

WELHOM DEVELOPMENTS LIMITED PRIVATE PLAN CHANGE HEARING

MASTERTON DISTRICT COUNCIL & WAKA KOTAHI (NZ TRANSPORT AGENCY)

COMMENTS ON WELHOM SUPPLEMENTARY SUBMISSIONS

AND DISTRICT PLAN CHANGES POST HEARING

INTRODUCTION

1. This document incorporates the comments of Masterton District Council and Waka Kotahi (NZ Transport Agency) that were requested by the Hearing Panel in points 6 and 8 of Hearing Minute 5 dated 28th April 2023.

COMMENTS OF LEGAL COUNSEL FOR MASTERTON DISTRICT COUNCIL (POINT 8)

2. Legal Counsel for Masterton District Council, Rachel Conner of Hazelton Law, has reviewed the Balmoral decision and Welhom's legal submission and agrees with the conclusions reached. The key points are that the proposal:
 - Meets the criteria in clause 3.5(7)(a); and
 - does not fall within the clause 3.5(7)(b) exemptions.
3. This means that there is interim protection under the NPS-HPL until Regional Plan mapping is completed.
4. The proposal then falls to be considered under clause 3.6(4) and clause 3.6(5).
5. Clause 3.7 does not apply as it relates to rezoning to "rural lifestyle", so clause 3.10 is irrelevant.

COMMENTS OF MASTERTON DISTRICT COUNCIL AND WAKA KOTAHI (POINT 6)

Outline Development Plan

Council comments:

6. The Outline Development Plan does not appear to have been improved or enhanced greatly.
7. Council requests that the '1.5m-2m Planted Area' be extended along the eastern and southern boundaries of the Plan Change Site for the reasons discussed by Ms McArthur in Council's section 42A Addendum and at the reconvened hearing.
8. Council also requests that the 'Potential Future Road Connection' to the north of the Plan Change Site be removed from the Outline Development Plan because the Site has neither legal nor physical access through the neighbouring land, which is private property. Including this notation may lead to unrealistic expectations that an alternate connection to State Highway 2 is likely.

Waka Kotahi comments:

9. The 'potential future road connection' should be removed as it is fanciful and may unrealistically influence future subdivision layout and design. There is no land to the north included within a 'future' residential zone under the Draft District Plan or any other non-statutory document that has been referred to.
10. The Outline Development Plan does not improve information on the way in which roading, cycling and pedestrian pathway connections between the plan change site and transport network are intended to be made. It was expected this would be updated with improved information for all these transport connections, which in turn influences choices people make as they travel through the transport network including when they connect with the state highway.

Proposed amendment to rule 5.5.4(a) & activity status

Council comments:

11. The amendment to rule 5.5.4(a) proposed by Welhom isn't logical and doesn't follow the structure of the Operative Wairarapa Combined District Plan.
12. Under this amendment if a restricted discretionary activity (the construction and operation of a retirement village within the Plan Change Site) does not comply with any of the relevant standards, it defaults to restricted discretionary activity status (i.e., no change in activity status).
13. It is usual practice under most district plans, including the Operative Wairarapa Combined District Plan, for an activity to default to a higher (more restrictive) activity status when that activity does not comply with all relevant standards. For example, an activity that is provided for as a restricted discretionary activity but does not meet all relevant standards would default to discretionary (unrestricted) or non-complying activity status.
14. In the example of the Orchards Retirement Village Character Area (under the Operative Wairarapa Combined District Plan) a retirement village is provided for as a controlled activity¹, but if the relevant standards aren't met it becomes a non-complying activity².
15. Council considers that where a retirement village proposal for the Plan Change Site doesn't meet all relevant standards (including permitted, controlled, and restricted discretionary activity standards) it should default to discretionary (unrestricted) activity status.
16. To avoid any confusion about whether the existing discretionary activity rule would apply to such a proposal, Council requests that a new discretionary activity rule be added, as follows:

"5.5.5(b) The construction and operation of a retirement village within the land identified as Residential/Retirement Village Development' at Appendix 16 that does not meet one or more of the standards for permitted, controlled or restricted discretionary activities."

¹ Rule 5.5.3(c), pg 5-19, Operative Wairarapa Combined District Plan

² Rule 5.5.6(b), pg 5-21, Operative Wairarapa Combined District Plan

Waka Kotahi comments:

17. Waka Kotahi requests that the Hearing Panel reject Welhom's proposed changes to Rule 5.5.4(a) as it introduces a confusing element to the plan. It is not in keeping with plan structure and does not follow the same structure as rules pertaining to The Orchards plan change area. Once an activity cannot meet standards and terms for an activity status designed to assess and manage the effects of that activity, it is then logical the activity should be assessed against a different activity status.

Restricted discretionary activity rule 5.5.4(b) & matters of discretion

Council comments:

18. Council is generally comfortable with new restricted discretionary activity rule 5.5.4(b) and the matters of discretion under this rule as proposed by Welhom, except for the following four requested amendments.
19. Council requests that matter of discretion 5.5.4(b)(iv)(d) be amended to read:

“(d) The provision of safe pedestrian and cycle access and connections to existing transport corridors, including State Highway 2, and within the site”

20. Council requests that matter of discretion 5.5.4(b)(iv) be amended to insert a new matter of discretion 5.5.4(b)(iv)(f) that reads:

“(f) Timing for construction and completion of interventions and changes to the Cashmere Oaks Drive and State Highway 2 intersection and its functional area.”

Council considers a matter of discretion regarding timing of construction of any mitigation relative to the development/construction of the Site to be necessary to ensure any mitigation is constructed prior to any stage of the development becoming operational.

21. Council requests that the matters of discretion be amended to insert a new matter of discretion 5.5.4(b)(viii) that reads:

“(viii) Staging of development.”

This additional matter of discretion is considered necessary to address partial or staged development of the site through multiple resource consent applications and the mitigation that may be necessary for such development.

22. Council also requests that matter of discretion 5.5.4(b)(v) be amended. Council considers the following amended matter of discretion would give more certainty to addressing adverse visual effects for Cashmere Oaks residents and residents of the adjoining rural residential area.

“Landscaping, screening, boundary planting and fencing treatments, and open spaces.”

Waka Kotahi comments:

23. Waka Kotahi requests the amendments to new Restricted Discretionary Activity rule 5.5.4(b) outlined in the attached Waka Kotahi track changes version of the proposed amendments to the Operative Wairarapa Combined District Plan for the following reasons:
 - i. Waka Kotahi safety experts consider the existing intersection threshold is reached by development consented within Cashmere Oaks (see Waka Kotahi dated December 2009 – St Amand evidence in chief appendix 1).

- ii. The intersection having reached its threshold, the rule should be clear on the resource management outcome anticipated with the need for an intersection treatment to cater for expansion of the urban area and subsequent increases in vehicle, cycling and pedestrian numbers. The list of treatment options available under the primary safe system intervention, will enable the best fit treatment to be considered based on the road environment at the time an application is made.
- iii. Inserting a definition for the intersection's functional area will provide clarity over the length of road either side of the intersection affected and to be captured.
- iv. Comprehensive development and a holistic approach are necessary to address the intersection threshold having already been reached and cumulative effects, which can be overlooked or difficult to address if many smaller applications are made over time.
- v. The changes sought by Waka Kotahi seek to provide a clearer direction on managing the road infrastructure issues in line with other relevant transport and urban growth policies within the Operative Wairarapa Combined District Plan.
- vi. Staging and timing of development relative to intersection treatments and infrastructure allows flexibility for both the applicant and authorities to ensure that infrastructure is completed as and when necessary, particularly considering that the timing for full development of Cashmere Oaks is an uncertainty within the existing environment.
- vii. Policy 5.3.2(k) makes development of the land in Appendix 16 subject to appropriate standards. If the changes to the restricted discretionary activity rule recommended by Waka Kotahi are not accepted, then additional standards on adverse traffic and transport safety effects; and cumulative effects should be added to the proposed permitted activity standard 5.5.2(o) as follows:

[...]

2. *All proposals associated with the construction and operation of a retirement village on the land shown as 'Residential/Retirement Village Development' at Appendix 16 shall include a **primary safe system intervention** treatment of the Cashmere Oaks Drive and State Highway 2 intersection and its **functional area**.*

*Note: **Functional area** of an intersection is the area beyond the physical intersection of two roads that comprises decision and manoeuvre distances on approaches and departures, plus any required vehicle storage length (Austroads Guide to Road Design Part 4(2017)).*

Primary safe system intervention refer to options in the 'Standard safety intervention toolkit', published by Waka Kotahi NZ Transport Agency, September 2021, page 10.

- viii. Waka Kotahi recommends the matters of discretion be expanded to ensure all traffic and transport safety along with urban function and form can be appropriately considered.
- ix. Waka Kotahi recommends the matters of discretion be amended to include an explanation note for new terms used and provide sources.
- x. Waka Kotahi recommends that the notification clause of Rule 5.5.4(b) confirms Waka Kotahi as a party to be notified but does not restrict the Council's ability to

consider other notification options if they are warranted for any application. Ensuring the proposed requirements of the restricted discretionary activity rule (as amended by Waka Kotahi) are met will most likely lead to sufficient mitigation of the traffic safety effects, such that adverse effects are unlikely to be found to be more than minor.

24. Waka Kotahi requests that a new non-complying activity Rule 5.5.5(c) be added for the following reasons:
- i. This would neatly follow plan architecture and align with the Orchards Retirement Village Character Area rule structure (rule 5.5.6(b)) requiring non-complying resource consent where standards are not met.
 - ii. Where sufficient direction is provided for under an restricted discretionary activity rule structure in response to likely effects and district plan policy, a non-complying activity rule is the next appropriate step applying the gateway test in s104D of the RMA for decision making.

Notification clauses – rules 5.5.4(b) & 20.1.5(l)

Council comments:

25. The notification clause under new restricted discretionary rule 5.5.4(b) as proposed by Welhom would significantly reduce the benefits of restricted discretionary activity status and would unduly restrict Council's ability to exercise discretion.
26. The proposed notification clause effectively nullifies some of the benefits of restricted discretionary activity status, including the ability to identify affected parties other than Waka Kotahi or notify the consent. Council considers this to be inappropriate because the final form and scale of a retirement village proposal on the Plan Change Site is unknown. Noting that the proposed standards do not include a maximum number of retirement village units, the scale and density of development proposed could feasibly exceed the estimates provided as part of the Plan Change. This could lead to adverse effects on parties other than Waka Kotahi, including residents of Cashmere Oaks.
27. Precluding public or limited notification of an application for resource consent under rule 5.5.4(b), with the exception of a requirement to serve notice of the application on Waka, presumes and implies that any adverse effects of the proposal on parties other than Waka Kotahi will be less than minor. There is no certainty that this will be the case. Depending on the nature of any mitigation measures proposed as part of the consent application, including safety improvements to the intersection of State Highway 2 and Cashmere Oaks Drive, there may be adverse effects on other parties that are at least minor.
28. Further, the proposed notification clause would unduly restrict Council's ability to exercise its discretion and limit the grounds on which Council could decline an application for consent. As such, it reduces the effectiveness of the rule.
29. Council therefore requests that the notification clause of restricted discretionary activity rule 5.5.4(b) be amended to read:

"Notification

Notice of any application for resource consent made in respect of rule 5.5.4(b) must be served on Waka Kotahi NZ Transport Agency."

30. Council also requests that a notification clause be added to discretionary activity rule 20.1.5(l), as follows:

“Notification

Notice of any application for resource consent made in respect of rule 20.1.5(l) must be served on Waka Kotahi NZ Transport Agency.”

31. Council remains of the opinion that Waka Kotahi should be notified of any application for resource consent for a new traffic generating activity on the Plan Change Site, including subdivision, that relies on access from State Highway 2 via Cashmere Oaks Drive.

Waka Kotahi comments:

32. Waka Kotahi requests that the notification clause of restricted discretionary activity rule 5.5.4(b) be amended to confirm Waka Kotahi as a party to be notified but not restrict the Council's ability to consider other notification options if they are warranted for any application.
33. Waka Kotahi requests that the discretionary activity rule for subdivision 20.1.5(l) be amended as outlined in the attached Waka Kotahi track changes version of the proposed amendments to the Operative Wairarapa Combined District Plan for the following reasons:
- i. Waka Kotahi safety experts consider the existing intersection threshold is reached by development consented within Cashmere Oaks (see Waka Kotahi dated December 2009 – St Amand evidence in chief appendix 1).
 - ii. The intersection having reached its threshold, the rule should be clear on the need for an intersection treatment to cater for expansion of the urban area and subsequent increases in vehicle, cycling and pedestrian numbers. The list of treatment options available under the [*primary safe system intervention*](#), will enable the best fit treatment to be considered based on the road environment at the time an application is made.
 - iii. Inserting a definition for the intersection's functional area will provide clarity over the length of road either side of the intersection affected and to be captured.
 - iv. Comprehensive development and a holistic approach are necessary to address cumulative effects which can be overlooked or difficult to address if many smaller applications are made over time and matters of discretion do not capture this eventuality, cumulative effects or respond to urban growth policies.
 - v. The changes sought by Waka Kotahi seek to provide a clearer direction on managing the road infrastructure issues in line with other relevant transport and urban growth policies within the plan.
 - vi. Staging and timing of development relative to intersection treatments and infrastructure allows flexibility for both the applicant and authorities to ensure that infrastructure is completed as and when necessary, particularly considering that the timing for full development of Cashmere Oaks is an uncertainty within the existing environment.
34. Waka Kotahi requests that discretionary activity rule 20.1.5(l) be amended to ensure subdivisions under this rule are still subject to controlled activity standards.
35. Waka Kotahi requests that discretionary activity rule 20.1.5(l) be amended and a notification clause added to ensure that Waka Kotahi is not overlooked because the land

in Appendix 16 does not front or directly access the State Highway and the rule has been introduced to enable consideration of effects on transport infrastructure, including State Highway 2. Rule 20.1.5(j) relates directly to sites fronting and accessing a state highway and so does not require the same notification clause.

36. Waka Kotahi requests that discretionary activity rule 20.1.5(l) be amended to include an 'out' clause in the notes section to provide Council discretion where other resource consents may have already been granted.
37. Waka Kotahi requests that a non-complying activity rule be added to 20.1.7 in line with existing plan architecture applying when standards for discretionary activity subdivision are not met. This also aligns with the restricted discretionary activity rule moving to non-complying when standards and requirements are not met, as requested by Waka Kotahi.

Assessment criteria - section 22.2.25

Council comments:

38. Council is generally comfortable with the assessment criteria under new section 22.2.25 proposed by Welhom.

Waka Kotahi comments:

39. Waka Kotahi requests that the assessment criteria be amended in line with Waka Kotahi's above comments relating to matters of discretion.

Information requirements – section 26.3.6

Council comments:

40. Council is generally comfortable with the information requirements in new section 26.3.6 as proposed by Welhom, with the exception of one requested amendment.
41. Council requests that information requirement 26.3.6(c)(ii)(d) be amended to read:

“(d) The provision of safe pedestrian and cycle access and connections to existing transport corridors, including State Highway 2, and within the site”

Waka Kotahi comments:

42. Waka Kotahi requests that the information requirements be amended in line with Waka Kotahi's above comments relating to matters of discretion.