

**BEFORE WAIPA DISTRICT COUNCIL**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the hearing of submissions on Plan  
Change 13 under the First Schedule to the  
Act

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**JOINT MEMORANDUM ON BEHALF OF WAIPA DISTRICT COUNCIL AND  
3MS OF CAMBRIDGE GP LTD**

**12 AUGUST 2021**

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**ATKINS | HOLM | MAJUREY**

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## Introduction

1. This joint memorandum is filed on behalf of Waipa District Council (**Council**) and 3MS of Cambridge GP Ltd (**3MS**). 3MS is recorded as Submitter 20 in respect of the Plan Change 13 (**PC13**) hearing process.
2. Important and relevant information relating to PC13 has come to light since the hearing of PC13, and the parties wish to place that information before Commissioner Lester so that a fully informed decision can be made in respect of PC13.

## Background

3. 3MS owns a substantial amount of land within the C2 growth cell which is the subject of PC13, and has recently applied for a subdivision consent in respect of its land. That application was heard by Independent Commissioners on 26 & 27 May 2021. The Commissioners declined the application, and issued their decision on behalf of Council on 6 July 2021. A central reason for the decline of the application was the inability to provide the certainty for the land acquisition and construction of the central infrastructure corridor which is a critical feature of the Structure Plan for the C2 growth cell.
4. On 26 July 2021 3MS lodged an appeal in the Environment Court challenging the decision and seeking that the subdivision application be granted.
5. Since lodging the appeal the parties have been in without prejudice negotiations regarding the resolution of the appeal. An important factor in those negotiations has been steps taken by 3MS to successfully secure control of land adjacent to its landholding, which can be used to accommodate the central infrastructure corridor within the C2 growth cell.
6. Council is supportive of the 3MS proposal to resolve the appeal, which will involve some adjustments to the original subdivision proposal, while retaining many of the core elements ("revised subdivision proposal"). One of the core elements is the treatment of reserves within the subdivision. The structure plan depicts reserve areas within the land which is the subject of the subdivision. The revised subdivision proposal does provide for reserves but not in the manner and location as depicted in the structure plan.

7. The removal of the reserve areas within the subdivision land was also a matter which arose within the context of PC13. The 3MS submission sought relief which removed the reserve area from the subdivision land. The section 42A report supported that relief.
8. In relation to PC13, the parties support this outcome (ie that the reserve area is removed from the subdivision land), and wish to have the relevant information placed before the Commissioner so that a fully informed decision on PC13 can be made.

### **3MS Relief Sought on PC13**

9. In its submission 3MS sought that the active reserve areas be removed from the planning maps. The summary of submissions described the 3MS submission and relief sought in these terms:

#### Submission

3Ms seeks that these active reserve areas be removed from the Planning Maps as the subdivision consent that 3Ms obtained in 2020 that is referenced in the section 32 evaluation report has been surrendered and that reserve layout is not being progressed by 3Ms as part of its current subdivision application. For clarity, 3Ms seeks that that the entire extent of its property be zoned Residential Zone rather than a combination of Residential Zone and Reserves Zone, or such similar relief as is necessary to be consistent with 3Ms current subdivision consent application before Council, and any ongoing negotiations between Council and 3Ms regarding reserves.

#### Relief

Amend the Planning Maps to remove the areas proposed to be zoned "Active Reserve" on the 3Ms properties within the C2 Growth Cell (namely, Planning Map 4, Planning Map 23 and Planning Map 24). 3Ms seeks that that the entire extent of its property be zoned Residential Zone rather than a combination of Residential Zone and Reserves Zone.

10. This relief was supported by Xiaofeng Jiang and Liping Yang in further submission FS3/4.
11. Other submissions broadly touching on this topic were submission 1/6 (Hayden Woods) who sought that vested reserve areas within the C2 growth cell should be zoned as Reserves Zone, and submission 8/1 (Susanne Dargaville) who opposed such rezoning and sought to maintain all of the current green belts and public reserves.
12. The 3MS relief, and these related submissions were addressed in the section 42A report as follows:

5.4.2. Submissions 1/6, 8/1, 20/4 and Further Submission FS3/4 are a mix of support and opposition for the rezoning of the areas of reserve within the 3Ms property within the C2 Growth Cell. Following release of the Council's Section 32 for Proposed Plan Change 13, an application to surrender the subdivision consent which gave effect to the reserve areas to be vested in Council (being SP/0036/20), was received by Council and the previously consented reserve layout no longer being pursued by the landowner. Additionally, a resource consent for the subdivision of the site is being processed by Council (being SP/0179/20).

5.4.3. In terms of this subdivision consent, it is noted the application was limited notified and a hearing held on 26 and 27 May 2021. At the time of preparing this report, the hearing had been adjourned pending a further site visit and additional information to be supplied to the Commissioners by 11 June 2021. It is noted that the decision on resource consent application SP/0179/20 and Proposed Plan Change 13 are interconnected and may result in changes to areas shown as Reserve Zone on the 3Ms property, either to the zoning in its entirety, or to the location of the reserve areas. Should this occur, Council has three options as follows: (a) Initiate a variation to Proposed Plan Change 13 to address any inconsistencies with the consent decision; (b) Defer the decision of Proposed Plan Change 13, as it relates to the reserves as shown on the 3Ms property only, should the resource consent decision be appealed; or (c) Remove the Reserve Zoning as shown in Proposed Plan Change 13, and as requested by Submission 20/4 and FS3/4, and

address any approved reserve areas through a subsequent plan change.

5.4.4. Based on the timing of the abovementioned consent decision, and consideration of the submissions received regarding this matter, Council staff consider at this time the most appropriate course of action is to remove the reserve zones from the Planning Maps, and zone these areas as Residential Zone, therefore accepting Submissions 20/4 and FS3/4.

13. Based on the further negotiations between Council and 3MS it is not in Council's interests to pursue the reserve zoning of these areas within the 3MS subdivision land. Council does not wish to pursue the acquisition of this land for reserve purposes. If the land is zoned for reserve purposes it will be sterilised because 3MS will not be required to develop it as public reserve, and Council will not be investing in this community asset. This is because Council's reserve management strategy can accommodate the community's requirements in other areas within its existing reserves network or in other locations within the C2 growth cell.
14. Accordingly, in terms of the legal test set out in section 32 of the RMA, the most effective and efficient way for Council to achieve its objectives regarding the provision of residential land, and the provision of reserves and community facilities, is for the land to be zoned for residential use.
15. In addition, if the land is zoned for reserves, this will impede Council's ability to resolve the 3MS appeal and frustrate Council's ability to commence the urbanisation of the C2 growth cell, which is the central outcome of PC13.

#### **Procedural Issues**

16. Council and 3MS recognise that procedural issues arise. With the hearing having been reopened to allow this further information to be received, there is a need to ensure no party is prejudiced by the process. The parties whose interests are required to be addressed are those submitters who submitted on this issue.
17. Submitters Xiaofeng Jiang and Liping Yang submitted in support of the relief sought by 3MS therefore suffer no prejudice. Submitters Woods and Dargaville made

submissions on the reserves issue generally but took no position on the 3MS relief.

18. Accordingly, both 3MS and Council do not consider that any of these submitters are likely to wish to comment on the matters set out in this memorandum. However, it is considered appropriate that submitters are given an opportunity to comment and there is a suggested direction set out below.

### **Outcome sought**

19. The outcomes sought are:
- (a) That both Council and 3MS respectfully request that the decision on PC13 removes the requirement for reserve areas within the 3MS land contained within the C2 growth cell. This outcome meets the requirements of section 32 of the RMA, and best serves the sustainable management purpose of the RMA set out in section 5.
  - (b) That you direct that this memorandum and the earlier one from Counsel for the Council, together with your minute is made available to all submitters who are invited to comment on the matter within 5 working days of the provision of the documents.
  - (c) A further direction giving 3MS and Council the opportunity to respond to any issues raised by submitters.

**Dated: 12 August 2021**



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**Helen Atkins**  
Counsel for Council



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**Lachlan Muldowney**  
Counsel for 3MS