

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.

OPENING LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANTS

Dated 8 November 2021

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. Proposed Plan Change 37 (**Plan Change or PC37**) represents a compelling opportunity to enable an attractive, liveable and high-quality residential neighbourhood in the Nukuhau area in Taupō. Long established as a future urban area, Nukuhau's time has come.
2. The Plan Change, which is sought by three landowners in the Nukuhau area (**co-operating landowners or Applicants**), seeks to rezone 77.78 hectares of Rural Environment zoned land to a mix of General Residential Environment and Medium Density Residential.
3. The Plan Change is consistent with the well established strategic growth planning in Taupō. It is consistent with Taupō District 2050 (**TD2050**) which is the long term urban growth strategy for Taupō. The Nukuhau area is identified as a Northern Urban Growth Area in the Operative Taupō District Plan (**District Plan**). Under the District Plan such areas are where the majority of growth is intended to occur in the northern area of Taupō¹. At the regional level, the Waikato Regional Policy Statement (**WRPS**)² gives statutory life to TD2050 and the Plan Change gives effect to WRPS Policy 6.11: *Implementing Taupō District 2050* by enabling residential growth in Nukuhau.
4. The Plan Change delivers a residential community which will make a demonstrable contribution to growth within Taupō in the right location, and in a compact, coherent, and efficient way which sets this community into the landscape, protects key environmental features, and makes and creates quality neighbourhoods for a broad diverse community.

¹ District Plan, Section 3e.6.1; Taupō Urban Structure Plan.

² WRPS, Policy 6.11.

STRUCTURE OF SUBMISSIONS

5. These submissions do not repeat the planning analysis that has been undertaken to support the Plan Change. The commissioners will hear evidence on those matters. Rather, the focus of these submissions is on addressing the live issues arising from the submissions and Officer's Report. In addition to addressing these issues, the submissions:
 - a) Summarise the Plan Change proposal;
 - b) Summarise the procedural background;
 - c) Outline the proposed amendments to the Plan Change since notification, generally as a result of issues raised in submissions and the Council Officer's Report prepared under s 42A of the RMA;
 - d) Address the key issues; and
 - e) Provide a brief statutory analysis of the Plan Change, largely with reference to Ms Cheryl Cleary's primary planning evidence.

PLAN CHANGE PROPOSAL

6. The proposal is described in the Plan Change Request and in the evidence of Mr Hamish Crawford. In summary:
 - a) PC37 is a Private Plan Change that primarily seeks to facilitate residential development through the proposed rezoning of approximately 78ha of land from Rural Environment to General Residential environment, and approximately 8.3ha to Medium Density Residential Environment in the District Plan. A

Neighbourhood Shopping Centre overlay of approximately 2,500m² is also proposed on the western side of Acacia Bay Road.

- b) The Plan Change area is located on the immediate northwest of the Taupō urban boundary, on elevated southward-sloping topography. The Plan Change area is ideal for the residential development proposed, being currently comprised of pastoral farmland and a limited number of rural lifestyle allotments, containing a modest number of existing dwellings. The Plan Change area is well-located to ensure a compact urban form as an extension to the existing urban area, being only 2-3km from the Taupō CBD via Wairakei Drive and the Control Gates Bridge. The proximity to the Taupō CBD and Lake Taupō means that the Plan Change will provide good accessibility for future residents to employment, services and recreational facilities.
 - c) PC37 will make a positive contribution to a well-functioning urban environment by providing housing choice and opportunities for active transport modes. Extensive open space and stormwater reserves will provide a high level of visual and recreational amenity for residents. The creation of walking and cycleways within the main gully system within the Structure Plan, and the enhancement of these areas with planting, will achieve a high level of amenity for residents and ensure the low impact stormwater design concept for the Structure Plan is fulfilled.
7. PC37 includes the following changes to the District Plan:
- a) Amendments to Chapter 3a Residential Environment, Objectives and Policies, to refer to the Nukuhau Structure Plan Area and the Nukuhau Residential and Medium Density Areas in the Introduction and Explanation.

- b) Introduction of a new Objective and Policy (3a.2.2A) and explanation.
 - c) Introduction of a new section 'Nukuhau Structure Plan Area', with Objective and Policies (3a.2.3).
 - d) Amendment of 3a.3 Methods (i) Performance standards and introduction of a new method xii.
 - e) Introduction of a new Anticipated Environment Outcomes to 3a.5.
 - f) Amendments to Chapter 4a Residential Environments, Rules and Standards, to amend 4a.1 Performance Standards and Development Controls to introduce the Nukuhau General Residential and the Nukuhau Medium Density Residential.
 - g) Introduction of 4a.7 Nukuhau Structure Plan Area Rules.
 - h) Introduction of new criteria for subdivision in 4a.7.17 Subdivision (renumbered by PC37 to 4a.8.17).
 - i) Introduction of a new Appendix 9 Outline Development Plan, which includes 9.7 Nukuhau Structure Plan.
 - j) Rezoning of 77.78 hectares of Rural Environment zoned land to General Residential (70.65ha) and Medium Density Residential (6.9ha) with a Neighbourhood Shopping Centre (Shops) overlay over 0.25ha in the proposed General Residential Zone.
8. The Plan Change has been amended to incorporate many of the recommendations made by Council's reporting officer in the report prepared under s 42A of the RMA (**Officer's Report**) and in response to submissions. In addition, the Officer's Report sought a small number of amendments that the Applicants support in general terms, but have made further changes to, to ensure a workable set of provisions. The amended

form of the Plan Change proposed by the Applicants is appended to the evidence of Ms Cleary.

PROCEDURAL BACKGROUND

Submissions and submitter evidence

9. The Plan Change was publicly notified by Council on 3 February 2021. 59 submissions and one further submission were lodged on the Plan Change. Of these submissions:
 - a) 12 were in full support;
 - b) 44 opposed the application or sought amendments; and
 - c) 3 did not take a position.

10. The Applicants have sought to constructively respond to the issues raised in submissions. This is reflected in the relatively small number of issues that remain outstanding, and the limited amount of expert evidence on a narrow set of issues lodged by submitters, which comprises:
 - a) Planning evidence from Bike Taupō which does not oppose the Plan Change but seeks an amendment to Policy 3a.2.3 to provide for cycling infrastructure;
 - b) Planning and technical evidence from Waikato Regional Council (**WRC**) which seeks amendments to the Plan Change in relation to gully management;

- c) Planning evidence from Contact Energy Limited which advises that its reverse sensitivity concerns are being worked through directly between the parties and are likely to be resolved;
- d) Archaeological evidence from Heritage New Zealand Pouhere Taonga (**Heritage NZ**) which seeks resolution of matters raised in the archaeological peer review appended to the Officer's Report before a decision on the Plan Change is made;
- e) Planning evidence from Rangatira Blocks 8A17A5 and 8A17A6 and Rangatira 8A1T2X and 8A1T2Y and PT Rangatira A1T2 (**Rangatira 8A17**) supporting the Plan Change but seeking particular amendments, including removal of the Neighbourhood Shopping Centre overlay, amendment of the stormwater reserve notation along the south-western boundary of their site to a 3m landscaping strip, and the south-eastern portion of their property be identified as medium-density;
- f) Planning evidence from Rangatira E Trust (**Rangatira E**) which opposes the Plan Change largely on the basis that it prefers to see its development aspirations enabled ahead of the Plan Change.

Officer's Report

11. The Council's reporting officer has recommended that the Plan Change be approved, subject to amendments, described as follows:³

279.1 Objective 3a.2.2A and associated Policy 3a2.2A(i) to confine application to the Nukuhau Structure Plan Area. As outlined, without such the provisions could result in unintended consequences in providing policy support for developments outside of this area. Accordingly, the amendments are

³ Officer's Report, paragraph 279.

considered to be the more appropriate in terms of achieving the purpose of the Act.

279.2 Amendments to Rule 4a.7.2 to account for the need to further consider matters associated with landscape (CPTED, larger trees), Design (overlooking and visibility of gullies), and Ecology (surveys and mechanisms for protection of 'at risk' species at time of subdivision). I consider that these insertions relate to existing requirements to be undertaken at time of subdivision and are both efficient (as they will be linked with existing subdivision processes) and effective (in addressing residual matters).

279.3 Amendments to Policy 3a.2.3(v) and insertion of Rule 4a.7.5 which acts to provide a deferral of development otherwise enabled by the Request until such time as increased road capacity is provided at the Control Gate Bridge. I have identified that without such, development would not be efficient and effective in terms of achieving the higher order statutory framework, with some tension with those provisions of the WRPS and Taupo District Plan that seek development of Growth Areas adequately accounts for the efficient and effective functioning of supporting and surrounding infrastructure.

12. Amendments have been proposed to reflect these recommendations, with further changes to ensure a workable set of provisions. The Officer's Report also identified two matters he considered to be contested or unresolved: engagement with mana whenua and archaeology. These issues were subsequently raised in the evidence of Rangatira E and Heritage NZ and will be addressed by the Applicants' witnesses.

Expert conferencing

13. Following release of the Officer's Report, at the Applicants request, the Hearing Panel issued directions for expert conferencing of the

transportation and planning witnesses. For discussion at the conferencing, the Applicants' transport witnesses provided an updated modelling assessment.

14. The conferencing of the transportation and the planning witnesses for Council and the Applicants took place virtually on 12 October 2021. Further conferencing of the transportation witnesses occurred virtually on 15 and 18 October. The conferencing was effective in identifying the matters that are agreed, and the key issue in contention, as recorded in the Joint Witness Statement (**JWS**) dated 18 October 2021. The experts agree a volume of traffic as the capacity of the Control Gates Bridge⁴, and that any additional residential development to the north of the Bridge will exacerbate congestion⁵. On that point, the JWS records:⁶

In agreeing with that statement, Mr Swears emphasised that he considers it is traffic generated by "additional development" that will exacerbate the congestion. He considers that if additional lots are available for development, but the amount of motor vehicle traffic (associated with the residential development) at any given location on the transport network is the same, the effect of the Plan Change on congestion will be no worse than neutral. That is when directly compared to an alternative scenario with the same total amount of traffic generated by development occurring to the north of the bridge. Mr Smith agrees with this point.

15. In other words, regardless of whether the new residential lots are created in the Plan Change area, or somewhere else north of the Control Gates Bridge, the effect on traffic congestion at the bridge is the same.

⁴ Paragraph 2.2(c).

⁵ Paragraph 2.2(d).

⁶ Paragraph 2.2(d).

16. The issue of the capacity of the Control Gates Bridge, and how effects can be addressed through plan provisions will be addressed later in these submissions.

AMENDMENTS TO THE PLAN CHANGE

17. The Applicants have carefully considered all feedback received on the Plan Change since lodgement, including through submissions, evidence and in the Officer's Report. As a result, a number of changes have been made to the proposal, these are set out in paragraphs 289 to 296 in Ms Cleary's evidence, and are supplemented by a small number of further amendments as set out in her reply statement. The proposed amendments are as follows:

- a) Additions to the discussion of the Nukuhau Structure Plan Area to explain the need for an ITA in relation to subdivision consenting and the impacts at the Control Gates Bridge;
- b) Additional policy wording at Policy 3a.2.3(v) to include reference to traffic effects as a subdivision consideration;
- c) Amendments to Rule 4a.7 to make subdivision a discretionary activity and the requirement in assessment criteria 4a.8 to address traffic considerations;
- d) Additions to Rule 4a.7.2 to address public transport considerations;
- e) Additions to Rule 4a.7.2(d) to address ecological effects;
- f) Amendments to Objective 3a.2.3 and Policy 3a.2.3 to address erosion and flooding risks;

- g) Amendment to subdivision Rule 4a.7.2 to address CPTED issues, ecological issues, and cultural issues through provision of a cultural impact assessment;
- h) Additions to the subdivision assessment criteria to address public transport, historical and cultural heritage; and
- i) Amendments to the Nukuhau Structure Plan to address reverse sensitivity issues.

KEY ISSUES

18. There are a narrow set of issues that remain in contention as between the Applicants, Council and some submitters. The Applicants' position in respect of each of those issues is set out below.

Archaeology

19. There are no archaeological reasons why the Plan Change should not be granted. There are however different opinions on the timing of further investigatory work. The Applicants' experts consider that this work should be completed before earthworks and subdivision. Heritage NZ and Council's reporting officer consider it should be undertaken prior to the Plan Change being approved. There is no valid resource management reason to support this approach.
20. The Applicants have followed an orthodox approach to the assessment of archaeological factors relevant to the proposed Plan Change. That began with a higher-level archaeological review, described by Ms Sykes as an "Archcheck" which is a first stage desk top analysis of the site. The New Zealand Archaeology Association's "Archsite" was the primary resource for identifying recorded sites in the area. A site inspection was also conducted. The report, which is set out at Appendix K to the Plan Change Request

notes that the wider landscape was extensively used prior to 1900 by Māori, and while no specific archaeological risk was identified it is recommended that further research be undertaken in the form of an archaeological assessment which would include a site walkover and further research to determine whether an archaeological authority would be required prior to earthworks, or whether works could proceed under the accidental discovery protocol.

21. In her evidence Ms Sykes confirms that she then prepared an Archaeological Assessment Report dated 7 September 2021 following discussions with Heritage NZ and after consideration of the matters raised in its submission. She undertook a comprehensive site visit on 6 July 2021 and concluded that:

The majority of the Site is considered to have low archaeological risk and thus, low archaeological values. The exception to this is the two depressions identified during the site visit in Area C. There is potential that these may represent an unrecorded archaeological pit site, which in turn would indicate wider settlement or gardening in the general vicinity. Any such evidence would be considered of local archaeological relevance only and therefore is considered to be low significance.

22. The archaeological assessment was provided to Heritage NZ, which formed the view that further exploratory work should be conducted to reach conclusive findings on whether archaeological sites were present. Ms Walter, as part of the Officer's Report, also concluded that in her view further investigatory work was required, and that this should occur before the Plan Change is approved. The Officer's Report concludes that without the further investigatory work he cannot confidently conclude that the relevant objectives and policies relating to historic heritage are given effect to.
23. The Heritage NZ evidence relies on the report from Ms Walter to support its proposition that 'the most appropriate way forward to assist with informing the location of development and avoiding adverse effects on archaeology' is to undertake additional research ahead of the Plan Change being approved.

24. In reply, Ms Sykes sets out a full account of the comprehensive research and work undertaken on behalf of the Applicants. The evidence provides a robust evidential foundation for the commissioners to conclude that there are no archaeological reasons why the Plan Change should not be approved subject to provisions which ensure that the next level of archaeological investigation occurs prior to subdivision and earthworks.
25. In her planning evidence, Ms Cleary identifies that proposed Rule 4a.7.2(d) of PC37 reserves as a matter of control for applications for subdivision consent “any actual or potential effects on areas or features of cultural, ecological, historic, landscape or natural values”. She then sets out the proposed matters of control and assessment criterion, which provides:

4a.7.2 Any subdivision within the Nukuhau Structure Plan that complies with Rule 4a.7.1 and is in accordance with the Structure Plan in Appendix 9 is a controlled activity.

For the purposes of Rule 4a.7.2 the matters over which the Council reserves control for the purpose of assessment are:

...

d. Any actual or potential effects on areas or features of cultural, ecological, historic, landscape or natural value. **Effects on areas or features of cultural value will be considered in relation to a cultural impact assessment provided by the applicant and prepared by or on behalf of the appropriate iwi authority representatives and mānā whenua representatives or otherwise appropriately qualified person, or written confirmation from those representatives that no cultural impact assessment is required. Note: it is envisaged that a cultural impact assessment will be prepared for the entire Nukuhau Structure Plan area and that will provide an assessment of cultural effects for all subsequent applications for subdivision consent.**

~~4.78~~ Assessment Criteria

~~4a.78.17~~ Subdivision

...

o. The extent to which historic and cultural heritage within the Nukuhau Structure Plan is recognised and provided for, and the extent to which adverse effects on historic and cultural heritage are avoided, remedied and mitigated, including through the design and layout of the subdivision.

26. Ms Cleary concludes that if the two depression features are found to be archaeological sites and protection of them is desirable, then the matters for control, including the recommended additional matter relating to a

cultural impact assessment, will ensure appropriate protection of cultural heritage in the subdivision design and layout.

27. Ultimately, this issue is satisfactorily resolved through the plan change subdivision rules which ensure that the further archaeological investigations will be undertaken, and the outcomes reflected in the ultimate design and layout of the subdivision, which could include preservation and protection of any identified archaeological features. Given the nature of the archaeological features, this planning response is proportionate, efficient and appropriate in s 32 RMA terms.

Iwi consultation and cultural impacts

28. Māori cultural and spiritual values are highly relevant to PC37, given that it involves Ngāti Tūwharetoa ancestral land and in light of the requirements in sections 6(e), 7(a) and 8 of the RMA.
29. These factors have been at the forefront of the consultation processes undertaken by the Applicants as it has progressed the Plan Change process. They have addressed consultation with iwi interests both internal to the Plan Change area, and externally.
30. As a starting point, it needs to be acknowledged that through Council's development of its growth strategy for Taupō which extends out to 2050, broad and wide community consultation was undertaken, which included mana whenua. Through that consultation process, the Plan Change area was identified as a land resource which would be subject to urbanisation. Accordingly, the broad concept of development of this land has been consulted on in the public domain, including with mana whenua, for some time.
31. In terms of the more specific engagement relating to the Plan Change proposal, in the period leading up to the lodgement of the Plan Change

there had been substantial engagement with mana whenua, which is detailed in Appendix L of the Plan Change Application. Parties consulted with included Te Kotahitanga o Ngāti Tūwharetoa, Te Arawa River Iwi Trust, Tūwharetoa Māori Trust Board, and Raukawa Charitable Trust as a River Iwi Authority and Iwi authority in terms of a Statutory Acknowledgment.

32. In his evidence Mr Crawford details the specific engagements he has had with representatives from each of these entities. He notes that no formal response was received from Te Kotahitanga Ngāti Tūwharetoa. For Te Arawa River Iwi Trust he notes that in their letter of comment they record that they 'support the direction of the Nukuhau Plan Change'. Tūwharetoa Māori Trust Board acknowledged the Plan Change and noted that it was primarily interested in the stormwater component and any other part of the development that might have an effect on Taupō Waters. They further noted that they were comfortable that Mr Crawford was consulting with Mr Andrew Kusabs and Ms Gloria McLaughlin given their links to local marae. No formal response was received from Raukawa Charitable Trust.
33. As the commissioners are aware, within the Plan Change area are two blocks of māori freehold land, Rangatira 8A17 and Rangatira 8A62B. Each group of landowners have been extensively consulted with in the development and progression of the Plan Change, and both ownership groups are on the whole supportive of the Plan Change.
34. In terms of the Rangatira 8A17 block, there has been extensive consultation with its representatives Mr Kusabs and Ms McLaughlin who, as respected senior identities within mana whenua, have provided the Applicants with advice on cultural issues.
35. In terms of the Rangatira 8A62B block, the Applicants, through Mr Crawford, have been in regular engagement with the land trust chair Ms Rogers, and Mr Williams. These representatives have signalled strong

support for the Plan Change, and are motivated to progress development of their land.

36. Direct consultation with representatives of the extensive Rangatira E block of Māori land (which is adjacent to the Plan Change area) has not been easy for the Applicants. Early engagement in October 2017 indicated support for the Plan Change but this was not borne out in the submission lodged on behalf of Rangatira E which signalled the Plan Change would be opposed, as Rangatira E had its own development aspirations that it wished to see achieved ahead of PC37.
37. Off the back of the submission the Applicants reached out to representatives of Rangatira E and a meeting was arranged for 14 May 2021. Unfortunately, only Mr Lenihen, an architect engaged by Rangatira E attended, and no real progress was made. Despite these matters, it is positive to note that the submission and evidence filed on behalf of Rangatira E make it clear that they have no objection to the Plan Change based on cultural considerations, with their focus firmly on their own land development aspirations and a preference to advance those aspirations ahead of PC37. The Applicants are encouraging of further development of the Rangatira E block and have ensured that the structure plan transport network layout enables connectivity between the two development areas.
38. Overall there is a record of extensive engagement between the Applicants and the various iwi interests. Through this engagement the Applicants have identified ways that the plan change can reflect and have regard to the cultural issues identified. That begins with the requirements at the subdivision stage to ensure that cultural effects are addressed through a Cultural Impact Assessment and Heritage Assessment, which is specific to the development. The robust stormwater management provisions will address those water quality issues identified by Tūwharetoa Māori Trust Board. Any development within or affecting the Rangatira 8A17 blocks will be advanced with direct reference to the trustees of that land, which will

ensure cultural effects are addressed. This may give rise to specific consent conditions requiring the identification and acknowledgment of areas or features of heritage and cultural significance to tangata whenua.

Local retail impacts

39. The Rangatira E submission and evidence raises concerns regarding the proposed neighbourhood shopping centre and its potential to generate adverse impacts on the existing centre at Acacia Bay Road/Mansell Road. They assert that there is considerable growth potential for that centre, and that should not be undermined by the Plan Change. That same concern is identified in the evidence submitted on behalf of the owners of Rangatira 8A17, which also notes that some of the owners of that block have interests in the Acacia Bay Road/Mansell Road centre.
40. While the Officer's Report concludes that the proposed neighbourhood shopping centre will not generate any adverse retail distributional effects, the owners of Rangatira 8A17 seek expert evidence on this point.
41. For the Applicants, Mr Heath, a nationally recognised expert in retail distributional effects has presented a reply statement addressing these concerns. Mr Heath concludes that a land area of 2,500sqm is likely to yield a commercial building footprint of around 1,100sqm GFA if efficiently developed.
42. Small convenience centres such as that proposed in PC37 will accommodate a small cluster of shops located in the residential neighbourhood. This commonly includes your local takeaway shops, bakery, café, liquor store, dairy and convenience services like hairdressers. These small convenience centre types are evident in all urban areas across the country and are an economically efficient way of delivering frequently required or 'top up' goods and services to a local community. Ideally,

residents are able to walk or have to drive only a short distance to their local Neighbourhood Centre.

43. Mr Heath notes that the proposed PC37 Neighbourhood Centre would play a different role and function to the larger supermarket-based convenience centres such as Taupō Village, and the larger Taupō Town Centre. In terms of the centre located on the corner of Mansell and Acacia Bay Roads he considers that while the centre may experience some trade competition effects in the short term, these would be quickly offset by growth in PC37 and the wider Acacia Bay area. As such, the proposed PC37 Neighbourhood Centre would not cause adverse trade competition effects to a level that would flow over into any relevant wider retail distribution effects.

Natural gully network

44. The evidence lodged by WRC highlights the risks associated with gully erosion and scouring, and while supportive of the further amendments Ms Cleary has recommended, WRC seeks further amendments to satisfy its concerns. Many of those further amendments can be accommodated, and Ms Cleary has addressed those matters in her reply.
45. WRC also suggests that gully modification should be prevented. While recognising that gully modification should be exceptional, there should be provision for this to occur, particularly given that it may enable not simply subdivision yield, but also restoration and enhancement of the gully network.
46. In terms of using the gully network for stormwater detention purposes, WRC proposes an amendment to the rule by adding:

The management of stormwater in accordance with the Waikato Regional Council Stormwater Management Guideline (2020/07) and to

ensure that stormwater is treated onsite to control the use of the existing natural gully systems as stormwater reserves.

47. This wording is inconsistent with the Applicants' recommended approach of applying a gully based detention of stormwater as the final part of a train of stormwater management measures, controlling the largest storms. Gully floor detention may also provide a safer alternative to top-of-bank detention where there is a significant and increased risk of tomo failure.
48. While there is acceptance that the gully network should not be the primary detention mechanism, particularly for the purpose of maximising subdivision yield, the Applicants' expert, Mr Bird concludes that once reasonable peak flow attenuation has been provided on-site (suggested 10% AEP for residential and at least 50% AEP for roads), the extra-over detention could be provided via gully storage so that flow to the lower catchment is not increased across all storm events.
49. Accordingly, he proposes the following modifications to Ms Craven's wording:

. . . and to ensure that stormwater is treated predominantly onsite to limit the use of the natural gully system as stormwater reserves.

South-western stormwater reserve v landscaping strip

50. PC37 provides for a stormwater reserve along the south-western boundary of the Plan Change area, within the Rangatira 8A17 land. For the landowners, Mr Greaves suggests conversion of the south-western stormwater reserve to a 3m wide landscape buffer given that its existing topography is not typical of a stormwater gully⁷. Mr Bird acknowledges that the proposed reserve is not an existing conventional gully, like the

⁷ Evidence of David John Greaves on behalf of the owners of Rangatira blocks 8A17A5 and 8A17A6 and Rangatira 8A1T2X and 8A1T2Y and Pt Rangatira A1T2, 29 October 2021; paras 6.1-6.5

other proposed Stormwater Reserves, and as such it is not proposed due to any intrinsic value. However, multiple dry gullies within the Plan Change area fall southwards towards the existing urban boundary. Most of these gullies stop short of the urban area and rely on soakage for disposal, the only connections to Council's stormwater system being at Docherty Drive and Northwood Road. This raises the risk of uncontrolled overflow across the boundary into the housing area during large storm events or hydrophobic conditions.

51. The proposed stormwater reserve will create an overland flow path to divert excess stormwater flows safely away from the existing houses. The flow path reserve needs to be wide enough to convey flow as well as incorporating amenity planting and the batters associated with cuts through minor high points, noting that a 3m width is unlikely to be sufficient for this purpose.
52. Accordingly, provision of a corridor to safely convey excess runoff is an essential element of the Plan Change. The Stormwater Reserve shown on the Structure Plan ensures land is reserved for this purpose.

Control Gates Bridge/Deferred zoning

53. In the Traffic JWS prepared by Mr Swears, Ms Cui and Mr Smith it is agreed that that the Control Gates Bridge is operating at or near capacity and further development will extend delays and queues at the bridge and adjacent intersections. The roading infrastructure required to service not just PC37, but also other, already zoned, land to the north of the Waikato River is at-capacity or nearly at-capacity status due to the 'pinch point' at the Control Gates Bridge.
54. The Officer's Report has recommended deferral of subdivision until there is additional capacity for motor vehicle traffic to cross the Waikato River

through either duplication of the existing Control Gates Bridge or a second bridge that provides access to the CBD. This conclusion is based on Mr Smith's transportation evaluation which concludes that any worsening of the performance of the Control Gates Bridge is unacceptable⁸.

55. Mr Swears identifies that trip generation from PC37 will exacerbate queuing and delay.⁹ However, Mr Swears notes that it is important to realise that despite its capacity limitations, the Control Gates Bridge is able to carry significant volumes of traffic.¹⁰ Mr Swears' opinion is that it is unlikely the queuing and delay increases described in Ms Cui's traffic modelling (October 2021 memo) will eventuate because queuing and delay of the magnitude described will lead to peak spreading occurring.

56. In this respect, Mr Swears and Ms Cui consider that while, if all else is equal, trip generation associated with PC37 will increase queuing and delay on the existing bridge and associated intersections, it also presents the best opportunity for motor vehicle trips to be reduced through reassigning journeys to active modes and public transport¹¹. They consider that PC37 could be used as a method to mitigate the queuing and delay that will arise as a result of residential development (including, but not limited to, that associated with the Plan Change) north of the bridge¹². In other words, if residential development is to occur north of the bridge, better that it occur in a location which enables these other modes of public mobility. Mr Swears considers:

If the Project is permitted to develop, and the total amount of increased traffic is no greater than could occur without the Project, the resultant effects will be neutral. However, because of its proximity to the town centre, the Project presents the opportunity for traffic

⁸ Statement of evidence of David Smith dated 30 September 2021; para 4.19.

⁹ Statement of evidence of Robert Swears dated 20 October 2021; para 131.

¹⁰ Statement of evidence of Robert Swears dated 20 October 2021; para 9.

¹¹ JWS, para 3.1(e).

¹² JWS, para 5.2.

volumes (and therefore travel time) to decrease if motor vehicle trips are replaced by active mode trips.¹³

57. This conclusion appears to be accepted by Mr Smith who confirms that the proximity of the PC37 area relative to the town centre “provides an opportunity for relatively high levels of active transport mode share which would require excellent provision for these modes...(and) the Plan Change could be readily be serviced with public transport”¹⁴.
58. Nevertheless, the Reporting Officer, Mr Bonis, considers that the potential delays will lead to a reduction of the level of service at the bridge which is deemed unacceptable.
59. On that basis, Mr Bonis has suggested a rule for deferment of subdivision, and Mr Smith has suggested a discretionary activity resource consent with a matter for discretion being the traffic impacts in the vicinity of the river crossing. Mr Bonis examines the efficiency and effectiveness of four options that he has identified in Table 2 of the Officer’s Report, being no constraint, discretionary activity status, deferment, or decline of the Plan Change. Mr Bonis recommends that PC37 should be approved with a deferral mechanism.
60. The actual deferment mechanism recommended is not a prohibition on development until the bridge is upgraded, but a non-complying activity status for development in advance of additional capacity at the bridge. Mr Bonis’ recommended policy and rule (amendments bolded) is as follows:

Policy (3a.2.3)

v. Subdivision in the Nukuhau Structure Plan Area should only occur where:

(i) the resulting lots will be connected to Council’s waste water network; **and**

(ii) additional capacity for vehicle movement (beyond that available in October 2021) is provided at the Control Gates Bridge (through either expansion or a second bridge) across the Waikato River, or

¹³ Statement of evidence of Robert Swears dated 20 October 2021; para 114.

¹⁴ Statement of evidence of David Smith dated 30 September 2021; para 6.31.

otherwise would not result in traffic demand that would result in substantial increases in delay or travel times.

Rule 4a.7.5 Any subdivision within the Nukuhau Structure Plan Area prior to the provision of additional capacity at the Control Gates Bridge beyond that supplied in October 2021 is a non-complying activity.

61. The Applicants do not support this approach, and consider it inferior to the discretionary activity option suggested by Mr Smith, which is more efficient and effective. Simply put, the recommended option will act as a blunt and unduly prohibitive barrier to development. Whereas the option of subdivision having a discretionary activity status, and subject to the provision of an ITA, would enable the traffic effects of any proposed development within the Plan Change area to be assessed at the relevant time, in its specific context. This could present a scenario where, from a consenting perspective, certain transportation delays may be deemed acceptable in the context of the additional housing supply delivered under the proposal.
62. Additionally, Mr Swears and Ms Cui identify and discuss possible development scenarios and the effect on travel times and consequential behavioural changes. The degree to which delay identified in an ITA can be mitigated by supporting behavioural changes, such as the provision of walking, cycling and public transport can be assessed as a matter of discretion. These factors could also contribute to a scenario where there could be some level of development which is considered appropriate ahead of the Control Gates Bridge upgrade.
63. More fundamentally, this discretionary activity option also avoids the anomaly of a non-complying activity status for residential land use activity in a residential zone. This kind of land use is clearly anticipated in the zone, and this should be reflected in the activity status. As a full discretionary activity, all matters of discretion are available to the decision maker, and nothing is gained through a non-complying status.

64. Finally, on this issue, on the basis that there might be some level of development that could proceed, there has been some consideration given to enabling a staged development of PC37, so that an identified part or parts of the Plan Change area could be prioritised for consideration under the discretionary activity status. That consideration has included the potential for each landowner within the Plan Change area to be entitled to develop up to 30% of their land under the discretionary activity rule, thereby creating some degree of parity amongst landowners.
65. Ultimately, this staging approach is not the most efficient or effective in s 32 terms and is not being pursued. The most efficient and effective approach is to enable discretionary activity status to all subdivision across the plan change area, and allow the merits of any one proposal to be tested in the usual way.

Reverse sensitivity

66. Contact Energy Ltd (**Contact**) has raised concerns regarding the potential for reverse sensitivity effects to arise in relation to the area of the Plan Change adjacent to their land at Poihipi Road. This area relates to the parcels of land owned by CN Top (Lot 2 DP 384060).
67. Contact is concerned that when the land is urbanised, the new residents will expect a high level of residential amenity, which may at times be incompatible with Contact's existing and future activities on their land.
68. To address concerns about reverse sensitivity, Contact seeks that residential development only be able to proceed if an encumbrance is placed on all the titles created from Lot 2 DP 384060, similar to those placed on the titles within the Taupō Heights subdivision on the opposite side of Wairākei Drive, preventing complaints or objections in relation to the effects of geothermal activities undertaken by Contact including noise

from well drilling and testing, odour, lighting and effects on any other aspects of amenity.

69. The CN Top representatives have confirmed an in principle agreement to resolve this matter as suggested by Contact, and are working through the necessary due diligence steps. Communications with representatives of Contact is ongoing, and it is possible that the matter will be resolved during the hearing. The Applicants will update the commissioners as the hearing proceeds.

STATUTORY FRAMEWORK

70. The Plan Change was accepted by Council pursuant to clause 25(2) of the First Schedule to the RMA. It is a “land use” plan change, and as per *Colonial Vineyard Limited v Marlborough District Council*¹⁵ the provisions of primary relevance are ss 72 to 76 in Part 5 of the RMA. Those provisions set out the purpose of district plans, matters to be considered by the territorial authority in the preparation of district plans and the content of district plans, respectively.

71. In short, the Panel must be satisfied that the Plan Change:

- a) Is in accordance with:
 - i. Council’s functions as set out in s 31 of the RMA;
 - ii. Council’s duty under s 32 of the RMA; and
 - iii. The purpose and principles in Part 2 of the RMA.

- b) Gives effect to:

¹⁵ [2014] NZEnvC 55 (EC) at [17].

- i. Any relevant national policy statement;
- ii. Any relevant national environmental standard; and
- iii. The WRPS.

72. Clause 29(4) of the First Schedule to the RMA provides that after considering the Plan Change and undertaking a further evaluation in accordance with s 32AA of the RMA, the Panel:

- a) May decline or approve the Plan Change and may make modifications if approving the Plan Change; and
- b) Must give reasons for its decision.

73. There is a body of well-settled case law that establishes how the statutory provisions regarding plan changes should be interpreted and applied. The generally accepted approach was articulated in *Long Bay-Okura Great Park Society v North Shore City Council*¹⁶, subsequently updated in *High Country Rosehip Orchards Ltd v Mackenzie District Council*¹⁷ and *Colonial Vineyard Limited v Marlborough District Council*¹⁸ and are set out in **Attachment A** to these submissions.

PART 2 OF THE RMA

74. In *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*¹⁹, the Supreme Court determined that where

¹⁶ A078/08 (EC).

¹⁷ [2011] NZEnvC 387 (EC).

¹⁸ [2014] NZEnvC 55 (EC) at [17].

¹⁹ [2014] 1 NZLR 593 (SC) at [85].

there is no ambiguity in higher order planning documents, the assessment against Part 2 is not required, except:

- a) Where there is a challenge to the lawfulness of a planning document;
 - b) Where the document concerned does not cover all matters in issue, and the decision maker must determine whether Part 2 assists in dealing with those matters not covered; and
 - c) If there is any uncertainty to the meaning of particular policies, references to Part 2 may assist in a purposive interpretation.
75. For the purposes of the Plan Change, it is accepted that the District Plan needs to be updated to give effect to the National Policy Statement on Urban Development (**NPS-UD**), which is separately assessed in these submissions. Apart from that requirement, there is room for argument as to whether the Panel is required to consider Part 2 in the context of the Plan Change. Applying the caveats in relation to lawfulness, coverage and uncertainty to the Plan Change, in our submission there is no need to have recourse to it. Nevertheless, the Applicants' evidence demonstrates that the purpose of the RMA is clearly promoted by the Plan Change, should the Panel determine that recourse to Part 2 is appropriate.
76. Section 5 is the key section in Part 2, containing the purpose of the RMA:
- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
 - (2) In this Act, sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems, (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

77. Section 6 matters must be “recognised and provided for” in relation to managing use, development and protection of resources. It is submitted that the s 6 matters that are or may be relevant for the purposes of the Plan Change are:

- a) Sections 6(e) which, together with sections 7(a), (aa) and 8, are the triumvirate of provisions that provide for Māori cultural and spiritual values, the exercise of Kaitiakitanga and the principles of the Treaty of Waitangi; and
- b) Section 6(f) – the protection of historic heritage from inappropriate subdivision, use, and development; and
- c) Section 6(h) – the management of significant risks from natural hazards.

78. Section 7 requires that “particular regard” is had to the matters set out in this section. Those matters which could be considered to be of particular relevance in the context of the Plan Change (in addition to ss 7(a) and (aa), as already addressed) are as follows:

- (b) the efficient use and development of natural and physical resources
- (c) the maintenance and enhancement of amenity values
- (f) maintenance and enhancement of the quality of the environment
- (g) any finite characteristics of natural and physical resources

79. Ms Cleary has assessed the Plan Change against these Part 2 matters in detail in her evidence. Fundamentally, the Plan Change has been designed to accord with and assist the Council to carry out its functions so as to achieve the purpose of the RMA.

POLICY AND PLANNING FRAMEWORK

80. The relevant policies, planning instruments, management plans and strategies to be considered for the purposes of the Plan Change are comprehensively addressed in the AEE, the planning evidence of Ms Cleary and in the Officer's Report. There is no disagreement between Ms Cleary and Mr Bonis as to the applicable policy and planning instruments, nor that the Plan Change appropriately gives effect to those instruments. As such, it is not necessary to traverse those in detail for the purposes of these submissions, other than to briefly comment on the NPS-UD.

National Policy Statement for Urban Development 2020

81. The NPS-UD came into effect on 20 August 2020 and directs councils to enable more housing and businesses to be built where they will ensure access to jobs, community services, public transport, and respond to market demand. It requires councils to plan for growth and ensure a well-functioning urban environment for all people, communities and future generations.
82. The Plan Change gives effect to, and aligns with, the objectives and policies of the NPS-UD. Furthermore, in my submission, the NPS-UD provides significant support for the Plan Change and the Plan Change will assist Council to fulfil its functions and responsibilities to provide for sufficient growth.

83. The statutory considerations for PC37 include the need to give effect to the NPS-UD. Under the NPS-UD, Taupō is an urban environment, and Taupō district is a Tier 3 local authority. Key aspects of the NPS-UD that are particularly relevant to consideration of PC37, include the national significance of providing sufficient development capacity to meet the different needs of people and communities and to ensure that there are adequate opportunities for land to be developed to meet the community's housing needs. It also recognises the national significance of having well-functioning urban environments.²⁰
84. Policy 2 of the NPS-UD requires councils to provide, at minimum, enough capacity to meet the diverse demands of their communities. Under the NPS-UD, every local authority is to meet expected demand for housing in the short, medium and long term. The NPS-UD requires development capacity that is plan-enabled, infrastructure-ready, and feasible and reasonably expected to be realised. The Property Economics Ltd 2021 report on residential demand forms Appendix D to the Officer's Report. This identifies that using StatsNZ projections, there is sufficient capacity in the Taupō District as a whole until 2033.
85. Beyond that timeframe, supply is more constrained under the medium to long term both in terms of being plan enabled and infrastructure ready. The Plan Change increase the amount of plan enabled land in the short to medium term and assists in achieving the NPS-UD directives.

Overall position on statutory and policy framework

86. On the basis of the Applicants' evidence, particularly that of Ms Cleary, it is submitted that it is appropriate for the Panel to conclude that the Plan Change:

²⁰ Ministry for the Environment, National Policy Statement Urban Development – what it does, why it is needed, <https://environment.govt.nz/acts-and-regulations/national-policy-statements/national-policy-statement-urban-development/> accessed 11 October 2021

- a) Complies with the requirements of all applicable statutory provisions; and
- b) Has appropriately accounted for all relevant policy/planning instruments.

87. This conclusion is supported by the Officer's Report, subject to the Plan Change addressing the recommended deferment of subdivision until the Control Gates Bridge capacity issue is resolved. Ms Cleary has recommended amendments to the Plan Change to address this issue.

OVERALL POSITION ON PLAN CHANGE

88. The evidence for the Applicants clearly demonstrates that the Plan Change, as amended in Ms Cleary's 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.

89. The Applicants submit that there is no impediment to PC37 proceeding and that significant benefits will ensue if it does proceed. Accordingly, the Plan Change should be accepted.

WITNESSES

90. In addition to the evidence submitted in advance of the hearing, the following expert witnesses will be called to provide evidence in support of the Plan Change:

- a) Mr Neil Hickman – one of the three Applicant landowners;

- b) Mr Hamish Crawford – Project Manager;
- c) Mr Tim Heath – Residential land supply;
- d) Mr Ian Gray – Geotech;
- e) Mr Warren Bird - Three waters;
- f) Ms Kirsty Sykes – Archaeology;
- g) Ms Ruihan Cui – Traffic modelling;
- h) Mr Robert Swears – Transport; and
- i) Ms Cheryl Cleary – Planning.

Dated 8 November 2021



L F Muldowney/S K Thomas
Counsel for Applicants

ATTACHMENT A

SUMMARY OF THE STATUTORY PROVISIONS

A General requirements

1. A district plan (change) should be designed to accord with²¹ and assist the territorial authority to carry out - its functions²² so as to achieve the purpose of the Act²³.
2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.²⁴
3. When preparing its district plan (change) the territorial authority shall:
 - a) Have regard to any proposed regional policy statement;²⁵
 - b) Give effect to any regional policy statement.²⁶
4. In relation to regional plans:
 - a) The district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) [or a water conservation order];²⁷ and
 - b) Must have regard to any proposed regional plan on any matter of regional significance etc.²⁸
5. When preparing its district plan (change) the territorial authority must also:
 - a) Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the New Zealand Heritage List and to various fisheries regulations; and to consistency with plans and proposed plans of adjacent territorial authorities;²⁹

²¹ Section 74(1).

²² Section 31.

²³ Sections 72 and 74(1).

²⁴ Sections 75(3)(a) and (b).

²⁵ Section 74(2).

²⁶ Section 75(3)(c).

²⁷ Section 75(4).

²⁸ Section 74(2).

²⁹ Section 74(2)(b).

- b) Take into account any relevant planning document recognised by an iwi authority,³⁰ and
 - c) Not have regard to trade competition;³¹
6. The district plan (change) must be prepared in accordance with any regulation³² (there are none at present);
 7. The formal requirement that a district plan (change) must³³ also state its objectives, policies and the rules (if any) and may³⁴ state other matters.

B Objectives [the section 32 test for objectives]

8. The objectives in a district plan (change) are to be evaluated by the extent to which they are the most appropriate way to achieve the purpose of the RMA.³⁵

C Provisions³⁶ [the s 32 test for provisions]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies.³⁷
10. The provisions are to be examined, as to whether they are the most appropriate method for achieving the objectives of the district plan, by:
 - a) Identifying other reasonably practicable options for achieving the objectives; and³⁸
 - b) Assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:³⁹
 - i. Identifying and assessing the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and

³⁰ Section 74(2A).

³¹ Section 74(3).

³² Section 74(1)(f).

³³ Section 75(1).

³⁴ Section 75(2).

³⁵ Section 32(3)(a).

³⁶ Defined in s 32(6), for a proposed plan or change as the policies, rules or other methods that implement, or give effect to, the objectives of the proposed plan or change.

³⁷ Section 75(1).

³⁸ Section 32(1)(b)(i).

³⁹ Section 32(1)(b)(ii).

employment that are anticipated to be provided or reduced;⁴⁰ and

- II. Quantifying these benefits and costs where practicable;⁴¹ and
- III. Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁴²

D Rules

- 11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.⁴³

E Other statutes

- 12. Finally territorial authorities may be required to comply with other statutes.

⁴⁰ Section 32(2)(a).

⁴¹ Section 32(2)(b).

⁴² Section 32(2)(c).

⁴³ Section 76(3).