

## Before the Independent Hearings Panel At Masterton

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Under the Resource Management Act 1991 (the Act)

In the matter of a request by Welhom Developments Limited to Masterton District Council for a private plan change to the Combined Wairarapa District Plan

Between **Welhom Developments Limited**  
Requestor

And **Waka Kotahi NZ Transport Agency**  
Submitter

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### Legal submissions for Waka Kotahi NZ Transport Agency

Dated 9 March 2023

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## MAY IT PLEASE THE COMMISSIONERS

### 1 Introduction

- 1.1 Welhom Developments Limited (**'Requestor'**) requests a private plan change (**'Plan Change'**) to the Combined Wairarapa District Plan (**'District Plan'**).
- 1.2 The Plan Change would rezone a parcel of land (**'the Site'**) from its Rural (Primary Production) zone to a Residential Zone, and introduce site-specific provisions for the future development of a retirement village within the Site.
- 1.3 The Site will be accessed through the Cashmere Oaks subdivision. Access to the Cashmere Oaks subdivision is directly from State Highway 2 (**'SH2'**). The Cashmere Oaks/ SH2 intersection (**'Intersection'**) is a T-intersection which was approved by Waka Kotahi in 2009 and caveated on a low-density development threshold.<sup>1</sup>
- 1.4 The current speed limit of SH2 at the Intersection is 100km/h. The safe and appropriate speed (**'SaAS'**) for this stretch of SH2 has been assessed to be 80km/h.<sup>2</sup> The speed limit is expected to change to 80km/h.<sup>3</sup>
- 1.5 There is also a recreational trail network on the eastern side of SH2 and a footpath from the Intersection on the western side of SH2 into Masterton.<sup>4</sup> Both paths are well used.<sup>5</sup> Users currently cross SH2 in the 100km/h area to access the trail network and there is no pedestrian crossing infrastructure in place.<sup>6</sup>
- 1.6 Significant pre-notification discussions took place between Waka Kotahi NZ Transport Agency (**'Waka Kotahi'**) and the Requestor, but these were unable to be progressed to the point of agreement.
- 1.7 The Plan Change was publicly notified and Waka Kotahi NZ Transport Agency lodged a submission and further submission in opposition, raising concerns about the Plan Change's implications for the safe and efficient functioning of state highway network.
- 1.8 In short, Waka Kotahi's case is that:

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<sup>1</sup> St Amand EIC, Appendix 1. The 'low density' scenario was an average lot size of 1,200m<sup>2</sup>.

<sup>2</sup> Speight EIC, para 7.7; Connelly EIC, para 13.

<sup>3</sup> Speight EIC, paras 7.7-7.9.

<sup>4</sup> Connelly EIC, paras 110-111;

<sup>5</sup> Connelly EIC, paras 110-111.

<sup>6</sup> Connelly EIC, paras 110-111.

- a The Plan Change will essentially enable creation of a “massive cul-de-sac” which is entirely reliant on the Intersection to access SH2.<sup>7</sup>
- b The Cashmere Oaks Intersection cannot safely accommodate the increased number of vehicle, pedestrian and cyclist movements which the Plan Change will enable:
  - i Just because there are no crashes recorded at the Intersection, does not mean that it will continue to operate safely when accommodating transport movements arising from the completed Cashmere Oaks subdivision together with the Plan Change enabled development. Current vehicle movements are less than 20% of those which would be generated by full development of the Cashmere Oaks and Plan Change sites.
  - ii A reduced speed limit of 80km/hr will not mitigate the adverse safety effects caused by the Plan Change development. Indeed, even if the speed limit was to reduce to 50km/h, deaths and serious injuries are still predicted to increase as a result of the development enabled by the Plan Change.
  - iii While not being the only solution, a roundabout combined with a speed limit of 50km/h and changes to ‘urbanise’ the state highway corridor would reverse the predicted increase in deaths and serious injuries. But Waka Kotahi and Masterton District Council cannot fund this, and the Requestor has refused.
- c The Plan Change provisions are inadequate and will not provide a reasonable future process to reduce traffic safety risk to an acceptable level at the resource consent stage. Which means Waka Kotahi’s ITA recommendation can be ignored by the applicant and consent would have to be granted in that case. Controlled activity status would mean that consent could not be refused, there is currently no ability/ ‘hook’ to notify Waka Kotahi as an affected party. Also, cumulative effects can be difficult to manage if consents are sought in an adhoc and piecemeal way.
- d While Waka Kotahi’s opposition to this Plan Change is *consistent* with its Road to Zero Strategy, the opposition is primarily based on modelled adverse safety effects and the characteristics of this site:

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<sup>7</sup> St Amand EIC, para 8.4.

- i The Plan Change will create a large cul-de-sac, with one road in and out. It is incorrect to compare this Plan Change proposal with more general intensification or urbanisation initiatives;
- ii Vehicles turning right towards Masterton will have to cross two lanes of traffic at speeds of up to 100km/h. This right turn will be the predominant traffic movement. In comparison, vehicles turning right into the Arvida site on the opposite side of the state highway only need to cross one lane of traffic. This right turn movement is important because T-bone (side impact) crashes which occur during right turning movements are more likely to result in deaths and serious injuries; and
- iii The Cashmere Oaks and Plan Change sites have no shops, schools or other conveniences. There are limited and unsafe pedestrian and cyclist facilities connecting the site to Masterton or the recreational trails across the state highway. The site lacks both integration and connectivity.

1.9 Overall, Waka Kotahi considers the traffic safety effects of the Plan Change (being a 'more than minor' 56-67% increase in death and serious injury crashes) need to be mitigated to an acceptable level.

## **2 Traffic safety effects**

2.1 Waka Kotahi's primary concern with the Plan Change is adverse traffic safety effects. The Plan Change will essentially enable creation of a "massive cul-de-sac" which only relies on the Intersection to access SH2.<sup>8</sup>

### *Existing environment*

2.2 In assessing the effects of development enabled by the Plan Change it is necessary to consider effects on the surrounding environment as it might be modified in the future (often called the 'existing environment').<sup>9</sup>

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<sup>8</sup> St Amand EIC, para 8.4.

<sup>9</sup> This is in the sense of the Court of Appeal's finding in *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 (CA) at para [84], that "the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented."

- 2.3 The 'existing environment' is considered in the evidence of **Mr Connelly**,<sup>10</sup> **Mr Landon-Lane**<sup>11</sup> and **Ms St Amand**.<sup>12</sup>
- 2.4 The Cashmere Oaks subdivision is planned to contain an overall total of 161 residential units.<sup>13</sup> As at 13 February 2023, 70 units were occupied with a further 91 to be constructed.<sup>14</sup> These 91 units also form part of the 'existing environment' as they are authorised (by subdivision consents) and likely to be implemented as they are shown in a concept plan in the Plan Change ITA.<sup>15</sup>
- 2.5 The Requestor does not appear to dispute that these units form part of the existing environment. The Requestor's ITA and evidence applies this existing environment when modelling the performance of the intersection with the different Plan Change scenarios,<sup>16</sup> as does **Mr Landon-Lane**.<sup>17</sup>

*Traffic safety evidence*

- 2.6 Waka Kotahi's evidence is that the receiving road environment, including the Intersection, is not designed or developed to safely cater for the traffic likely to be generated by development that the Plan Change will enable.<sup>18</sup> This will cause adverse traffic safety effects for vehicles using the Intersection and active transport users crossing SH2. In particular:
- a There will likely be an increase in vehicle trip generation of between 158% and 124%<sup>19</sup> (compared to the trips predicted by the consented Cashmere Oaks subdivision when fully developed). This is an increase of between 493% and 421% on the current vehicle movements;
  - b The increased number of turning movements and vulnerable road users that would use the Intersection with increased development is likely to result in crashes resulting in deaths and serious injuries (DSI), an adverse effect with high consequences;<sup>20</sup>
  - c The modelling predicts that there will be 1 DSI every 17-19 years<sup>21</sup> if the development enabled by the Plan Change goes ahead, compared to every

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<sup>10</sup> Connelly EIC, para 61.

<sup>11</sup> Landon-Lane EIC, para 22(c).

<sup>12</sup> St Amand EIC, para 6.6.

<sup>13</sup> Plan Change Request, Appendix 6 ITA, section 5.1.

<sup>14</sup> Connelly EIC, para 48.

<sup>15</sup> Plan Change Request, Appendix 6 ITA, section 5.1;

<sup>16</sup> Plan Change Request, Appendix 6 ITA, section 5.1 and 8.1; Georgeson EIC, para 5.4.

<sup>17</sup> Landon-Lane EIC, para 22(c).

<sup>18</sup> Connelly EIC, para 10.

<sup>19</sup> Landon-Lane EIC, Table 1. In the residential scenario and mixed scenario, respectively.

<sup>20</sup> Connelly EIC, para 10.

<sup>21</sup> Landon-Lane EIC, para 15(b),(c). In the residential scenario and mixed scenario, respectively.

29 years for the existing environment.<sup>22</sup> This represents a 'more than minor' 56-67% increase;<sup>23</sup>

- d The predominant movement out of the Intersection will be a right-hand turn, crossing over two lanes of traffic, which is the manoeuvre that carries the highest DSI risk.<sup>24</sup> This can be contrasted with the right-turn bay which accesses the Arvida village on SH2 which only has to cross one lane of traffic;
- e Any pedestrian or cyclist crossing SH2 at the Intersection will be at risk of death or serious injury.<sup>25</sup>

2.7 Waka Kotahi and the Requestor's traffic experts generally agree on the above traffic safety effects.<sup>26</sup>

### **3 Approach to transport safety effects mitigation**

#### *Waka Kotahi's mitigation approach*

- 3.1 The Requestor suggests that Waka Kotahi's concerns are driven by its Road to Zero Strategy and has no resource management basis.<sup>27</sup> Waka Kotahi disagrees.
- 3.2 Waka Kotahi has used an 'RMA approach' in concluding that the transport safety effects are 'unacceptable' and there needs to be a fundamental review of the Intersection.<sup>28</sup>
- 3.3 As outlined above, Waka Kotahi's witnesses have assessed the traffic safety effects and consider them to be "more than minor".<sup>29</sup> The Requestor submits a DSI of 1.25 does not require fundamental intersection redesign nor does it provide a basis for declining this Plan Change. With respect, that is not an RMA approach. Using data Ms Muirson agrees with, the figure of 1.25 should not be viewed on its own, but rather as a 69% increase on the 'existing environment' number of 0.74 DSI.<sup>30</sup>

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<sup>22</sup> Landon-Lane EIC, para 15(a).

<sup>23</sup> Landon-Lane EIC, para 15(a), 46, 52, 67.

<sup>24</sup> Connelly EIC, para 86.

<sup>25</sup> Connelly EIC, para 14, 94.

<sup>26</sup>; Georgeson EIC, para 14.5; Muirson EIC, paras 5.15-5.16. There is some disagreement about vehicle trip generation rates but this is relatively inconsequential. Mr Georgeson also disagrees that active transport users will regularly cross over SH2 at the Intersection, para 10.5.

<sup>27</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at paras 5.2, 5.11.

<sup>28</sup> Connelly EIC, para 92.

<sup>29</sup> Landon-Lane EIC, para 67.

<sup>30</sup> Muirson EIC, para 5.15.

- 3.4 Further, the evidence of **Mr Landon-Lane** is that, by 2063, the expected DSI outcome will be 56-67% higher than the 'existing environment' as a result of the Plan Change (depending on the Plan Change scenario).<sup>31</sup> **Mr Landon-Lane** considers this to be a 'more than minor' increase.<sup>32</sup>
- 3.5 **Mr Connelly** considers the mitigation measures outlined by Ms Muirson do not reduce risk to an anywhere near an acceptable level as they do not address the speed of SH2 users.<sup>33</sup>
- 3.6 Instead, to mitigate the 'more than minor' increase in DSI crashes, **Mr Connelly** considers a fundamental review of the Intersection is needed.<sup>34</sup> While **Mr Connelly** suggests a roundabout may not be the only solution,<sup>35</sup> the modelling undertaken by **Mr Landon-Lane** predicts that installing a roundabout will save 1 DSI by 2053 or 2057 (depending on the development scenario).<sup>36</sup>
- 3.7 The modelling results also indicate that installing a roundabout will lower DSI crashes compared to the current 'existing environment' (even with no Plan Change).<sup>37</sup> The Requestor expresses concerns that "Summerset is not required to make improvements to road safety as part of this plan change".<sup>38</sup>
- 3.8 Following an RMA approach, the Requestor is simply required to adequately mitigate the effects of its Plan Change. In the case of a roundabout, the reality is that it is not possible to build a roundabout that only lowers DSI crashes such that the Plan Change is having a negligible effect, because it is an 'all or nothing' approach, i.e. roundabout or no roundabout. A fundamental review of the Intersection, as suggested by **Mr Connelly**, could address these issues and consider what is required to mitigate risk to an 'acceptable level'.

*The Requestor's mitigation approach*

- 3.9 There is disagreement between the experts on the appropriate form of mitigation.
- 3.10 The Requestor's safety expert, Ms Muirson considers a 'safety management' approach is the most appropriate form of mitigation and outlines various examples of these measures in her evidence.<sup>39</sup>

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<sup>31</sup> Landon-Lane EIC, paras 46 and 52.

<sup>32</sup> Landon-Lane EIC, para 14.

<sup>33</sup> Connelly EIC, paras 108-109.

<sup>34</sup> Connelly EIC, para 92.

<sup>35</sup> Connelly EIC, para 5.6.

<sup>36</sup> Landon-Lane EIC, para 17.

<sup>37</sup> Landon-Lane EIC, para 49.

<sup>38</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at paras 5.14.

<sup>39</sup> Muirson EIC, paras 3.5 and 3.9.

- 3.11 Ms Muirson’s conclusion on mitigation is based on her view that the level of risk for the Intersection does not reach the level where ‘safety transformation’ would apply. Ms Muirson’s assessment of risk is based on crash history and past performance of the Intersection. **Mr Connelly** considers this is an “entirely reactive approach to road safety”.<sup>40</sup>
- 3.12 In recommending mitigation measures, Ms Muirson uses the following approach:<sup>41</sup>
- a Assessing the risk of the Intersection based on the crash history and current traffic volume; and
  - b Based on the risk, suggesting a ‘safety management’ approach would be the appropriate response, rather than ‘safety transformation’.
- 3.13 Ms Muirson’s approach is flawed from an RMA perspective as it does not properly consider the existing environment which would be affected as well as the level of effects. The approach considers safety effects (being past crash history) based on physical development and actual crash data rather than the proper approach of also considering the effects of consented development and the Plan Change development.<sup>42</sup> The crash history used by Ms Muirson was for a period of time where there were less than 70 lots in Cashmere Oaks, compared to the 161 consented lots which form the ‘existing environment’.<sup>43</sup> The Requestor also considers that Ms Muirson’s approach of only assessing past crash history “indicates” that the current infrastructure can continue to operate within acceptable levels as the Site is developed.<sup>44</sup>
- 3.14 This approach can be contrasted to the modelling undertaken by **Mr Landon-Lane**, which supports the view of **Mr Connelly** in considering a fundamental review of the Intersection needs to be undertaken.<sup>45</sup> **Mr Landon-Lane**:
- a Assesses the effects of the Plan Change development on DSIs;
  - b Assesses the effects against the correct ‘existing environment’ of 161 lots in the Cashmere Oaks Subdivision.<sup>46</sup>
- 3.15 In addition, **Mr Connelly** considers Ms Muirson’s approach:

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<sup>40</sup> Connelly EIC, para 84.

<sup>41</sup> Muirson EIC, paras 3.1-3.5.

<sup>42</sup> Muirson EIC, paras 3.1-3.5.

<sup>43</sup> Muirson EIC, para 3.4.

<sup>44</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 5.4(b).

<sup>45</sup> Connelly EIC, para 92.

<sup>46</sup> Landon-Lane EIC, para 22(c).



- a Accepts that some death and serious injuries could occur and is acceptable, which does not address the potentially significant adverse effects;<sup>47</sup>
  - b Uses a reactive tool which aims to address existing DSIs (rather than future DSIs) to justify not mitigating the safety risk that will be created by the Plan Change;<sup>48</sup> and
  - c Uses an inappropriate tool to assess whether the Intersection needs to be upgraded to cater for development enabled by the Plan Change.<sup>49</sup>
- 3.16 Waka Kotahi submits that the Commissioners should prefer Waka Kotahi’s traffic and safety evidence on whether the proposed mitigation is appropriate. The Requestor’s safety assessment is flawed from an RMA perspective and does not apply the existing environment correctly, for the reasons set out above.

*Mitigating effects at the resource consent stage*

- 3.17 In relation to the mitigation of traffic safety effects, the Requestor suggests that all potential traffic safety effects can be appropriately managed through the resource consent process.<sup>50</sup> As part of that, the Requestor suggests:
- a Council has discretion to address the safety effects as part of a discretionary subdivision rule;<sup>51</sup>
  - b The existing District Plan financial contributions provisions could be used to collect contributions to upgrade the Intersection;<sup>52</sup> and
  - c A crossing for pedestrians and cyclists could be installed near the Intersection “when the SH2 speed limit is lowered”, and/or within the existing 50km/h zone to the south.<sup>53</sup>
- 3.18 Waka Kotahi disagrees.
- 3.19 In response to the Requestor’s submission that appropriate management of effects will be “carefully considered” at the resource consent stage,<sup>54</sup> Waka Kotahi submits that the Plan Change provisions are simply inadequate to allow

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<sup>47</sup> Connelly EIC, para 91.

<sup>48</sup> Connelly EIC, para 9.

<sup>49</sup> Connelly EIC, para 9.

<sup>50</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 1.5; Lewandowski EIC, para 5.12.

<sup>51</sup> Lewandowski EIC, para 8.26.

<sup>52</sup> Lewandowski EIC, para 9.53.

<sup>53</sup> Georgeson EIC, para 10.4.

<sup>54</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 2.4.

that. They do not allow for traffic safety effects to be adequately addressed at the resource consent stage, as:

- a The controlled activity status incorrectly indicates that significant resource management issues have already been addressed and they align with Part 2 RMA.<sup>55</sup> Waka Kotahi's evidence is that the Plan Change does not adequately address the traffic safety effects;<sup>56</sup>
- b There is no ability to decline resource consent if the traffic safety effects are not satisfactorily addressed;
- c The District Plan rules<sup>57</sup> do not contain any scope for wider transport effects or traffic safety effects to be assessed at the resource consent stage (because the relevant rules have a more permissive activity status than discretionary and do not include 'wider transport' effects in their matters of control or discretion),<sup>58</sup> in particular:
  - i While the amended retirement village land use rule allows traffic safety effects at the Intersection to be considered as a matter of control, any resource consent condition which requires the intersection to be upgraded (relying on this matter of control) may be challenged as unreasonable. Such a condition could frustrate the consent, as it would be dependent on Waka Kotahi to implement.
  - ii The evidence of **Ms St Amand** discusses how the discretionary subdivision rule<sup>59</sup> does not apply to the Plan Change Site as it does not have physical or legal access to SH2.<sup>60</sup> **Ms St Amand** has also not seen the discretionary rule applied in practice in that way;<sup>61</sup>
- d Waka Kotahi understands the Requestor considers it would be impractical for a resource consent applicant not to notify Waka Kotahi. Waka Kotahi agrees. However, the reality is that the Requestor cannot control future applicants' decisions. In addition, it is too uncertain whether there is scope for Waka Kotahi to be 'limited notified' as it would not be an 'affected person'<sup>62</sup> and the Council may not consider 'special circumstances' exist to justify notification of Waka Kotahi (in the context of a controlled rule that

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<sup>55</sup> St Amand EIC, paras 10.4-10.5.

<sup>56</sup> Connelly EIC, para 109.

<sup>57</sup> As proposed to be amended by the Plan Change.

<sup>58</sup> St Amand EIC, section 9.

<sup>59</sup> Rule 20.1.5(j).

<sup>60</sup> St Amand EIC, paras 5.2, 9.15.

<sup>61</sup> St Amand EIC, para 9.16.

<sup>62</sup> RMA, section 95B(8).

assumes resource management issues have been addressed).<sup>63</sup> As the Plan Change provisions are currently drafted, a resource consent applicant will have no obligation to notify or consult Waka Kotahi. This means:

- i Waka Kotahi will not have the right to participate in any discussion of whether the Intersection should be upgraded, despite being the road controlling authority;<sup>64</sup> and
  - ii any works within a state highway require prior approval from Waka Kotahi under the Government Rounding Powers Act 1979. If Waka Kotahi isn't involved in the resource consent process, then both sets of conditions may not be consistent with each other;<sup>65</sup>
- e There is a significant lack of detail in the structure plan provided as part of the Plan Change;<sup>66</sup> and
- f Traffic safety effects are proposed to be mitigated as recommended by the Requestor's ITA, but this is currently inadequate.<sup>67</sup> In addition, the involvement of Waka Kotahi in the ITA is limited by the fact there is no ability to decline consent.

3.20 Waka Kotahi submits that the Commissioners *must* assess whether effects will be adequately mitigated as part of this Plan Change, rather than leaving this consideration to the resource consent stage. This is because the Commissioners must:

- a Assess whether the Plan Change is *in accordance* with the Council's function to *control* effects;<sup>68</sup>
- b Assess whether the Plan Change is *in accordance* with the purpose of the RMA to "enable people and communities to provide for their social, economic .. well-being and for their health and safety while ... avoiding, remedying, or mitigating any adverse effects of activities on the environment;<sup>69</sup>
- c Assess whether the Plan Change is *in accordance with the obligation to have particular regard to* the examination in the section 32 report of whether

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<sup>63</sup> RMA, section 95B(10).

<sup>64</sup> St Amand EIC, para 10.12.

<sup>65</sup> St Amand EIC, para 10.13.

<sup>66</sup> St Amand EIC, para 4.4.

<sup>67</sup> St Amand EIC, para 10.14.

<sup>68</sup> RMA, sections 31(1)(b), 74(1)(a).

<sup>69</sup> RMA, section 5(2)(c), section 74(1)(b).

the Plan Change provisions *are the most appropriate way to achieve the objective by assessing whether the provisions are effective in achieving the objective to provide for urban expansion where such growth does not adversely affect the safe use and development of land, roads and infrastructure;*<sup>70</sup>

- d Assess whether the WCDP (as proposed to be amended by the Plan Change) will give effect to the Wellington RPS policies, and in particular:
  - i Whether the Plan Change will increase pressure on infrastructure beyond existing capacity;<sup>71</sup>
  - ii Whether traffic generated by the Plan Change can be accommodated within the existing transport network and the impacts on the safety of the network;<sup>72</sup>
  - iii Whether new or upgrades to existing transport network infrastructure have been appropriately recognised and provided for;<sup>73</sup> and
  - iv Whether the development is located and sequenced to make safe use of existing infrastructure capacity.<sup>74</sup>

3.21 The evidence of **Ms St Amand** is that:

- a The Plan Change does not adequately control or mitigate effects on people and communities' well-being, and health and safety;<sup>75</sup>
- b The Plan Change does not adequately control or mitigate effects on infrastructure that is significant to the region; and
- c The Plan Change is inconsistent with Part 2 RMA, Objective SLD4 of the WCDP and the relevant policies of the Wellington RPS.<sup>76</sup>

3.22 In addition, as set out above, the current plan provisions, and the proposed plan provisions do not allow for transport safety effects to be adequately addressed at the resource consent stage.

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<sup>70</sup> RMA, section 32(1)(b) and (3), 74(1)(e) WCDP 18.3.10, Objective SLD4.

<sup>71</sup> RPS, policy 56(e).

<sup>72</sup> RPS, Policy 57(a).

<sup>73</sup> RPS, Policy 57(e).

<sup>74</sup> RPS, Policy 58(a).

<sup>75</sup> St Amand EIC, paras 4.5, 13.1.

<sup>76</sup> St Amand EIC, paras 12.6-12.7, 13.1.

*Financial contributions*

- 3.23 It is also **Ms St Amand's** evidence is that applying the financial contributions provisions of the WCDP requires that:<sup>77</sup>
- i the road controlling authorities have budgets in place to contribute to the upgrade;
  - ii there be confirmation of what upgrades are required in order to apportion contribution costs; and
  - iii the upgrades be identified on a structure plan.
- 3.24 Applying those factors to the Plan Change, **Ms St Amand** considers that the financial contributions provisions will not help to facilitate an infrastructure upgrade at the Intersection, as:<sup>78</sup>
- a There is no business case or funding available for Waka Kotahi in relation to an upgrade at the Intersection;
  - b The contributions would only go to the Council and not Waka Kotahi;
  - c There is no confirmation of what upgrades are required and there is no structure plan which sets out the details of an upgrade.
- 3.25 Waka Kotahi also submits that a crossing for active transport users cannot be relied upon as mitigation of effects as:
- a There are no current plans to install a crossing in this location and/or within the existing 50km/h zone to the south;<sup>79</sup> and
  - b Both the Requestor and Waka Kotahi agree that a crossing is not appropriate or safe in this location given the current speed environment.<sup>80</sup>

*Speed limit change*

- 3.26 The Requestor considers:<sup>81</sup>

Any reduction in the speed limit for this stretch of State Highway 2 will have safety benefits, but that is a matter for Waka Kotahi.

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<sup>77</sup> St Amand EIC, paras 12.31-12.37.

<sup>78</sup> St Amand EIC, paras 12.31-12.37.

<sup>79</sup> Speight EIC, para 1.11.

<sup>80</sup> Georgeson EIC, para 10.4; Connelly EIC, para 94.

<sup>81</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 5.5.

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Critically, it is neither appropriate, nor necessary, for a speed limit change to be required to be implemented on State Highway 2 in order to accommodate future development of the Site.

3.27 Waka Kotahi's submission is that this is not a case of 'the chicken or the egg'. As discussed in the evidence of **Ms Speight** and **Mr Connelly**, Waka Kotahi cannot change the speed limit until the infrastructure changes are made on the ground to make the road 'look and feel' 50km/h.<sup>82</sup> Despite increased housing in the vicinity of the Intersection, the road still has a 'rural appearance'.<sup>83</sup> The evidence of **Ms Speight** is that there is an opportunity for the Requestor to work with Waka Kotahi to implement an appropriate infrastructure upgrade and align this with the next round of speed management review.<sup>84</sup> That opportunity does not work in the context of a resource consent application as the resource consent application is a separate process to, and does not align with, Waka Kotahi's statutory processes.<sup>85</sup>

## 4 District plan review

4.1 Waka Kotahi is not anti-housing and considers the Plan Change Site has certain qualities which may make it an appropriate location for Masterton's urban expansion in the future.<sup>86</sup> However, the assessment of the Site as an appropriate location should be determined as part of the upcoming district plan review.<sup>87</sup>

4.2 While accepting that the Commissioners need to assess the Plan Change on its merits, Waka Kotahi submits the district plan review is the appropriate place to consider the Plan Change as the review can:

- a Assess whether the Site is an appropriate location for urban expansion, taking into account Masterton's overall housing needs;<sup>88</sup>
- b Allow for an assessment of integrated transport options and what upgrades would be appropriate overall;<sup>89</sup>

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<sup>82</sup> Speight EIC, para 1.10; Connelly EIC, para 15.

<sup>83</sup> Connelly EIC, para 13.

<sup>84</sup> Speight EIC, paras 7.18-7.20.

<sup>85</sup> Speight EIC, para 1.10.

<sup>86</sup> St Amand EIC, para 4.9.

<sup>87</sup> St Amand EIC, para 4.9.

<sup>88</sup> St Amand EIC, para 4.9.

<sup>89</sup> St Amand EIC, para 4.8.

- c Align with Waka Kotahi business case and speed management approaches so that Waka Kotahi can fund any required upgrades and/or change the speed limits;<sup>90</sup>
  - d Allow for district wide decisions to be made which align with the structure of Waka Kotahi's functions.<sup>91</sup>
- 4.3 Waka Kotahi also notes the Commissioners' comments in the Arvida resource consent decision that "the time to consider whether the land should be developed regardless of its use was when the District Plan was reviewed".<sup>92</sup>

## 5 Statutory framework

- 5.1 Sections 11 and 12 of **Ms St Amand's** evidence thoroughly consider the relevant planning documents. She concludes that:
- a The Plan Change is inconsistent with Objective 22, Policies 57 and 58, Objective 10, and Policies 7, 8 and 39 of the Wellington Regional Policy Statement;<sup>93</sup>
  - b The Plan Change is contrary to a number of objectives and policies<sup>94</sup> in the WCDP;<sup>95</sup> and
  - c The Plan Change is inconsistent with Objective 2, Objective 6, Policy 1(c) and Policy 5(a) and (b) of the NPS-UD.<sup>96</sup>

### GPS

- 5.2 The Requestor suggests that Waka Kotahi's concerns are driven by its Road to Zero Strategy and that this "does not have direct statutory weight".<sup>97</sup> The Government Policy Statement on Land Transport ('**GPS**') is to be delivered through the implementation of New Zealand's Road to Zero.<sup>98</sup> Waka Kotahi's approach to this Plan Change aligns with both documents.

<sup>90</sup> St Amand EIC, paras 11.5-11.7.

<sup>91</sup> Speight EIC, para 6.8.

<sup>92</sup> Decision of the Hearing Commissioners, 1 March 2019, at para [46].

<sup>93</sup> St Amand EIC, para 12.6.

<sup>94</sup> Transport chapter - 17.3.1 Objective TT1, 17.3.2 TT1 Policies (a), (b), (d), (e) and (f), and implementation methods 17.3.10(a), (f), (g), (i) and (k); Subdivision, Land Development & Urban Growth chapter - 18.3.1 Objective SLD1, and SLD1 policy (e), 18.3.10 Objective SLD4 (a), (b) and (c) and 18.3.16(c), (h), (i) and (j); Financial Contributions chapter.

<sup>95</sup> St Amand EIC, para 12.7.

<sup>96</sup> St Amand EIC, paras 11.3-11.14.

<sup>97</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at paras 5.2, 5.11.

<sup>98</sup> Connelly EIC, para 80.

- 5.3 Waka Kotahi submits that the GPS is a ‘strategy’ prepared under another Act (being the Land Transport Management Act 2003), and so can be had regard to under section 74(2)(b)(i).
- 5.4 The Environment Court has previously found that government strategies prepared under the Land Transport Management Act 2003, including the Government Policy Statement on Land Transport (‘**GPS**’) should be considered in relation to land use developments which affect state highways.<sup>99</sup> While that was in the context of an ‘other matter’ in a resource consent application, the Environment Court referred to the GPS as a ‘strategy prepared under the Land Transport Management Act 2003’.<sup>100</sup> The Commissioners can therefore have regard to the GPS under section 74(2)(b)(i) of the RMA.
- 5.5 **Ms Speight’s** evidence explains the Government’s priorities, expressed through the GPS, and introduces the Safe System approach.<sup>101</sup> **Ms Speight** and **Mr Connelly** conclude that the Plan Change will not align with the Safe System approach and the GPS, because of its adverse traffic safety effects and predicted DSIs.<sup>102</sup>
- 5.6 **Mr Connelly** considers that the Requestor’s suggested ‘safety management’ traffic mitigation does not align with the Safe System approach as it:<sup>103</sup>
- a Does not address the potentially significant adverse effects from development enabled by the Plan Change; and
  - b Accepts that some death and serious injuries could occur and are acceptable.
- 5.7 Instead, **Mr Connelly** concludes that a fundamental review of the Intersection and how it will integrate with planned growth needs to be undertaken, to enable the state highway to be designed and operated safely and to avoid the risk of DSIs.<sup>104</sup>

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<sup>99</sup> *New Zealand Transport Agency v Marlborough District Council* [2017] NZEnvC 174 at [192] – [195] and [205]; *Prime Property Group Ltd v Wellington City Council* [2021] NZEnvC 169 at [12].

<sup>100</sup> *New Zealand Transport Agency v Marlborough District Council* [2017] NZEnvC 174 at [192].

<sup>101</sup> Speight EIC, paras 5.2-5.10, 5.13-5.22.

<sup>102</sup> Speight EIC, paras 5.19 and 5.22; Connelly EIC, paras 86-92.

<sup>103</sup> Connelly EIC, para 6.6.

<sup>104</sup> Connelly EIC, para 91.



*MUGS and the draft District Plan*

- 5.8 The Requestor considers the Masterton Urban Growth Strategy ('**MUGS**') and draft WCDP are relevant considerations when assessing the Plan Change, and provide "useful insight" into future urban development in the area:<sup>105</sup>
- 5.9 Waka Kotahi considers these documents do not provide a useful or helpful insight as:
- a They have no statutory weight and do not fall within any of the categories of documents listed in section 74,<sup>106</sup> in particular, the MUGS:
    - i is not a 'council adopted' strategy;
    - ii It was not prepared under the LGA as it was prepared by Boffa Miskell, not the council,
  - b If the Commissioners do consider the documents are relevant as a strategy prepared under another Act, or because it 'cannot be ignored', this is a weaker obligation than the other *must* obligations.<sup>107</sup> It is also weaker than the 'shall have regard to' category for the UPS. **Ms St Amand** considers the Plan Change is inconsistent with various documents that the Commissioners *must* consider (such as the RPS and NPS-UD);<sup>108</sup>
  - c Both documents have not robustly considered whether the Site is an appropriate place for urban expansion, including the readiness of the transport environment, as:
    - i The MUGS sets out 'current development opportunities' (which includes the Arvida site before it had received resource consent) but only shows the Site as a *potential* future urban expansion area, and notes that it would require rezoning;<sup>109</sup>
    - ii The MUGS has also not been 'adopted' by Council;

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<sup>105</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at paras 10.1-10.3.

<sup>106</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 10.1; St Amand EIC, para 6.8.

<sup>107</sup> As the Hearings Panel will be aware, the statutory framework in section 74 and 75 contains three different obligations in respect of the relevant statutory documents, being matters:

- That Council "must ... change its district plan in accordance with"; 74(1).

- That a District Plan "must give effect to"; 75(3) and

- That Council "shall have regard to". 74(2).

<sup>108</sup> St Amand EIC, paras 11.3-11.14, 12.6-12.7.

<sup>109</sup> Masterton Urban Growth Strategy, page 100, Map 5.

iii The draft WCDP has undergone public consultation but the results of that are unknown;

5.10 The Plan Change Site is outside of the Future Development Area ('FDA') in the WCDP, and, as far as Waka Kotahi is aware, always has been.<sup>110</sup> The Plan Change Site is not just a 'logical expansion' of the FDA that is to be considered "within the context" of the current transport network.<sup>111</sup> It is a significant step-change that will more than double the vehicle movements using the Intersection.<sup>112</sup> The preliminary nature of these documents also demonstrates that the appropriateness of the Site and the Intersection for further urban development is a matter to be more properly assessed as part of the district plan review.

## 6 Part 2 RMA

6.1 Part 2 of the RMA sets out the purpose and principles that guide the RMA.

6.2 The role that Part 2 plays in plan changes and plan reviews was articulated by the Supreme Court in the *King Salmon*<sup>113</sup> decision:

- a Absent invalidity, incomplete coverage or uncertainty of meaning in the relevant higher order statutory planning documents there is no need to refer back to Part 2 of the RMA when determining a plan change; and
- b If there is conflict or tension in the higher order planning document between provisions that pull in opposite and competing directions, the provisions expressed in more directive terms carry more weight than those expressed in less directive terms.

6.3 No witness suggests there are any gaps in the plans and there is no suggestion that planning documents have not been competently prepared. Nonetheless, **Ms St Amand** comments that the Plan Change does not achieve the sustainable management purpose of the RMA because it does not manage the use, development and protection of State Highway 2 in a manner that provides for the

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<sup>110</sup> Including in 2009 when Waka Kotahi caveated its approval on the level of development being within the FDA and having an average lot size of 1200m<sup>2</sup>. The appendix to Ms St Amand's evidence was not from the WCDP, and it does not appear to have been formally adopted by the Council.

<sup>111</sup> Legal Submissions of Welhom Developments Limited, dated 7 March 2023 at para 5.3.

<sup>112</sup> St Amand EIC, para 11.25.

<sup>113</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

health and safety of people and communities and avoids, remedies or mitigates the adverse effects on users of the state highway.<sup>114</sup>

## **7 Relief sought**

7.1 For the reasons set out in its submission, evidence and above, Waka Kotahi opposes the Plan Change and seeks that it be declined.

## **8 Waka Kotahi witnesses**

8.1 Waka Kotahi has lodged the evidence of four witnesses in support of its submission:

- a **Emma Speight** – Corporate;
- b **Richard Landon-Lane** –Safety;
- c **Glenn Connelly** – Safety and Transportation; and
- d **Kathryn St Amand** –Planning.

**Dated 9 March 2023**



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Nicky McIndoe/ Liam Bullen

Counsel for Waka Kotahi NZ Transport Agency

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<sup>114</sup> St Amand EIC, para 13.1.