tauau  
Via email: [HTauau@mpdc.govt.nz](mailto:HTauau@mpdc.govt.nz)

### 2370 Maungatautari Road – 102.2023.12852 – Section 92 Response

Dear Hope,

We refer to the request for further information dated 3 October 2023 regarding the above application. This letter provides our response to your queries in respect of the proposed new dwelling and accessory buildings within the Kaitiaki Zone, and the proposal to vary a Consent Notice in accordance with Section 221 of the Resource Management Act 1991 (RMA).

#### Update Minimum FFL

- The following consent notice from subdivision consent 101.2016.11285 notes that the site is subject to flooding and change in lake levels due to the consented operating levels of the Waikato Hydro System. It is understood that the recommended RL was provided for the building footprint at the time of subdivision. Because it is proposed to change the building footprint as part of the proposal, please provide comment from Mercury Energy, either confirming that the RL is appropriate for the new proposed building location or confirming an appropriate updated level. Please note that if an updated level is provided, the following consent notice condition would also need to be varied.*
  - “That a consent notice pursuant to Section 221 of the Resource Management Act 1991 must be entered on the Computer Freehold Register of Lot 2 hereon to advise owners that the said property may be subject to flooding and change in lake levels due to the consented operating levels of the Waikato Hydro System and that the floor level of any buildings must be above an RL of 56.8m (Moturiki Datum) when measured to the underside of the floor slab or flooring joists.”*

Response: The proposed finished floor level for the new dwelling is 56.8 m in relation to the lake RL of 56.26 m, meaning 0.52 m above the RL. This is the same level as that used for the original boat shed and as such, is considered suitable for this proposal as well (being less than 5 years after completing the boat shed). With regards to comments from Mercury, we note that the architect has sought to obtain written confirmation with regards to the RL but has so far not heard back. Be that as it may, the FFL will be confirmed as part of the building consent process and if there is a need for further certainty, we recommend including a consent condition covering this aspect.

#### Accessory Building Confirmation

- Noting that the implement shed is approximately 200m<sup>2</sup> with the proposed boatshed extension resulting in a building that is approximately 428m<sup>2</sup> or 688m<sup>2</sup> inclusive of the decks. This would result in a total of approximately 888m<sup>2</sup> of land occupied by accessory buildings which we would consider to be excessive of what we would typically anticipate for a 10ha allotment. You have noted in your AEE that the boat shed extension would be for the purpose of entertaining guests and hosting family gatherings. While we can appreciate this, we would require some further justification for the scale of the building and the nature of events that would be held here.*

Response: While it is acknowledged that the boat shed will be large once the extension is complete, it is important to bear in mind that the MPDP does not contain any rules or restrictions with regards to the size of accessory buildings on this site. Accepting that there is a rule restricting site coverage for properties that are smaller than 4,000 m<sup>2</sup> (Standard 3.2.2), this site is 10 ha (or 100,000 m<sup>2</sup>) and therefore that rule does not apply. In addition, even if the outside decking area was to be included in the footprint of the boatshed (which it is not, given that the deck does not meet the definition of a ‘building’ under the

Building Act or under the definition of the MPDP), the overall footprint of the accessory buildings would still be less than 1%. This is not considered 'excessive' and should the maximum site coverage rule have applied (which as noted, it does not), the proposal would still be well within those limits.

Be that as it may, we note that AEE clarifies that the applicant has a large family. As it is, the Leigh family consists of some 45 immediate family members who gather at the Leigh property at regular intervals for family celebrations. In that respect and as explained in the AEE, the purpose of the proposed boat shed is to accommodate family during gatherings such as Christmas and birthdays. Currently, the applicant does not have sufficient indoor space to allow for these gatherings, which is what this proposal is seeking to rectify.

It is worth further noting that the application does not seek to authorise any commercial activities, which is not the Leigh's intention or desire. It is well understood that any such activities would be subject to a separate resource consent process, which is of no interest here. In that respect, we respectfully ask that Council process and assess the application on the basis of the information provided with the application, taking into account the assessment criteria and scope of its jurisdiction under the MPDP.

*Further to the above, you have stated in section 4.1 (2.2.1 General)(1.1) of the AEE that "the boatshed will not contain a kitchen and therefore is not considered a dwelling". The floor plan demonstrates that there are two wash closets, and two showers that are accessible from the boat lounge. There is also a wet bar with a sink, and kitchen island. This is considered to be a kitchen, and we would deem this building to be self-contained/a dwelling. In accordance with the District Plan, typically one dwelling per rural record of title is permitted in the Rural Zone. Please remove the kitchen area from the floor plan and update the site plan.*

Response: While the AEE referred to the lack of a kitchen, as highlighted by your question we note that the accurate assessment of what is/is not a dwelling, is whether it meets the definition of the same under the MPDP, being as follows:

*"Dwelling means a self contained residential unit designed for or occupied exclusively by one household and includes apartments, semi-detached and detached houses, home units, town houses, boarding houses and community homes accommodating fewer than six people at any one time and similar forms of residential development. A dwelling may also include attached self-contained suites when occupied by a member of the same family, and garages part of the same building which are primarily for storage of the occupants' vehicles, tools and the like."*

Applying the above definition to this proposal, the following points are made:

- This building is not "self-contained", as it does not contain cooking facilities (being a pre-requisite for any building to classify as being self-contained and able to be lived in independently). In that respect, the existence of bathroom facilities, sinks and/or built-in cabinetry (such as an island) are not relevant factors for the assessment of or sufficient to classify a building as 'self-contained'.
- The shed is not "designed for or occupied exclusively by one household". As explained throughout the application, the boat shed is designed for hosting family gatherings and providing short-term overnight stays for family members.
- The boat shed is not "occupied by a member of the same family", as no one will be residing in the boat shed full time.

In short, the relevant assessment for whether the boat shed is a dwelling is as per above. As the analysis showcases, it is clear that neither of the arms of the legal test for a 'dwelling' have been met in this instance. While the shed might be larger and contain more convenience facilities than Council would "typically anticipate" of an accessory building, that does not have a bearing on the assessment of the building against the dwelling definition in the MPDP. In that respect, the applicant as well as the Council is limited to applying the rules in the MPDP, which confirms that the boat shed does not meet the definition of a dwelling.

### Cultural Values Assessment

- 3 *It appears that the applicant has gone to significant effort to engage with the relevant Iwi which is appreciated. However, it appears that an agreement was not met. Due to the concerns raised by the relevant Iwi outlined in the Iwi consultation summary, and through past consenting processes, it cannot be concluded that cultural effects would be less than minor. Please provide a Cultural Values Assessment which is to be carried out by a suitably qualified person, or please provide correspondence from the relevant Iwi demonstrating their written approval for the proposed activity.*

Response: The applicant has engaged an independent iwi consultant (as approved by the relevant iwi groups) to prepare a Cultural Values Assessment and is currently awaiting the receipt of this report. Once it is available, we will forward a copy to Council.

## Earthworks

- 4 Please confirm the volume of earthworks required to carry out the proposed works. This information is required to confirm compliance with the provisions of the District Plan.

Response: As discussed in the original AEE, the proposed boat shed extension will require approximately 267 m<sup>3</sup> of earthworks and the proposed dwelling will require approximately 603 m<sup>3</sup> of earthworks. This is a total of 870 m<sup>3</sup> of earthworks to create a building platform for these two buildings. However, based on the fact that the dwelling (and a very small part of the decking on the boat shed) straddles two zones, only a proportion of this volume requires a consent under the MPDP. In that respect, we **attach** an updated Site Plan which shows the volume of earthworks taking place within the Kaitiaki Zone, being:

- 320 m<sup>3</sup> for the proposed dwelling
- 14.5 m<sup>3</sup> for the boat shed extension

This represents a total of 334.5 m<sup>3</sup> of earthworks requiring consent. With regards to cleanfill, it is noted that the only 'fill' that will be required is sand, which is needed to prepare the building platform pads (as is always the case with building platforms). This type of activity is not generally intended to be captured by 'cleanfill' rules in District Plans, which is distinct from cleanfill activities involving a discharge. Be that as it may and in the interest of completeness, we note that the volume of sand required will be significantly less than 1,000 m<sup>3</sup>, meaning it would be a Permitted Activity insofar as it is located in the Rural Zone, and a Non-Complying Activity with respect to the Kaitiaki Zone. There are no additional environmental effects not already addressed in the AEE that would need assessment for this aspect given that the overall activity status is already NCA. In other words, this aspect (should the cleanfill rule be applied) would not alter the AEE as presented.

## Waikato Regional Plan

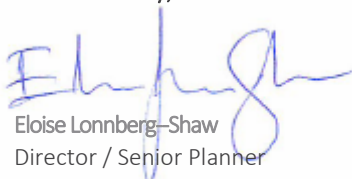
- 5 Please confirm if you have undertaken an assessment of the Waikato Regional Plan and confirm if consent is required or not.

Response: An assessment against the Waikato Regional Plan (WRP) has been undertaken and we can confirm no consent is required from the Waikato Regional Council on the basis that:

- The earthworks are taking place outside of any high risk erosion areas;
- The dwelling and boatshed will be set back far enough from the Lake to not trigger the need for consent under either of the chapters of the WRP; and
- The proposal will not give rise to any discharges to air, water or land.

We trust that the above provides sufficient information to allow all matters except for point 3 (regarding the CVA) to be closed out. We will be in touch again when the CVA has been completed, but look forward to receiving confirmation of the s92 outcome in advance of that.

Yours faithfully,



Eloise Lonnerberg-Shaw  
Director / Senior Planner