

**BEFORE THE COMMISSIONER APPOINTED BY THE WAIPA DISTRICT COUNCIL TO
HEAR PROPOSED PRIVATE PLAN CHANGE 33 TO THE WAIPA DISTRICT PLAN**

IN THE MATTER of the Resource management Act 1991 (the **Act**)

AND

IN THE MATTER of proposed Private Plan Change 33 to the Waipa District
Plan (**PC33**)

**CLOSING LEGAL SUBMISSIONS ON BEHALF OF THE HAUTAPU LANDOWNERS'
GROUP**

Dated: 21 NOVEMBER 2025

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— CHAMBERS —

MAY IT PLEASE THE HEARING COMMISSIONER

INTRODUCTION

1. These closing submissions are presented on behalf of the Hautapu Landowners' Group (**HLG**), the proponents of the private plan change to the Waipa District Plan to change the zoning of Area 7 in the Hautapu Structure Plan from deferred to live Industrial Zone (**PC33**). They respond to matters arising during the hearing and should be read alongside the opening legal submissions presented on behalf of the HLG.
2. There are two outstanding issues:
 - a. The drafting of Rule 15.4.2.WW (Road 4 vesting rule); and
 - b. The inclusion of a trigger in Rule 15.4.2.XX which expressly refers to the vesting of Road 4.
3. The HLG accepts the "fall back" trigger of 31 March 2030, on the basis that Rule 15.4.2.WW is not deleted and that the vesting of Road 4 is included as a trigger in Rule 15.4.2.XX.

PRELIMINARY COMMENTS IN RESPONSE TO LEGAL SUBMISSIONS FOR KAMA TRUST

4. While not determinative of the outcome of the hearing, it is important for the HLG that a response is made to some of the assertions made by counsel for the Kama Trust in their submissions. As noted verbally in response at the hearing, several comments were unfounded and contrary to the experience of the HLG members. In particular:

- a. Kama Trust has never consulted with the HLG or its members about its original intentions to re-zone its land (Area 6).¹
- b. Kama Trust has never consulted with the HLG or its members in relation to its application(s) for resource consent, including its commencement of works on site.²
- c. The HLG (certainly Mr Gundesen and Mr Hawthorne) are suffering the adverse effects of that consent implementation, yet it was not notified (limited or public). Potential breaches of the conditions of that consent have been raised with the Council.
- d. Kama Trust aggressively opposed the submission on PC17 by the HLG on the basis of scope.
- e. The HLG's objection to the decision on scope made by the Council at the time was upheld.
- f. The "deal" referred to by Mr Muldowney about the 31 March 2030 trigger was on the understanding that Kama Trust would complete its development within 18 months of PC17 hearing (2023).³
- g. Planning is an evolving discipline and circumstances change. Any person may make a request for a plan change. As set out in the evidence for the HLG, the request to live Industrial Zone Area 7 now, rather than later, will result in better integration of the development of Area 6 with Area 7 and makes sense from an economic as well as planning perspective.⁴
- h. Opposition to the proposed amendments to Rule 15.4.2.WW and Rule 15.4.2.XX has no planning merit. Moreover, if Kama Trust is true to its word (including the vesting of Road 4 in its entirety through its current consent), such opposition raises the question of whether there is an ulterior purpose behind that opposition,

¹ Statement of evidence of Dean Hawthorne, 13 October 2025 and summary presented on 30 October 2025; Statement of evidence of John Gundesen, 13 October 2025 and summary presented on 30 October 2025.

² *Ibid.*

³ As noted in the evidence of Mr Chrisp.

⁴ Refer to the evidence of Mr Heath and Mr Chrisp.

despite the HLG accepting the “fall back” date of 31 March 2030. Kama Trust has already tried to lock out Area 7 once.⁵

- i. The implication of Mr Muldowney’s submissions for Kama Trust to “trust us” is irrelevant to the Commissioner’s decision making. It is not a valid matter under section 32 nor is it a valid consideration when determining rules in a plan.

DISTRICT PLAN RULES

5. The Commissioner will be familiar with the RMA requirements for rules in a District Plan. Policies are to implement the objectives, and rules are to implement the policies.⁶ Rules must be clear and precise. Rules are to be examined, having regard to their efficiency and effectiveness, as to whether the rule is the most appropriate method for achieving the objectives of the district plan (in this case, including the objective of PC33), taking into account⁷:
 - a. the benefits and costs of the proposed policies and methods (including rules).
 - b. the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.⁸
6. In making a rule, regard must be had to the actual or potential effects of activities on the environment.⁹ Furthermore, a territorial authority must not have regard to trade competition or the effects of trade competition.¹⁰
7. This sets the framework for the Commissioner’s consideration of the two rules at issue: Rule 15.4.2.WW – Road 4 to vest in Council; and Rule

⁵ The first application lodged with the Council did not show Road 4 extending to the boundary of Area 7.

⁶ Section 75(1)(b) and (c) of the Act (also section 76(1)).

⁷ *Colonial Vineyard Limited v Marlborough District Council* [2014] NZEnvC 55.

⁸ Section 32(4).

⁹ Section 76(3).

¹⁰ *Supra* n7, at paragraph [17].

15.4.2.XX – additional development trigger. In my submission, as discussed as follows, both rules are necessary and appropriate to implement the relevant policies and achieve the relevant objectives of the Waipa District Plan and PC33.¹¹

RULE 15.4.2.WW – ROAD 4 TO VEST IN COUNCIL

8. It is critical that this Rule remains to address the potential for the existing resource consent held by Kama Trust to be changed/amended via s127 and/or surrendered and a new application is made which seeks to avoid the need to vest Road 4 in its entirety – or seeks to delay the vesting of Road 4 by amending stages of its subdivision, ostensibly to “block” or delay industrial activities from occurring within Area 7.¹² While counsel for Kama Trust asserted that this is not going to happen and that Kama Trust is committed to implementing its current consent, which requires Road 4 to vest in Stage 2, that is not guaranteed.
9. Unless and until Road 4 has been vested in its entirety, this Rule is necessary. It is axiomatic that it is the most appropriate method to implement the relevant policies of the Waipa District Plan, it addresses transportation effects of Industrial Activities in Areas 6 and 7, and it provides for the implementation of the Hautapu Industrial Zone Structure Plan. The risks of not including Rule 15.4.2.WW include unnecessary delays to the implementation of planned infrastructure provision for the Hautapu Industrial Zone Structure Plan and the enablement of Industrial Zone activities.

¹¹ For example: Objective 7.3.4(d) – development in the Hautapu Industrial Structure Plan Area is co-ordinated with infrastructure provision; Policy – infrastructure: 7.3.4.6; Policy 15.3.3.1(c); Policy 15.3.3.2: Co-ordination between servicing and development and subdivision; Policy – Integrating land use and transport: 16.3.2.1; Policy – Location of vehicle entrances: 16.3.4.1.

¹² In questioning, Mr Moran noted the potential for the existing consent to be surrendered, and a new application made, albeit he considered that to be unlikely.

10. Unnecessary delays in its vesting will lead to economic inefficiencies and latent zoned capacity – both of which are contrary to the sustainable management purpose of the RMA. Effectively locking out Area 7 to suit the development aspirations of Kama Trust for Area 6 through changes to its existing resource consent, for example, introducing additional and/or different staging of subdivision and the consequent delaying vesting of Road 4, is not only contrary to integrated development and the objectives of the Waipa District Plan, it is also contrary to the assurances made by its planner and counsel that it is committed to completing their subdivision with haste.
11. Kama Trust has already made two fundamental changes to its original application lodged with the Council, the first of which did not show Road 4 in its entirety as vesting with the Council, and the second *inter alia* to change the location of the pump station. Considering that track record, there is no guarantee that Kama Trust will not seek to make further changes to deviate from the structure plan or use section 127 of the RMA to change the stages of its existing subdivision consent to delay vesting of Road 4. The potential for this was illustrated in the correspondence from Mr Moran to Mr Skilton on 7 November 2025, in response to the proposed amendments to Rule 15.4.2.WW which were agreed to by the Council and the HLG at that time.¹³
12. As set out in Mr Skilton's email to the Commissioner on 20 November 2025¹⁴, following the adjournment of the hearing on the 30th of October, the Council, the HLG, and Kama Trust exchanged correspondence regarding drafting changes to Rule 15.4.2.WW. Having considered the various iterations of the draft Rule 15.4.2.WW exchanged between the

¹³ Refer to Annexure 2.

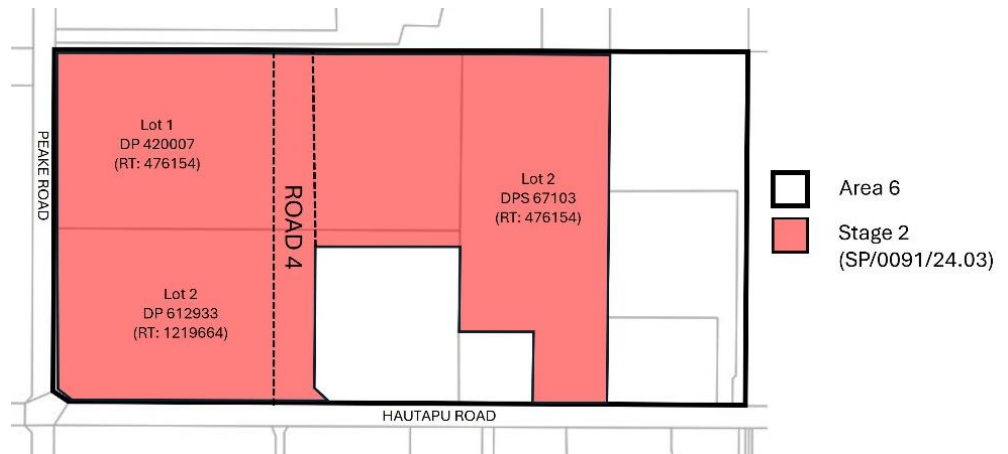
¹⁴ From: Peter Skilton Peter.Skilton@waipadc.govt.nz Sent: Thursday, 20 November 2025 7:36 am. To: Dave Serjeant. Cc: Mark Chrisp; Marianne Mackintosh; Lachlan Muldowney; Gareth Moran; Nathan McLeay. Subject: PC33 - Proposed Rule 15.4.2.WW - Road 4 Vesting.

Parties, contrary to the assertions made at the hearing, it is clear from Kama Trust's planner that it intends to make changes to the stages of its existing subdivision. Given their earlier proposition that Road 4 vest at the "final" stage of subdivision of the area shaded in red, the HLG remains concerned that unless Rule 15.4.2.WW gives a clear direction that Road 4 must vest at the next s224(c) lodgement, regardless of whether the stages are changed by way of a s127 application or a new application under s88, Kama Trust may deliberately delay vesting of Road 4 to control the release of land within both Area 6 and Area 7.

13. Such a scenario:
 - a. Will delay the vesting of Road 4 for an indefinite period, which is contrary to the existing current resource consent that requires Road 4 to vest as part of Stage 2 section 224(c), and the assurances from Kama Trust throughout the hearing that it is committed to that consent;
 - b. Is contrary to the objectives of the Industrial Zone, including the Hautapu Structure Plan;
 - c. Does not implement the policies relevant to PC33;
 - d. Does not address an adverse environmental effect;
 - e. Undermines the purpose and intent of the "80% trigger" in Rule 15.4.2.XX; and, therefore,
 - f. Appears to be based on matters relating to trade competition, as it will have the effect of precluding the progression of industrial development within Area 7.
14. To address this, the HLG propose the following amended Rule 15.4.2.WW. This is based on the version of Rule 15.4.2.WW agreed by Kama Trust and Council. The proposed further amendment is shown in underlined red text. The HLG agrees to the advice note in red text on the basis that its proposed underlined amendment to the Rule is confirmed.

HLG Proposed Rule 15.4.2.WW¹⁵

The entire length of “Road 4” as shown on the Hautapu Industrial Structure Plan shall vest in Council as part of any subdivision involving land shaded red in the image below. For the avoidance of doubt, the entire length of “Road 4” is to vest upon the lodgement of the first section 224(c) certificate relating to any subdivision of the land shaded in red as shown below.



Activities failing to comply with this rule will require resource consent for a non-complying activity.

Advice Note:

- this rule shall cease to have effect once “Road 4” has been vested in Council
- this rule shall only apply in the event that Stage 2 of subdivision consent SP/0091/24.03 is not completed to the point where “Road 4” is vested in Waipā District Council.
- In the event that an application to change the conditions of SP/0091/24.03 is made, the effects of any change on the ability for legal vehicle access and service extension to Area 7 to be provided via “Road 4” will be assessed and taken into account in making a decision.

15. In my submission, this rule is clear, certain, and addresses any potential changes to the existing consent held by Kama Trust, including changes under section 127 to amend lot sizes and/or stages of the subdivision. While a change under section 127 is classed as a discretionary activity (and therefore the activity status trigger set out in Rule 15.4.2.WW would not be relevant), regard must nevertheless be had to the rule pursuant to section 104(1)(b)(vi). Accordingly, it will be a relevant consideration for any application under section 127 that seeks to avoid or delay the vesting of Road 4 in its entirety as part of implementing Stage 2 of SP/0091/24.03.

¹⁵ Reproduced as Annexure 1.

16. In my submission, the Rule 15.4.2.WW set out in paragraph 14 above and attached as **Annexure 1** is the most appropriate and should be confirmed in the Commissioner's Decision on PC33.

RULE 15.4.2.XX – AREA 7 DEVELOPMENT TRIGGERS

17. As noted in opening legal submissions, the “trigger” rule would read as follows (amendments to the notified version shown in underline and strikethrough):

“15.4.2.XX The subdivision and development of Area 7 for industrial purposes can occur either:
a) when Area 6 of the Hautapu Industrial Structure Plan Area has reached 80% development (i.e. 80% of the developable area of Area 6 is the subject of s.224 certificates); or
b) when Road 4 has been vested in Council as required by Rule 15.4.2WW; or
c) by 31 March ~~2026~~2030,
whichever occurs sooner.”

18. To be clear, as set out in opening legal submissions, the reversion to 31 March 2030 is contingent upon the inclusion of the additional clause (b) and that Rule 15.4.2.WW is retained.¹⁶ A consequential amendment to “Appendix S1 - Future Growth Cells Cambridge / Hautapu Industrial Growth Cells – anticipated now to 2035” is necessary to be made to ensure consistency.
19. As Mr Chrisp stated in his evidence, the proposed amendment will implement the relevant policies of and gives effect to the relevant objectives for the Hautapu Industrial Zone (including the Hautapu Structure Plan); and is consistent with the relevant provisions of the WRPS and Future Proof.¹⁷
20. Relevantly, when asked at the hearing as to whether the additional trigger addressed any matters that the 80% trigger did not, Mr Moran gave the

¹⁶ The version of Rule 15.4.2.WW as set out in paragraph 14 and Annexure 1.

¹⁷ Statement of evidence of Mark Chrisp, 13 October 2025, paragraph 6.8.

example where the current consent could be surrendered, and a new application made. While he opined that it was unlikely that the consent would be surrendered, the fact it was noted at all clearly shows that there is a potential gap in the rule which should be addressed.¹⁸ Unless the current resource consent is implemented in accordance with its conditions, the verbal assurances from Mr Moran and Mr Muldowney cannot form the basis of rulemaking for a district plan.

21. It is trite law that rules must be certain.¹⁹ In my submission, the additional trigger provides improved clarity and precision as to when development of Area 7 will be enabled. Furthermore, it avoids the potential for manipulation of what “80%” of Area 6 subject of s224(c) may mean, should the existing consent held by Kama Trust be changed. Moreover, the reference to vesting of Road 4 in its entirety is consistent with the transportation evidence of Mr Inder, which is supported by the Council.
22. Mr Muldowney submitted that “don’t fix what isn’t broken”.²⁰ With respect, that approach is irrelevant to section 32 and the principles applying to Rules in a plan. The proposed amendment is not about fixing a rule that is “broken”. It is about providing better clarity and precision as to when Area 7 may take advantage of an RDA activity status and is consistent with the Hautapu Industrial Zone Structure Plan.
23. While it is encouraging that the Council’s policy team has confidence in its consenting team²¹ (that it would not allow potential changes to the current subdivision that sought to avoid the 80% trigger and that Rule 15.4.2.WW would mean Road 4 is required), that too is not a valid s32

¹⁸ Mr Moran in response to questions from Commissioner Serjeant, 30 October 2025, ~ 2:26:41.

¹⁹ The rules in a plan, and the provisions of the plan in general, must be clear and precise, so that those who administer the plan or are affected by it should be able to identify without difficulty the provisions which apply to properties: *Sandstad v Cheyne Developments Ltd* (1986) 11 NZTPA 250 (CA).

²⁰ Legal submissions on behalf of Kama Trust, 30 October 2025, paragraph 27.

²¹ Response from Nathan McLeay during presentation of s42A report at the hearing on 30 October 2025.

consideration. The point is that the economic, transportation, and planning evidence says that development of Area 7 may occur when Road 4 is vested. Therefore, the “trigger” rule ought to include that road vesting.

24. The opposition from Kama Trust to this additional trigger is concerning if it is committed to implementing its existing consent. The proposed additional trigger cross-references the critical piece of infrastructure required for Areas 6 and 7 (Road 4 vesting), is consistent with the Hautapu Industrial Structure Plan, implements the relevant policies, and presents no threat to Kama Trust’s current plans (as described by its counsel). There is no “mischief” to any party by the inclusion of the additional trigger. It is consistent with section 32/32AA and will implement the relevant policies of the Waipa District Plan and achieve the objective of PC33.
25. Finally, the degree of opposition from Kama Trust to the proposed additional trigger and Rule 15.4.2WW raises the question of whether its concerns genuinely relate to adverse effects on the environment and not, potentially, matters relating to trade competition.²² In that regard, the effect of Rule 15.4.2.WW and the additional trigger in Rule 15.4.2.XX will not have an adverse effect on the environment. It follows that Kama Trust cannot be directly adversely affected by of the approval of PC33 on the basis proposed in these submissions on behalf of the HLG.²³

CONCLUSION

26. The evidence for the HLG demonstrates that Area 7 should be re-zoned from Deferred Industrial Zone to live Industrial Zone.

²² Kama Trust confirmed that it could not gain an advantage in trade competition through its submission. The general test as to whether trade competition exists between two entities is whether there is a "competitive activity having a commercial element". This approach was affirmed by the Environment Court in *Kapiti Coast Airport Holdings v Alpha Corporation Limited* [2016] NZEnvC 137.

²³ RMA, Schedule 1, clause 6(4).

27. The Applicant does not oppose the date of 31 March 2030 on the basis that an additional trigger which expressly references Road 4 vesting is included in Rule 15.4.2.XX. In addition, Rule 15.4.2.WW should be retained and amended in accordance with the drafting set out in paragraph 14 above and in Annexure 1 to these submissions.
28. These amendments will achieve the objective of PC33 and the relevant objectives of the Waipa District Plan, will implement the relevant policies of the Waipa District Plan, give effect to the WRPS and NPS-UD, and will achieve the purpose of the RMA. Furthermore, the amendments do not have an adverse effect on Kama Trust; nor will they undermine the development of Area 6 that is currently underway. Indeed, the inclusion of the Rules will ensure integration of Area 7 with Area 6.
29. In summary, the rezoning of Area 7 from Deferred Industrial Zone to Industrial Zone should be confirmed, and the amendments to the Waipa District Plan set out in Appendix 1 and Appendix 2 of the Section 42A Report be made:
- a. subject to the additional clause proposed for Rule 15.4.2.XX;
 - b. subject to the changes to Rule 15.4.2.WW (as set out in paragraph 14 and Annexure 1); and
 - c. any consequential changes to "Appendix S1 - Future Growth Cells Cambridge / Hautapu Industrial Growth Cells – anticipated now to 2035".

Dated: 21 November 2025



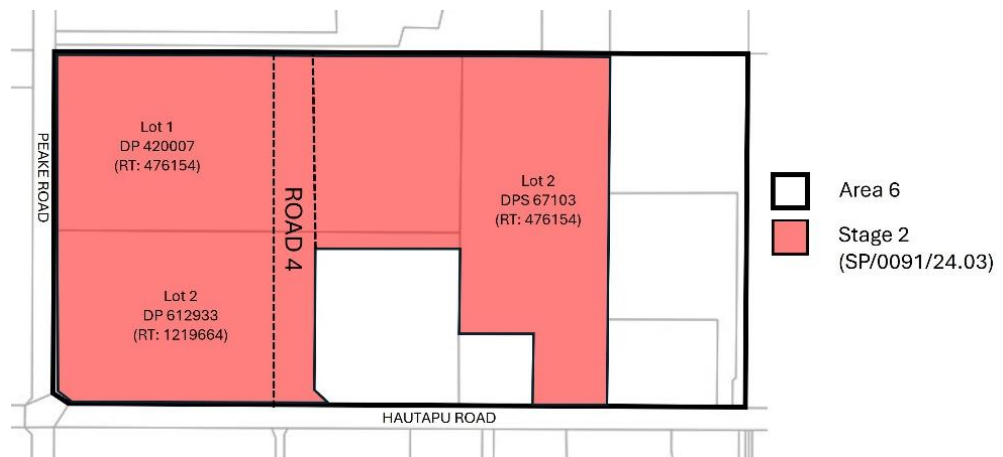
M Mackintosh

Counsel for Dean Hawthorne, on behalf of the Hautapu Landowners' Group

ANNEXURE 1

HLG PROPOSED RULE 15.4.2.WW

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Activities failing to comply with this rule will require resource consent for a non-complying activity.

Advice Note:

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- this rule shall only apply in the event that Stage 2 of subdivision consent SP/0091/24.03 is not completed to the point where “Road 4” is vested in Waipā District Council.
- In the event that an application to change the conditions of SP/0091/24.03 is made, the effects of any change on the ability for legal vehicle access and service extension to Area 7 to be provided via “Road 4” will be assessed and taken into account in making a decision.

ANNEXURE 2

7 November 2025 Kama Trust proposed amendments to Rule 15.4.2.WW (included in 20 November 2025 email from Peter Skilton to the Commissioner)

On 7 Nov 2025, at 1:27 PM, Gareth Moran <garethm@barker.co.nz> wrote:

Afternoon all.

I've had another look at Peter's provision; and propose the following variation.

The entire length of Road 4 as shown on the Hautapu Industrial Structure Plan, shall be vested in Council following the final completion of SP/0091/24.xx, which could include any necessary variations pursuant to Section 127 of the RMA; or any future subdivision involving land shaded red in the image below.

Reasons

1. This covers off possible situation where Kama Trust needs to vary the consent to accommodate a purchaser – which could hypothetically involve increasing or decreasing the consented lot sizes; lot configurations or staging.
2. HLG are worried about the unlikely occurrence of a 'lock out'. Any future subdivision which will create materially different effects can't be dealt with as a variation (127) – under SP/0091/24 – thus a new subdivision consent will be required. If that was to occur, then the road needed to have been vested as part of the 'last subdivision' under SP/0091/24 – noting that the consent condition requiring the road to be vested, won't be removed from the consent conditions – so there is an extra layer of protection.
3. The insertion of the word final is key.
4. The provision incorporates a further layer of protection *if* SP/0091/24 or any subsequent variations is surrendered or not given effect to
5. It is also noted, that Council's Planning staff will ensure that the 'road to vest' consent condition is included in any future subdivision or variations

Look forward to hearing your thoughts.

Kind regards,

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