

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.

**SUMMARY STATEMENT AND REPLY EVIDENCE OF CHERYL LOUISE CLEARY
(PLANNING)**

Dated 5 November 2021

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INTRODUCTION

1. My full name is Cheryl Louise Cleary. My qualifications and experience are as set out in my full statement of evidence.
2. I have been engaged by the applicant to provide planning evidence in respect of Private Plan Change 37: Nukuhau Private Plan Change (**PC37**).
3. My role with PC37 commenced after it had been publicly notified and submissions had been made; and I was not the author of PC37, assessment of environmental effects, or the s32 report. I have not been involved in the consultation for the plan change. I have visited the site and am familiar with PC37 as notified. The documents that I have reviewed and refer to are as set out in my statement of evidence.
4. This document contains a summary of my statement of evidence dated 20 October 2021, and a reply to particular planning matters in the statements of evidence of submitters.

CODE OF CONDUCT

5. I have read the Environment Court Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014 and agree to comply with it. I confirm that the opinions expressed in this statement are within my area of expertise except where I state that I have relied on the evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

SUMMARY OF EVIDENCE

6. PC37 will rezone approximately 78 ha from Rural Environment to General Residential Environment and Medium Density Residential Environment in

the Taupō District Plan (**TDP**). PC37 will introduce the Nukuhau Structure Plan into the TDP, and my Statement of Evidence dated 20 October (**Statement of Evidence**) contained an amended version of the Structure Plan, that was included as Attachment 1 to my Statement of Evidence. PC37 also amends the Residential Environment objectives, policies and rules of the TDP. Further details of PC37 are discussed in my full statement of evidence.

7. The Nukuhau Structure Plan area relates to the ‘future residential growth’ area identified on Map 1 Northern Growth Areas of the Taupō District Council’s (**TDC**) growth management strategy, Taupō District 2050 (**TD2050**). Policy 3e.2.1.ii of the TDP identifies the importance of ensuring a pattern of urban development that is consistent with the identified urban growth areas, and the Nukuhau Structure Plan will give effect to that outcome. The Nukuhau Structure Plan also gives effect to Policy 6.11(ii) of the Waikato Regional Policy Statement (**WRPS**) which requires that patterns of future development are consistent with the strategic directions of TD2050.
8. In my Statement of Evidence, I evaluate whether PC37 will give effect to the National Policy Statement-Urban Development (**NPS-UD**). To summarise that evaluation, I note that:
 - a) PC37 will give effect to Objective 1 and Policy 1 of the NPS-UD in relation to a well-functioning urban environment, as it will:
 - i meet the needs, in terms of type, price and location, of different households. In particular, the Medium Density areas of the Structure Plan will enable a variety of housing types.
 - ii have good accessibility for people between housing, jobs, community services, natural spaces and open spaces, including by way of public or active transport.

- iii provide positive effects in relation to greenhouse gas emissions due to the proximity of the Nukuhau Structure Plan area to Taupō CBD.¹
 - iv support achievement of a compact urban form, with the Nukuhau Structure Plan being situated adjoining the existing urban area. This location, the proximity to the Taupō CBD, and the mix of residential, local shops, and extensive reserves, will minimise the need for private motor vehicle use, encourage walking, cycling and multi-modal transport connections, and maximise the opportunities for people to live, work and play within their local area.²
- b) Objective 4 of the NPS-UD requires that recognition is given to the fact that urban environments, including amenity values, will develop and change over time in response to the needs of people and communities. PC37 will contribute to meeting the need for housing choice, and any change in travel times that it causes, might be seen as the sort of change in the amenity values of urban environments that Objective 4 recognises.
 - c) PC37 will give effect to Objective 6 of the NPS-UD, relating to being responsive to proposals that would supply significant development capacity, by adding significant development capacity.
9. Another important element of both the NPS-UD and the Waikato Regional Policy Statement (including in the 6A Development Principles), is the strong direction of seeking to ensure that planning for urban development growth is coordinated with infrastructure provision.

¹ Robert Swears, Statement of Evidence 20 October 2021, para 170.

² Development Principle 6A (i) Waikato Regional Policy Statement.

10. I rely on Mr Swears and Ms Cui's evidence, in identifying that there will be traffic delays affecting the Control Gates Bridge and its vicinity as a result of growth that will take place in Taupō north of the Waikato River. It is less clear, as discussed in Ms Cui and Mr Swears evidence³, that approving PC37 will worsen those delays: due to potential peak spreading, shift to active modes, and if PC37 does not increase the demand for housing and is therefore neutral in terms of traffic generation.
11. However, while there is some uncertainty of the significance of the traffic effects of PC37, the modelling of traffic effects does identify traffic delay effects. Therefore, I have to agree with Mr Bonis that those effects may mean that PC37 needs to be modified to ensure that the effects are appropriately avoided, remedied or mitigated. Modifications will also ensure that PC37 gives effect to the objectives and policies of the WRPS relating to ensuring land uses do not adversely affect the efficient and effective functioning of infrastructure and regionally significant infrastructure.
12. Mr Bonis recommends a rule that "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".⁴ I do not agree that development of the Structure Plan should essentially hinge on the provision of additional capacity at the Control Gates Bridge, which is what the non-complying activity rule recommended by Mr Bonis appears to suggest.
13. I consider the more appropriate mechanism is a discretionary activity resource consent application for subdivision, with a requirement that an Integrated Transport Assessment (**ITA**) addresses the traffic effects (amongst other matters usual in an ITA).

³ Swears, para 16.

⁴ Rule 4a.7.5 in Mr Bonis s.42A Report.

14. The s42A Report identifies that there are two other matters in relation to WRPS 6A Development Principles to be addressed, and notes that “not that such values represent an insurmountable hurdle to the request”. Those matters relate to (j) maintaining or enhancing landscape values and providing for the protection of historic and cultural heritage, and (q) consider effects on the unique tangata whenua relationships with respect to an area. The s42A Report also says there are “residual issues” in determining cultural and archaeological values associated with PC37.
15. The s42A Report suggests that the panel needs to consider whether the applicant has engaged with appropriate māna whenua⁵. Mr Crawford explains the engagement that he and his colleagues carried out with Iwi authorities and hapu. In my opinion, engagement with tangata whenua is important to understand and identify potential cultural effects and to ensure that the RMA requirements of Part 2, sections 6(e), 6(f) and 7(a) of the RMA are met. The engagement with Iwi authorities and hapuu has not identified any cultural effects that would either preclude urbanisation or, it seems, require measures to avoid, remedy or mitigate effects on cultural values. However, I acknowledge that without a cultural impact assessment confirming this to be the case then the matter may need to be addressed further.
16. I am of the opinion that this can be achieved before subdivision and development proceeds, through the requirement for a cultural impact assessment of the Nukuhau Structure Plan area to be prepared and provided to TDC. Given that TDC prepared the TD2050 and identified the Nukuhau area as a growth area, following a consultation and engagement process, I consider the suitability of the area for urbanisation has already been determined. I also note there are no submissions from Iwi authorities to PC37. The Structure Plan process is to determine the form of the development, and cultural values need to be better understood and

⁵ S42A Report, para 129.

addressed in the form of the subdivision and development of the area. Therefore, I propose an amendment to PC37 to require the provision of a Cultural Impact Assessment with subdivision applications.

17. I have proposed a number of other amendments to PC37 in my Statement of Evidence to address issues raised by submitters, and I refer the Panel to those.
18. Before concluding my Summary of Evidence, I would like to now address certain matters raised in the evidence of submitters.

REPLY TO THE EVIDENCE OF SUBMITTERS

19. I have been asked to provide evidence in response to the following statements of expert evidence made on behalf of submitters:
 - a) Heritage New Zealand Pouhere Taonga.
 - b) Rangatira Blocks 8A17 Trusts.
 - c) Rangatira E Trust.
 - d) Waikato Regional Council.
20. I address the planning matters raised in these statements of evidence. In preparing this evidence I rely upon the expert evidence prepared by the other witnesses for the Applicant, including the other statements of reply to the evidence of submitters.

Heritage New Zealand Pouhere Taonga

21. Ms Carolyn McAlley has provided planning evidence on behalf of Heritage New Zealand Pouhere Taonga (**HNZPT**). Ms McAlley explains that the HNZPT submission sought an archaeological assessment and a cultural

impact assessment. WSP's archaeologist, Ms Kirsty Sykes prepared an archaeological assessment and some additional work has been requested by HNZPT and recommended by Ms Walter (the s.42A archaeologist) to supplement this, as discussed in Ms Sykes Statement of Evidence and Reply to Evidence of Submitters.

22. Ms McAlley relies on the conclusion of Ms Walter, that it is not currently possible to make an accurate determination as to whether PC37 will have an adverse effect on historic heritage.⁶ The s.42A report discusses this matter as being one of seeking additional information of the archaeology assessment methodology⁷, and identifies that the issue is a lack of information "not that such values represent an insurmountable hurdle to the request".⁸
23. Ms Sykes sets out in her Reply Statement, extensive information relating to the in-depth archaeological assessment she had carried out. In my opinion, the archaeological work done to date does not identify any risk of adverse effects on historic heritage, including archaeological sites, that either require a delay in determining whether PC37 can be approved or a determination that PC37 needs to be amended in some way in order to ensure recognition and protection of historic heritage. To the extent that further archaeological assessment work is necessary, the requirement that I have recommended for a cultural impact assessment, together with the proposed subdivision assessment criteria will ensure this occurs.
24. I discuss the matter of a cultural impact assessment in full in my Statement of Evidence. As I have already noted, I recommend that PC37 be amended so that the preparation of a cultural impact assessment is a requirement that has to be fulfilled prior to subdivision. I note that there are no submissions from Iwi authorities raising either concerns with the cultural

⁶ Executive Summary, Linda Walters, Appendix G to section 42A Report.

⁷ Paragraph 12.6, Section 42A Report.

⁸ Paragraph 106.8, s.42A Report.

significance of the Nukuhau Structure Plan area, or the need for a cultural impact assessment. I also note that the consultation described by Mr Crawford in his Statement of Evidence did not identify either any cultural values that might preclude urbanisation or require particular recognition in the plan change, or a request that a CIA be commissioned.

Rangatira Blocks 8A17 Trusts

25. Mr Greaves has provided planning evidence for the Rangatira 8A17 Trusts and notes their submission was generally in support of PC37, with the proposed zoning generally aligning with the long-term development aspirations of the Trust.⁹
26. Mr Greaves notes that an appropriately drafted discretionary activity or non-complying activity rule, with a supporting policy framework, are equally effective at managing resource consent applications, depending on where the Commissioners land with regard to the scale of effect¹⁰. I agree with Mr Greaves, that a non-complying activity status would suggest there is potential for more significant adverse effects than a discretionary activity status would signal.
27. In my view, a non-complying status would be wrongly signalling substantial adverse effects for any scale of subdivision and development of the Nukuhau Structure Plan. As Mr Greaves suggests, based on the expert evidence of Mr Swears and Ms Cui, I am of the view that some initial scale of subdivision and development will likely be able to take place without significant adverse traffic effects. A discretionary activity resource consent application process will enable that determination to take place.
28. Mr Greaves states that my evidence identifies that the Plan Change could be amended to enable part, but not full, urbanisation within the Plan

⁹ Paragraph 2.1, Mr David Greaves Statement of Evidence – Planning, 29 October 2021.

¹⁰ Paragraph 4.2, Ibid.

Change Area prior to the second bridge crossing being constructed.¹¹ To be clear, my evidence and the amendments I have proposed, do not suggest that the rezoning of the Nukuhau Structure Plan to urban zonings should be delayed until there is a second bridge crossing. As Mr Swears evidence points out, the potential for peak spreading, mode shift and other factors, may mean the traffic effects of some (as yet determined) scale of development will not create significant traffic effects.

29. To further clarify, I also do not agree with Mr Bonis' suggested Rule 4a.7.5 that any subdivision is a non-complying activity prior to the provision of additional capacity at the Control Gates Bridge beyond that supplied in October 2021. This rule is problematic in a number of respects, including that it is silent as to what activity status subdivision would have after additional capacity has been provided; and because the congestion and traffic delays identified in Ms Cui's Statement of Evidence relate to the roads in the vicinity of the Bridge, rather than the Bridge itself.
30. I agree with Mr Greaves that there is no evidence to support the promotion of development on one specific piece of land over any other.¹² In my opinion, if development of a structure plan needs to be staged, due to factors such as limited capacity of infrastructure, then it is preferable that the logical sequencing of stages of development is identified within the structure plan, to ensure coordination with the provision of infrastructure. As Mr Greaves says, there is no evidence to support staging of the Nukuhau Structure Plan.

Rangatira E Trust

31. Mr Farquhar has provided planning evidence on behalf of Rangatira E Trust, who have substantial land holdings to the west and north of the PC37 area. Mr Farquhar states Rangatira E Trust have had ongoing discussions with

¹¹ Paragraph 4.3, Ibid.

¹² Paragraph 4.4, Ibid.

Council staff about developing their land,¹³ and explains that the long term, 100 year plus future of this locality is what Rangatira E's focus is.¹⁴ In my opinion, PC37 does not affect the ability for Rangatira E to seek an urban zoning and to develop their land. Mr Farquhar says that PC37 should be declined until a district wide review is commenced¹⁵. I do not agree, because PC37 is consistent with the enabling of private plan change requests that the RMA provides, under the provisions of Part 2 of Schedule 1 of the RMA.

32. Mr Farquhar provides the opinion that PC37 should be declined or deferred until wider growth management strategies are considered.¹⁶ I do not agree. TDC carried out a growth management strategy in 2018 to produce TD2050, and I understand that TDC's consultation with Rangatira E Trust resulted in the Rangatira E Trust land being removed as an identified growth area. TD2050 does not identify the Rangatira E Trust land as an area for future growth.

Waikato Regional Council

33. The evidence of Ms Craven for Waikato Regional Council strongly supports the amendment that are set out in my statement of evidence¹⁷. The applicant accepts that the gullies are at risk of scouring and erosion and fully understands the need for careful management of the risks to the gullies. The amendments the applicant has proposed appear to go a long way to satisfying the matters of concern to WRC. However, Ms Craven suggests that further amendments are needed to fully address the WRC submission, and these are set out in Appendix 1 to her evidence.

¹³ Paragraph 2.2, Brett Farquhar Statement of Evidence 29 October 2021.

¹⁴ Paragraph 2.4, Ibid.

¹⁵ Paragraph 3.1, Ibid.

¹⁶ Paragraph 4.5, Ibid.

¹⁷ Refer Cheryl Cleary Statement of Evidence – Planning, 20 October 2021. Paragraphs 261 – 274 discuss the WRC submission; paragraph 292 sets out the applicant's proposed revisions to address the WRC submission; and Attachment 2 to the Statement of Evidence 20 October 2021 sets out all proposed revisions to address submissions.

34. Ms Craven's evidence seeks that the Nukuhau Structure Plan be modified to illustrate the main gully system in its existing form and to change the legend from "proposed stormwater reserve" to "natural gully system". The applicant is willing to agree to these amendments to the Structure Plan, and I provide a revised Structure Plan that reflects these amendments as **Attachment 1** to this statement.
35. Ms Craven's suggested amendments include that wherever the term "gullies" is used in the policies, rules and criteria of PC37, this be amended to refer to "natural gully". As noted in my Statement of Evidence¹⁸, the term "natural gully" is not defined in the WRPS or in any WRC technical Guidelines and Mr Warren has noted that the gullies are in many cases already modified and therefore could not be considered to be "natural".¹⁹
36. Labelling the main gully that is shown on the Structure Plan as "natural gully system" may assist in clarifying that these are the gullies that are referred to in Policy 3a.2.3(iv), 4a.7.2, 4a.7.7, 4a.8.17(l), which relate to landscape planting, walking and cycleway network, and stormwater. In my view amending the references to "gullies" in the provisions I have noted, to refer instead to the "natural gully system identified in the Nukuhau Structure Plan", would assist in clarification and address the concern of WRC.
37. The request by the WRC for reference to the WRC Stormwater Management Guideline and the WRC Erosion and Sediment Control Guidelines for Soil Disturbing Activities was noted in my Statement of Evidence as unnecessary, as they apply whether stated in the Nukuhau provisions or not. However, the applicant is willing to agree to those inclusions with some minor modification to omit the requested wording:

¹⁸ Ibid, para 269.

¹⁹ Paragraphs 50 and 53, Statement of Evidence Mr Warren Bird, 20 October 2021.

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

38. As Mr Bird discusses in his Reply to Submitters Evidence, the wording proposed by Ms Craven suggests a blanket “no modification”, whereas Mr Bird considers this should be a matter that is determined through the appropriate resource consent assessment.
39. To address the revisions sought in the WRC Evidence, the applicant can agree to the following additional amendments (NB: the amendments that I have already proposed in my full Statement of Evidence are not shown as amendments here. Additions are shown as bold underlined, deletions as struck-through):

4a.7.2

The matters that Council will consider when assessing an application for subdivision within the Nukuhau Structure Plan Area includes, but is not limited to:

- a. The design and layout of the subdivision to ensure safe and efficient access onto existing and/or proposed roads, efficient routes for public transport, suitable building platforms to accommodate future complying buildings, application of Crime Prevention Through Environmental Design (CPTED) principles specifically in terms of open space provision, and adequate management of stormwater **in accordance with the Waikato Regional Council Stormwater Guideline 2020.07) and to ensure that stormwater is treated predominantly onsite to limit the use of the natural gully system as stormwater reserve.**
- b. The identification of any natural hazards or contaminated sites and how these may affect the stability of the land and suitability of any future

building sites, including any information provided by a suitably qualified person whose investigations are supplied with the subdivision application. **The Waikato Regional Council Erosion and Sediment Control Guidelines for Soil Disturbing Activities (TR2009/02) should be followed.**

- f. A Landscape Planting Plan for the **natural gully system and the** stormwater gully reserve network and areas of open space along Wairakei Drive and Poihipi Road.

...

4a.8 Assessment Criteria

...

4a.8.17 Subdivision:

- i. **Whether** ~~landscape planting, stormwater infrastructure and walking and cycling pathways network, **are provided in general accordance with including (but not restricted to) the integrated use and provision of the stormwater gully network to address all three matters as indicated in the**~~ Nukuhau Structure Plan (Appendix 9).

CONCLUSION

40. In my opinion, with the amendments that I have proposed, PC37 will meet all of the statutory tests and give effect to the NPS-UD and the WRPS. It is the most appropriate way of achieving the existing objectives of the TDP, and in combination with the new objectives it introduces, it is the most appropriate way of achieving the Purpose of the RMA.

41. Accordingly, I recommend that PC37, with the amendments set out in **Attachment 2** to my Statement of Evidence and with the additions of the above-noted amendments, be approved.

Cheryl Louise Cleary

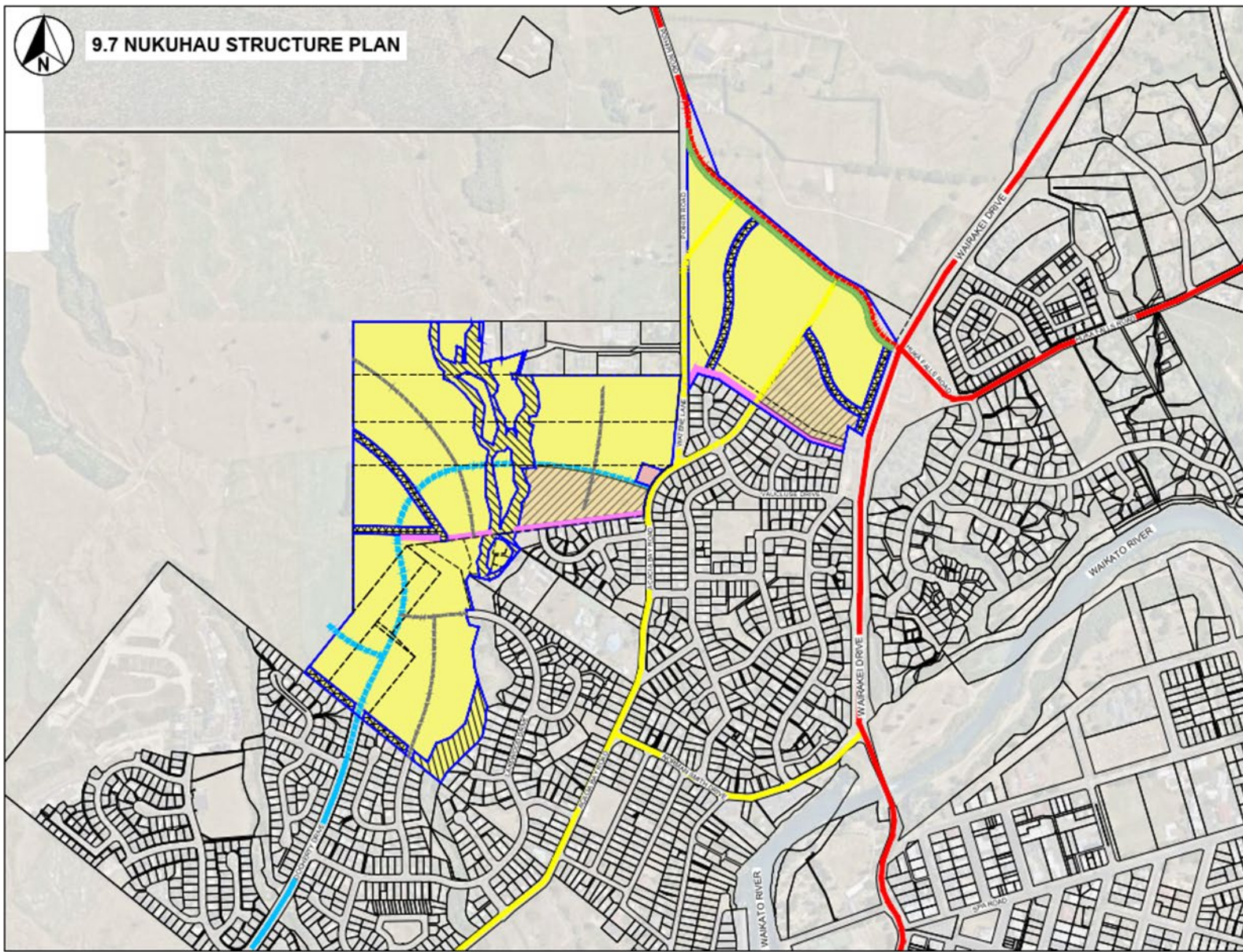
5 November 2021

Attachment 1

(Modified November 2021 to amend Legend and shape of the main gully to address submission by WRC)



9.7 NUKUHAU STRUCTURE PLAN



LEGEND

-  PROPOSED MEDIUM DENSITY RESIDENTIAL ZONE
 -  PROPOSED GENERAL RESIDENTIAL ZONE
- URBAN ROAD HIERARCHY**
-  ARTERIAL
 -  PROPOSED ARTERIAL
 -  PRIMARY COLLECTOR
 -  PROPOSED PRIMARY ARTERIAL
 -  SECONDARY COLLECTOR
 -  PROPOSED SECONDARY COLLECTOR
 -  PROPOSED ACCESS AND LOW VOLUME
- PROPOSED OVERLAYS**
-  PROPOSED NEIGHBOURHOOD SHOPPING CENTRE (SHOPS)
 -  NATURAL GULLY SYSTEM
 -  PROPOSED STORMWATER RESERVE WITH PEDESTRIAN ACCESS, CYCLEWAY, AND PLANTING
 -  RECREATION RESERVE, 10-12m WIDE, WITH PEDESTRIAN ACCESS, CYCLEWAY AND PLANTING
 -  3m WIDE LANDSCAPING STRIP - NO DRIVEWAY ACCESS
 -  10m WIDE LANDSCAPING STRIP

NOTES

- FIXED FEATURES:**
1. GENERAL LOCATION OF VARIOUS ZONES.
 2. LOCATION OF PROPOSED AND EXISTING ROAD INTERSECTIONS, WITH THE EXCEPTION OF THE PRECISE LOCATION OF THE PROPOSED ARTERIAL ROAD / POIHIKI ROAD INTERSECTION.
 3. ROAD CLASS FOR PROPOSED ROADS.
 4. POSITION OF LANDSCAPING STRIPS.
- INDICATIVE FEATURES:**
1. POSITION/ NUMBER OF INTERNAL ROADS.
 2. LOCATION OF PROPOSED ARTERIAL ROAD / POIHIKI ROAD INTERSECTION.
 3. PRECISE LOCATION AND SIZE OF VARIOUS ZONES.
 4. PRECISE LOCATION AND SIZE OF STORMWATER RESERVES.
 5. PRECISE LOCATION OF WHERE PROPOSED ROADS WILL INTERSECT WITH NEIGHBOURING LAND.
 6. WIDTHS OF LANDSCAPING STRIPS.

FOR CONCEPT

Code	Description	Author	Date
D	CHANGED POIHIKI ROAD ALIGNMENT	K.C.	16/06/2021
F	RE-ISSUED FOR INFORMATION	K.C.	28/10/2021
G	ADDED 20% INITIAL DEVELOPMENT AREAS	K.C.	28/10/2021
R	NATURAL GULLY SYSTEM	K.C.	25/11/2021

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 Date: 15/09/2021
 Scale: 1:500 @ A1, 1:1000 @ A3

TAUPO DISTRICT PLAN	
PRIVATE PLAN CHANGE NUKUHAU PROJECT	
Project No:	2-37400.00
Sheet No:	L001
Revision:	R

