
**BEFORE THE TAUPO DISTRICT COUNCIL
INDEPENDENT HEARING COMMISSIONERS**

PROPOSED PRIVATE PLAN CHANGE 37

UNDER THE

the Resource Management Act 1991 (**the Act**)
Schedule 1, Part 2 of the Act

IN THE MATTER OF

of the Proposed Private Plan Change 37 –
Nukuhau a request by AN Rajasingham LPT
Trustees No 124 Limited, Thiru Trustee
Company Limited (at 24 Acacia Bay Road),
Lexus Trustees Limited (at 48 Acacia Bay
Road), CN Top Investment Limited (at 6
Poihipi Road) to rezone 77.78 hectares of
Rural Environment zone to a mix of General
Residential and Medium Density Residential
land.

LEGAL SUBMISSIONS ON BEHALF OF RANGATIRA E TRUST

9 November 2021

Le Pine and Co
Barristers and Solicitors
PO Box 140
TAUPO 3351
P 07 378 5030
Solicitor: Tony Devlin
tdevlin@lepine.co.nz



PO Box 5444 Victoria Street West
Auckland 1142
P 09 309 7889
Counsel: S Stienstra
setareh@publiclawchambers.com

MAY IT PLEASE THE COMMISSIONERS

1. Rangatira E is a submitter on this proposed plan change. Its submission was lodged by Mr Brett Farquhar on 5 March 2021. Mr Farquhar filed a statement of evidence on 29 October 2021 which he will speak to.
2. You will also hear from Mr Alec Wilson, the Chair of Rangatira E Trust and Mr Alex Wilson Junior, a Partner at Deloitte, and the secretary at Rangatira E Trust.
3. Although Rangatira E Trust has several concerns with the proposed plan change, due to resource constraints it has not commissioned experts to counter the evidence of the applicant. Mr Farquhar in his planning evidence has raised the concerns that relate to stormwater and transport. Wider cultural issues will be discussed jointly by Mr Alec Wilson and Mr Alex Wilson Junior.

Who is Rangatira E

4. The Rangatira E Trust was established in 1982 under section 438 of the Maori Affairs Act 1953. It continues as an Ahu Whenua Trust under Te Ture Whenua Maori Act 1993.
5. In 1987 a residential subdivision of a 6-hectare corner of the farm was undertaken. This piece of land was cutoff from the main farm property by a storm water gully. In this location, 32 sections were developed, and only one remains. The owners have decided that the last section shall not be sold.
6. In 2007, Rangatira E Trust obtained resource consent for a neighbourhood centre on its land. Following the withdrawal of an Environment Court appeal, the consent was confirmed. This Neighbourhood Retail Centre was proposed to be approximately 10.4ha. Given the economic uncertainties of the time (being the 2008 financial crisis, GFC), Rangatira E did not implement the consent. The land use consent for the Neighbourhood Centre was extended to April 2017. However, it remained unimplemented, and this resource consent has since lapsed
7. The Trust lands now comprise 994 hectares and are located at Acacia Bay on the western shores of Lake Taupo, in the central North Island.
8. There are 3,460 owners in the Trust. Succession to ownership is processed through the Maori Land Court.

Position of the Trust regarding the proposed plan change 37

9. Rangatira E Trust requests that the panel decline the plan change request. For reasons to be addressed by Mr Alec Wilson and Mr Alex Wilson Junior and Mr Farquhar and in these legal submissions, Rangatira E Trust is of the view that the proposed plan change does not promote a sustainable management of the use,

development and management of the limited developable land that is available in the district.

10. The proposed plan change does not take an integrated approach to the rezoning of nearly 80 hectares of land. So far as Rangatira E Trust is concerned, the impact on its use of land (which sits above and adjacent to the proposed plan change site), should be considered through a council led plan change process which is comprehensive and integrated.
11. The concern of the owners of Rangatira E Trust block is that the surrounding development will be piecemeal and unsustainable as there is no agreed framework for the development of the required infrastructure.
12. The evidence of the applicants' experts, and one of the landowner applicants, is that there are no agreements in place to deliver the necessary infrastructure and that this proposed plan change remains conceptual only. The traffic and stormwater specialists for the applicant noted that there may be a "block by block" subdivision. That at each subdivision stage, the requisite effects will be considered and proposals to mitigate, or manage effects may be developed, depending on the council's requirements in processing any consent application.
13. In the absence of a clear framework specifying stormwater management, gully management, spiritual and physical cultural management of the land as a whole, it is difficult to see how the sustainable management purpose of the Act can be fulfilled and plan change approved. Is there are a development agreement between the applicants and the Taupo District Council that suggests the council will undertake to deliver the infrastructure that will be required? If there is such an agreement, that would be relevant to consider for all submitters given that an approval of the plan will mean the council would become its administrator.
14. It is the submitters view that the council has abandoned its statutory function by allowing growth areas to be identified but leave how development occurs, if it does, to private landowners.
15. Rangatira E Trust accept that the land within the plan change has been identified for growth in the Taupo District 2050 – District Growth Management Strategy (**TD2050**). The Council consulted publicly on the strategy, including discussing the strategy with Māori owed land trusts, including the submitter. However, the council determined the following:¹

"It has become clear over time that a conventional approach to development has not worked for these [multiple owned Māori land blocks] areas so it is proposed that these growth areas be removed from TD2050. Further work with these landowners will be needed through the District Plan review to establish better mechanisms to develop multiply-owned Maori land."

¹ Taupo District 2050 – District Growth Management Strategy, page 14, section 3.6.

16. No further work has been undertaken of which the submitter is aware. As in the case of Whareroa, the matter is being left up to Māori land trusts to do what they can to enable use of their land.
17. The council in its TD2050 strategy noted through a District Plan review several issues could be overcome. However, that review has not been forthcoming, leaving a gap for landowners to undertake their own developments to alleviate the growth pressure faced by Taupo.
18. The applicants have commented that Rangatira E “opted out” of TD2050.² As noted above, and addressed in evidence by Mr Wilson Senior and Junior, that is not the case. Rangatira E has been removed from the process, and it remains on the outside with this proposed plan change.
19. Some of the issues of concern for Rangatira E Trust are:
- a. Cultural issues – lack of engagement and consultation with Rangatira E Trust as landowner and māna whenua – failure to satisfy section 6(e), 7 and 8 of the Act;
 - b. Narrow consideration of development rights of Rangatira E Trust if plan change proceeds as proposed – in particular reverse sensitivity issues and infrastructure issues.
 - c. Limited information on provision of infrastructure.
20. During the presentation of her evidence, Ms Cleary for the applicant suggested that this “structure plan process” is sufficient for the conversion of the current rural land in Nukuhau to urban landform.
21. However, if the purpose of the proposed plan is to act as a structure plan, significantly more detail is required. The purpose of a structure plan is to establish land use and infrastructure networks and identify the potential effects of urbanisation.
22. Structure plans identify, investigate, and address matters related to:
- a. Supply of urban land to meet the growth projects – in this case as set out in TD2050;
 - b. Any natural and physical features within the defined area and proposal to manage such features – that would be gullies and heritage features in this instant;
 - c. Types of land use and activity, which the proposal does to a limited extent although there are issues with the location of medium density housing and reverse sensitivity effects;

² Statement of Evidence of Ms Cleary and Mr Crawford, 20 October 2021, and Reply Statements 5 November 2021.

- d. The layout of transport networks and facilities – the issues in this case result in a non-complying activity recommendation until transport infrastructure and active mode transport is delivered; and
 - e. The location and type of infrastructure that is to be provided – this proposed plan lacks any detail on this matter.
23. Proposed Plan Change 37 is not a structure plan. Were a structure plan proposed, and run by the council for this area, and incorporated the Rangatira E land, then there may be a real possibility to truly deliver on TD2050 in an integrated manner that considered the issues raised by the 44 submitters who are opposed to the proposed plan change.

Response to Rangatira E submission and evidence

Consultation with Rangatira E Trust

24. The applicant appears to have taken some liberties in the way it has represented its engagement with the Trust. Mr Wilson Junior will address this in his evidence.
25. The legal points of contact, the Chair, and the Secretary, have received no correspondence from the applicants seeking to engage over the proposed plan change at any time.
26. The applicant's consultant Mr Farquhar in his submission on behalf of the Trust lodged on 3 March 2021 noted that as māna whenua, the Trust had not been consulted and that no cultural impact assessment was provided by the applicant. As such he raised the issue as to the lack of consideration to cultural issues in the introduction to the submission.
27. It is noted that the Council's request for further information pursuant to clause 23 of Schedule 1 of the Act, did not require additional information on cultural issues arising from engagement with māna whenua.³
28. Given the obligations in the Act, if the council is going to recommend approval of the plan change, and then take over the plan's administration, then it is expected that some formal engagement is undertaken with māna whenua.
29. Mr Crawford outlined the process he had undertaken in his written and oral evidence. In Rangatira E's views, this engagement was and is insufficient.
30. Ms Cleary for the applicant expressed her oral opinion at the hearing on 8 November 2021 that there was no mandatory requirement for the applicants to consult māna whenua and that the statutory obligation to consult was with a local authority. Despite this view, she considered the engagement by Mr Crawford was satisfactory. From that the only inference that can be drawn is that the

³ Taupo DC request for further information, 2 October 2020.

applicant and the council consider that the statutory requirements under Part 2 of the Act, section 6(e), 7 and 8, have been satisfied. There is nothing to the contrary in the council's section 42A report.

31. Unusually, the applicant appears to have accepted in oral evidence on 8 November that a cultural impact assessment ought to now be undertaken. Details around how and what the relevant mechanism to do so were unable to be addressed at that point in time.
32. Given the wide definition of 'environment' under section 2 of the Act and the developing caselaw on this point, it is unusual for a private plan change applicant to fail to provide a cultural impact assessment for the locality where a plan change is proposed. Taupo is a significant historical area. For the applicant's planner to suggest that there is no obligation to consult is somewhat difficult to comprehend.
33. Regardless of whether the applicant considered the views of māna whenua, section 7 of the Act requires that as decision makers, the commissioners have particular regard to cultural matters, and section 8 requires that the decision makers under the Act take into account the principles of the Te Tiriti o Waitangi. Should the commissioners be of the view that the proposed plan change can be approved, a requirement for a comprehensive development plan which includes, engagement with māna whenua ought to be required before the plan change could be implemented.⁴

Impact on Rangatira E Trust land and its future development rights

34. The applicant has provided a limited response to some of the concerns raised by Rangatira E Trust. While presenting its evidence on 8 November the applicant maintained a position that the proposed development would not impact on Rangatira E's development rights. It did not address any of the matters raised in the submission or evidence of Mr Farquhar.
35. The council's section 42A report has not addressed the submissions of Rangatira E Trust in any detail.
36. The thrust of the applicant and council reports is that Rangatira E Trust is not part of any future growth, and even if it were, then it would not have its development rights affected.
37. This is clearly an erroneous understanding given the wording in TD2050 discussed above. This is simply a matter of timing: The council has asked the Trust to wait for the plan review, whilst it has accepted proposed plan change 37 and others to progress development in Taupo, Rangatira E awaits its turn.

⁴ An approach like this is not common, however, in some circumstances as in the present, it may be an appropriate mechanism to reach a balanced decision, in absence of cultural impact assessment. This is particularly so given this submitters view, and the WSP archaeology report dated 7 September 2021, para 10, suggesting this area is of significance to iwi. The failure of Heritage New Zealand Pouhere Taonga to appear at the hearing is unhelpful in addressing this significant issue.

38. Rangatira E is not asking for the applicants to plan the use of the Trust land site, however, the applicant, and do need to be able to integrate development and infrastructure across to Rangatira E land if Rangatira E's aspirations are to be realised and the plan change progressed.
39. As addressed in Mr Farquhar's evidence, given the lack of a buffer between where the proposed plan change proposed to locate housing and the boundary with the Rangatira E land, there are likely to be reverse sensitivity effects arising from stormwater run off whilst Rangatira E's land remains undeveloped farmland. This is exemplifying the type of concern that could be addressed through consultation and an integrated planning framework.
40. Although current stormwater issues in places like Chelsea Rise are alleged to be caused by "bad engineering",⁵ no detail is provided by the applicants as to how similar effects will be managed on development within the proposed plan change area. This issue was put to the applicant's expert Mr Bird by both the Chair and Commissioner Huria. In the absence of a plan change wide stormwater management plan, lack of landowner agreements on the delivery of infrastructure, and the effects of climate change, the impact of conversion from rural to urban landform will result in potentially significant stormwater management issues and discharges into the lake – a taonga not just locally, but nationally. Who will manage these effects? The regional council now appears to accept that the applicant has addressed all its concerns, however, Rangatira E Trust remains concerned.
41. This plan change presently has no answers to some very significant issues. It is Rangatira E Trust's submissions that the plan change should be at least placed on hold (if not declined) whilst:
- a. A comprehensive development plan is undertaken setting out the location and linkages and the provisions of water, wastewater, transport, stormwater, reserves and how this is to be developed and funded;
 - b. A thorough cultural impact assessment is prepared which identifies all archaeological, heritage and any other cultural issues of significance and how the proposed development is going respond to these cultural issues and incorporate these matters into the proposed development.

Limited provision of infrastructure and staging issues

42. As is noted in the applicants' evidence, there is no consensus as to support from all landowners within the plan change area. With regard to Rangatira 8A17, Mr Crawford notes that the multiple owners of that parcel of land, "Area H" are supportive of the plan change with some minor contention points.⁶ The evidence of Mr Greaves, on behalf of Rangatira 8A17 Trust and other owners of "Area H" is that by the time further submission were filed, Rangatira 8A17 Trust in fact had

⁵ Oral evidence of Mr Bird for the applicant 8 November 2021.

⁶ Statement of Evidence of Mr Crawford, 20 Oct 2021, para 32(h), page 12.

some substantial concerns, including the impact of reverse sensitivity issues, the location of medium density housing, stormwater management and traffic and roading.⁷ This is further illustrated in the statement of Mr Kusab for Rangatira 8A17.⁸ As advised by Contact Energy in their submission, they remain opposed to the development until their concerns are addressed. By the close of the presentation of the applicant's evidence, there was no agreement between Contact Energy and the applicants.

43. There is also Mr Hickman's statement that there is no agreement as to the provision of infrastructure or the management of gullies, reserves and stormwater across the proposed plan change area.
44. These uncertainties in this submitters view raise significant hurdles to how the plan is to be implemented.
45. The most significant point of opposition for Rangatira E Trust is the proposition that the plan should not require specific details as staging of development and that these staging issues should be resolved through resource consents on a first come first serve basis.
46. The applicant's view is that the proposed plan change does not prevent Rangatira E from undertaking their own development, however, given the infrastructure issues in this locality, identified by the applicant, and the council's consultant planner in his s 42A report, any future development on the parcel owned by Rangatira E, would be significantly compromised.
47. Although there is first mover advantage in the Act, the reverse of that is certainly, also true, there is last mover disadvantage.
48. The approach of first come first serve basis is not just detrimental to integrated land use but fails to satisfy the key driver of the Act as it stands – the sustainable management and use of limited natural resources, in this case developable land and the lake as a natural receiving environment.
49. In the submitter's view there is an uncomfortable co-existence between the ideals of developers who see land as thing to be used and that of Māori landowners who see land has a long-term asset to be nourished and then to be used to help the community – it is whenua - It is the source that provides sustenance to its people. It is not something to be used and let go of.

Part 2 of the Act

50. The guiding purpose of Part 2 is fundamental to the duties and powers of local government when carrying out its functions. That includes the perspective through which those plan provisions are interpreted and applied.

⁷ Statement of Evidence of Mr Greaves, 29 Oct 2021, para 2.4, page 2, see details at section 5, 6, and 7 of evidence.

⁸ Statement of Evidence of Andrew Kusab, 8 November 2021. Presented 9 November 2021.

51. As will be addressed by Mr Wilson, the beneficial owners of Rangatira E land must have the ability to properly utilise the opportunities provided by this land holding. That is how the Trust can provide for the ongoing social, economic, and cultural wellbeing of its beneficial owners.
52. Regarding kaitiakitanga (section 7), kaitiakitanga is a principle which should be considered when an authority exercises powers and functions under the Act. Kaitiakitanga also applies to the way the rest of the land is dealt with, that is the land not subject to development under the proposed plan change. The inability or a restriction to the way in which Rangatira E uses or can use its land is relevant in this context. In the context of a private plan change, this inherently means considering the implications of a decision to accept or reject a plan change in relation to the principle of kaitiakitanga.
53. Māna whenua values in sections 6, 7 and 8 are relevant considerations when balancing the competing values that have been identified during this proposed plan change process. There is an active duty on the part of a local authority under sections 32 and 74 when processing a request for a plan change to consider Māori views.⁹ The duty on decision makers does not evaporate because they suggest that either there is no obligation to consult Māori, or because there is no specific iwi authority objecting to the proposed plan change. Rangatira E are making the submission that Part 2 matters and the impact of cultural issues are relevant and not considered by the applicant or the council. Rangatira E has standing to bring these issues to the attention of the commissioners.
54. During this plan change Taupo District Council (**TDC**) has accepted to process this plan change without discharging its partnership obligations under te Tiriti. The principles of te Tiriti are not confined to consultation but extend to principles such as partnership and good faith. TDC has failed to consider the principles of te Tiriti by not acting as a true treaty partner. As commissioners, the submitters asks that this issue is carefully addressed in the decision-making process given that Mr Bonis has recommended the submissions raising cultural issues be rejected despite accepting that he cannot decide as to the relevant māna whenua views which should take primacy.¹⁰ Perhaps if TDC had run the plan change process, it might have been able to hear all relevant views.

Conclusion

55. The requirements that Rangatira E be involved arise not just from the Act but because Rangatira E is a recognised Maori authority in Taupo – it has mana not just as a landowner, but as māna whenua, which has been completely ignored yet again by the council, in administering the plan change process.

⁹ *Takamore Trustees v Kapiti Coast District Council* [2003] NZLR 496

¹⁰ Section 42A report, para 276.

56. The applicant has not assisted itself. It has failed to provide a cultural impact assessment, it has not actively approached and discussed the proposed plan change with the submitter, and it has misunderstood the interests of Rangatira E as an adjoining landowner. Rangatira E did not provide support to the proposed plan change and it remains opposed to the plan change in its current form.
57. Rangatira E is not opposed to development – as the commissioners know it had a resource consent to undertake its own development. Neither is Rangatira E opposed to the implementation of TD2050. That strategy notes, that Rangatira E is a significant landowner and part of the growth management solution. Rangatira E is a partner in decision making on the use of land in this locality, it is asking to be involved not sidelined.

Dated: 9 November 2021



S Stienstra
Counsel for the Rangatira E Trust