

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Proposed Plan Change 37 - Nukuhau (private) by AN Rajasingham LPT Trustees No 124 Limited anors to the Taupō District Council to rezone c.78ha of land in the Nukuhau area from Rural Environment to a mix of General Residential and Mixed Density Residential with a Neighbourhood Shopping Centre overlay.

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**CLOSING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANTS**

**Dated 3 December 2021**

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## MAY IT PLEASE THE HEARING PANEL

### INTRODUCTION

1. On 8 and 9 November 2021, the Panel heard evidence and submissions from the applicants, submitters, and Taupo District Council (**Council**) in relation to the application for a private plan change, Plan Change 37 (**PC37**) to the operative Hamilton City District Plan (**District Plan**).
2. The Hearing Panel adjourned the hearing on 9 November, and directed the applicants file their closing legal submissions, supplementary planning evidence and accompanying final draft plan provisions by 29 November 2021. On 26 November, the Panel granted the applicants' request for an extension to file its closing submissions and supplementary planning evidence to 3 December.
3. These submissions address the following matters that have arisen during the course of the hearing:
  - a) Existing level of service and capacity of the Control Gates Bridge;
  - b) The activity status of subdivision within the PC37 area;
  - c) Whether lot sizes should be introduced into PC37;
  - d) Identification of the depressions in Area C on the Nukuhau Structure Plan;
  - e) The timing of provision of a catchment management plan and whether there is a need for a separate gully management plan;
  - f) Cultural effects;

- g) Whether the Owners of Rangatira Blocks 8A17A5 and 8A17A6 and Rangatira 8A1T2X and 8A1T2Y and PT Rangatira A1T2 (**Rangatira 8A17**) have scope to seek medium density residential zoning;
- h) Whether Contact Energy Limited's (**Contact**) reverse sensitivity concerns have been resolved through direct negotiations with C N Top Limited;
- i) Whether there are any Maori Land Court obstacles to vesting part of the Rangatira 8A17 land in Council for reserve purposes; and
- j) Concerns raised by Rangatira E Trust (**Rangatira E**) in relation to consultation and effects.

#### **SUPPLEMENTARY PLANNING EVIDENCE**

- 4. In providing supplementary planning evidence, the Panel directed that Ms Cleary append an updated set of plan provisions and undertake a further evaluation of any additional amendments in accordance with s 32AA of the RMA. The Panel directed Ms Cleary to confer with Council's reporting officer Mr Bonis in preparing the final set of plan provisions.
- 5. In accordance with the Panel's direction, Ms Cleary has conferred with Mr Bonis and subsequently prepared a supplementary statement of evidence dated 3 December 2021 which appends the applicants' final suite of proposed plan provisions. Ms Cleary's supplementary evidence includes her further evaluation of the proposed amended plan provisions in accordance with s 32AA of the RMA.
- 6. Ms Cleary's conclusion is that, with the amendments proposed, PC37:

- a) Will meet all of the statutory tests and give effect to the National Policy Statement-Urban Development and the Waikato Regional Policy Statement;
  - b) Is the most appropriate way of achieving the existing objectives of the District Plan; and in combination with the new objectives it introduces,
  - c) Is the most appropriate way of achieving the purpose of the RMA.
7. The particular issues raised in the hearing that Ms Cleary's proposed amendments respond to are addressed below.

#### **CONTROL GATES BRIDGE AND ACTIVITY STATUS**

8. Council and the applicants have recognised that the capacity constraint at the Control Gates Bridge (**bridge**) is a significant factor in the ability to realise residential development within the plan change area. The critical question is how to enable residential development within the plan change area at a rate which does not generate unacceptable transportation effects.

#### **Existing level of service and capacity**

9. Mr Smith considers that the bridge is operating as a constraint on the flow of traffic during the morning peak, while for the evening peak, the most relevant constraint is the Tongariro Street/Spa Road roundabout.<sup>1</sup>
10. Mr Smith reviewed and accepted the additional modelling prepared by Ms Cui dated 8 November 2021, which presented updated modelling based on Mr Heath's residential development assumptions.<sup>2</sup>

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<sup>1</sup> Summary statement of evidence of David Smith dated 9 November 2021, paragraphs 23-24.

<sup>2</sup> Summary statement of evidence of David Smith dated 9 November 2021, paragraph 29.

### **Growth in residential demand**

11. Clarification was sought in relation to the residential development assumptions presented by Mr Heath. Mr Heath confirms that the 140 residential dwellings is the number of additional dwellings likely to be demanded north of the bridge over the next 10 years if the plan change area is developed. Without the plan change area being developed, the demand sits at 997 dwellings.
12. Mr Heath explains that the 140 dwellings represents net additional demand north of the bridge as a result of the PC37 area being brought to the market. Mr Heath explains that this does not mean the 140 dwellings are necessarily demanded within the PC37 area. It simply means that total estimated demand north of the bridge increases from 997 to 1,137 as a result of the PC37 area being enabled.
13. According to Mr Heath that demand can go anywhere north of the bridge, in existing zoned capacity, or in the plan change area. He confirms commissioner Hill's observation that some of the demand north of the bridge (without the PC37 area enabled) will transfer to the PC37 area if PC37 is approved.

### **The threshold for acceptable effects**

14. Mr Smith concludes that the modelled effects of 140 lots are acceptable in the context of a future permitted baseline with considerably worse performance than what is experienced today. He considers that this increase in traffic (one vehicle per minute) and travel time (up to 55 seconds per journey) would be at the threshold of being perceptible to general traffic that consistently experiences the 'permitted baseline' 5-6 minute and 12 minute travel times across the bridge in the morning and evening peak respectively.<sup>3</sup>

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<sup>3</sup> Summary statement of evidence of David Smith dated 9 November 2021, paragraphs 32-36.

15. Based on these conclusions, and also taking into account Mr Spears contention that the modelling will be conservative and improvements will be accorded through both peak spreading and also take up of active modes, Mr Bonis considered that the modelling at 140 additional dwellings provides an 'acceptable' and 'adequate' level of servicing transport infrastructure.<sup>4</sup>
16. However, beyond that level of additional residential supply above the baseline, he recommended that a more stringent activity status should remain. He considered a non-complying activity status to be appropriate given the gateway considerations pursuant to s 104D.<sup>5</sup>
17. In her supplementary statement, Ms Cleary states that in her opinion, the matters for control contained in PC37 as notified, subject to her recommended additions and minor amendments, would be appropriate as matters for discretion for applications for subdivision consent. Relevantly, one of the recommended amendments relates to the need for an assessment of the traffic effects of the proposed subdivision. On this basis, Ms Cleary recommends amendments to PC37 as notified, to make subdivision a restricted discretionary activity.<sup>6</sup>
18. The applicants support this approach and seek amendment to PC37 to enable all subdivision within the PC37 area to proceed as a restricted discretionary activity, which will necessitate a transport assessment specific to each progressive subdivision application within the PC37 area. This will enable residential development to occur in an efficient manner that will, over time, identify the threshold at which transportation effects are unacceptable. At this point residential development will stall until the necessary transport infrastructure upgrades are in place.

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<sup>4</sup> Summary statement of evidence of Matthew Bonis dated 9 November 2021, paragraph 28.

<sup>5</sup> Summary statement of evidence of Matthew Bonis dated 9 November 2021, paragraph 28.

<sup>6</sup> Supplementary statement of evidence of Cheryl Cleary dated 3 December 2021, paragraph 13.

## **LOT SIZES**

19. Ms Cleary's supplementary evidence notes that Council is currently considering whether the review of the District Plan will introduce minimum and/or maximum lot sizes. That review will consider whether they should be applied across the District, including PC37 (if approved). Nevertheless, Ms Cleary has assessed whether it is appropriate to introduce lot size provisions in PC37.
20. To ensure the housing typologies and medium-density Objective and Policies will be achieved, Ms Cleary proposes to introduce a maximum lot size of 750m<sup>2</sup> for the General Residential Zone and 500m<sup>2</sup> for the Medium-Density Residential Zone. She also proposes a maximum density of 15 household units per net hectare for the General Residential Zone and 30 household units per net hectare for the Medium Density Residential Zone. Her evidence is that these provisions will ensure the land resource is used efficiently, while enabling some flexibility for a variety of lot sizes.
21. Further, to enable the flexibility to have a larger lot size to accommodate a comprehensive housing development or apartment block, an additional matter for discretion is introduced that will apply to a restricted discretionary activity subdivision application.

## **ARCHAEOLOGY – STRUCTURE PLAN NOTATION**

22. Ms Sykes' evidence identified two depressions in the PC37 area north of Poihipi Road (referred to as Area C) that may have archaeological values, albeit, even if found to be an archaeological site, likely of low heritage value.
23. The Panel suggested including a notation on the Structure Plan indicating the location of the depressions. Ms Cleary's supplementary evidence

includes a revised structure plan which shows the location of the two depressions and identifies it as 'an area of potential archaeological interest'. She also proposes including an explanation of the depressions in the Explanation section of Objective 3a.2.3 that explains that the origin and archaeological nature of the depressions are inconclusive based on research to date and advising of the need for an authority under the Heritage New Zealand Pouhere Taonga Act 2014 to undertake certain works in the identified location.

## **STORMWATER AND GULLY MANAGEMENT**

### **The interrelation between stormwater and gully management**

24. The management of stormwater effects and impacts on the gully network are interrelated. During the hearing there was a suggestion from Mr Palmer for WRC that there should be a Gully Management Plan in addition to a Stormwater Management Plan.<sup>7</sup> When questioned at the hearing, there was a lack of clarity over the purpose and content of a Gully Management Plan, but the key aspects of erosion and tomo control, and flooding within the gully network, were identified. Further questions were raised regarding how the management of the gully network interfaced, including in a hierarchical sense, with the stormwater management strategy.
25. As can be seen from the supplementary evidence of Ms Cleary, it is recommended that the gully management issues be incorporated with the overall stormwater management strategy. This approach is reflected in a series of new objectives, policies and rules relating to stormwater management which address gully management issues also. For example, new proposed Objective 3a.2.3.a and b which provides:

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<sup>7</sup> Statement of evidence of Jon Palmer dated 27 October 2021, paragraph 36-38.



To enable residential development of the Nukuhau Structure Plan Area as envisaged by the Plan, in a manner that contributes positively to residential amenity and character and minimises offsite effects, while:  
a. Ensuring the risk of erosion of, and exacerbation of flood risk downstream from, the major gully systems within the Nukuhau Structure Plan are avoided, remedied or mitigated; and,  
b. maintaining and enhancing the major gullies as stormwater flow paths as far as practicable.

26. These objectives are supported by new Policies 3.a.2.3 and 3.a.5 which provide:

vi. The risks of significant erosion and flooding within the gullies shown on the Nukuhau Structure Plan are avoided, remedied or mitigated.

viii. Risks of significant erosion and flooding within the gullies shown on the Nukuhau Structure Plan are avoided, remedied or mitigated.

27. And the following assessment criteria:

h. Stormwater management that is:

i in accordance with a Catchment Management Plan that has been approved by Council;

ii in accordance with the Waikato Regional Council Stormwater Guideline (2020.07);

iii integrated with the management of risks of significant erosion and flooding within the gullies throughout the Nukuhau Structure Plan; and

iv predominately onsite treatment to limit the use of the natural gully system as stormwater reserves.

28. These provisions ensure an integrated approach to the management of the gully network in combination with the overall strategy for the management of stormwater effects. On this basis, the applicants consider the requirement for a gully management plan to be redundant.

### **Catchment Management Plan**

29. During the hearing the commissioners raised issues concerning the need for a catchment wide, integrated approach to the management of stormwater effects arising within the PC37 area.
30. In terms of the wider stormwater management regime, Council holds a comprehensive consent for the municipal stormwater system within the

Taupō urban area<sup>8</sup> (**comprehensive consent**) which requires that new diversions or discharges be consistent with the conditions of the comprehensive consent. Mr Meadowcroft addressed this matter on behalf of Council in his statement of evidence<sup>9</sup>. He noted that the comprehensive consent requires that new diversion or discharge activities in undeveloped catchments must be consistent with a Catchment Management Plan, prepared in accordance with condition 32 of the consent, and approved by WRC acting in a technical certification capacity prior to any new diversion or discharge activities.

31. In her supplementary evidence Ms Cleary advises that a Catchment Management Plan that will meet the conditions of the comprehensive consent may be prepared by an applicant for subdivision and once approved by Council, provided to WRC for the technical certification approval stipulated in condition 32 of the comprehensive consent.
32. On this basis Ms Cleary recommends a new matter of discretion in relation to applications for subdivision consent, as follows:
  - (h) Stormwater management that is:
    - i in accordance with a Catchment Management Plan that has been approved by Council;
    - ii ....
33. Ms Cleary also recommends a new information requirement for applications for subdivision relating to the provision of a report that demonstrates that the application for subdivision is in accordance with a Catchment Management Plan that has been approved by Council.
34. The practical effect of these proposed rules is that unless there is already a Catchment Management Plan for new urban areas that includes the PC37

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<sup>8</sup> Resource Consent 105048 - Taupō Urban Areas Comprehensive Stormwater Discharge Consent issued by WRC. This is a Discharge to water consent to divert and discharge urban stormwater runoff contaminants at multiple locations to land, the Waikato (and other rivers) and to Lake Taupō. The duration of the consent is until 15 June 2027.

<sup>9</sup> Statement of Evidence of Colin Meadowcroft dated 8 November 2021, paragraph 10.

area, the first applicant for subdivision within the PC37 area will need to prepare a Catchment Management Plan and have it approved by Council. The new assessment criteria for subdivision<sup>10</sup> will ensure the necessary integration is addressed. That rule will require consideration of the proposed stormwater management strategy within the plan change area in the context of the Catchment Management Plan which takes a catchment wide approach, and will include an assessment of how it integrates with the management of risks of significant erosion and flooding within the gully network.

## CULTURAL EFFECTS

35. In her supplementary evidence, Ms Cleary considers that there is a small risk of effects on cultural values, and measures to address those values, not having been identified for the Nukuhau Structure Plan<sup>11</sup>.
36. Ms Cleary confirms her view that an assessment of cultural effects to accompany applications for subdivision remains necessary. She has retained her recommendation for the inclusion of an information requirement for a cultural impact assessment for the first applicant for subdivision within the PC37 area. She has also included a matter of discretion that requires subdivision to demonstrate that it gives effect to a cultural impact assessment for the entire Nukuhau Structure Plan area and proposes the following assessment criterion for subdivision:

o. the extent to which subdivision within the Nukuhau Structure Plan:  
(i) recognises and provides for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga; and  
(ii) ensures that historic heritage is protected from inappropriate subdivision, use and development; and  
(iii) ensures adverse effects on historic and cultural heritage are avoided, remedied or mitigated; and

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<sup>10</sup> Proposed rule 4.a.7.2.1(h).

<sup>11</sup> Supplementary statement of evidence of Cheryl Cleary dated 3 December 2021, paragraph 55.

(iv) responds to and incorporates the outcomes of engagement with relevant iwi authorities, hapū and/or Mana Whenua in the design, layout and other measures; and

(v) incorporates into the subdivision design cultural and historic heritage landscapes, sites and features.

Advice Note: the provision of a cultural impact assessment with the application for subdivision consent may assist in addressing this assessment criterion (o). The WRPS defines cultural impact assessments as:

Cultural impact assessments – reports documenting Māori cultural values, interests and associations with an area or a resource and the potential impacts of a proposed activity on these. They are tools to facilitate meaningful and effective participation of Māori in impact assessment and should be regarded as technical advice, much like any other technical report such as ecological or hydrological assessments.

37. The Panel can have confidence that the final proposed plan provisions appropriately address all relevant Māori cultural matters arising in the context of the plan change and ensure that cultural values are recognised and protected before development occurs within the PC37 area.

#### **RANGATIRA 8A17 - SCOPE TO SEEK MEDIUM-DENSITY ZONING**

38. The Hearing Panel queried whether there is scope for Rangatira 8A17 to seek medium-density residential zoning on its land within the PC37 area.
39. Rangatira 8A17's submission did not seek to rezone any part of its land for medium-density residential development. Its further submission (FS60.14) in support of Contact's submission is as follows:

Contact Energy Ltd amongst other matters requires the deletion of the medium density residential zone. The Trustees submit that the positioning of such zone close to Contact Energy Ltd interests may well be inappropriate **and the Trustees provide an alternative location as shown on the attached infrastructure plan.**

[Emphasis added].

40. The medium density residential zoning was pursued in Rangatira 8A17's planning evidence<sup>12</sup>.

41. Clause 8 of Schedule 1 to the RMA relevantly provides:

...

(2) A further submission **must be limited to a matter in support of or in opposition** to the relevant submission made under clause 6.

[Emphasis added].

42. Case law authority is clear that further submissions cannot extend the scope of an original submission and can only seek allowance or disallowance (wholly or in part) of the original submission which it supports or opposes<sup>13</sup>. To be entitled to seek medium-density residential zoning on its land, Rangatira 8A17 were required to request that relief in its original submission.

43. The Panel has no power to grant the relief sought in Rangatira 8A17's further submission to rezone part of its land within the PC37 area to medium-density residential.

## **CONTACT ENERGY SUBMISSION**

44. Both Mr Crawford on behalf of the applicants and Mr Chrisp on behalf of Contact confirmed that CN Top and Contact were engaged in direct negotiations regarding placement of an encumbrance on all titles created from Lot 2 DP 384060, the area of land within the PC37 area owned by CN Top adjacent to Contact's land on Poihipi Road. It was anticipated that the encumbrance would address all reverse sensitivity concerns raised by Contact in its submission and evidence.

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<sup>12</sup> Statement of evidence of David Greaves dated 29 October 2021, paragraph 5.0.

<sup>13</sup> *Offenberger v Masterton* DC W053/96 (PT); *Telecom NZ Ltd v Waikato* DC EnvC A074/97.

45. At the time the hearing was adjourned, the discussions between C N Top and Contact were ongoing. Discussions between the parties continued thereafter, and an agreement has now been reached which resolves Contact's concerns outlined in its submission and evidence in their entirety. That was confirmed by email to Council and Mr Crawford for the applicant dated 30 November 2021 which states:

Contact and CN Top have now agreed to, and signed, a Memorandum of Agreement and associated encumbrance to secure reverse sensitivity covenants over the CN Top property in the event that PC37 is approved.

On this basis, Contact's concerns raised in its submission to the PC37 application and subsequent evidence at hearing, have now been satisfactorily resolved.

As such, the submission by Contact should not be viewed as a reason to decline the application.

46. Accordingly, the Panel can have confidence that there are no reverse sensitivity concerns relating to the Contact land that the Panel need to consider in determining PC37.

## **VESTING OF LAND**

47. It is proposed to vest Rangatira 8A17A6 in Taupo District Council which will become reserve land.
48. In the hearing, the Panel made enquiries about the process for vesting the land, including whether any Maori Land Court procedures would need to be undertaken. Mr Kusabs' evidence on behalf of Rangatira 8A17, confirmed that by Order of the Maori Land Court on 7 March 2017, the relevant land held by Rangatira 8A17 ceased to be Maori Freehold Land,

and is now General Title<sup>14</sup>. The Order was registered against the relevant titles on 1 June 2018. Accordingly, the applicants do not foresee there being any statutory barriers that will impede vesting of the land in Council as proposed.

## **RANGATIRA E**

### **Consultation**

49. The evidence and submissions from Rangatira E have underlined that a key concern for them is that, as mana whenua and as a Maori landowner, they have not been adequately consulted on the plan change application.
50. There is a factual dispute between the applicant and Rangatira E as to how consultation with Rangatira E unfolded. Mr Crawford, on behalf of the applicants, has explained in his primary evidence the steps taken to engage with Rangatira E. His evidence is that in taking those steps, he relied on the best advice he had at the time from a Trustee of Rangatira E of whom he understood to be a representative. Rangatira E's evidence is that Mr Crawford met with Rangatira E's consultant, Mr Lenihan, and that further attempts by the applicant to consult were made, although not through the preferred channels<sup>15</sup>.
51. Nevertheless, putting the factual dispute aside, the applicants regret that Rangatira E is dissatisfied with the applicants' efforts to consult and accepts that it was not what it should have been. The applicants recognise the benefits of consultation with affected and interested parties. The applicants did attempt to consult with Rangatira E in good faith and considered that it did all it could to engage with all parties affected, including Rangatira E.

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<sup>14</sup> Statement of evidence of Mr Andrew Kusabs dated 5 November 2021, paragraph 3.10.

<sup>15</sup> Joint statement of evidence of Alec Wilson and Alex Wilson Jnr dated 9 November 2021, paragraphs 24, 27.

52. The critical question is what the impact is. It is submitted that no significant prejudice arises. Rangatira E submitted on PC37, has actively participated in the plan change process, and made its concerns known in its submissions and evidence. No significant cultural sensitivities regarding the PC37 area have been identified that would count against urbanisation of the land. In the event there are cultural effects, Ms Cleary has proposed amendments to the suite of plan provisions that will address any potential cultural effects.
53. In the hearing, Rangatira E took the unorthodox approach of inviting the Panel to adjourn the hearing to allow the parties to engage on the issues of concern, including via expert caucusing. The applicants are willing to engage with Rangatira E, however it considers it unnecessary to halt the plan change decision-making process that is at the final stage, given the ability for engagement to take place at the time of subdivision via the cultural impact assessment.

#### **Effects on Rangatira E**

54. Rangatira E indicate that there has been limited consideration for the effects that PC37 will have on them.
55. It is difficult to discern the particular effects of concern to Rangatira E, and clarification was not provided through evidence and submissions presented at the hearing. Broadly, Rangatira E appear to assert that the failure to adequately consult has given rise to cultural effects. They also indicate that there has been a lack of consideration for the impact that PC37 will have on Rangatira E's development rights and that PC37 may 'use up' all available infrastructure capacity<sup>16</sup>. They also raise the issue of stormwater effects from the development of PC37 land.

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<sup>16</sup> Statement of evidence of Brett Farquhar dated 29 October 2021, paragraph 3.3.



56. Rangatira E's concerns regarding cultural effects appear to be related to two issues: its complaint about a lack of consultation and the absence of a cultural impact assessment. In her supplementary evidence, Ms Cleary assesses cultural effects in detail. As stated earlier in these submissions, she considers there to be a small risk of effects on cultural values<sup>17</sup>. However, these concerns are addressed through the requirement for a cultural impact assessment at the subdivision stage of development.
57. The applicants reject the premise that by enabling PC37 ahead of enabling development of Rangatira E land, it may impede Rangatira E's ability to realise its development aspirations. To the contrary, PC37 will enable transport connections between the PC37 area and Rangatira E's land. Stormwater and potable water connections through the PC37 area to Rangatira E land could potentially be upsized during the development stage to the benefit of both areas.
58. There is no basis for Rangatira E's suggestion that development of the PC37 area should only be enabled through a future review of the TDP, which is the RMA pathway it appears to have elected. It was open to the applicants to lodge a private plan change request under the RMA to progress their development aspirations. That same opportunity remains open to Rangatira E.
59. Rangatira E's concern about stormwater runoff from PC37 land affecting its land upstream is unsupported by any expert stormwater engineering evidence<sup>18</sup>. The applicants' stormwater expert, Mr Bird's evidence is that the issue will be avoided through the implementation of sound engineering<sup>19</sup>. Mr Bird also notes that the most significant flow paths from

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<sup>17</sup> Supplementary statement of evidence of Cheryl Cleary dated 3 December 2021, paragraph 55.

<sup>18</sup> Statement of evidence of Brett Farquhar dated 29 October 2021, paragraph 3.18.

<sup>19</sup> Reply statement of evidence of Warren Bird dated 5 November 2021, paragraph 11.

the Trust's land into the Nukuhau Structure Plan area are identified and provided for in the stormwater reserves/gullies shown on the Structure Plan. All other drainage features crossing the boundary will also be assessed and provided for at the appropriate time - an orthodox part of the development engineering process. Rangatira E's concern is also allayed through the inclusion of the requirement that subdivision in the PC37 area be in accordance with an approved Catchment Management Plan.

60. It is submitted that, having regard to the evidence before the Panel, it can be satisfied that the proposed PC37 provisions will adequately mitigate any effects from development of the PC37 land on Rangatira E.

### **Integrated approach**

61. Rangatira E asserts that PC37 does not represent an integrated approach to rezoning. Their concern being that the surrounding development will be piecemeal as there is no agreed framework for the development of the necessary infrastructure.
62. To the contrary, the technical evidence shows that PC37 adopts a coordinated approach that achieves integrated management and promotes the purpose of the RMA and meets the relevant statutory tests. That evidence provides that there are appropriate solutions to the infrastructure issues raised by Rangatira E in relation to both stormwater and transport.
63. Rangatira E considers that Council should place a hold on all developments in western Taupo/Acacia Bay until an integrated and inclusive structure planning exercise of the entire area has been undertaken. The thrust of this submission is that PC37 "is too premature in its overall planning"<sup>20</sup>. The applicants do not accept this proposition. The urbanisation of

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<sup>20</sup> Statement of evidence of Brett Farquhar dated 29 October 2021, paragraphs 3.4 and 5.2.

Nukuhau is not occurring out of sequence. Nukuhau is directly contemplated for urban development by the TD2050 Growth Management Strategy which identifies Nukuhau as a growth area. The natural extension of the existing northern urban boundary is through the PC37 area.

### **Nature of Rangatira E's opposition on PC37**

64. Case law is clear that Part 2 does not give any party, including mana whenua, a right of veto over a proposal<sup>21</sup>. The applicants do not suggest that Rangatira E are seeking to exercise the right of a veto. However, Rangatira E is opposed to PC37 in its entirety and seeks that the Panel decline it. Rangatira E has not stated on what basis it would move from opposition to support, nor has it suggested any amendments to the proposed plan provisions.
65. Accepting the obligations on decision-makers under Part 2 of the Act and statements of superior Courts in cases such as *McGuire v Hastings District Council*<sup>22</sup>, the evidence of Rangatira E whether as mana whenua or a Maori landowner, like any other party, needs to be assessed and weighed within the framework of the relevant statutory provisions set out in Attachment 1 to the applicants' opening legal submissions.
66. The applicants submit that Rangatira E has not raised any issue that justifies declining PC37.

### **CONCLUSION**

67. It is the applicants' submission that the hearing did not give rise to any further issues which alter the position taken in its opening legal submissions. As such, the applicants position remains that there is no

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<sup>21</sup> *Watercare Services Ltd v Minhinnick* [1998] 1 NZLR 294 (CA).

<sup>22</sup> [2002] 2 NZLR 577 (PC) at [21].

impediment to PC37 proceeding and that significant benefits will ensue if it does proceed.

68. Fundamentally, the planning evidence of the applicants and Council's reporting officer is that:

- a) PC37 gives effect to the relevant provisions of the WRPS, the Operative Taupo District Plan "as they relate to realising Nukuhau as an Urban Growth Area identified in the TD2050 Growth Management Strategy<sup>23</sup>";
- b) Subject to addressing the recommended deferment of subdivision until the Control Gates Bridge capacity issue is resolved, that PC37 "would appropriately take into account the efficient and effective [sic] functioning of supporting infrastructure in terms of three waters and the supporting road network and open-space network (including cycle/pedestrian networks), in a manner that gives effect to and achieves the relevant higher order framework"<sup>24</sup>;
- c) Disputes relating to mechanisms to ensure that residual resource management issues (iwi engagement, historic heritage) and infrastructure (transport) are addressed<sup>25</sup>; and
- d) Overall, there is agreement that PC37, as amended in Ms Cleary's supplementary evidence, is the most appropriate means of achieving the objectives of the District Plan, and the sustainable management of natural and physical resources in accordance with Part 2 of the RMA<sup>26</sup>.

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<sup>23</sup> Section 42A report, paragraph 12.1.

<sup>24</sup> Section 42A report, paragraph 12.2.

<sup>25</sup> Summary statement of evidence of Matthew Bonis dated 9 November 2021, paragraph 9.

<sup>26</sup> Summary statement of evidence of Matthew Bonis dated 9 November 2021, paragraph 9.

69. Accordingly, the Plan Change should be accepted.

Dated 3 December 2021

A handwritten signature in black ink, appearing to be 'L F Muldowney' or similar, written in a cursive style.

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L F Muldowney/S K Thomas  
Counsel for Applicants