

Recommendation decision following the hearing of Private Plan Change 37 [Nukuhau] to the Taupō District Plan under the Resource Management Act 1991

Proposal

To rezone 77.78 ha of land in the Nukuhau area from Rural Environment to a mix of General Residential and Medium Density Residential with a Neighbourhood Shopping Centre overlay.

This plan change is Recommended for Approval. The reasons are set out below.

Plan change number:	PC37
Site address / legal description:	24 and 48 Acacia Bay Road; 6 Poihipi Road; 29 and 59 Watene Lane; Rangatira 8A1T2Y; Rangatira 8A1T2X; 179, 181, 183, 185, 187, 189 and 200 (Rangatira 8A17A5) Lakewood Drive, Taupō
Applicant:	AN Rajasingham LPT Trustees No 124 Limited anors
Hearing commenced:	Monday, 8 November 2021 and Tuesday, 9 November 2021
Hearing panel:	David Hill (Chair) Dayle Hunia Councillor Kevin Taylor
Appearances:	<p><u>Opening Welcome & Karakia</u> David Rameka (Strategic Relationships Manager – Council)</p> <p><u>For the Proponents:</u> Lachlan Muldowney (Legal) Warren Bird (3 Waters) Cheryl Cleary (Planning) Hamish Crawford (Planner) Ruihan Cui (Transport modelling) James Gladwin (Contamination) Tim Heath (Land Supply) Robert Swears (Traffic) Kirsty Sykes (Archaeology) Neil Hickman (Lexus Trustees 11)</p> <p><u>Excused from attending</u> Nick Aiken (Urban Design) Ian Gray (Geotechnical) Stefan Steyn (Landscape and Visuals) John Turner (Ecology)</p> <p><u>For the Submitters:</u> Hannah Craven & Jon Palmer – Waikato Regional Council Jane Penton - Lakes & Waterways Action Group Rowan Sapsford – Bike Taupō Advocacy Group Bruce Bartley – Walnut Lane Limited Sarah Davidson & Rory Scott – Taupō Business Chamber Thomas Hendricks Todd Baldwin and Mark Chrisp – Contact Energy Limited</p>

	<p>Andrew Kusabs & David Greaves – Rangatira 8A17 Trust Tāne Lawless Geoff Rameka Garrick Workman Setareh Stienstra (counsel), Brett Farquhar, Alec Wilson Snr and Jnr – Rangatira E Trust</p> <p><u>For Council:</u> Matt Bonis (S42A author) Colin Meadowcroft (Stormwater) Thomas Swindells (Water) Michael Cordell (Wastewater) David Smith (Transport)</p> <p><u>Excused from attending:</u> Lynda Walter (Archaeology) William Shaw (Ecology) Rebecca Ryder (Landscape and Visual) Morné Hugo (Urban Design) Adam Gray (Contamination) Geoffrey Farquhar (Geotechnical)</p> <p>Carrie Robinson, Senior Administrator (Policy)</p>
Commissioners’ site visit	7 November 2021
Hearing adjourned	9 November 2021
Hearing Closed:	8 December 2021

Introduction

1. This decision is made on behalf of the Taupō District Council (“**the Council**”) by Independent Hearing Commissioners David Hill (chair), Dayle Hunia and Councillor Kevin Taylor, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“**the RMA**”).
2. By Council resolution TDC202102/17, per the modified Joint Management Agreement structure, the Commissioners have been given delegated authority to hear, consider and make recommendations on Private Plan Change 37 (“**PC37**”) to the Taupō District Plan (“**the TDP**”) after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and evidence presented during and after the hearing of submissions.
3. PC37 is a private plan change requested by a group of co-operating landowners:
 - AN Rajasingham, LPT Trustees No 124 Limited and Thiru Trustee Company Limited at 24 Acacia Bay Road;
 - Lexus Trustees 11 Limited, 48 Acacia Bay Road; and
 - CN Top Investment Limited, 6 Poihipi Road,

that has been prepared following the standard RMA Schedule 1 Part 2 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).

4. The s42A report prepared by Mr Matt Bonis records that the plan change request was lodged on 10 September 2020. Council requested further information under cl 23 of Schedule 1 on 2 October 2020, which was provided on 12 November 2020. Those matters are summarised in section 3.4 of the s42A report. PC37 was accepted for promulgation by Council on 3 December 2020.
5. The plan change was publicly notified on 3 February 2021 following a feedback process involving Iwi Authorities, as required by Clause 4A of Schedule 1. Notification involved a public notice as well as letters to directly affected landowners and occupiers alerting them to the plan change. The latter step was aimed at ensuring that landowners and occupiers of properties affected by potentially significant changes were made aware of the proposed plan change.
6. The submission period closed on 5 March 2021. A summary of submissions was notified for further submissions on 5 March 2021 and closed on 30 April 2021. A total of 59 submissions (44 opposed; 12 in support; 2 not stated) and 1 further submission were made on the plan change. No late submissions were received.
7. The Hearing took place at a time when the Auckland region was subject to restrictions under the Alert Level Red COVID-19 Framework and a number of parties were unable to travel across regional borders (including the Chair). The entirety of the Hearing was held by remote access (i.e. on-line) facility pursuant to s39AA RMA.
8. A site visit was undertaken 7 November 2021 by Commissioners Hunia and Councillor Kevin Taylor with support from Hilary Samuel (Senior Policy Advisor - Council) and Hamish Crawford (Planner and Project Manager – Applicant).
9. The matter was heard virtually on 8 and 9 November 2021 and then adjourned pending written reply, which was received on 3 December 2021. The hearing was closed on 8 December 2021.

SUMMARY OF PLAN CHANGE

10. The proposed plan change is described in the application as follows:
 - (i) The plan change request seeks to change the zoning of 77.78 hectares of Rural Environment zoned land to a mix of General Residential, Medium Density Residential (8.3ha) zoning, Neighbourhood Shopping Centre overlay (Local Centre 2,500m²) zoning and areas of stormwater and recreation reserves. These proposed zone changes will enable the future development of approximately 780 dwellings.
 - (ii) PC37 includes a Structure Plan which forms part of the plan change request and provides the framework to guide the development of the land. It defines the areas of future General Residential and Medium Density Residential zones, proposed reserves, Neighbourhood Shopping Centre overlay and the proposed roading network.
 - (iii) To enable the development of the site, subdivision and land use consents would need to be applied for and granted by Council. Resource consent may also be required from the Waikato Regional Council (WRC) for stormwater discharges from the proposed stormwater solutions.
11. In terms of planning context, the s42A hearing report notes the following:

- (i) The area is split into two parts and is located on the immediate northwest of the Taupō urban boundary, on elevated southward-sloping topography, approximately 410m to 450m above sea level.
- (ii) Northeast of the plan change area is the Rural Environment Zone and is a continuation of the topographical southward slope that overlooks Lake Taupō.
- (iii) West of the area is multiple owned Māori land, being some 993.49ha of pastoral land, also zoned Rural Environment.
- (iv) On the southeast side of Wairakei Drive is the Low-Density Residential Zone.
- (v) The Taupō Town Centre is located within a 5 minute drive to the south of the area via Wairakei Drive and the Control Gates Bridge (“**the CGB**”) over the Waikato River.

12. The requested provisions are summarised in the s42A report as follows:

49. *The Plan Change request provisions are relatively straightforward, principally:*

49.1 *Rezoning for Residential Environment (zone) and hence largely reliant on the existing Residential Environment provisions in the operative Plan (Chapter 3a ‘Objectives and Policies’, and Chapter 4a “Rules and Performance Standards).*

49.2 *Insertion of the proposed ‘Nukuhau General Residential’ and ‘Nukuhau Medium Density Residential’ Environments to introduce distinctive built form controls.*

49.3 *Provision of a ‘Neighbourhood Shops’ overlay (circa 2,500m²) to provide for a small range of convenience retail and commercial services.*

49.4 *Insertion of two new objectives.*

(a) *Proposed Objective 3a.2.2A would seek to provide for a range of housing types and densities and associated Policy (i) which seeks to enable a variety of housing types in the Residential and Medium Density zone. It is noted that these provisions as notified are not specific to the Nukuhau Plan Change area.*

(b) *Proposed Objective 3a.2.3 which seeks to enable residential development of the Nukuhau Structure Plan Area as envisaged by the Plan, while maintaining and enhancing the gully and stormwater flow path network and contributing positively to residential character and amenity. Associated Policies (i) to (v) seek to enable development that ‘reflects the intent of’ the Nukuhau Structure Plan, provides housing choice and residential amenity, achieves a connected open space and cycling network; with subdivision only to occur where resulting lots are connect to the Council’s wastewater network infrastructure.*

49.5 *Rules (4a.1 – 4a.1.12) which introduce the Nukuhau General Residential and Nukuhau Medium Density Residential built form standards.*

49.6 *Rules that would seek to implement the Nukuhau Structure Plan, including subdivision and the provisions of services.*

(a) *Rule 4a.7.1 and 4a.7.2 seek to ensure wastewater connection and design of subdivision in accordance with the Nukuhau Structure Plan.*

(b) *Rule 4a.7.3 determines any subdivision ‘not in accordance’ with the Nukuhau Structure Plan to be a Discretionary (**DIS**) activity.*

(c) *Rule 4a.7.4 which seek to recognise, and effectively defer residential subdivision given existing wastewater capacity issues until wastewater constraints at the flood gates are able to be overcome as a Non-complying (**NC**) activity.*

- (d) *Rules 4a.7.5 and 4a.7.6 seek controls on landscaping (referencing Appendix 9 as proposed to be added to the Plan), Fencing Walls and Hedges, and Streetscape and the open space network, and road cross sections, also referencing design conditions set out in Appendix 9 as proposed to be added to the Plan).*

49.7 The Nukuhau Structure Plan (Outline Development Plan) is sought to be inserted as Appendix 9.7 to the Plan.

13. In addition to the proposed text provisions two plans are now proposed, being the Nukuhau Structure Plan and one illustrating the principal proposed walkway and cycling pathway connections.
14. Further revisions arising from a consideration of submissions, the s42A report and matters arising from the hearing were proposed both at the commencement of the hearing and in reply.
15. The amendments proposed at the commencement of the hearing were summarised by Mr Muldowney¹ 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.*
16. Consideration of further amendments was discussed in reply by Ms Cleary in terms of:
- (a) Subdivision activity status;
 - (b) Lot sizes and density;
 - (c) Stormwater management;
 - (d) Archaeology; and
 - (e) Cultural values.
17. The amendments proposed were generally agreed in consultation with Mr Bonis, the exception being a difference of opinion over how to incorporate a Tangata / Mana Whenua provision, and we discuss them at the end of this decision.

¹ Muldowney, Opening legal submissions, para 17.

HEARING PROCESS

18. The Hearing Panel issued 5 directions prior to the hearing as follows:
 - (i) setting out a timetable for the s42A hearing report and evidence exchange;
 - (ii) confirmation of Council's informal further information request;
 - (iii) amending the reporting and evidence timetable;
 - (iv) requiring expert conferencing of traffic and planning witnesses; and
 - (v) advising that the hearing would take place under s39AA RMA by remote access facility.
19. Prior to the hearing, Commissioners Hunia and Taylor visited the site and the local surroundings. Commissioner Hill was unable to conduct a site visit due to the Auckland border COVID-19 restrictions.
20. Expert conferencing was also directed for the transport and planning witnesses. Those took place on 12, 15 and 18 October 2021 with a final Joint Witness Statement (“**JWS**”) being issued on 18 October 2021. That JWS is a matter of record, was made available to all parties prior to the hearing and, for the reason indicated below, we therefore need discuss it in detail no further.
21. The Panel expresses its gratitude to those transport and planning expert witnesses who participated in those sessions and materially assisted in narrowing the relevant issues remaining in contention for our determination. We also note, in passing, that those matters were further resolved by the end of the hearing such that the recommended provisions relating to those matters were all agreed.

PROCEDURAL MATTERS

22. Two procedural matters were raised in section 3.5 of the s42A report:
 - (a) Whether to accept submissions 56 - 59 that were made via a different consultation portal on the Council's website; and
 - (b) Whether there is scope to accept submission 33 (G & R Brandon, Ripeka Ma Trust) seeking to include Watene Lane within the plan change area.
23. Mr Bonis recommended accepting submissions 56-59 as no prejudice arose thereby for any party, but not accepting submission 33 as that was out of scope² – not being “on” the plan change and there being no opportunity for potential submitters to engage on the matter.
24. Having considered Mr Bonis' reasons, we accept both recommendations and find accordingly.
25. A subsequent scope issue arose in connection with the evidence presented by Mr Greaves at the hearing on behalf of the owners of Rangatira Blocks 8A17A5, 8A17A6, 8A1T2X, 8A1T2Y and Pt Rangatira A1T2.
26. Mr Greaves sought, among other things, an amendment to the Structure Plan placing an additional medium density residential overlay over the south-eastern portion of the owners' property. The Panel invited Mr Muldowney to consider the question as to whether this was in scope.

² S42A report, para 50.2.

27. In closing submissions, Mr Muldowney submitted that as the amendment sought was not raised in its original submission but through the owners' further submission (FS60.145) in support of Contact Energy's submission, which sought deletion of the overlay adjacent to its interests, there was no ability to enlarge the scope of that original submission in the manner sought. Mr Muldowney concluded³, therefore, that the Panel has no power to grant the relief sought by Mr Greaves.
28. That conclusion aligns with the Panel's thinking on the matter and, accordingly, we find the submission point and relief sought by Mr Greaves out of scope.

RELEVANT STATUTORY PROVISIONS CONSIDERED

29. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements are set out succinctly in Mr Muldowney's legal submissions⁴ (among others). Those formal matters were not contested and, as such, we see no useful purpose in repeating them again in detail. We refer the reader to that summary.
30. Clause 10 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA. With regard to Section 32AA, we note that the evidence presented by the proponent (and supplemented by Ms Cleary in reply⁵), submitters and Council effectively represents that assessment, and that material should be read in conjunction with this decision, where we have determined that a change to PC 37 should be made.

S42A REPORT

31. The s42A Report was prepared by planning consultant, Mr Matt Bonis, and included technical reviews as follows:
- Property economics (Tim Heath)
 - 3 Waters (Thomas Swindell, Michael Cordell & Colin Meadowcroft);
 - Transport (David Smith);
 - Archaeology (Lynda Walter);
 - Ecology (William Shaw);
 - Landscape and visual (Rebecca Ryder);
 - Urban design (Morné Hugo);
 - Contaminated land (Adam Gray); and
 - Geotechnical engineering (Geoffrey Farquhar);
32. Mr Bonis summarised the main issues arising from submissions as:
- Capacity at the CGB – Transport;
 - Internal roading and cycling network;
 - Range and typology of housing provision;
 - Support / opposition for additional housing supply;
 - Wastewater capacity constraints on development;
 - Information sufficiency;
 - Effects on stormwater and the internal gully system;

³ Muldowney, Closing submissions, para 43.

⁴ Muldowney, Opening legal submissions, paras 70 – 73 & Attachment A.

⁵ Cleary, Supplementary statement, paras 75 – 81 & Attachment 2.

- Reverse sensitivity issues / impacts on Contact Energy;
 - Effects on archaeology;
 - Effects on cultural heritage / engagement with mana whenua; and
 - Provision of reserves (sports), rather than just stormwater gullies.
33. Having considered those matters, and with the assistance of the technical reviewer advice, Mr Bonis recommended that PC37 be approved with some proposed amended provisions – particularly related to the deferral of subdivision applications until the Taupo CGB capacity issue is resolved. Mr Bonis was satisfied that geotechnical, natural hazard and contaminated land issues were not impediments to the proposed rezoning, and that residual landscape values, ecology and biodiversity and urban design could be resolved with the amendments proposed. He requested that the proponent provide further information related to the mana whenua consultation and archaeology at the hearing and reserved his recommendation on those matters.
34. We also note that Council had advised that as the existing wastewater network does not have capacity to service the proposed development, it will need to be satisfied that appropriate wastewater infrastructure is in place before development can occur. The proposed provisions make that clear.
35. Mr Bonis included, as *Attachment C: Consideration of Individual Submissions*, a series of twelve topic-based table identifying submission points with a recommendation to the hearing panel as to whether to accept or reject that point. For the sake of brevity, we record that we have accepted all those recommendations except as otherwise identified in this decision and as noted in **Attachment 2** to this decision.

EVIDENCE AND/OR REPRESENTATIONS HEARD

36. The Council planning officer's s42A report and expert evidence on behalf of the proponent and certain submitters was circulated prior to the hearing in accordance with our Directions and taken as read.
37. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's report, the application itself and the submissions made on the application.
38. Evidence was presented at the hearing on behalf of the proponent, in addition to legal submissions from Mr Muldowney, from the following witnesses:
- Warren Bird (3 Waters);
 - Cheryl Cleary (Planning);
 - Hamish Crawford (Planning);
 - Ruihan Cui (Transport modelling);
 - James Gladwin (Contamination);
 - Tim Heath (Land supply economics);
 - Robert Swears (Traffic);
 - Kirsty Sykes (Archaeology); and
 - Neil Hickman (proponent for Lexus Trustees 11).
39. We note that we had excused the following witnesses as the issues which they addressed in evidence appeared not to be in contention:
- Nick Aiken (Urban Design);
 - Ian Gray (Geotechnical);

- Stefan Steyn (Landscape and Visuals); and
- John Turner (Ecology).

40. We received written evidence and/or representations from the following submitters:

- Hannah Craven & Jon Palmer - Waikato Regional Council;
- Jane Penton - Lakes & Waterways Action Group;
- Rowan Sapsford - Bike Taupō Advocacy Group;
- Bruce Bartley - Walnut Lane Limited;
- Sarah Davidson & Rory Scott - Taupō Business Chamber;
- Thomas Hendricks;
- Todd Baldwin and Mark Chrisp - Contact Energy Limited;
- Andrew Kusabs & David Greaves - Rangatira 8A17 Trust;
- Tāne Lawless;
- Geoff Rameka;
- Garrick Workman;
- Setareh Stienstra (counsel), Brett Farquhar, Alec Wilson Snr and Alec Wilson Jnr – Rangatira E Trust.

41. Council prepared and presented summary statements from the following witnesses:

- Matt Bonis (S42A author);
- Colin Meadowcroft (Stormwater);
- Thomas Swindells (Water);
- Michael Cordell (Wastewater);
- David Smith (Transport);
- Lynda Walter (Archaeology);
- William Shaw (Ecology);
- Rebecca Ryder (Landscape and Visual);
- Morné Hugo (Urban Design);
- Adam Gray (Contamination); and
- Geoffrey Farquhar (Geotechnical).

42. In his hearing summary statement, having considered the additional evidence filed, Mr Bonis refined the key matters remaining as:

- how to provide for a Cultural Impact Assessment (CIA);
- whether a comprehensive Gully Management Plan is required;
- whether a comprehensive Stormwater Management Plan is required; and
- the appropriate development threshold and activity status prior to resolving the Waikato River CGB congestion issue.

He confirmed agreement with the proponent that PC37 would achieve the superior instruments – including giving effect to the Waikato Regional Policy Statement (“**the WRPS**”) – and considered other relevant matters raised appropriately provided for in the recommended provisions.

43. Rather than summarise those statements we deal with the issues raised, as relevant, in the following sections of this decision. While we may not cite particular submitters or submission points that should not be taken as implying that we have not given such due weight. We adopt this approach out of expediency and for the sake of avoiding undue

repetition or unnecessary protraction. Regardless, we note for the record that we are satisfied that submitters material concerns are appropriately addressed in this decision.

44. The proponent's written response and closing was provided by Mr Muldowney and Ms Cleary and addressed the following matters:
- (a) Existing level of service and capacity of the CGB;
 - (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 have scope to seek medium density residential zoning;
 - (h) Whether Contact Energy Limited's reverse sensitivity concerns have been resolved through direct negotiations with C N Top Limited;
 - (i) Whether there are any Māori Land Court obstacles to vesting part of the Rangatira 8A17 land (i.e in relation to 8A6B2 Māori land) in Council for reserve purposes; and
 - (j) Concerns raised by Rangatira E Trust in relation to consultation and effects.

PRINCIPAL ISSUES IN CONTENTION AND FINDINGS

45. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and the Council officers' response to questions, the following principal issues in contention have been identified:
- The policy context and its correct interpretation;
 - Whether the traffic / transport matters had been appropriately and sufficiently identified, addressed and provided for;
 - Whether the effects on cultural values had been appropriately and sufficiently identified, addressed and provided for;
 - Whether the effects on archaeological values had been appropriately and sufficiently identified, addressed and provided for;
 - Whether the natural gully system is appropriately protected; and
 - Whether the bespoke development controls are appropriate in terms of the overall operative District Plan and the statutory requirements.

The Policy Context

The National Policy Statement on Urban Development 2020 ("the NPS-UD")

46. While it was broadly accepted that the NPS-UD applies, particularly with respect to urban growth and transport infrastructure, the extent to which it applies was subject to different

interpretation – in that Taupo is an urban environment and the Council a Tier 3 local authority.

47. In opening legal submissions Mr Muldowney (referencing Ms Cleary’s planning assessment⁶) noted that:
- The PC37 location 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.
 - The WRPS 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.
 - PC37 will make a positive contribution to a well-functioning urban environment by providing housing choice and opportunities for active transport modes.
 - PC37 assists with the provision of sufficient development capacity to meet the diverse needs of its community and the expected demand for housing in a way that is infrastructure-ready, feasible and reasonably expected to be realised in the short to medium term.
48. Mr Heath noted⁷ that Taupo district requires a further 1200 household dwellings on top of currently zoned capacity – of which Nukuhau (i.e. PC37) notionally represents 780 dwellings.
49. In his s42A report Mr Bonis essentially agreed⁸ with the above, though noting that funding for the Control Gate improvements is not identified in Council’s current Long Term Plan, and therefore NPS-UD Policy1 [*per* 3.4(3)] is not fully met.

Finding

50. In light of the Court’s finding in *Eden-Epsom* we find that NPS-UD policies 2 and 3 do not apply – albeit useful points of reference in terms of the general direction in which the resultant district plan is likely to travel. Clearly being consistent with those policies confers a degree of advantage (without, as the Court records, pre-empting the changes that the resultant district plan might presage); however, on the other hand, being inconsistent with or not giving full effect to those policies is not fatal at this point in time.
51. In terms of the policy provisions that the Court accepted as being engaged, only NPS-UD policy 1 and policy 6(c)-(e) are directly engaged. Those are matters on which PC37 must give effect, being:

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) *have or enable a variety of homes that:*

- (i) *meet the needs, in terms of type, price, and location, of different households;*
and
- (ii) *enable Māori to express their cultural traditions and norms; and*

⁶ Cleary, Statement of evidence, paras 17 – 27.

⁷ Heath, Statement of evidence, para 10.

⁸ S42A report, paras 64 – 83.

- (b) *have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and*
- (c) *have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and*
- (d) *support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and*
- (e) *support reductions in greenhouse gas emissions; and*
- (f) *are resilient to the likely current and future effects of climate change.*

Policy 6: *When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:*

....

- (c) *the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1);*
- (d) *any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity;*
- (e) *the likely current and future effects of climate change.*

Finding

52. We are satisfied that PC37 will contribute to a well-functioning urban environment, albeit that is qualified in the medium term by the need to resolve the bridge capacity constraint matter as we discuss next. However, that matter is one that is recognised and for which solutions exist, the precise nature of which remains to be settled and funded. No evidence was put before us to suggest otherwise.

Waikato Regional Policy Statement 2016

53. It was common ground that the general location within which PC37 sits gave effect to the urban growth / development requirements of the WRPS and the important development principles stated in section 6A, which urban growth location had been incorporated into the WRPS as policy 6.11 – implementing TD2050.
54. This matter is comprehensively discussed by Mr Bonis⁹ (as were relevant allied policy issues of indigenous biodiversity; landscape, amenity and urban design; geotechnical risk; and historic and cultural heritage) and was not challenged in evidence (noting, in particular, that the Waikato Regional Council accepted that conclusion).

Finding

55. We find that PC37 will give effect to the relevant urban development provisions of the WRPS.

Traffic & Transport Matters

56. As noted earlier, by the time of the hearing the traffic and transportation matters at issue had been narrowed such that the question for us to determine was largely one of implementation provision(s).

⁹ Op cit, paras 103 – 106.

57. The key question addressed by the relevant experts was whether *any* development should be enabled north of the CGB given the existing peak period levels of service (“LoS”), projections for traffic growth through that corridor, and existing planned development north of the bridge (particularly from the Acacia Bay / Kinloch quarter).
58. It also became clear that in considering this issue, the relevant corridor included the two intersections either side of the bridge (Norman Smith Street / Wairakei Drive intersection and the Tongariro Street / Spa Road roundabout) that variously controlled peak traffic northbound and southbound at the bridge. The modelling undertaken by Ms Cui was instrumental in understanding that relationship.
59. We note that some of the existing issues associated with the LoS at the Norman Smith Street / Wairakei Drive intersection would be resolved with the final proposed new Poihipi Road / Wairakei Drive diversion and intersection.
60. Importantly the JWS records agreement¹⁰ (among other things) that development and trip generation associated with 1500 or more additional lots north of the bridge is likely to result in a significant increase in peak period traffic flow, noting that this is not confined to proposed PC37 development alone but *any* development. That threshold figure was subsequently amended to a conservatively agreed 1137 dwellings as discussed below.
61. The travel time modelling undertaken by Ms Cui¹¹ underscored how this might manifest for the morning and evening peak periods and for different route scenarios.
62. Ms Cui’s updated modelling analysis is comprehensively discussed in her Statement of evidence but, given the agreements reached, we see no need to restate that evidence further, and note that Mr Smith records¹² that:
- ... the experts are aligned in accepting the underlying modelling methodology and modelling results, however the remaining differences relate to the interpretation of the results ...*
63. The experts therefore helpfully turned their attention to a scenario less than the outright prohibition of development until such time as the CGB issue is resolved (as initially recommended by Mr Smith and Mr Bonis in the s42A report).
64. Taking as the base case an authorised / permitted development scenario of 997 households / dwellings north of the Bridge plus a further 140 dwellings for PC37 (the qualified demand calculated by Mr Heath¹³ for additional dwellings north of the bridge over the next 10 years), Ms Cui’s modelling indicated bridge travel time delays of 45 seconds at the morning peak and 55 seconds at the evening peak – or an additional 20% in the morning and 10% in the evening at the notional 2030 year. Furthermore, Ms Cui calculated that the LoS change from E to F for the two relevant intersections would occur at around 140 dwellings. Mr Smith¹⁴ was able to support this threshold of development provided it was also associated with active mode provisions that would provide an additional demand cushion (and would potentially include both north and south of the bridge – although not the sole responsibility of PC37 clearly). That position was also supported by Mr Swears.
65. In terms of active mode provision, Mr Sapsford’s evidence for Bike Taupō was particularly helpful in noting both the uptake of biking but also micromobility use (E-bikes and E-scooters). As he noted, the lack of safe cycling infrastructure north of the bridge potentially

¹⁰ JWS, para 2.2(e).

¹¹ Ibid, paras 6.8 – 6.10.

¹² Smith, Summary statement of evidence, para 9.

¹³ Op cit, para 7.

¹⁴ Op cit, para 36.

compromises the CBD proximity benefits – improvements to which are necessary to achieve further gains (and cites Mr Swear’s evidence on the matter with approval). Mr Sapsford sought an additional provision in PC37 explicitly requiring the implementation of cycling infrastructure at or prior to subdivision.

66. While Mr Smith was sympathetic¹⁵ to the intent of Mr Sapsford’s submission, he remained concerned that it would be difficult to translate into an effective rule with sufficient precision. He noted that such would require upgrades to existing roading infrastructure beyond the purview of PC37 and that this was probably best left for incorporation into detailed planning for, and decisions about, a second river crossing. We agree, noting that Council indicated that this would be a matter carefully considered in that process.

Findings

67. We acknowledge the importance of the LoS issues surrounding the CGB bottleneck and adjacent intersections. That was not in dispute despite technical differences in expert opinion over modelling and interpretation matters.
68. We find that the “compromise” solution proposed of setting a development ceiling of 1137 household dwellings north of the CGB, with a maximum of 140 new dwellings in the PC37 plan change area, in conjunction with on-going active transport mode encouragement by Council, will provide for a sufficient level of development while the CGB matter is resolved. We are thereby satisfied that the CGB issue is not a reason for declining PC37.
69. We also find that active mode improvements to and in the immediate roading network is a matter that Council is aware of, is focussed on, and is neither a reason for declining the present plan change nor for requiring specific remedies of the proponent.

Cultural Values - Tangata Whenua Engagement

70. The notified application contained a brief outline of engagement that had occurred with tangata whenua including with various Iwi Authorities. The s42A report and various submitters questioned whether there had been appropriate and sufficient consultation with tangata whenua. The lack of tangata whenua engagement in the Archaeological Assessment was also raised by Heritage New Zealand Pouhere Taonga¹⁶ and by Ms Walters for the Council.
71. At the hearing, we heard further details about the consultation process undertaken by the applicant from Mr Crawford¹⁷. We also heard in evidence and submissions from Rangatira E that they did not consider themselves to have been adequately consulted on the plan change application. The responses arising from tangata whenua engagement were limited and there was a clear lack of identification of cultural values.
72. As noted elsewhere in our decision, we consider that the Plan Change area has already been determined as being suitable for residential development as part of the TD 2050 consultation and engagement process. The proponent did not prepare a Cultural Impact Assessment and was not required to do so. We note however, that had a CIA been prepared, we would have been better placed to assess any cultural effects arising from the plan change.

¹⁵ Smith, Summary statement, paras 11 – 15.

¹⁶ Sub 36

¹⁷ Crawford, Statement of evidence, paras 59 – 83, and Reply Statement

73. We directed Ms Cleary to prepare supplementary evidence relating to the matter of cultural effects. We found that evidence helpful in weighing the evidence before us.
74. We concur with Ms Cleary that: “engagement with mana whenua is important to understand and identify potential cultural effects and to ensure that the RMA requirements in Part 2 of the RMA are met, including in relation to the exercise of kaitiātanga (s7(a) of the RMA), and recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (s6(e)) and the protection of historic heritage from inappropriate use and development (s6(f)).
75. We are conscious that any amendments we recommend to PC37 must either fall within the scope of the notified plan change and of submissions (Clause 10 of Schedule 1 to the RMA) or have been volunteered by the proponent within that same scope.
76. We consider that the Structure Plan process requires a consideration of cultural effects not currently provided for within the ODP. This would require provisions that consider and address the form, subdivision and development of the area during the initial subdivision process.

Finding

77. We agree with Ms Cleary’s opinion that there is a small risk of adverse effects on cultural values despite those (and measures to address them) not having been identified for the Nukuhau Structure Plan¹⁸. In our opinion, and based on the largely process-led evidence presented by submitters, that is not sufficient ground for declining the plan change and we agree that a CIA (for the entire area of the Plan Change) can and should be prepared as part of the first subdivision application.
78. We considered the differing provisions relating to the requirement for a CIA proposed by Ms Cleary and Mr Bonis in their primary statements of evidence, and in Ms Cleary’s supplementary evidence.
79. On balance, we prefer the original assessment criterion for subdivision and have amended the provisions accordingly as follows ¹⁹:

Amendment of 4.a.7.2 to include:

- (iii) effects of the proposed subdivision 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 mana whenua representatives, or written confirmation from the appropriate iwi authority 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.*
80. We find that the above assessment criterion will assist in ensuring that future decision makers are able to assess cultural values that can inform the design and layout as part of the subdivision consent process.

¹⁸ Cleary, Supplementary statement of evidence, para 55.

¹⁹ Cleary, Statement of evidence, page 96.

Archaeological values

81. Between October 2017 and February 2019 an 'ArchCheck' archaeological assessment was carried out by Opus International Consultants. This was primarily a desktop exercise with a brief site visit. The report recommended that further research be undertaken in the form of an archaeological assessment report for an archaeological authority prior to earthworks.
82. Mr Bonis in his s42A report, and referring to the report of Ms Walter, notes that the archaeological assessment completed at that time identified a low risk for archaeology and the likelihood of minor negative effects on archaeological values. While not all of the proposed plan change area was surveyed it was noted that two depressions were recorded in area C.
83. Mr Bonis further indicated that there remained a contested matter of whether mana whenua had been properly consulted.
84. Further evidence was provided by Ms Sykes on behalf of the proponent, Ms McAlley on behalf of Heritage New Zealand Pouhere Taonga, and by Ms Walter for the Council.
85. Additional assessments were carried out by Ms Sykes.
86. The conclusion of this is succinctly set out in Ms Walter's evidence where she noted²⁰:
The additional archaeological assessment undertaken is sufficient to determine that PC37 will not have an adverse effect on archaeological sites in Areas A & B.
An archaeological exploratory investigation of the depression identified in Area C should be carried out, as provided by Sec 56 of the Heritage New Zealand Pouhere Taonga Act 2014 prior to development occurring in that area.

Finding

87. We agree with the consensus reached that further assessment is required prior to development. We note that the only features identified as having potential as an archaeological site are the depressions located in area C.
88. We therefore find it appropriate that an archaeological assessment be completed in relation to the depressions identified in area C before development occurs. Further, that development of the remainder of the PC37 area be undertaken under an Accidental Discovery Protocol (ADP) basis.
89. We have included provisions to that effect, noting that this will require a full PC37 area CIA to be undertaken for the first development under these provisions. We leave decisions about whether or not that might involve a co-operative landowner approach rather than solely being an obligation on the first subdivider to the parties. We are satisfied that the requirement is a reasonable RMA provision and that we do not need to direct the means by which it might be conducted.

Natural Gully System and Stormwater Management

90. As Mr Palmer noted, the Nukuhau catchment is approximately 240 hectares, has conveyed significant stormwater flows in the past, and those historic flows will increase with increased areas of hard surface from existing and future urban development, increasing risks for existing downstream development from PC37.

²⁰ Walter, Summary statement, paras 8 – 9.

91. Mr Palmer and Ms Craven for WRC, and Ms Penton for Lakes & Waterways Action Group, raised the question as to whether PC37 gave sufficient attention to and protection for the natural gully system that crosses the plan change area. In their initial evidence a gully system management plan was proposed separate to the comprehensive Stormwater Management Plan (“**SMP**”) that is proposed (in line with the relevant WRC guidelines – but not as a full Catchment Management Plan prepared for the entire PC37 development area as initially proposed by Mr Meadowcroft, noting that Council will require this new area to be incorporated with the existing Nukuhau residential area into its comprehensive urban stormwater discharge consent).
92. The proposal at the hearing was for the main gully stormwater flows to be mitigated (attenuated / slowed) to predevelopment levels for up to a 1% AEP (100-year) rainfall event and to use the gullies through planting and detention to that end. It was this latter aspect that was of concern to those submitters, who feared that this could prioritise flood control over natural values protection and result in the undue realignment of those gullies (either through erosion or through physical contouring works). We note that Mr Palmer²¹ was not opposed to the use of the gully system as stormwater reserves provided appropriate erosion and sediment control measures / provisions are in place.
93. Mr Hendricks sought a number of additional provisions in order to avoid the risk of gully erosion or modification – including mandatory rainwater tanks, green roofs, co-generation via conveyance pipelines, etc. While some or all of those options might be worth further investigation at the time of development, we had insufficient material evidence before us to turn those ideas into actual provisions that might then satisfy a s32 RMA evaluation.
94. By the end of the hearing it appeared to be common ground that the gully matters of concern could, and probably should, be managed through the stormwater proxy since this would better ensure integrated management of the respective issues. WRC indicated that it was satisfied with the provisions with the addition of reference to the WRC’s *Erosion and Sediment Control Guidelines for Soil Disturbing Activities* (TR2009/02). That was agreed and reference has been included.

Finding

95. We agree with the final position that seemed to be arrived at by the relevant experts and as the proponent now proposes be adopted into the provisions. Gully management and stormwater management are necessarily intertwined in the case of pumice soils and both the Council and WRC are competent and experienced in terms of their management processes.

Bespoke Development Controls

96. We are satisfied that with the relatively minor amendments made by us to the final set of draft provisions provided by the proponent, that a suitable set of bespoke provisions is now available to us for decision and recommendation. Furthermore, to the extent that we are able, we are satisfied that those provisions do not unnecessarily duplicate existing TDP provisions, go no further than is necessary to achieve the objective of PC37, and are within scope of the notified plan change and the submissions and further submissions made upon it.
97. As noted in Mr Muldowney’s and Ms Cleary’s replies, agreement was reached on a number of additional provisions including:

²¹ Palmer, Statement of evidence, para 14.

- (i) maximum lot and density controls, particularly so that in the medium density zone the projected densities are more likely to be achieved. While the TDP does not generally contain such controls we consider those necessary to achieve the objectives for Nukuhau, and understand that Council is considering similar options for the forthcoming plan review; and
- (ii) specific identification on the Structure Plan of the two pit depressions as a formal reminder that requisite authorities may be required should development impinge upon them.

98. We also note that the particular reverse sensitivity issue of concern to Contact Energy Limited with respect to operational matters involving its Poihipi Road geothermal power generation plant had been resolved by the close of the hearing by way of Memorandum of Agreement with CN Top Ltd requiring the registration of an encumbrance on all relevant titles subsequently issued from subdivision of the CN Top land, Lot 2 DP 384060. That was confirmed by both Mr Muldowney in reply. As such no specific provision was sought or considered necessary for inclusion in PC37.
99. The issues discussed above are also subject to specific requirements for such matters as detailed integrated transport assessments and stormwater management plans to ensure that the CGB and gully matters are appropriately addressed at subdivision stage – and appropriate activity statuses are attached.

STATUTORY PROVISIONS

100. The RMA sets out a range of matters that must be addressed when considering a plan change. These matters have been identified (correctly in our view) in the s32 Report (section 4), the s42A Report (section 4 and Attachment B), and in Mr Muldowney’s opening legal submissions²². Ms Cleary provided a s32AA RMA evaluation on further amendments proposed as Attachment 2 of her final reply evidence. We note that Mr Bonis considered the plan change satisfied those requirements and we agree.
101. We also note that s32 clarifies that analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposal.
102. Having considered the evidence, submissions, legal advice, and relevant background documents, we are satisfied, overall, that PC37 has been developed in accordance with the relevant statutory and policy matters with regard to the Council’s s31 RMA functions relating to the integrated management of effects (s31(1)(a)) and the provision of sufficient development capacity (s31(1)(aa)) in particular. The plan change will clearly assist the Council to effectively administer the Taupō District Plan.
103. In terms of Part 2 of the RMA, Mr Muldowney submitted²³ that recourse was not required because there is no ambiguity in the higher order planning documents and the settled King Salmon exceptions regarding lawfulness, coverage and uncertainty of meaning do not apply. However, he noted that Ms Cleary had undertaken a full Part 2 analysis out of caution, concluding that PC37 had been developed in full compliance with those sections.
104. With the exception of the NPS-UD, also noted by Mr Muldowney, Mr Bonis agreed – and he had satisfied himself on that matter.


²² Op cit, paras 70 – 73.

²³ Op cit, paras 75 – 79.

105. We agree that little utility is likely gained from a Part 2 analysis (as is effectively demonstrated from Ms Cleary's analysis). We have noted a gap in the cultural values assessment area and received an explanation for that from Mr Crawford. Having heard that matter in evidence from submitters we are satisfied that the CIA provision we impose closes that gap such that there remains no outstanding s6(e) or 8 RMA matter.

DECISION / RECOMMENDATION

106. That pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, Proposed Plan Change 37 – Nukuhau to the Taupō District Plan be approved, subject to the modifications as set out in this decision.
107. Submissions on the plan change are accepted and rejected in accordance with this decision. In general, these decisions follow the recommendations set out in the Council's section 42A report, response to Commissioners' memo and closing statements, except as identified above in relation to matters in contention.
108. The reasons for the decision are that Plan Change 37:
- (a) will assist the Council in achieving the purpose of the RMA;
 - (b) is consistent with the Waikato Regional Policy Statement;
 - (c) is consistent with the provisions of Part 2 of the RMA;
 - (d) is supported by necessary evaluation in accordance with sections 32 and 32AA of the RMA;
 - (e) accords with the s18A RMA requirement that it includes only those matters relevant to the purpose of the Act and is worded in a way that is clear and concise; and
 - (f) will help with the effective implementation of the plan.



David Hill
Chairperson
and for Commissioners Dayle Hunia and Councillor Kevin Taylor

Date: 10 February 2022

Attachment 1: Plan Change 37 – Nukuhau – Provisions