

Decision Report

Taupō District Council

Private Plan Change 36 - Whareroa North

June 2020

Table of Contents

1	Introduction	1
2	Appointments	1
3	Process Issues	2
3.1	<i>Notification, submissions and written approvals</i>	2
3.2	<i>Officers' recommendations</i>	2
3.3	<i>Hearing, appearances and site visit</i>	2
4	Background to and description of Private Plan Change 36	3
5	Assessment approach	6
5.1	<i>Demand for Whareroa North sections</i>	8
5.2	<i>The proposed access road</i>	9
5.3	<i>Potential adverse effects</i>	11
5.3.1	Services	11
5.3.2	Indigenous biodiversity values	13
5.3.3	Landscape character and visual amenity	15
5.3.4	Effects on the existing roading network	18
5.3.5	Land stability – geotechnical issues	18
5.3.6	Tāngata whenua interests and values	21
5.3.7	Archaeological values	21
5.3.8	Stormwater management	23
5.3.9	Future infrastructure maintenance costs	24
5.3.10	Lake Taupō water quality	26
5.3.11	Reserves	26
5.3.12	Boat ramp	27
5.3.13	Overall conclusion on adverse effects	27
5.3.14	Revised Appendix 8	27
5.4	<i>Subdivision consent category</i>	28
5.5	<i>National policy statements and national planning standards</i>	29
5.5	<i>National environment standards and other regulations</i>	29
5.6	<i>Regional policy statement and regional plan</i>	30
5.7	<i>Taupō District Plan</i>	31
5.8	<i>Management plans and other strategies</i>	32
5.9	<i>Iwi and hapū management plans</i>	32
5.10	<i>Other matters</i>	32
5.11	<i>Part 2 matters</i>	33
5.12	<i>Amendments to Plan Change 36</i>	33
5.13	<i>Section 32AA</i>	33
7	Decisions on Plan Change 36 Submissions	34
Appendix 1	Amended Plan Change 36 Provisions	
Appendix 2	Decisions on submissions	

1 Introduction

- [1] In December 2017, pursuant to section 73(2) of the RMA, the Proprietors of Hauhungaroa No 6 (the Proponent) requested a change to the Taupō District Plan. The Proponent is the Māori landowning entity which has been responsible for the release of land at the Whareroa since the 1980's.
- [2] Pursuant to clause 25(2)(b) of Part 2 to Schedule 1 of the RMA the Taupō District Council Plan (TDC or Council) has accepted that request which means that the plan change (now called Private Plan Change 36 – Whareroa North or PPC36) remains a private plan change with Council administering the process of notifying it and conducting a hearing of submissions on it.
- [3] The purpose of PPC36 is to rezone a 14.63ha area north of Whareroa Stream adjacent to the existing Whareroa village on the southwest shores of Lake Taupō. The area is currently zoned under the Operative Taupō District Plan (TDP) as Rural Environment. The Proponent is seeking a Residential Environment zone to enable a maximum of 160 residential lots with densities ranging between 500m² to 1100m².
- [4] The location of the land affected by PPC36 and a future proposed access road is shown in Figure 1 below:¹

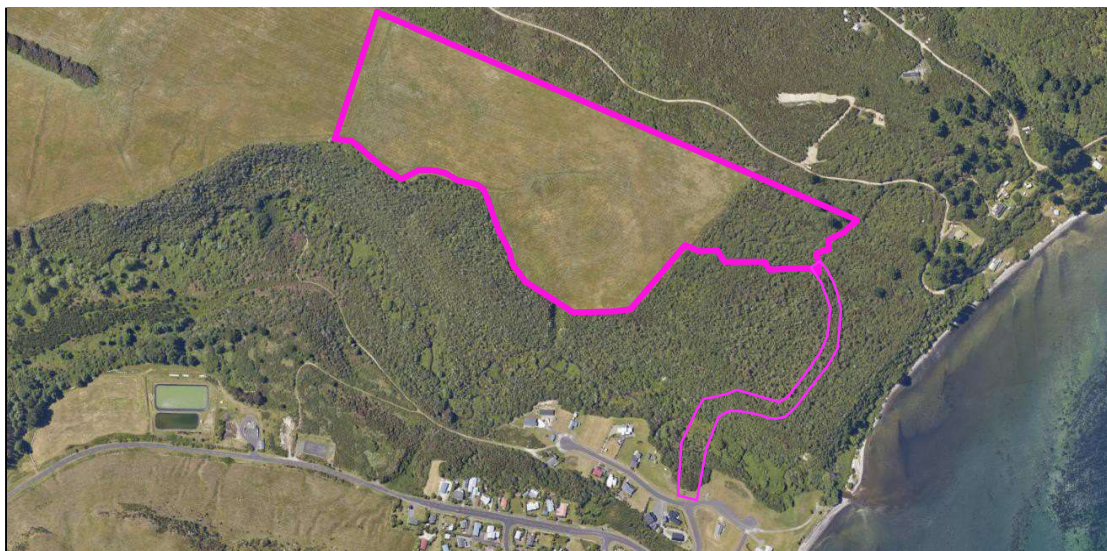


Figure 1 – PPC36 Location

Summary of Decision:

Pursuant to clause 29(4)(a) of Part 2 to Schedule 1 of the RMA Private Plan Change 36 – Whareroa North is approved with modifications.

2 Appointments

- [5] PPC36 was heard under the auspices of the Joint Management Agreement between the TDC and the Tūwharetoa Māori Trust Board (on behalf of Ngāti Tūwharetoa Iwi). Commissioners Rob van Voorthuysen² and Rosanne Jollands³ were appointed by the TDC. Commissioners Poto Davies⁴ and

¹ Sourced from Archaeological Assessment, Whareroa Private Plan Change, Siân Keith, 30 April 2020.

² Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 285 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy and was a full member of the New Zealand Planning Institute (NZPI) from 1998 to 2016.

³ Commissioner Jollands is an independent commissioner (since 2015) with a chair endorsement, based in Taupō.

⁴ Commissioner Davies is an independent commissioner (since 2013): grounded in mātauranga Māori and currently working with elected members of local body government.

Steven Wilson⁵ were appointed by the Tūwharetoa Māori Trust Board. As provided for by the Joint Management Agreement those four commissioners then selected Rob van Voorthuysen to be the Panel chairperson and they also thereafter jointly selected the fifth commissioner, Douglas Fairgray.⁶

- [6] Due to the Covid-19 lockdown, formal delegations from TDC to the commissioners did not occur until 14 April 2020.

3 Process Issues

3.1 Notification, submissions and written approvals

- [7] PPC36 was publicly notified in October 2019. There were 17 submissions lodged and 11 of the submitters wished to be heard. A summary of the submissions was published on the TDC webpage.⁷ We adopt⁸ that summary but do not repeat it here for the sake of brevity. However, we confirm that we read each original submission in full. No further submissions were received in response to the Council's notification of the summary of submissions.

3.2 Officers' recommendations

- [8] The TDC prepared an Officers Report under section 42A of the RMA for PPC36.⁹ We have had regard to that report and the advice of the s42A authors who recommended that PPC36 be declined. We discuss particular matters canvassed in the Officers Report in subsequent sections of this Decision Report.

3.3 Hearing, appearances and site visit

- [9] The hearing was originally scheduled for 13 to 15 May 2020 with a site visit to occur on 12 May 2020. However, NZ was still in Covid-19 Alert Level 3 on 12 May 2020 and so a site visit was impossible on that day. Consequently, the hearing was rescheduled to June 2020. We conducted a site visit¹⁰ on 16 June 2020 accompanied by Roger Stokes and Dave Forsyth.¹¹ We held a hearing at the TDC offices in Taupō on 17 and 18 June 2020. Three of the original submitters who wished to be heard provided pre-circulated written evidence in response to our request to do so.¹² Three submitters appeared at the hearing.¹³
- [10] Copies of all statements of evidence and legal submissions are held by the TDC. We do not summarise the matters covered here, but we refer to or quote from that material as appropriate in the remainder of this Decision Report. We posed written questions to the TDC experts and the Proponent's experts prior to the hearing and those questions were helpfully answered in writing prior to the hearing. We took our own notes of any answers given to verbal questions that we posed during the hearing.
- [11] We received a verbal Reply from the Proponents the second day of the hearing. We closed the hearing on 18 June 2020, having concluded that we required no further information from any of the parties.

⁵ Commissioner Wilson is an independent commissioner (since 2010), grounded in mātauranga Māori, currently working as a consultant facilitating consultation and engagement processes between tāngata whenua, councils, government and developers in the areas of natural resources and strategic or long-term planning. He has qualifications in science and business.

⁶ Commissioner Fairgray has 32 years of consulting and research experience, and established Market Economics Ltd in 2001 after seven years as Managing Director of McDermott Fairgray Group. He is frequently engaged as an expert witness in the Environment Court. He is a member of the External Reference Group for the University of Auckland School of Environment.

⁷<https://www.taupodc.govt.nz/repository/libraries/id:25026fn3317q9slqygym/hierarchy/Council/Consultation/Whareroa%20North%20Plan%20Change/Proposed%20Plan%20Change%2036%20to%20Taupo%20District%20Plan%2C%20Summary%20of%20Submission%20points.pdf>

⁸ As provided for by section 113(3)(b) of the RMA.

⁹ S42A Report of Matt Bonis, Planning Report on Submissions and Further Submissions, 22 April, 2020.

¹⁰ Amongst other things we viewed the area affected by PPC36, including the existing Whareroa Village, Whareroa Stream at the point of the proposed bridge crossing and its entrance to Lake Taupo, the escarpment, and the area of plateau to be rezoned "Residential Environment", paying particular attention to the 'bowl' feature and the area of 'regenerating scrub' at the eastern edge of the plateau.

¹¹ TDC Development Engineer and Director, Cheal consultancy respectively.

¹² NZHPT, WRC and S Sanderson.

¹³ Stephen Sanderson (#4), Desarie Drayton (#6) (represented by her husband Jake Drayton) and WRC (#17).

4 Background to and description of Private Plan Change 36

- [12] The Proponent prepared numerous documents in support of PPC36 that we have read and had regard to, including:
- The Proprietors of Hauhungaroa No 6, Application to Change the Taupō District Plan Pursuant to Section 73(2) of the Resource Management Act 1991, (Incorporating Section 32 Evaluation Report), December 2017 [Initial Request];
 - Appendices to the Initial Request addressing, amongst other things, infrastructure, landscape and visual effects, geotechnical matters (land stability, fault lines and liquefaction), consultation and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011;
 - The Proponent's responses to requests for further information from the Council in 3 October 2018, 19 October 2019, 21 October 2019 and 7 June 2019 addressing, amongst other things, infrastructure, landscape, the Whareroa stream crossing, national policy statements, geotechnical constraints, stormwater management, residential land supply and amended District Plan provisions; and
 - Evidence from Hokowhituatu Duncan Cormac McKenzie, Marilyn Connolly, Kevin Counsell – economics, Michael Keys -infrastructure, roading and bridge, Harshad Phadnis – geotechnical, Tony Kelly – stormwater, Chris Wedding – ecology, Mary Monzingo – landscape, Sian Keith – archaeology, and Joanne Lewis – Planning.
- [13] In the interests of brevity and efficiency we cross-refer to or adopt parts of those documents in this Decision Report.
- [14] The Initial Request¹⁴ includes an informative discussion of the background to Whareroa Village and its current nature, as did the evidence of Hokowhituatu Duncan Cormac McKenzie and Marilyn Connolly. We strongly recommend that readers of this Decision Report also read those parts of the Initial Request and that evidence.
- [15] It is apparent to us that the Proponent, alongside TDC, has invested substantially (and in a sustained, measured, professional, and collaborative manner) in the long-planned northern extension of Whareroa Village. By way of brief overview, we understand that:
- the Maori Incorporation, the Proprietors of Hauhungaroa No. 6 (Hau.No. 6), was formed on 26 August 1965 for the purpose of severing around 200 acres¹⁵ of the lakeward portion of a larger farming block (Whareroa Station), obtaining road access to that severed block and developing it as a residential village in place of an ancient village that had existed in former times;
 - as advised by Mr McKenzie¹⁶ the village concept was developed because the Incorporation saw “*an opportunity, to not only retain their lands, but the opportunity to clear debt, and improve the long-term wellbeing of their whanau and shareholders*”. The debt referred to was the debt attached to Whareroa Station;
 - the general area subject to PPC36 was zoned ‘Lakeshore Residential’ by the former Taumarunui County Council in 1973;
 - physical construction of the 200 lot Whareroa subdivision commenced in the 1980’s and required a 10km formed and sealed road from the State Highway to Whareroa Village (along the Kuratau Hydro Road and through the Waituhi Kuratau Station). The Incorporation developed and paid for the 5km Whareroa Road and developed and paid for half of the 5km Kuratau Hydro Road;
 - the Incorporation met the whole cost of bringing electric power reticulation from the Kuratau Power Station to the entrance of Whareroa Village;
 - in November 1984 the Incorporation presented the Taumarunui County Council with an overall concept plan for the whole of Whareroa Village, which included both the southern and northern sides;

¹⁴ Section 2, pages 7 to 11 and section 3.3, pages 13 to 15.

¹⁵ 80.9371 hectares.

¹⁶ In answer to our written questions.

- an auction was held on 26 April 1986 which resulted in the sale of 43 sections for an overall total of \$1,540,600. That was enough to pay for the internal subdivision costs, the completion of the Whareroa and Kuratau Hydro Roads; the internal roads; the sewage and waste water disposal areas; the water supply; the electric power and telephone supplies. All of this infrastructure was designed and constructed on the basis of providing for a total of 360 lots, not just the lots in the first few stages on the southern side;
- in 1989, as a result of local body amalgamations, TDC assumed planning responsibility for the Whareroa Village area from the Taumarunui County Council;
- in 2000 TDC changed the zoning of the northern site to Rural Environment;¹⁷
- in April 2006 the TDC growth management strategy “Taupō District 2050” was made operative, identifying Whareroa North as a location for future urban development and signalling a structure plan process ahead of any rezoning proposals;
- in 2008 TDC enacted the SNA062 overlay on the eastern portion of the northern area;
- in November 2010 TDP Variations 20 and 21 become operative and the TDP (Land Development Section) was updated to include the Whareroa North future urban growth area and the Structure Plan / Plan Change processes;
- In May 2013 the Southern Settlements Structure Plan (SSSP) was made operative and it included Whareroa North as a location for future urban development; and
- In December 2017 the Incorporation lodged PPC36 with TDC.

[16] All seven stages of the southern part of Whareroa Village are now complete and all sections have been sold. Several remain in the name of the Incorporation but are subject to sale and purchase agreements which provide for the purchasers to pay them off over a period of time.¹⁸

[17] The nature of PPC36 was set out in the Initial Request. The land proposed to be rezoned “Residential Environment” is a 14.63ha area of land comprising 12.63ha of pasture land (6.38ha of which is currently part of Whareroa Station) and 2ha initially referred to as ‘regenerating scrub’. PPC36 seeks to:

- rezone land at Whareroa North on the plateau above the Whareroa Stream (District Plan Map C29) from “Rural Environment” to “Residential Environment”;
- amend the TDP’s “Section 3a: Objectives and Policies – Residential Environment” which provides policy support for the Residential Environment and “Section 4a: Rules and Standards – Residential Environment” which provides for residential subdivision;
- insert into the TDP a new Appendix 8 being the Whareroa North Residential Concept Plan;
- provide Controlled Activity status for subdivision at Whareroa North if it is in accordance with the Whareroa North Residential Concept and Staging Plan in the new TDP Appendix 8;
- lock in a concept plan which will deliver between 140 and 160 residential lots clear of land identified in the TDP as having natural and/or landscape values;
- provide for staging of the subdivision to match efficient servicing and to meet market demand for sections; and
- leave unaltered the TDP provisions which manage the effects of indigenous vegetation clearance, earthworks and structures (associated with construction of road and services to the residential development area) through land identified as having natural and/or landscape values.¹⁹

¹⁷ The 2000 TDP was a strongly “effects based” plan and did not include any strategic zoning to provide for future growth. Consistent with that approach the Incorporation’s land north of the Whareroa Stream (and other land in Taupo District which was zoned for urban growth but which, in 2000, was being used for rural activities rather than urban,) lost its residential zoning and took on a rural zoning. EIC, Joanne Lewis, paragraph 2.3.

¹⁸ Initial Request, paragraph 2.1.17.

¹⁹ Initial Request, Executive Summary, page 4 and sections 4.1 and 4.2.

- [18] PPC36 includes the Whareroa North Concept Plan which in turn includes an Outline Development Plan as shown in Figure 2 below:²⁰

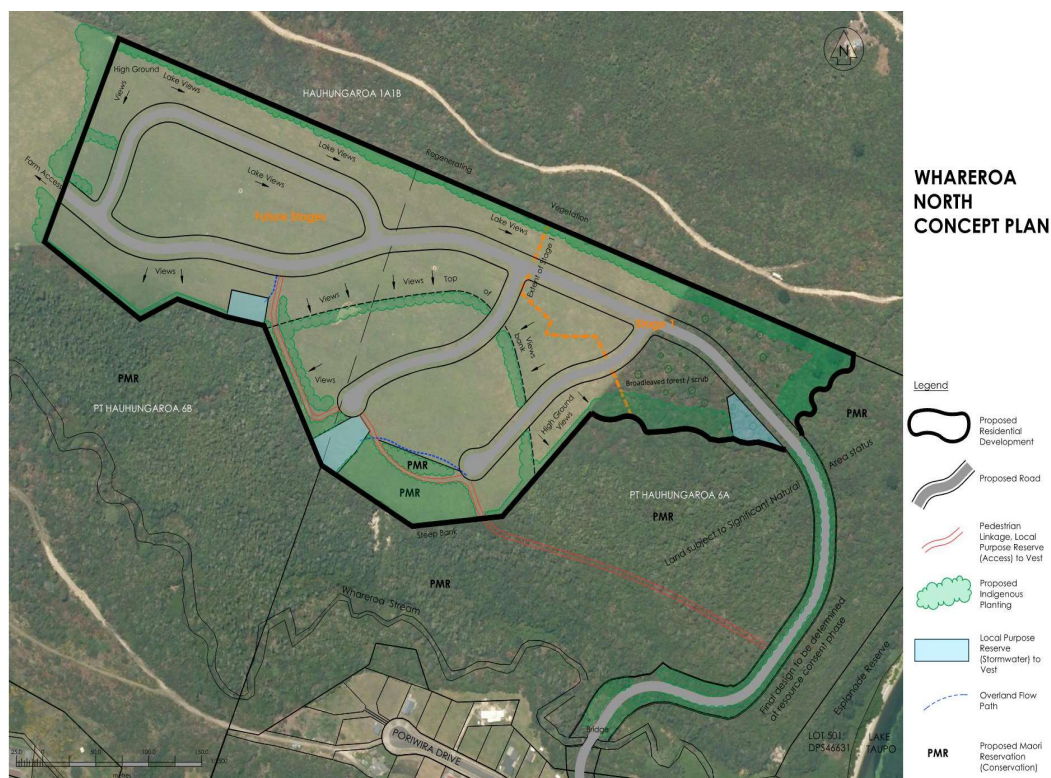


Figure 2 – Outline Development Plan

- [19] The proposed road connection between the southern side of the Whareroa Stream and the proposed “Residential Environment” boundary crosses land currently zoned “Rural Environment” in the TDP. This land is subject to Significant Natural Area (SNA) and Outstanding Landscape Area (OLA) overlays. The current TDP provisions (zoning, policy framework, and rules) which apply to this area will remain unchanged by PPC36. That means that the construction of the access road and associated vegetation clearance will require land use consent with a discretionary activity status.²¹
- [20] The Proponent considers that while population growth in the Taupō District may be subdued in the long term, the success of Whareroa North does not rely on resident population growth, but rather its appeal to prospective property purchasers as a holiday settlement. In that regard it considers that there will always be a demand for sections at Whareroa because of its unique attributes, such as its remote location and absence of commercial activities, which set Whareroa apart from other lakeside settlements in the south western part of Lake Taupō (like Omori and Kuratau).²²
- [21] The land affected by PPC36 (being the 6.38 ha portion of Part Hauhungaroa 6B Block joined with the 18.9873 ha Part Hauhungaroa 6A Block) has no frontage to a legal road. Subdivision and Māori Land Court processes will be required to enable the 6.38 ha western parcel currently in the ownership of The Proprietors of Whareroa Station to be transferred to the Proponent.²³

²⁰ Sourced from Archaeological Assessment, Whareroa Private Plan Change, Siân Keith, 30 April 2020.

²¹ Initial Request, section 4.3, page 24.

²² Initial Request, paragraph 2.2.2, page 10.

²³ Initial Request, paragraphs 3.1.2 to 3.1.4.

[22] Finally, we acknowledge and respect the evidence of Mr McKenzie that the Proponents have expended over 40 years of effort to secure the Whareroa North subdivision which reflects their desire to sustainably develop their ancestral whenua.

5 Assessment approach

[23] We now assess PPC36 and the submissions received on it. However, prior to doing so we describe our assessment approach.

[24] Firstly, we note that the Waikato Regional Policy Statement (WRPS) specifically directs that growth in the Taupō District will be managed in a way that ensures future urban development is consistent with the strategic directions of Taupō District 2050 (WRPS Policy 6.11(a)(ii)). Urban development in the rural environment outside of identified urban growth areas is to be avoided to prevent a dispersed pattern of settlement (WRPS Policy 6.11(a)(iii)). Urban development of an identified growth area should occur by way of a structure plan and associated plan change process (WRPS Policy 6.11(b)).

[25] Consistent with WRPS Policy 6.11(a)(ii) TDC has undertaken a comprehensive assessment of where urban growth should occur within the district by way of a consultative process resulting in the Taupō District 2050 Growth Management Strategy (TD2050) that was created in 2006.

[26] TD2050 was 'refreshed' by TDC in October 2018 and it includes Whareroa North as a future growth area.²⁴ With regard to Whareroa North, section 4.7 of TD2050 now states:

Whareroa North is included as a future growth area on the basis that it has previously been identified in planning documents and Council has recently received a private plan change seeking to have the zoning changed. It will need to be demonstrated that there is demand for this land and that costs to the community can be appropriately managed. Ultimately its future will be determined through the private plan change process.

[27] Consistent with WRPS Policy 6.11(b) the TDP states²⁵ that the subdivision and development of an urban growth area should occur by way of a comprehensive Taupō District Structure Plan process and plan change. The TDP explicitly identifies Whareroa North as an urban growth area.²⁶

[28] To give effect to the above WRPS and TDP provisions TDC promulgated the Southern Settlements Structure Plan 2013 (SSSP). The SSSP identifies Whareroa North as a future residential growth area. Two options WFG1 and WFG2 are shown in terms of potential development areas, with the latter extending into SNA062 and ONL60. A 'possible road crossing' is shown connecting the potential development areas to Whareroa Village.

[29] We find that the SSSP should be afforded substantial weight because Structure Plans are an integral component of the TDP's (Section 3e) strategic growth management framework. We also agree with Ms Lewis²⁷ that in terms of RPS Policy 6.11(a)(ii), which is about implementing TD2050, the SSSP is the "adopted structure plan" relevant to PPC36 that the RPS policy is concerned to ensure "patterns of future urban growth are consistent with".

[30] In saying that, we also note and accept the submission of counsel for TDC²⁸ that "the SSSP does not of itself demonstrate that a subsequent plan change request is appropriate or justified at a threshold level or on the merits." We agree that is something which we need to determine on the evidence before us.

²⁴ Taupō District 2050, District Growth Management Strategy, Map 2 – Southern Growth Areas.

²⁵ Objective 3e.2.2 and Policies 3e.2.2i to

²⁶ Section 3e.6.3 South Eastern and Western Urban Growth Areas.

²⁷ Rebuttal Evidence of Joanne Patricia Lewis for The Proprietors of Hauhungaroa No 6, paragraph 4.17.

²⁸ Legal Submissions on Behalf of Taupō District Council, 5 June 2020, paragraph 12.

- [31] The TDP Whareroa North future residential area identified in the SSSP is required to be rezoned to 'Residential Environment' before a subdivision resource consent is lodged to facilitate its development. The SSSP Executive Summary states that "*Council now considers it more appropriate that private landowners/developers undertake changes to the District Plan to zone land for new development, rather than Council doing this work.*"
- [32] Accordingly, consistent with the above TD 2050 and SSSP provisions, the Incorporation has lodged PPC36.
- [33] It is abundantly clear to us that Whareroa North has long been identified as a future urban growth area. It is not our role to second guess the appropriateness of that process. We acknowledge that if PPC36 is approved and the land is zoned "Residential Environment" then a subdivision resource consent will need to be applied for and granted before residential development can occur.
- [34] Given that context, we have decided to address two fundamental matters, namely on the basis of evidence available to us:
- is it likely that there are potential adverse effects within the area covered by PPC36 that are unable to be avoided, remedied, mitigated or offset and are of such a scale that PPC36 should be declined?
 - does the TDP rule structure (consent category and matters upon which conditions can be imposed) proposed by the Incorporation provide an adequate basis for future decision-makers to assess the necessary subdivision resource consent?
- [35] We note that the Proponent's proposed "Appendix 8: Whareroa North Outline Development Plan" as amended in June 2020²⁹ contains (amongst other things) "key outcomes", narrative descriptions of engineering and servicing matters, Anticipated Environmental Outcomes and "additional matters of control" that are additional to those already in the TDP. The latter are the key to ensuring regulatory certainty (should PPC36 be approved) by enabling clear, certain and enforceable conditions to be imposed on the subdivision consent. That necessitates a comprehensive suite of matters of control to be set out in (or incorporated into) the relevant TDP rule under which the subdivision application will be assessed.³⁰
- [36] In making that finding we are mindful of s104A(b) of the RMA which states that for controlled activities a consent authority may impose conditions on the consent under section 108 only for those matters over which it has reserved its control in its Plan.
- [37] We acknowledge that RMA s220(1)(c) enables conditions to be imposed on subdivision consents requiring any allotment be subject to a requirement as to the bulk, height, location, foundations, or height of floor levels of any structure on the allotments; and s220(1)(d) enables conditions to be imposed requiring the protection of the land or any part thereof against natural hazards from any source. We nonetheless consider that an appropriate TDP rule framework will provide additional certainty for those specific matters in this case.
- [38] We are conscious that any amendments we recommend to PPC36 must either fall within the scope of submissions³¹ or have been volunteered by the Incorporation (while remaining within the scope of the original plan change request, be intended to mitigate effects, and not be prejudicial to other parties or the

²⁹ We note and accept the view of Mr Bonis that the amendments are within the scope of the original Plan Change and the submissions on it. Rebuttal Evidence. Matthew Bonis, paragraph 87.

³⁰ We note that Chapter 4a of the TDP (Resident Environment) contains a list of "Assessment Criteria". We understand these to be a form of 'checklist' for decision-makers but they do not, in our view, comprise objectives or policies and nor do they replace the need for robust matters of control in the actual subdivision rule.

³¹ Clause 10 of Schedule 1 to the RMA.

public interest).³² In subsequent sections of this Decision Report where we identify necessary amendments to PPC36 we also consider whether we have scope to make those amendments.

- [39] The Waikato Regional Council (WRC) submitted on PPC36. Evidence for the WRC was provided by Marie-Louise (Miffy) Foley.³³ She urged us to take a ‘precautionary approach’ to PPC36 and reject it due to insufficient information on ‘substantive matters’, such as geotechnical risk, ecological and landscape effects. We discuss each of those matters later in this Decision Report.³⁴
- [40] Prior to addressing the effects that might arise from PPC36 and the adequacy of the TDP rule structure to deal with them, we now address two matters that have been the focus of the TDC officers and some submitters. These are:
- The likely demand for sections in Whareroa North; and
 - The proposed access road from Whareroa Village to Whareroa North.

5.1 Demand for Whareroa North sections

- [41] Consistent with section 4.7 of TD2050 we now address the matter of demand for sections at Whareroa North.
- [42] The parties agreed that demand for residential property in Whareroa and other lakeside settlements is predominantly for holiday properties, owned by people who are not resident in Taupō District. The key matters were the amount of future demand for holiday properties in the southwestern lakeside settlements (Kuratau, Omori, Pukawa and Whareroa), and how much capacity is currently available to cater for that future demand.
- [43] Mr Osborne and Mr Counsell agreed that over the next 30 years there would be demand for 210-300 lots in the southwestern lakeside settlements.³⁵
- [44] Mr Osborne counted remaining capacity as being any existing property which does not yet have a permanent dwelling on it, with the implicit assumption that such properties are not part of demand to date for holiday properties. He identified 198 such vacant properties in the settlements, including 27 in Whareroa,³⁶ and was of the view that there was plenty of capacity “... *in competitive alternative locations* ...”³⁷ to meet demand since Whareroa North was not a unique location. On that basis, he considered that development at Whareroa North would be “*unnecessary*”³⁸ to cater for future demand for holiday properties.
- [45] Mr Counsell held the view that the acquisition of properties is the indicator of demand uptake, rather than construction of dwellings on them. The construction of a dwelling may follow sometime after its acquisition as a holiday property. He provided some detail on property ownership in Whareroa, and ongoing development of vacant properties, and considered that not all vacant lots represented available capacity for future demand. He considered that an existing property in private ownership (that is, is no longer owned by the Trust as the original developer) should not be counted as capacity for future demand for holiday properties, whether or not a dwelling had yet been constructed.³⁹ On that basis, he considered “*there will be a shortfall in undeveloped residential lots in this area over a 30-year time frame.*”⁴⁰

³² Memorandum from Simpson Grierson (author James Winchester) to Matt Bonis titled “Legal issues for Council rebuttal – PPC36 Whareroa North, Taupo” dated 15 May 2020, paragraph 41.

³³ Senior Policy Advisor in the Integration and Infrastructure Section at the Waikato Regional Council.

³⁴ EIC Marie-Louise (Miffy) Foley, paragraph 7.1.3.

³⁵ Economics JWS, paragraph 11a.

³⁶ Economics JWS, paragraph 11b.

³⁷ Economics JWS, paragraph 12b.

³⁸ Summary Statement Philip Osborne, paragraph 1.11.

³⁹ EIC Kevin Counsell, paragraphs 42 and 43.

⁴⁰ Economics JWS, paragraph 12c.

[46] A submitter Mr Jake Drayton (appearing on behalf of submitter #6 Desarie Drayton) described to us how, after holidaying in Whareroa, he had recently purchased a vacant site as a holiday property, and was currently constructing a dwelling on it with a view to long term ownership. He described what he considered to be the unique characteristics of Whareroa compared to other southwestern lakeside settlements, emphasising in particular its isolation and connections to nature.

[47] Our consideration of the evidence, including both that properties in the lakeside settlements with or without a dwelling are predominantly holiday properties, and that dwellings are steadily being added⁴¹ in the area, lends weight to Mr Counsell's view, and we prefer it. We also conclude that Whareroa has unique characteristics that set it apart from other southwestern lakeside settlements. On that basis, we do not agree with Mr Osborne's view that the urban development which would be enabled by PPC36 is unnecessary.

5.2 The proposed access road

[48] There is currently no road access to the proposed residential area within PPC36. The Proponent's Application notes that various access options have been considered since the early 1980's. The Proponent's preferred option (Option D) involves an extension of Whareroa Road within the existing Whareroa Village from where it currently terminates at Poriwira Drive, a bridge over the Whareroa Stream and a new road up the escarpment to the development site. We understand the bridge will carry wastewater, potable water supply pipes and also telecommunications and power.

[49] Of interest to us, and understandably frustrating for the Proponents, the Application notes that in 1987 a road reserve was created for that crossing and a bridge was consented by the Taumarunui County Council, but that consent has now lapsed.⁴² We understand that in 1990 the bridge was also consented by WRC but that consent has now also lapsed.

[50] The Proponent has decided to authorise the necessary access road way through a subsequent resource consent process under the more general provisions of the TDP rather than resolving it through the PPC36 process.

[51] The general location of this proposed road is shown in Figure 2 of this Decision Report. The underlying "Rural Environment" zoning of the road route is not altered by PPC36 and TDP provisions (policy framework and rules) which apply to this area remain unchanged by PPC36. The road's proposed route traverses a Significant Natural Area (SNA062) and Outstanding Landscape Area (OLA60 and ONFL8) overlays.

[52] We note from the Initial Request⁴³ and the evidence of Joanne Lewis that any earthworks, vegetation removal, or structures associated with the construction of the access road and its bridge will continue to be subject to at least the following TDP rules:

- for indigenous vegetation clearance within an SNA: TDP Rules 4e.6.1 (permitted activity rule) and 4e.6.2 (restricted discretionary activity rule) and including Assessment Criteria 4e.6.2 a) to g);
- for structures in an OLA: TDP Rule 4b.2.7 (restricted discretionary activity);
- for earthworks in an OLA: District Plan Rule 4b.2.8 (restricted discretionary activity);
- for subdivision to enable the road: Rule 4b.3.3 (discretionary activity); and
- for subdivision to enable the bridge and its abutments: TDP Rule 4e.9.5 (restricted discretionary activity).

[53] In overall terms, the consents required under the TDP (applying the 'bundling principle') for the access road and its associated bridge will be assessed as a discretionary activity. We note that the JWS Planning recorded that the planners for the Incorporation and TDC agree that there is an existing operative

⁴¹ EIC Philip Osborne. Attachment page 18.

⁴² A copy of the 1987 consent was appended to the Proponent's opening legal submissions.

⁴³ Paragraphs 4.3.1 and 4.3.2.

framework in the TDC to consider subdivision, indigenous vegetation removal, excavation and fill within the SNA and OLA areas that the road is proposed to traverse.

- [54] Consent will also be required from WRC for bridging the Whareroa Stream and undertaking earthworks in a High-Risk Erosion Area.
- [55] The Incorporation has elected to await the outcome of PPC36 before seeking the necessary resource consents for the access road which is a course of action open to them. Such a staged approach is not unique.⁴⁴ We appreciate that gaining consent will not be straightforward given the road traverses a SNA, an OLA and an ONFL, matters that future decision makers will need to have regard to.
- [56] Having said that, we understand that the permanent footprint of the road will only be 1.02 ha⁴⁵ which is a very small proportion of the 707 ha⁴⁶ area of SNA 062, albeit there will be additional area used for road cutting batters that will be remediated with dense buffer planting into the edge of forest with like for like vegetation.⁴⁷ On the evidence we have viewed to date we doubt that the access road, if approved, would denigrate the overall integrity of SNA 062 by any more than a minor degree. We are also cognisant that, as evidenced by the photomontages helpfully prepared by Ms Monzingo, the landscape and visual amenity impacts of the road, once rehabilitation planting is established, will in all likelihood be similarly minor and certainly not out of context with the adjoining existing Whareroa Village environment.
- [57] In the absence of formal access to the upper plateau, the Whareroa North residential development will not be able to proceed, even if PPC36 is approved.
- [58] That is a risk that the Incorporation is willing to take.
- [59] The s42A authors and some submitters were concerned that the proposed access road requires a bridge over the Whareroa Stream. For example, Mr Bonis was concerned that there was no surety over the legal mechanism to ensure perpetual public access over Whareroa Stream.⁴⁸ He considered that to be a fundamental unresolved problem with PPC36 in terms of the provision of supporting transport infrastructure. Mr Bonis did not consider that matter could be left to be addressed at a later stage under s106(1)(c) of the RMA.⁴⁹
- [60] The Whareroa Stream bed is owned by Ngāti Tūwharetoa and the Tūwharetoa Māori Trust Board does not wish to forego title of the land. We understand the Incorporation is exploring tenure options including the creation of a Māori Roadway over the stream. In that regard we acknowledge the evidence of Mr McKenzie:⁵⁰

“We have been talking to the Tuwharetoa Trust Board about the road for many years and I understand our advisors have also talked to council staff about the access. The Trust Board has supported our plans and has always said that the bridge and road could go over the stream. We knew the Trust Board didn’t want to give up ownership because it was such a struggle to get it back from the Crown. We didn’t believe it was a fundamental or irresolvable problem as described in Council evidence. The Trust Board had agreements with the Crown over the state highways and the bridges and we couldn’t see a problem with having a similar agreement with council. We didn’t know about the possibility of a Maori Roadway until our lawyers talked to the specialist in Crown land dealings.”

⁴⁴ For example, for public sector roading projects district plan designations are often sought in advance of necessary regional council resource consents.

⁴⁵ Answers to Panel Questions for Authors of Incorporation Evidence, page 10.

⁴⁶ Initial Request, paragraph 3.4.20.

⁴⁷ Biodiversity JWS

⁴⁸ S42a Report, section 6.6.

⁴⁹ That section would allow the TDC to refuse to grant the necessary subdivision consent, or grant it subject to conditions, if sufficient provision had not been made for legal and physical access to each allotment to be created by the subdivision

⁵⁰ Answers to Panel Questions for Authors of Incorporation Evidence, page 2.

[61] The Proponent has also provided us with an email⁵¹ from the Trust Board which includes the following paragraph:

“The proposal as set out in your correspondence dated 20 April [2020] appears to be a sensible approach which enables the Trust Board to support a deed over our property (Whareroa Stream Bed) for access purposes (a bridge) relating to the development of Hauhungaroa lands. The proposed legal mechanisms of a deed agreement and Maori Roadway status looks appropriate and meets our requirements ...”

[62] The Incorporation, TDC and the Tūwharetoa Māori Trust Board appear to be having ongoing fruitful discussions about how legal access over the stream can be provided.⁵² At the hearing Dr Forret tabled an amended document titled “Proposed Whareroa Stream Crossing Basis of Tripartite Agreement – Aspirations of the Parties”. That document was intended to form part of a ‘Heads of Agreement’ between the Proponents, TDC and the Tūwharetoa Māori Trust Board resolving the land tenure issues associated with the bridge crossing.

[63] In light of all of the above we accept the submission of counsel for the Proponent that public access can be secured over the Whareroa Stream without ceding legal ownership of the streambed.⁵³ In that regard a Māori Roadway has certain advantages if that is the eventual outcome.⁵⁴

[64] In saying that however we accept the advice of counsel for TDC that “... the plan change, if approved, cannot include a mechanism which would bind the Council to agree to a Maori roadway or other arrangements regarding road and bridge access”.⁵⁵ In that regard the evidence of Dennis Lewis, TDC’s Infrastructure Manager, stated “There are many practical and legal issues associated with the bridge and Maori roadway proposal, which involve considerable complexity. All of these matters would need to be resolved to the Council’s satisfaction before the Council could make a decision under the other legislation to agree with the Incorporation’s concept.”⁵⁶

[65] Again, these are risks that the Incorporation is willing to take.

[66] Of some comfort to us regarding the Māori Roadway option, at the hearing⁵⁷ Mr Lewis advised “... I now consider such an approach may be a viable option.”

[67] In light of the above, we do not dwell on the proposed access road and its associated bridge in the remainder of this Decision Report, noting that to be a matter for future decision makers to address.

5.3 Potential adverse effects

[68] We now turn to the potential adverse effects of the Whareroa North residential development, confining our consideration to the area of land actually sought to be rezoned “Residential Environment”. We remind readers that our aim in doing so is to address the two matters we set out in paragraph [034] above.

5.3.1 Services

[69] The proposed residential development to be enabled by PPC36 will require services including internal roading, stormwater management, potable water supply and wastewater collection and disposal. We deal with the effects of the development on the existing roading network roading in section 5.3.4 and stormwater in section 5.3.8 of this Decision Report.

⁵¹ Email from Cher Mohi-Duff, Natural Resources – Environmental Coordinator, Tuwharetoa Maori Trust Board, dated 28 April 2020.

⁵² Rebuttal Evidence of Michael Keys for The Proprietors of Hauhungaroa No 6, Michael Keys.

⁵³ Legal Submissions for the Proponent, 9 June 2020, paragraph 16(b).

⁵⁴ Ibid, paragraph 24.

⁵⁵ Memorandum from Simpson Grierson (author James Winchester) to matt Bonis titled “Legal issues for Council rebuttal – PPC36 Whareroa North, Taupo” dated 15 May 2020, paragraph 10.

⁵⁶ Rebuttal Evidence Dennis Lewis, paragraph 16.

⁵⁷ Summary Expert Statement (Bridge Access), Dennis Lewis Infrastructure Manager, paragraph 13.

- [70] The internal roading layout is designed and located to minimise visual prominence, where possible by following topography, and minimising the number of vehicle accesses onto roads.⁵⁸ We understand that layout, and the nature of the roads, is uncontroversial.
- [71] For the TDC, roading matters were addressed by Johan Hansson.⁵⁹ He was concerned that there was no certainty about the pedestrian provisions in PPC36 and how those provisions would tie into existing and proposed infrastructure (including the proposed bridge), the proposed width of new footpaths along the new roads and the connectivity to existing infrastructure. The JWS on Infrastructure recorded that *“It was agreed that the revised concept plan still lack (sic) details on pedestrian and cyclist provisions”* and *“that [while] the off-road pedestrian link through the native bush would provide value for recreational pedestrians, however, that this pedestrian link is not suitable for all pedestrians and cyclists.”*
- [72] We note that the 5 June 2020 “Appendix 8: Whareroa North Outline Development Plan” shows a revised layout for dedicated pedestrian pathways from the proposed access road up into and through the PPC36 residential area. Cyclists will be able to use the proposed access road. We find this adequately addresses that matter.
- [73] Water supply headworks are largely in place to cater for Whareroa North and the WRC consent for the water supply will accommodate growth at Whareroa North. For the TDC potable water supply matters were addressed by Thomas Swindells.⁶⁰ He confirmed that the current water take consent at Whareroa has headroom to service the proposed development of up to 160 residential dwellings. However, Mr Swindells noted that the Proponents had not quantified the infrastructure upgrades required to service the development, but that in his opinion the existing plant capacity would need to increase by 80% at a cost of between \$130,000 to \$300,000. Those costs will be met by the Proponent.
- [74] Mr Swindells was initially concerned that the Proponent had not identified a legal mechanism for the necessary new water pipes to cross the Whareroa Stream. We addressed that in section 5.2 of this Decision Report.
- [75] As a result of collaboration between TDC and the Proponent, wastewater infrastructure and the necessary WRC wastewater discharge consents are already in place to service Whareroa North.⁶¹ For the TDC wastewater issues were addressed by Michael Cordell.⁶² He advised that the wastewater discharge consent held by TDC has sufficient consented discharge volume to accommodate PPC36 and TDC has enough land on which to dispose of that wastewater. Wastewater system upgrades comprising a mechanical aerator, a third pond to buffer peak flows prior to wastewater irrigation, a new wastewater pump station and a rising main would be required. Again, these initial infrastructure costs will be met by the Proponent. We agree with Mr Keys that these costs do not need to be known at this stage of the process.⁶³
- [76] The wastewater discharge consent requires TDC to limit the total nitrogen (TN) load to no more than 446 kilograms of TN per year. Mr Cordell estimated that the allowable TN load would be exceeded by 136 dwellings or 270 kilograms of TN per year.⁶⁴ Should that be the case then there would need to be an equivalent offset of TN load elsewhere within the Lake Taupō catchment. In that regard, the JWS Infrastructure recorded that *“the nitrogen issue is not insurmountable and that the contribution of land from the Proponent, and the nitrogen rights that come with that land, are approximately equivalent to the Plan Change share of the wastewater discharge.”*

⁵⁸ Initial request, page 43.

⁵⁹ Transportation and Design Work Group manager for WSP in Tauranga.

⁶⁰ TDC Asset Manager Water, S42A report, Attachment I.

⁶¹ Initial Request, section 4.5, page 26.

⁶² TDC Asset Manager Wastewater, Section 42A Report, Attachment I

⁶³ Answers to Panel Questions for Authors of Incorporation Evidence, page 9.

⁶⁴ A conservative assumption based on an effluent TN of 25 g/m³. A slightly less conservative assumption of effluent TN concentration of 20 g/m³ would mean the shortfall would be in the order of some 80 dwellings.

- [77] Mr Cordell was also initially concerned that the Proponent had not identified a legal mechanism for the necessary new wastewater pipes to cross the Whareroa Stream. Again, we addressed that in section 5.2 of this Decision Report.
- [78] Having reviewed the evidence we find it unlikely that there are potential adverse effects related to the provision of potable water, the treatment of wastewater and the provision of pedestrian access services that cannot be avoided, remedied or mitigated as part of the necessary subdivision consent process. That finding is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address those matters.
- [79] We note that TDP Rule 4a.3.2 includes as matter of control (a) “*The design and layout of the subdivision to ensure safe and efficient access onto existing and/or proposed roads ...*”. However, we consider that if PPC36 is to be approved then an additional matter of control is required to address pedestrian and cyclist access to and within the proposed subdivision.
- [80] We note that in terms of potable water supply and wastewater treatment and disposal TDP Rule 4a.3.2 includes as matter of control (c) “*Whether the desired environmental outcome with a consistent and appropriate standard of infrastructure is achieved such as through compliance with the Council’s Development Guidelines and Structure Plans.*” We find that to be rather vague and consider that if PPC36 is to be approved then more specific matters of control should be included to specifically address potable water supply and wastewater matters.
- [81] The submissions of Dr Ruth and Simon Ewen, Ian Sutcliffe and Robert and Jo Colman all express concern about wastewater issues and we consider that provides scope to insert additional matters of control relating to wastewater. We consider that consequentially enables additional matters of control or discretion relating to potable water to be imposed in relation to potable water supply (given that the generation of wastewater is fundamentally linked to water supply).

5.3.2 Indigenous biodiversity values

- [82] In light of our findings in section 5.2 of this Decision Report we do not discuss the potential effects of the yet to be consented access road to the plateau on indigenous biodiversity, while acknowledging that the proposed road route up the escarpment traverses Significant Natural Area 062 in the TDP, which is titled *Te Kokomiko Point, Poukura Pa Bush, Wharf*.
- [83] The PPC36 site intended for residential development on the plateau above the escarpment is predominantly unremarkable pasture. At the time of our site visit the grass was long and rank and contained scattered broom bushes (*Genisteae*). However, in the north western corner of the site there is a 2ha area of “regenerating scrub” that in various reports is referred to as “Area 2”.
- [84] Objective 3i.2.1 of the TDP is the protection of Significant Natural Areas in the Taupō District from more than minor adverse effects of indigenous vegetation clearance.⁶⁵ TDP Policy 3i.2.2(ii) is to recognise and encourage development that enhances areas of natural value, particularly the establishment, re-establishment, extension or buffering of ecological linkages along waterways, and between existing areas of natural value.
- [85] Ecological issues were initially addressed for the Proponent in reports prepared by Bioresearches⁶⁶ and Bar and Hapgood.⁶⁷ The most recent 2019 Bioresearches report noted that in ‘Area 2’ early seral species,

⁶⁵ The Waikato RPS provisions are not helpful here as they appear to be solely directed to district and regional plans.

⁶⁶ Bioresearches 2005: Ecological characteristics of the north side development area and adjoining Whareroa Stream riparian habitat. Bioresearches Group Ltd Report; Bioresearches 2007: Whareroa structure plan comments. Bioresearches Group Ltd Report; Bioresearches 2019: Whareroa Village vegetation report. Final Whareroa Memo. Bioresearches Report.

⁶⁷ Reports in 2007 and 2008 addressing bats and lizards respectively. No bats or lizards were found. However, it has been agreed between the experts that bat and lizard surveys should be repeated prior to Stage 1 of the development proceeding (Biodiversity JKWS). We understand that relates primarily to the potential roading corridor.

such as broom and bracken, were being succeeded by an establishing native canopy of five finger and kanuka. None of the Bioresearches reports provided an assessment of the potential adverse effects that could result from developing 'Area 2', including potential edge effects on SNA 062.

- [86] For the TDC ecological issues were addressed by William Shaw.⁶⁸ He noted that 'Area 2' would be more appropriately termed 'early successional secondary forest'. In his opinion that vegetation and habitat type triggered at least four Waikato RPS significance criteria⁶⁹ and 'Area 2' was therefore ecologically significant in terms of s6(c) of the RMA.
- [87] For the Proponent ecological evidence was provided by Chris Wedding.⁷⁰ He agreed with Mr Shaw about the status of 'Area 2', advising⁷¹ *"the area outside SNA 062 previously described as 'low scrub of bracken and shrubs' now triggers the same biodiversity significance criteria (five criteria) as the surrounding vegetation within SNA 062 on the basis that it now has canopy cover consistent with surrounding SNA vegetation and therefore would support similar habitats for flora and fauna."*
- [88] The Proponent's Whareroa North Residential Concept Plan denotes 'Area 2' as falling within Stage 1 of the proposed residential development. From our reading of the Proponent's application documents and evidence we discerned that 'Area 2' will contain retired 'bush' margins, a road, a stormwater settling pond and an unspecified number of house lots. During the hearing we sought to clarify the number of house lots and their layout within 'Area 2' and how much 'early successional secondary forest' would be cleared. Dr Forret advised that level of detail had not yet been decided.
- [89] In response to our earlier written question on that same matter Ms Monzingo advised that there was not a specific number of house lots proposed within 'Area 2' and an indicative plan showing the proposed building platform/envelope layout for that Area had not been prepared. However, she advised that the Incorporation now intended to:⁷²

"amend the Concept Plan to show that an area within the "regenerating bush" along the boundary within SNA062 where:

- *the existing indigenous vegetation is to be retained;*
- *additional indigenous planting, as required to achieve a suitable density of vegetation to be self-sustaining, is to be undertaken; and*
- *that this area of vegetation will be protected in perpetuity.*

The remainder of the area is to be house sites."

- [90] It was not clear from that evidence whether potential adverse effects on biodiversity in 'Area 2' had been specifically assessed. Mr Wedding did state that some of the vegetation and habitats to be removed would be permanently lost and those values could not be remediated after construction and would need to be offset at another location. He identified more than 20ha of restoration and enhancement opportunities within and around SNA 062 that would support biodiversity offsets meeting the principles of best ecological practices for mitigation and biodiversity offsetting in New Zealand.⁷³ We assume that those areas could be used to offset the adverse effects of vegetation clearance with 'Area 2' and we note that the 20 ha of land identified by Mr Wedding *"is within the ownership of Whareroa Station and therefore any of it could be restored and protected in perpetuity as required by the requirements of a biodiversity offset."*⁷⁴
- [91] Mr Wedding also stated that that provision of dense buffer planting and a robust, ongoing, pest animal control programme within SNA062 would provide substantial benefits to indigenous vegetation and wildlife

⁶⁸ Principal Ecologist and a Director of Wildland Consultants Ltd, Section 42A report, Attachment F.

⁶⁹ Section 11A of the WRPS.

⁷⁰ Senior Ecologist and Manager of Bioresearches, an Ecology Consultancy and subsidiary of Babbage Consultants Limited.

⁷¹ Answers to Panel Questions for Authors of Incorporation Evidence, page 11.

⁷² Answers to Panel Questions for Authors of Incorporation Evidence, page 11.

⁷³ See Figure 2 on page 12 of the EIC of Chris Wedding.

⁷⁴ Answers to Panel Questions for Authors of Incorporation Evidence, page 11.

values in adjacent, surrounding habitats within the North Side Development and Whareroa Stream Habitat areas.⁷⁵ During the hearing, Mr Wedding clarified that the above measures, along with the proposed retirement and planting of the lower portion of the 'bowl', were more properly classified as 'mitigation' rather than 'offsetting'. Regardless, we find that they are suitable measures that respond to the clearance of some existing vegetation within 'Area 2'.

- [92] For the WRC Ms Foley remained concerned about the potential effects of the proposed access road on indigenous biodiversity. She stated that without understanding of the scale of clearance of vegetation, it would not be possible to approve PPC36 with certainty of positive biodiversity outcomes thereby ensuring that the TDP will be consistent with WRPS Policy 11.2.⁷⁶ With respect, we are not persuaded by that argument. As we found in section 5.2 of this Decision Report the effects of the proposed access road on indigenous biodiversity will be fully addressed during the discretionary activity resource consent process required for it. There is no guarantee that consent will be granted.
- [93] Interestingly, Ms Foley's evidence did not address potential adverse effects on biodiversity in 'Area 2'.
- [94] Having reviewed the evidence we find it unlikely that there are potential adverse effects on indigenous biodiversity within the area of PPC36 that provides for residential development that cannot be avoided, remedied, mitigated or offset as part of the necessary subdivision consent process. In particular, we acknowledge the ecological significance of 'Area 2', but consider that there is ample opportunity to mitigate the effects of that vegetation clearance and to offset any residual adverse effects in the 20ha of land owned by Whareroa Station Trustees. Given the tenure of that 20ha of land, we do not foresee any difficulty in securing offsets in perpetuity. We are satisfied that the subdivision consent process is the appropriate avenue for establishing that level of detail.
- [95] In making the above finding we note with interest the 1965 and 1970s aerial photographs in Appendix 1 of the evidence of Sian Keith. Those photographs show 'Area 2' as being devoid of any tall vegetation at those times and the land appeared to be pasture with what we assume to be scattered broom bushes.
- [96] Our finding on biodiversity matters is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address biodiversity matters. In that regard TDP Rule 4a.3.2 contains the following matters of control:
- (d) The extent to which earthworks and vegetation removal is required to create vehicle tracks and building platforms.
 - (e) Any actual or potential effects on areas or features of cultural, historic, landscape or natural value as identified in the plan
- [97] We find those matters of control are insufficiently clear and certain to address the potential adverse effects of the proposed development on the 'early successional secondary forest' contained in 'Area 2' and the suitable imposition of biodiversity mitigation or offsetting. We find that if PPC36 is to be approved then more specific matters of control or discretion should be included to specifically address these matters.
- [98] We note that the submissions of Ian Sutcliffe, Cory Skipper and WRC raise the issue of effects on indigenous biodiversity, ecology, native vegetation, birds and 'other creatures', and biodiversity offsetting which we consider provides scope to insert additional matters of control or discretion relating to indigenous biodiversity.

5.3.3 Landscape character and visual amenity

- [99] Part of the site closest to Lake Taupō, as well as Lake Taupō itself, is included as an "Outstanding Landscape Area" (OLA 60) in the TDP and is categorised as an "Outstanding Natural Feature or

⁷⁵ EIC, Chris Wedding, pages 10, 11 and 14.

⁷⁶ Ibid, section 7.2.

- Landscape” in the Waikato Regional Policy Statement (RPS ONFL 9 coincides with the TDP’s OLA 20 and 60).
- [100] None of the PPC36 area proposed for residential development falls within the OLA 60 or ONFL 20. In light of our findings in section 5.2 of this Decision Report we do not discuss the potential effects of the yet to be consented access road to the plateau on the OLA or ONFL, while acknowledging that the proposed road up the escarpment traverses them both.
- [101] The Proponent obtained a “Landscape and Visual Assessment” (LAVA) by landscape architect Mary Monzingo which included a description of the landscape and visual context of Whareroa North and also the visibility of the development land and elements of the proposed development.
- [102] For the TDC landscape and visual effects matters were addressed by Rebecca Ryder.⁷⁷ She considered that the LAVA did not sufficiently assess landscape and visual effects, in particular RMA Part II, Section 6a and 6b matters.⁷⁸ Ms Ryder also discussed CPTED – Crime Prevention Through Environmental Design principles. We asked her if these were adequately addressed in PPC36. Ms Ryder advised that there were no direct provisions proposed that addressed CPTED principles for the subdivision design which could inform covenants on visual permeability of fencing on reserves, reserve and street lighting, and sense of ownership through orientation of dwellings. She considered that those details could be addressed at the subdivision design stage.⁷⁹ We agree and find that the TDP rule framework should address CPTED principles.
- [103] There are no submissions that address CPTED directly, but the submissions of Desarie Drayton and Dr Ruth and Simon Ewen raise safety concerns (albeit in relation to roading). We consider that this provides scope to insert additional matters of control or discretion relating to CPTED principles.
- [104] Following the distribution of the Officer’s Report Ms Monzingo provided evidence. She noted that different areas of the landscape surrounding the PPC36 area have different degrees of sensitivity to change. In terms of the area of plateau where residential development will occur, she concluded that the anticipated environmental outcomes of the subdivision and residential development will ensure the development visually integrates into the surrounding landscape and adverse landscape effects on the character and amenity of the surrounding landscape will be moderate.⁸⁰ We understand that the “anticipated environmental outcomes” she referred to are those contained in proposed TDP “Appendix 8: Whareroa North Outline Development Plan.”
- [105] Ms Monzingo concluded that the visual effects of residential development would be moderate initially and change to low once planting was established. She considered that Whareroa North was likely to have an amenity similar to the existing Village and would sit comfortably in the surrounding landscape and would not create cumulative landscape or visual effects.
- [106] Ms Monzingo considered that ‘Area 2’ had a low sensitivity to change as a result of the existing vegetation that visually screens views of the land and the low human use of this area. She noted that within ‘Area 2’ provision for housing sites and protected indigenous vegetation would be achieved through, for example, clusters of house sites (secured by building envelopes) at the road frontage and protected indigenous vegetation behind (to avoid fragmentation and achieve a buffer to SNA062).⁸¹
- [107] We asked Ms Monzingo if she had specifically assessed the landscape and visual effects of having house lots in ‘Area 2’. She advised that house lots in ‘Area 2’ would result in the removal of some of the regenerating indigenous vegetation therein. However, along the boundary with SNA062 additional indigenous vegetation would be planted and protected in perpetuity. She concluded that this, together

⁷⁷ Landscape Architect and Director, of the firm Boffa Miskell Limited.

⁷⁸ EIC Rebecca Ryder, paragraphs 18 and 19.

⁷⁹ Rebuttal Evidence (planning) Matthew Bonis, Attachment B: Panel Questions for the s42A Reporting Officers page 25.

⁸⁰ EIC Mary Monzingo, Executive Summary.

⁸¹ Ibid, paragraphs 6.16 and 6.17.

- with the best practice management and restoration methods detailed by Mr Wedding, meant that adverse landscape effects arising from the introduction of house lots in 'Area 2' would be avoided, remedied or mitigated and net environmental landscape gain could be achieved.⁸²
- [108] In terms of visual amenity resulting from developing 'Area 2', Ms Monzingo advised that existing indigenous vegetation on the east and south would visually screen residential development from the east and south. The regenerating indigenous vegetation to the north visually screened views of the site from the north. There would therefore be negligible adverse visual effects from developing 'Area 2'.⁸³
- [109] Ms Ryder appeared to support the mitigation measures proposed to enable the residential development on the plateau to integrate with the surrounding rural landscape⁸⁴ but remained concerned about effects on OLA60.⁸⁵ She also remained concerned about the absence of a separate assessment of natural character.⁸⁶ An assessment of natural character was subsequently provided in the rebuttal evidence of Ms Monzingo who concluded that "*The proposed residential development is well separated from Lake Taupō and its margins by an escarpment covered with well-established indigenous. It is my opinion that this physical and visual separation will not result in these human modifications creating adverse effects on the natural character of Lake Taupō and its margins.*"⁸⁷
- [110] In terms of visual effects, while Ms Ryder agreed the assessment identified methods for visually integrating the residential land use into the site, she was concerned that the "... *outcomes of mitigation elements and site sensitivities are not clearly stated within the proposed provisions and plan.*"⁸⁸ The JWS Landscape reiterated Ms Ryder's concerns about a lack of certainty regarding the performance of outcomes and implementation measures identified by the Proponent to date. Matters requiring consideration included planting (including the western and northern interface with the Rural Environment) and building heights.
- [111] In terms of landscape and visual effects generally, we note that the Whareroa North Outline Development Plan proposes that controls (by way of Consent Notices on future residential titles or by other means) will be imposed in relation to building height, exterior colour of buildings, exterior lighting, window reflectivity and requiring that vegetation planted on residential allotments as part of the subdivision construction be maintained. We find those to be routine and appropriate mitigation measures.
- [112] For the WRC Ms Foley considered that it would not be appropriate to approve PPC36 without certainty around how the proposed access road might affect landscape values and that would be inconsistent with the requirements of WRPS Policy 12.1.⁸⁹ Ms Foley's concerns were addressed solely to the access road and its potential effects on ONFL 9 – Lake Taupo. We note those matters will be fully addressed during the discretionary activity resource consent process required for the access road.
- [113] Interestingly, Ms Foley's evidence did not address potential adverse effects on landscape character and visual amenity in 'Area 2' on the eastern edge of the upper plateau.
- [114] Having reviewed and weighed the evidence we find that it unlikely that there are potential adverse effects on landscape character and visual amenity within the area of PPC36 that provides for residential development that cannot be avoided, remedied, mitigated or offset (with the necessary degree of certainty) as part of the necessary subdivision consent process.

⁸² Answers to Panel Questions for Authors of Incorporation Evidence, page 12.

⁸³ Ibid.

⁸⁴ Ibid, paragraph 16.

⁸⁵ Ibid, paragraph 23.

⁸⁶ Ibid, paragraph 26.

⁸⁷ Page 7, paragraph 37.

⁸⁸ Ibid, paragraph 30.

⁸⁹ Ibid, section 7.3.

- [115] Our conclusion on this matter was reinforced by our site visit which demonstrated to us that the Whareroa North development would simply be an extension of the existing Whareroa Village, albeit separated from the existing Village by the vegetated Whareroa Stream corridor. In that regard it will be no different from existing residential areas at Pukawa, Omori and Kuratau. We put that proposition to Ms Monzingo and Ms Ryder and they both confirmed that the overall Whareroa Village development (south and north of the Whareroa Stream) would be similar in character to those other southern Lake Taupō settlements.
- [116] Our finding on landscape character and visual amenity is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address landscape character and visual amenity.
- [117] TDP Rule 4a.3.2 contains matter of control (e) “Any actual or potential effects on areas or features of cultural, historic, landscape or natural value as identified in the plan.” We find that scant reference to landscape effects to be inadequate. If PPC36 is to be approved then more specific matters of control should be included to specifically address effects on landscape character and visual amenity. In particular, matters of control are required to address the mitigations identified by Ms Monzingo for ‘Area 2’ together with the matters identified within the Whareroa North Outline Development Plan that are currently to be imposed by way of Consent Notices or other similar mechanisms.
- [118] The submissions of Robert and Jo Colman and WRC expresses concern about “the area’s existing character”, its “outstanding natural beauty”, natural character and outstanding natural features. We consider that provides scope to insert additional matters of control relating to landscape character and visual amenity.

5.3.4 Effects on the existing roading network

- [119] Whareroa North will introduce additional traffic onto the existing roading network.
- [120] For the TDC, roading matters were addressed by Johan Hansson.⁹⁰ He noted that the development would ultimately increase traffic flows to and from Whareroa Village from an average of 193 vpd to 309 vpd with those flows likely doubling in the holiday season. He advised that Kuratau Hydro Road, Whareroa Road and SH32/Kuratau Hydro Road all had sufficient capacity to accommodate that anticipated increase in traffic. Those roads and the SH32/Kuratau Hydro Road intersection were all currently operating safely and could support the additional traffic with less than a minor impact on road safety.
- [121] We note that TDP Rule 4a.3.2 does not contain a matter of control relating to effects on the roading network. However, given Mr Hansson’s evidence on that matter we do not consider that to be a problem.
- [122] Mr Hansson considered that from a traffic engineering perspective, public access needed to be legalised to avoid the development being potentially landlocked. We addressed road access matters in section 5.2 of this Decision Report.

5.3.5 Land stability – geotechnical issues

- [123] In light of our findings in section 5.2 of this Decision Report we do not discuss geotechnical matters related to the yet to be consented access road to the plateau. We instead address geotechnical issues pertaining to the area of the plateau upon which residential development is proposed.
- [124] Geotechnical issues were initially addressed briefly in the Key Solutions 2017 report⁹¹ and thereafter in a geotechnical assessment prepared by Andres Martin.⁹² The latter assessment was based on a desktop study of publicly available information, a walkover of the area and a review of an earlier 2006 report prepared by Mark T Mitchell Ltd. Mr Martin considered that the ‘bowl’ could indicate ancient meanders of

⁹⁰ Transportation and Design Work Group Manager for WSP in Tauranga.

⁹¹ Attachment E, Appendix 3 to the Application, pages 12 and 13.

⁹² Geotechnical Engineer with Cheal, Attachment ZA to the Application.

the Whareroa Stream when the level of Lake Taupō was higher than present, overlain with ash fall deposits. Based on an analysis of aerial photographs he concluded that the failure process which had led to the formation of the 'bowl' was close to reaching its final equilibrium shape. However, if remedial/control measures⁹³ were not implemented the failure could slowly extend backwards up to 15m before reaching its equilibrium condition.

[125] Geotechnical issues were addressed for the TDC by Maddison Phillips.⁹⁴ Ms Phillips noted that in a recent email with the Proponent's planner and geotechnical engineering expert the Proponent had stated that "... *instability, liquefaction susceptibility, lateral spreading, flow liquefaction, compressible soils, settlement/ subsidence including differential settlements, piping/ underground erosion, effects and/ or appropriateness of onsite soakage, effects on the "bowl" and the scar are potential geo-hazards that can affect the site.*" Ms Phillips observed that the listed geo-hazards were significant with problematic, complex and costly engineering solutions being likely required to mitigate their effects and those geo-hazards had not been assessed by the Proponent.

[126] Ms Phillips concluded:⁹⁵

With the information currently provided by the Proponent of the Plan Change it is not possible to make a recommendation as to the suitability of the site for residential development. All geohazards that could conceivably influence the site have not been identified and assessed in sufficient detail for me to provide confidence as to the likely or potential impact they may have on future residential development. I do not consider it appropriate to assume that all the potential geohazards mooted for this site can be investigated, assessed and mitigated through subdivision and building consent conditions

[127] Ms Phillips considered that a "Preliminary Geotechnical Assessment Report" was required before a recommendation could be made on the suitability of the site for residential development. She referred to guidelines from the New Zealand Geotechnical Society (NZGS) and Ministry of Business, Innovation and Employment (MBIE) Earthquake Geotechnical Engineering Practice. She noted those Guidelines were draft, and it was not mandatory to follow them, however they were widely accepted as 'best practice'.

[128] Following the circulation of the Officer's Report a compressive brief of evidence on geotechnical matters was prepared for the Proponent by Harshad Phadnis.⁹⁶ Mr Phadnis succinctly summarised earlier geotechnical reports and undertook his own desktop assessment to identify the geo-hazards that can potentially affect the site. He concluded that instability, liquefaction susceptibility, lateral spreading, flow liquefaction, compressible soils, settlement/ subsidence including differential settlements, piping/underground erosion, effects and/ or appropriateness of onsite soakage effects on the "bowl" and the scar, were all potential geo-hazards that could affect the development site.

[129] He noted that all of these geo-hazards have been encountered previously to varying degrees in and around Taupō and engineering solutions existed to mitigate them. He advised that the engineering solutions would be designed to take into account the cumulative effects of the potential natural hazards on the site.⁹⁷ Mr Phadnis was confident that even if the worst-case scenario was encountered, the site could be made to be suitable for residential development.

[130] Mr Phadnis agreed that comprehensive geotechnical investigations were required before the Incorporation applied for subdivision consent. He stated that in an ideal scenario, geotechnical investigations would have been performed at the plan change stage as per Table 2.1 of Module 2 of the Earthquake Geotechnical Engineering Practice which was published to explain current practice in earthquake geotechnical engineering. However, performing comprehensive geotechnical investigations

⁹³ Mr Martin did not define these 'measures' stating that they could be defined during the design stage of the project.

⁹⁴ Geotechnical Engineer for WSP in Gisborne, Section 42A report, Attachment H.

⁹⁵ Ibid, paragraph 1.6

⁹⁶ Geotechnical engineer with Cheal Consultants Limited.

⁹⁷ Answers to Panel Questions for Authors of Incorporation Evidence, page 10.

would require some vegetation to be cleared and tracks to be established using diggers and other construction equipment.⁹⁸ Mr Phadnis prepared an outline of the geotechnical investigations that are now proposed as part of the Proponent's Preliminary Stage of developing the Whareroa North site. Those investigations are significantly more extensive than those proposed by Ms Phillips.

- [131] Mr Phadnis considered that his investigation campaign would take twenty to thirty working days to complete. Given the remoteness of the site from major urban centres, he was of the opinion that the investigations should be undertaken after PPC36 was approved because it was more reasonable to perform all of the costly investigations in one campaign instead of performing investigations over multiple campaigns. Undertaking one campaign would minimise the disturbance, cost and effort to establish cleared areas, create tracks and mobilise construction equipment, geotechnical rigs and personnel.⁹⁹
- [132] We asked Ms Phillips if the investigation campaign would be adequate to address the information gaps she identified and the stormwater concerns set out in paragraph 71(d) of the Swindells *et al* evidence. Ms Phillips replied that the amount and coverage of proposed site testing with subsequent interpretative analysis would be sufficient to cover both her concerns and those of Roger Stokes.¹⁰⁰ While understanding the difficulties of conducting a site investigation, and the Proponent's desire to 'do it once', Ms Phillips nevertheless continued to consider that an initial geotechnical investigation was required to inform PPC36, albeit "... *in areas that are easiest to access and not within the SNA.*"¹⁰¹
- [133] For the WRC Ms Foley accepted Mr Phadnis' expert opinion that engineering solutions exist to mitigate the effects of the potential natural hazard risks that he identified.¹⁰²
- [134] Importantly, we note the JWS Geotechnical recorded that all the relevant experts agreed that all potential geotechnical hazards, any risks posed by expansive soils, any risks posed by soil contamination, and risks of flooding and inundation can be mitigated through engineering solutions. It was also agreed that details related to earthworks associated with the general development of the site were not necessary at the Plan Change stage.
- [135] The JWS¹⁰³ also records that Ms Phillips remained concerned "*that costs associated with development of this site are likely to be significantly more than development of other greenfield sites.*" With respect, that is not a matter relevant to our determination of PPC36. That is instead a risk that the Proponents bear.
- [136] Having reviewed the evidence, we favour the expert opinion of Mr Phadnis. We find it unlikely that there are potential natural hazards within the area of PPC36 targeted for residential development that cannot be avoided, remedied or mitigated through the subdivision consent process. The investigation campaign recommended by Mr Phadnis is comprehensive and we accept that it should be undertaken prior to the Proponent lodging its subdivision consent application.
- [137] Our finding on natural hazards is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address natural hazards. In that regard TDP Rule 4a.3.2 contains matter of control (b) and (g) which read:
- (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.
 - (g) Any potential adverse effects from Natural Hazards, including flood inundation or erosion from the District's waterways and Lakes

⁹⁸ EIC, Harshad Phadnis, paragraph 9.5.

⁹⁹ EIC, Harshad Phadnis, Executive Summary and paragraph 9.5.

¹⁰⁰ Rebuttal Evidence (planning) Matthew Bonis, Attachment B: Panel Questions for the s42A Reporting Officers page 27. We note that the Swindells et al evidence includes the assessment of TDC's stormwater engineer Roger Stokes.

¹⁰¹ Ibid, paragraph 11.

¹⁰² Ibid, section 7.5, paragraph 7.5.3.

¹⁰³ Page 6, first bullet point.

[138] Those matters of control are worded somewhat oddly in that they do not refer specifically to mitigating identified natural hazards risks to a level that is “acceptable” or “tolerable” for new residential development, as is required by WRPS Policy 13.2.¹⁰⁴ We find that if PPC36 is to be approved then more specific matters of control or discretion should be included to specifically address geotechnical matters.

[139] We note that the submissions of Ian Sutcliffe, Michael Townson Miller and the WRC all express concern about geotechnical and natural hazard matters and we consider that provides scope to insert additional matters of control or discretion relating to those matters.

5.3.6 Tāngata whenua interests and values

[140] The owners and trustees of the land in question are tāngata whenua and kaitiaki of the land. The Proponents are Ngāti Parekaawa o Poukura and have a presence on Poukura Marae. The lands subject to PPC36 are the Proponent’s traditional lands. PPC36 retains the relationship of Ngāti Parekaawa to their culture and traditions around ancestral lands, water, sites, wāhi tapu and other taonga.¹⁰⁵ Additionally, and as previously mentioned, Mr McKenzie¹⁰⁶ noted the village concept was developed because the Incorporation saw “*an opportunity, to not only retain their lands, but the opportunity to clear debt, and improve the long-term wellbeing of their whanau and shareholders*”. The debt referred to was the debt attached to Whareroa Station.

[141] Representatives of Ngāti Parekaawa, Te Kotahitanga o Ngāti Tūwharetoa¹⁰⁷ and the Tūwharetoa Māori Trust Board (‘TMTB’)¹⁰⁸ generally support PPC36. Though crossing the Whareroa Stream is not part of PPC36, TMTB has had input into a document outlining the aspirations for a proposed Whareroa Stream crossing, a further indication of TMTB support for PPC36.¹⁰⁹

[142] As owners and tāngata whenua, the Proponents have avoided places of specific cultural significance in PPC36.¹¹⁰ However, the significance of the general area to the Proponents was evident in the site visit that we undertook where it was observed that the street names were indicative of the tribal identities in the area, namely Ngāti Parekaawa Drive and Turangitukua Terrace. At the hearing Mr McKenzie spoke of how the Proponents had given practical effect to their kaitiaki role with the intentional naming of the streets and the relevance of those names, including Ani Patena Place, which remembers the original chairperson of Hauhungaroa No.6 and advocate for the Whareroa Village. Mr McKenzie spoke of how PPC36 was one way the owners have implemented their own tino rangatiratanga.

[143] Therefore, we are of the view that tāngata whenua interests, values, and kaitiaki roles and responsibilities are positively supported by PPC36.

5.3.7 Archaeological values

[144] The Proponent commissioned archaeologist Don Prince¹¹¹ to undertake an archaeological assessment of the site. His report concluded that “*there are no constraints on archaeological grounds as no archaeological sites are located on or in the immediate vicinity of the proposed works*”. However, Mr Prince recommended that “*following vegetation clearance within the bush block and prior to*

¹⁰⁴ Rather unhelpfully the RPS does not define what “tolerable” or “intolerable” means. We note from other situations (including the Matata debris flow and the CHCH Port Hills rock fall hazard) that other councils have decided that that an “intolerable” risk should be defined as a 10⁻⁴ or 10⁻⁵ risk to human life. We very much doubt that level of risk exists here.

¹⁰⁵ Initial Request, Submitter #8 Hokowhituatu Duncan Cormac McKenzie (Trustee of the Proprietors of Hauhungaroa No 6 [the Proponents]), and Submitter #11 Kia Paranihi (Ngāti Parekaawa Trustee, Te Kotahitanga o Ngāti Tūwharetoa)

¹⁰⁶ In answer to our written questions.

¹⁰⁷ Submitter #11 Kia Paranihi (Ngāti Parekaawa Trustee, Te Kotahitanga o Ngāti Tūwharetoa)

¹⁰⁸ Appendix 9 to Initial Request – Consultation documentation (A2107162).pdf

¹⁰⁹ Proponent rebuttal evidence, Michael Keys, Appendix 1 and subsequent amendments tabled at the hearing labelled ‘Proposed Whareroa Stream Crossing – Basis of Tripartite Agreement – Aspirations of the Parties

¹¹⁰ Appendix 8 to Initial Request – Section 32 Evaluation Report (A2107161).pdf

¹¹¹ Time Depth Enterprises Heritage Consultants.

commencement of earthworks an archaeologist inspects the area so as to determine whether archaeological features/deposits exist".¹¹²

- [145] For the TDC archaeological matters were addressed by Kenneth Phillips.¹¹³ He was of the opinion that a new archaeological survey and assessment of effects should be commissioned by the Proponent to clarify the potential for possible unrecorded subsurface archaeological sites to be present within the property. Mr Phillips also recommended that the Incorporation seek a Heritage New Zealand authority under the provisions of s44a of the Pouhere Taonga Act 2014.
- [146] Following the circulation of the Officers Report the Incorporation commissioned an Archaeological Assessment and associated evidence from Siân Keith Archaeology Ltd. We found her Assessment and the evidence to be comprehensive and informative. It involved extensive research of historical information and a site visit. It found no evidence of archaeological site features or deposits within the PPC36 plateau. There was a minor to moderate risk that archaeological features or deposits could be encountered, including evidence of horticultural practices (i.e. gardening and tools) and fire-features. Such features, if they did exist, were likely to relate to the Whareroa and Poukura settlements to the south and north of the plateau.
- [147] In her evidence¹¹⁴ Ms Keith noted there was a moderate to minor risk that archaeological deposits could be located on the south side of the Whareroa Stream, based on proximity to the likely location of a former kāinga. She recommended that an archaeological authority from HNZPT be obtained for earthworks in that area. We acknowledge the appropriateness of that suggestion but note it relates to the future resource consenting of the bridge and access road.
- [148] Heritage New Zealand Pouhere Taonga (HNZPT) submitted on PPC36. Evidence on behalf of HNZPT was provided by Carolyn McAlley. Ms McAlley advised that HNZPT sought the insertion of an Advice Note in the "Preliminary Stage" section of PPC36, that relates to the need for an HNZPT Archaeological Authority and that this must be undertaken prior to the commencement of earthworks. She also advised that HNZPT supported Ms Keith's recommendation¹¹⁵ that as part of the Proponent's "Preliminary Stage" an additional field survey should take place to determine the area of land that should be included in the Archaeological Authority.
- [149] We find the HNZPT requests to be reasonable and appropriate and note they are now reflected in "Appendix 8: Whareroa North Outline Development Plan".
- [150] In his rebuttal evidence Mr Philips concluded that on the basis of the updated Archaeological Report, if the amendments suggested above by HNZPT were incorporated within PPC36, then he would be supportive of the archaeological aspects of the Plan Change.¹¹⁶
- [151] Having reviewed the evidence we find it unlikely that there are potential adverse effects on archaeological values within the area of PPC36 that provides for residential development that cannot be avoided, remedied or mitigated as part of the necessary subdivision consent process. That finding is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address archaeological values.
- [152] TPD Rule 4a.3.2 contains matter of control (e) which reads "Any actual or potential effects on areas or features of cultural, historic, landscape or natural value as identified in the plan." That provision is worded rather oddly in that it only purports to address values identified in the 'plan' (which we understand to mean the TDP). We find that if PPC36 is to be approved then a more specific matter of control should be

¹¹² Initial Request, paragraphs 3.4.25 to 3.4.27.

¹¹³ Director of Archaeology B.O.P. Heritage Consultants.

¹¹⁴ EIC Siân Keith, paragraph 14.

¹¹⁵ Included in the fourth paragraph of the text below the heading "preliminary Stage" of the revised "Appendix 8: Whareroa North Outline Development plan" attached as Appendix 1 to the evidence of Joanne Lewis.

¹¹⁶ Rebuttal Evidence, Kenneth Phillips, paragraph 11.

included to specifically address the mitigation of adverse effects on any archaeological features identified within the PPC36 footprint. We consider that the NZHPT submission provides scope to do that.

5.3.8 Stormwater management

- [153] The TDC was initially concerned about stormwater management and issued requests for further information in that regard. This resulted in the Proponent obtaining a further report on stormwater matters.¹¹⁷ That report advised that stormwater management will focus on low impact design including roadside vegetated swales with engineered filter and drainage media placed in their base. The grassed swales were expected to remove at least 80% of total suspended solids. The roadside swales would be directed to soak holes that can accommodate up to a 10% AEP event.
- [154] In addition, all house lots will be prevented from using exposed zinc-coated (galvanized) roofing materials and will be required to install and maintain erosion and sediment controls during the actual building phase, by way of Consent Notes on the lot titles.
- [155] Stormwater resulting from up to a 1% AEP event is to be conveyed via road reserves to three attenuation ponds with volumes ranging from 120 to 240m³. Discharge from these ponds will be limited to the predevelopment 10% AEP flow rate and will be directed to existing vegetated areas by way of level spreader outlets (to evenly disperse outflows and provide further quality treatment) onto stable ground well away from the steep bank on the northern side of the Whareroa Stream, thereby eliminating the need for piping or drilling down the bank to the stream.
- [156] For the TDC, stormwater issues were addressed by Roger Stokes.¹¹⁸ Mr Stokes considered that the Proponent's proposed stormwater management system utilising dispersed ground soakage and vegetated swales treatment was consistent with other recent developments around Lake Taupō. He noted that private residential dwellings, along with their associated patios and driveways, will be required to collect and dispose of stormwater via onsite soakage systems, as was the normal practice elsewhere in Taupō District on elevated pumice sites.
- [157] Mr Stokes advised that road stormwater management methods would need to comply with WRC guidelines and that would be verified in detail at the time of subdivision resource consent and again during the construction phase. However, he considered that with the low level of vehicle activity associated with the subdivision, the proposed grassed verges and swales were a sustainable option as parking stresses would be low.
- [158] Mr Stokes noted that the proposed residential development was set on an elevated plateau above an escarpment that falls steeply into the Whareroa Stream. There had been and continues to be an active erosion channel (or 'scar') at the base of 'bowl' within that area. In his view the approach of splitting up the stormwater catchments into smaller elements (or sub-catchments) to limit the amount of water draining into the 'bowl' was appropriate. Mr Stokes concluded that while the proposed development met standard land development practices for stormwater management, he considered that an independent geotechnical assessment was required to confirm that the injection of the stormwater runoff to ground was safe in each sub-catchment and would not cause erosion of the escarpment, land instability of the cliff edge or reserves, or create public fall hazards.
- [159] We note that the area of the 'bowl' where a current erosion scar is located (the area between the two cul-de-sac heads) is now intended to be a Māori Reservation and it will be revegetated with indigenous species; it will also contribute to the management of stormwater. At the hearing we were advised that the vegetated 'buffer' will be around 50m wide. We also note from the JWS Planning that there was

¹¹⁷ The Proprietors of Hauhungaroa No. 6 Trust Whareroa North, Preliminary Stormwater Assessment, IBA 1070, Prepared by Cheal Consultants Limited, 26 September 2019

¹¹⁸ TDC Development Engineer, S42A report, Attachment I

agreement that this area should be protected and that its primary function should be for indigenous planting / regeneration with a secondary function being pedestrian access.¹¹⁹

- [160] We earlier referred to the geotechnical evidence of Harshad Phadnis. He was of the opinion that careful design of the stormwater management system for the residential development area (once the geotechnical investigations detailed in his evidence were completed) could avoid the issues of concern to Mr Stokes and Ms Phillips.¹²⁰ He considered that overland flow from the proposed house lots would be appropriately engineered as a part of the detailed stormwater design and there would be no erosion risk. Any underground flow paths would be located and assessed by performing deep investigations including machine-drilled boreholes. The stormwater management system will then be designed to address them.¹²¹
- [161] We find that the evidence of Mr Phadnis appropriately addresses the residual concern expressed by Mr Stokes. In saying that we note from his rebuttal evidence that Mr Stokes remained concerned about the potential effects of stormwater management on the erosion scar in the 'bowl'. However, we consider that matter can be addressed at the time of subdivision consent and if necessary, the Incorporation can be required at that stage to pump water from the lower stormwater pond back up into another less-sensitive catchment for soakage.¹²²
- [162] We note that the JWS Infrastructure addressed stormwater matters and recorded that the relevant experts agreed that solutions were available to minimise the possibility of further erosion occurring at the 'scar' at the base of the 'bowl' area.
- [163] Having reviewed the evidence we find it unlikely that there are potential adverse effects arising from the proposed stormwater management regime within the area of PPC36 that provides for residential development that cannot be avoided, remedied or mitigated as part of the necessary subdivision consent process. That finding is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address stormwater management issues.
- [164] In that regard TDP Rule 4a.3.2 includes matter of control (a) which reads (our emphasis) "The design and layout of the subdivision to ensure safe and efficient access onto existing and/or proposed roads, suitable building platforms to accommodate future complying buildings, and adequate management of stormwater." We find that to be sufficient.

5.3.9 Future infrastructure maintenance costs

- [165] The s42A authors were concerned that if PPC36 was approved, then notwithstanding the fact that the Incorporation will be required to fund the provision of three waters and roading infrastructure to the Whareroa North residential area and annual rates would be levied on the residential lots created, there would be increased three waters and roading maintenance costs imposed on the wider Taupō community should the Whareroa North sections either not be in demand or if the demand for those sections displaced demand from another already serviced area.
- [166] Mr Osborne estimated that the additional infrastructure to provide for residential activity would generate some \$52,000 annually in costs to TDC to provide for depreciation,¹²³ or around \$660,000 in present value terms. He assumed there would be no net increase in rates revenue to offset the additional costs, because he considered that any growth in Whareroa North would result in correspondingly less growth elsewhere in the District. He did not provide an assessment of infrastructure or other costs or benefits

¹¹⁹ The planers disagreed on the appropriate reserve status – namely as a Maori Reservation (Conservation) through a Māori Land Court process or as a Scenic Reserve (s19(1)(b) Reserves Act 1977. This is not a matter that we need to resolve. The key matter is that it will be a reserve within which residential development is precluded.

¹²⁰ EIC Harshad Phadnis, paragraph 7.3.

¹²¹ Ibid, page 9.

¹²² Rebuttal Evidence, Roger Stokes, paragraphs 45 and 47.

¹²³ EIC Philip Osborne, paragraph 7.12

associated with residential growth in other locations within the District, to show how those might compare with the costs he estimated for Whareroa North itself.

- [167] The critical aspect of Mr Osborne's assessment is his position that providing urban capacity at Whareroa North is "*unnecessary*".¹²⁴ Since demand for holiday properties would not be unique to Whareroa North, in his view, it could be met equally well in other locations, where there is sufficient capacity. Accordingly, any growth occurring at Whareroa North would be only redirection of growth from elsewhere in the District, and any costs associated with providing capacity at Whareroa North would be an unnecessary additional net cost to the community. That cost would arise from the infrastructure costs he estimated, together with costs associated with less efficient use of infrastructure in other locations.¹²⁵
- [168] It follows that if either of his conditions – that demand for Whareroa North is not unique, or there is adequate capacity elsewhere – were not met, then Mr Osborne could not conclude that providing for urban capacity at Whareroa North is unnecessary, or that associated costs would be an unnecessary impost on the community.
- [169] As set out in section 5.1 of the Decision Report, we do not agree with Mr Osborne's view that providing urban capacity at Whareroa North would be unnecessary. Accordingly, we do not consider that PPC36 will generate significant net infrastructure costs to the community.
- [170] Mr Osborne presented his EIC as a "*present value analysis for PPC36 of the costs and potential return for Taupo District as a whole*."¹²⁶ However, his focus was on certain infrastructure costs, and he did not address other matters which would commonly be considered in an economic assessment pertaining to a district growth strategy. Whareroa North is identified as an urban growth area.¹²⁷ which is part of the TD2050 growth management strategy.¹²⁸ If urban development were to be not enabled at Whareroa North, that would represent a change to the existing TDC growth strategy. As Mr Osborne acknowledged, a change to an urban growth strategy for the District would give rise to a range of private and public costs and benefits to the community. An economic assessment would be expected to cover the range of relevant effects. Mr Osborne confirmed that he had not undertaken a wider assessment, and that he was not in a position to identify whether the outcomes of a "with Whareroa North" growth strategy as sought by the Proponents would generate greater net economic costs or benefits to the community than the outcomes of a "without Whareroa North" growth strategy, as favoured by the s42A authors.
- [171] He concluded that "*the Proposed Plan Change represents an unnecessary and economically inefficient addition to resident capacity within the District*."¹²⁹ In our view, Mr Osborne's assessment did not cover the costs and potential return for Taupō District as a whole which he had described in his EIC and it was not sufficient to support his conclusion that PPC36 would be economically inefficient.
- [172] Mr Counsell applied a narrower scope. He identified a broader range of costs and benefits likely to arise from the proposal, and held the view that in economic terms there was likely to be net benefit from the development.¹³⁰
- [173] From all the evidence presented, and acknowledging its limitations, we conclude that enabling urban development at Whareroa North would likely result in a net benefit for the District, in economic terms. We do not consider that the issues raised by Mr Osborne weigh against approving PPC36.

¹²⁴ Summary Statement Philip Osborne, paragraph 1.11

¹²⁵ EIC Philip Osborne, paragraph 7.5 and 7.6

¹²⁶ EIC Philip Osborne, paragraph 7.2

¹²⁷ Joint Witness Statement (Planning); Part B Statutory Tests, [3].

¹²⁸ Taupo District 2050 District Growth Management Strategy. Taupo District Council 2018

¹²⁹ Summary Statement, Philip Osborne, paragraph 1.11.

¹³⁰ EIC Kevin Counsell; paragraph 25.

5.3.10 Lake Taupō water quality

- [174] Some submitters were concerned about the potential impact of PPC36 on Lake Taupō water quality. Such impacts can only potentially arise from stormwater runoff or wastewater discharges. We addressed those matters in sections 5.3.1 and 5.3.8 respectively of this Decision Report. We are satisfied that should PPC36 be approved, then the consideration of the subsequent subdivision consent application and the imposition of consent conditions can ensure Lake Taupō water quality is appropriately safeguarded.
- [175] That finding is subject to the proviso that the TDP rule framework enables the subdivision consent decision-makers to fully address Lake water quality issues which it does not currently do. We note that the submission of Rob Ewen provides scope to impose additional matters of control in relation to Lake water quality.

5.3.11 Reserves

- [176] The issue of reserves within the PPC36 residential area was initially addressed for TDC by Nathan Mourie.¹³¹ Referring to the 9 April 2020 modified Whareroa North Concept Plan, Mr Mourie concluded that the proposed reserve provision was adequate, based on the combination of the indicated 10,000m² of 'Local Purpose Reserve (Stormwater)' located adjacent to the scarp and indicated a pedestrian / cycle link to Whareroa Village.
- [177] Mr Mourie noted that that the provision of these reserves and linkages should be clearly identified on the 'Whareroa North Concept Plan' and that additional details should be added to the 'Key Outcomes' statements as to the type and planting of the reserves and the width of the pedestrian / cycle link. We note that these matters are now included in the Plan that was attached to the rebuttal evidence of Ms Lewis.
- [178] Notwithstanding his concerns, given that nearby existing reserves and the lakefront provide semi-formal recreation, coupled with the likely low usually resident population in the PPC36 development, Mr Mourie was of the opinion that it was preferable to provide additional native revegetation areas linked to the existing, adjacent natural environments than to provide formal park spaces which would require higher maintenance in the long term. We note that the Whareroa North Concept Plan does exactly that.
- [179] Mr Mourie concluded that sufficient controls would be put in place to ensure final design and implementation of stormwater reserves and linkages would be overseen and approved by TDC officers. In light of that, should PPC36 be approved, we are satisfied that 'reserve' matters can be appropriately dealt with through the subdivision consent process. In saying that we note Mr Mourie's concern with the proposal to make the large area of new indigenous vegetation between and below the two cul de sac heads a Māori Reservation.¹³² He preferred that area to become land owned by the TDC.
- [180] In terms of the concerns expressed by Mr Mourie we note from the rebuttal evidence of Joanne Lewis:¹³³

The Whareroa North Concept Plan has been amended as follows:

- *All public accessways provided for as Local Purpose Reserve (Access) to vest in Taupo District Council;*
- *Walkway access through SNA062 is confined to that area between the access road and the SNA062 boundary immediately southeast of the first cul de sac (and the walkway connection to the access road is further north than previously due to topography);*
- *The land proposed to be Maori Reservation (Conservation) is identified as "PMR". That land is the SNA and the area of land in the lower part of "the bowl" between the cul de sac heads except for that part of the land to be vested as Local Purpose Reserve (access).*

¹³¹ TDC Senior Reserves Planner, Section 42A report, Attachment I.

¹³² Rebuttal Evidence, Nathan Mourie, paragraphs 56 and 62.

¹³³ Rebuttal Evidence of Joanne Patricia Lewis for The Proprietors of Hauhungaroa No 6, paragraph

- [181] We find that resolves the matters raised by Mr Mourie. We are satisfied that there are no ‘reserves’ related matters that weigh against the approval of PPC36. In saying that we record that we have no issue with the proposed use of a Māori Reservation under the Te Ture Whenua Maori Act 1993 for the approximately 50m wide strip of land at the base of the ‘bowl’ that is intended to be retired and revegetated. We agree that type of reserve status better aligns with the Proponent’s kaitiaki responsibilities as owners of the whenua.¹³⁴
- [182] TDP Rule 4a.3.2 does not refer to reserves. Consequently, we find that additional matters of control are required that refer specifically to requiring pedestrian walkways and the reserve status of new areas of indigenous revegetation.
- [183] The submissions of Desarie Drayton and Dr Ruth and Simon Ewen raise safety concerns in relation to roading, pedestrians and cyclists. The submission of Kia Paranihi raises the issue of reserves. Together with the submissions that raise biodiversity issues (see section 5.3.2 of this Decision Report), we consider that there is scope to insert the additional matters of control outlined above.

5.3.12 Boat ramp

- [184] Community facilities associated with the existing Whareroa Village include a boat ramp and associated jetty, carpark, toilet block and esplanade reserve. Some submitters¹³⁵ were concerned that PPC36 could lead to increased pressure on those facilities, particularly the boat ramp. While this matter was not addressed in the Officers Report we note from the evidence of submitter and long-time Whareroa Village resident Steve Sanderson that the boat ramp and jetty are only busy around Christmas and other holidays on no more than half a dozen days of the year. In light of that low level of existing use we conclude that Whareroa North is unlikely to render those facilities unusable.

5.3.13 Overall conclusion on adverse effects

- [185] To answer the first question we posed in section 5 of this Decision Report, as far as we can discern there are no effects-based ‘show stoppers’ that would lead us to make a finding that the land directly affected by PPC36 should not be returned to a ‘Residential Environment’ zoning. We say ‘returned’ because between 1973 and 2000 the land was zoned ‘Lakeshore Residential’.
- [186] Influencing our finding is the fact that the directly affected land is located in a designated urban growth area identified in TD2050 (2018), the SSSP and the TDP. While some site-specific matters require further investigation, the preferred expert evidence before us is that those matters can be adequately avoided, remedied, mitigated or offset during the subsequent subdivision consent process.
- [187] In terms of the second question we posed, we are satisfied that a suitable rule structure can be inserted into the TDP that will provide appropriate scope for future decision-makers to assess the subsequent subdivision consent application and impose robust conditions should they determine to grant subdivision consent. That will however require the insertion of additional matters of control into the relevant TDP rule, as identified in preceding sections of this Decision Report.

5.3.14 Revised Appendix 8

- [188] As we noted earlier, PPC36 includes a proposed new “Appendix 8: Whareroa North Outline Development Plan”. The content of Appendix 8 was amended by the Proponent during the plan change process in response to matters raised by TDC officers, submitters and questions posed by the commissioners. A final revised version was attached to the rebuttal evidence of Joanne Lewis.
- [189] Importantly in our view, those revisions include an additional clause (h) in the TDP which would import into Rule 4a.3.2 (for the purposes of assessing a subdivision consent for Whareroa North) additional

¹³⁴ Legal Submissions for the Proponent, 9 June 2020, paragraph 11.

¹³⁵ Including Desarie Drayton and Dr Ruth and Simon Ewen.

matters of control set out in Section 5 of Appendix 8. In Appendix 8 the following additional text was proposed:

Additional Matters of Control

As provided for beneath Taupo District Plan Rule 4a.3.2, clause (h), the following additional matters of control apply to subdivision at Whareroa North:

- *measures to avoid, remedy, mitigate, or offset potential effects on indigenous biodiversity;*
- *effects on landscape character and visual amenity;*
- *effects on natural character;*
- *protection of the quality of the waters of Lake Taupō and its tributaries including through stormwater and earthworks management;*
- *provision and design of reserve areas including for pedestrian and cycling access to and within the residential subdivision;*
- *application of Crime Prevention Through Environmental Design principles*

[190] Those additional matters of control appropriately address most of our concerns set out in sections 5.3.1 to 5.3.13 regarding the need for additional matters of control, other than in relation to three matters:

- the provision of potable water and wastewater collection and treatment infrastructure and facilities;
- measures to avoid, remedy or mitigate identified natural hazard risks within the residential development footprint to a level that is “acceptable” or “tolerable” for residential activities;
- mitigating adverse effects on any archaeological features identified within the PPC36 footprint;

[191] We put these additional matters of control to Ms Lewis and Mr Bonis during the hearing. They both agreed those additional three matters of control were appropriate. Consequently, we find that proposed Appendix 8, under the heading “Additional Matters of Control” should be amended to include these three matters.

[192] Ms Lewis also proposed amendments to section 2 (Subdivision Design – Key Outcomes), section 3 (Staging) and section 4 (Engineering and Servicing). Those amendments included references to:

- connection of every residential lot to community water and wastewater systems, as well as electricity and telecommunication networks;
- planting of new and supplementary indigenous vegetation in accordance with a schedule titled “Whareroa North Indigenous Planting Proposal” which includes ‘Area 2’;
- a requirement for an Ecological Management Plan (EMP) setting out methods to minimise and mitigate potential adverse effects on ecological values, and to offset any significant residual adverse effects in accordance with best ecological practice for biodiversity offsetting in New Zealand;
- a safer community through incorporating “Crime Prevention Through Environmental Design” (CPTED) principles;
- a detailed maximum building heights plan;
- an off-road separate pedestrian link to be provided (as Local Purpose Reserve) connecting the access road, through indigenous vegetation, to the southern part of the subdivision roading network;
- during subdivision consenting consideration will need to be given to catering for recreational cyclists on the proposed pedestrian links between roads in the elevated development area; and
- design and physical works of the accessways being subject to TDC approval prior to vesting.

[193] We find those revisions to be helpful and appropriate and consider they will greatly assist future decision-makers charged with considering the necessary subdivision consent for Whareroa North.

5.4 Subdivision consent category

[194] In sections 5.3.1 to 5.3.13 of this Decision Report we addressed potential adverse effects and the adequacy of TDP Rule 4a.3.2 to address those effects. The reason for doing so was because the Proponent’s seek that the subdivision consent be assessed as a controlled activity if it is “in accordance

with the Whareroa North Outline Development Plan at Appendix 8” of the TDP. The matters of control initially sought to be applied by subdivision consent decision-makers would be those in TDP Rule 4a.3.2.

- [195] While we are comfortable that based on the evidence there appears to be no effects-based rationale for recommending that PPC36 be declined, we were initially reluctant to conclude that the subsequent subdivision consent should be granted (which a controlled activity requires) regardless of the outcomes of the further investigations the Incorporation intends to undertake. However, the amendments proposed by Ms Lewis to the proposed Appendix 8, in particular additional matters of control to be ‘incorporated by reference into’ Rule 4a.3.2, have greatly alleviated our concerns. In saying that we note that we have found that three additional matters of control are still required and consider that these can be added to Appendix 8 within the scope of submissions.
- [196] Accordingly, we find that controlled activity status, as proposed by the Incorporation, is appropriate.
- [197] In his summary presentation Mr Bonis suggested that the subdivision consent should ‘default’ to a full discretionary activity should it not meet the requirements for a controlled activity. However, we are satisfied that should the subdivision proposal be found not to be in accordance with the Whareroa North Outline Development Plan then it should default to a restricted discretionary activity. That enables future decision makers to decline consents if they decide that is necessary on the merits at that time.

5.5 National policy statements and national planning standards

- [198] Section 74(1)(ea) of the RMA states that a change to a district plan must be done in accordance with a national policy statement, a New Zealand coastal policy statement, and a national planning standard. In addition, ss75(3)(a) to (ba) of the RMA require the District Plan to give effect to those instruments.
- [199] The National Policy Statement on Urban Development Capacity 2016 (NPSUDC) is not directly relevant as it is only concerned with “urban environments” which are defined in the NPSUDC as:
- Urban environment means an area of land containing, or intended to contain, a concentrated settlement of 10,000 people or more and any associated business land, irrespective of local authority or statistical boundaries.*
- [200] At less than 20 resident households the existing Whareroa Village is not an “urban environment” and at 160 residential lots, nor is the proposed Whareroa North subdivision.
- [201] Nevertheless, for completeness we understand that Taupō is not considered to be a ‘high or medium-growth urban area’ and so while all objectives of the NPSUDC are relevant, only Policies PA1 – PA4 might be applicable. We observe that the relevant NPSUDC provisions are, in general, about ensuring urban environments enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; that there are sufficient opportunities for the development of housing and business land to meet demand; and that land use, development, development infrastructure and other infrastructure are integrated with each other. We received no reliable evidence that PPC36 is inconsistent with that policy direction.
- [202] The New Zealand Coastal Policy Statement 2010 (NZCPS) is not relevant.
- [203] No other national policy statements are relevant in our view. In making that finding we consider that the requirements of the National Policy Statement for Freshwater Management 2014 fall within the jurisdiction of the WRC and their administration of the Waikato Regional Plan, particularly those aspects dealing with the management of nitrogen losses from land in the Taupō catchment.

5.5 National environment standards and other regulations

- [204] Section 74(1)(f) of the RMA states that a change to a district plan must be done in accordance with any regulations.

- [205] The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (2011) is relevant. The initial Request notes that Whareroa Station farm manager confirmed that to his knowledge this part of the farm has not been used for an activity that may have resulted in soil contamination (for example sheep dips or the storage of herbicides or other chemicals). The Proponent also made enquiries of the TDC and the WRC to see if any activity or industry described on the Ministry for the Environment's "Hazardous Activities and Industries List" (HAIL) may have been undertaken on the site. There were no records of such activity. On that basis the Proponent concluded that in terms of potentially contaminated soil which could adversely impact on the health of future residents, the land is suitable for residential purposes.¹³⁶
- [206] We heard no evidence to the contrary and so we accept the Proponent's view on that matter. We also note that compliance with the NES will also be a matter for detailed consideration as part of any future subdivision or land disturbance application. TDP Rule 4a.3.2(b) addresses that matter.
- [207] The National Planning Standards released on 5 April 2019 focus on the format and consistency of plan provisions. The TDC has until 2024 to implement them. We are satisfied that as far as practicable at this time, PPC36 is consistent with the National Planning Standards.
- [208] No other relevant national environmental standards or regulations were brought to our attention and we ourselves are not aware of any.

5.6 Regional policy statement and regional plan

- [209] Section 75(3)(c) of the RMA requires a district plan to give effect to a regional policy statement.
- [210] The Waikato Regional Policy Statement (WRPS) was assessed in the Initial Request and the Officers Report. We addressed the relevant urban growth provisions of the WRPS in section 5 of this Decision Report. Those provisions clearly weigh in favour of approving PPC36.
- [211] The WRPS also has relevant provisions relating to biodiversity, natural features and landscapes, natural character and ecological integrity. We discussed these matters earlier in this Decision Report and note that they will be considered in more detail at the time that subdivision consent is sought.
- [212] In the JWS Planning Mr Bonis and Ms Foley highlighted the importance of RPS Policy 6.1 and the Section 6A "general development principles" that it cross-refers to. Our own assessment of those "principles" is as follows.
- [213] The proposed Whareroa North development will support the existing Whareroa Village (principles (a and e)). Whareroa North will provide a clear delineation between urban areas and rural areas, it will have a compact form, and it will embody low impact stormwater design and other sustainable design technologies as appropriate (principles (b, l, m and n)). We heard no evidence suggesting that the development was not appropriate with respect to climate change nor that it did not encourage waste minimisation and the efficient use of resources (principles (p and s)). There are no potential reverse sensitivity effects given the intended vegetated buffer between the adjoining Whareroa Station which is itself primarily a low impact form of agricultural land use¹³⁷ (principle o). The development will not comprise existing infrastructure and water requirements have been identified (principles (d, f and g)). It is not located on significant mineral resources and their access routes, natural hazard areas,¹³⁸ energy and transmission corridors, locations identified as likely renewable energy generation sites and their associated energy resources, regionally significant industry nor high class soils (principle (h)). The development will maintain landscape values and promote positive indigenous biodiversity outcomes though the proposed indigenous planting and offsetting activities, protect significant indigenous vegetation and significant habitats of indigenous fauna

¹³⁶ Initial request, sections 3.4.4 to 3.4.8, page 17.

¹³⁷ Manuka honey production.

¹³⁸ The land adjoining the existing erosion scar within the 'bowl' is to be given reserve status.

- to the extent practicable, maintain ecosystem services,¹³⁹ and provide for the protection of historic and cultural heritage (principles (j and k)). It will provide access to Lake Taupo (principle (l)).
- [214] The development is being promoted by the Māori owners of the land and so it fully gives effect to the unique tāngata whenua relationships, values, aspirations, roles and responsibilities with respect to the area (principle (q)).¹⁴⁰
- [215] The development does not make use of opportunities for urban intensification and redevelopment so as to minimise the need for urban development in greenfield areas (principle (c)). However, we assign that little weight given that (as we discussed in section 5 of this Decision Report), consistent with WRPS Policy 6.11(a)(ii) the TDC has undertaken a comprehensive assessment of where urban growth should occur within the district by way of a consultative process resulting in the Taupō District 2050 Growth Management Strategy (TD2050). TD2050 was 'refreshed' and adopted by TDC in October 2018 and it still includes Whareroa North as a future growth area.
- [216] We find that PPC36 is consistent with the RPS section 6A "general development principles".
- [217] We go further than that and find that when viewed holistically, with appropriate weight being given to the urban growth provisions, the RPS provisions support the approval of PPC36.
- [218] At the hearing Ms Foley advised that WRC's major outstanding concern related to the erosion feature in the 'bowl'. She advised, in answer to our questions, that WRC had not obtained its own expert advice on geotechnical matters and relied on the evidence of the TDC and Proponent experts. We addressed those matters in section 5.3.5 of this Decision Report.
- [219] Mr Bonis drew our attention to RPS Policy 13.2 which is titled "*Manage activities to reduce the risks from natural hazards.*" However, that policy explicitly refers to "subdivision, use and development" and we find it to be more relevant to the subsequent subdivision consent process. Nevertheless, having had regard to its content, we find that it does not weigh against PPC36 because (as we discussed in section 5.3.5) risks have been assessed (albeit primarily at a 'desktop' level) and potential hazards identified, none of which on the evidence before us are likely to be either "intolerable" or incapable of resolution at the subdivision consent stage.
- [220] Section 75(4)(b) of the RMA states that a district plan must not be inconsistent with a regional plan for any matter specified in s30(1) relating to the functions of regional councils. In this area the relevant regional plan is the Waikato Regional Plan (WRP). Resource consents will be required under the WRP for bridging the Whareroa Stream, earthworks and vegetation clearance a "high risk erosion area" (associated with the proposed road access) and disposal of stormwater from roads. Other than that, we are not aware of any issues arising from the WRP that would weigh against approving PPC36.

5.7 Taupō District Plan

- [221] It is relevant for us to consider the provisions of the operative Taupō District Plan (TDP).
- [222] We addressed the urban growth provisions of the TDP in section 5 of this Decision Report.
- [223] The Initial Request noted that PPC36 does not change any of the TDP operative objectives and policies. It assessed its suitability against objectives and policies in TDP sections titled Residential Environment (Section 3a), Traffic and Transport (Section 3f), Landscape Values (Section 3h); Natural Values (Section 3i); Natural Hazards and Unstable Ground (Section 3l) including consideration of Proposed Plan Change

¹³⁹ All subject to suitable conditions of subdivision consent being imposed.

¹⁴⁰ The Vision and Strategy in the RPS is not directly relevant (principle (r)).

34 (flood hazard).¹⁴¹ The overall conclusion was that PPC36 sits comfortably within the TDP framework. We agree.

- [224] Mr Bonis remained concerned that the absence of certainty over the proposed access road (and the potable water and wastewater services it would carry) was inconsistent with TDP Objective 3e.2.3. TDP Objective 3e.2.3 is to “*Ensure the maintenance of an appropriate and sufficient level of community infrastructure¹⁴² within existing serviced areas.*” We accept that in the absence of roading access to the upper plateau it will not be possible to give effect to Objective 3e.2.3. However, as we noted in section 5.2 of this Decision Report, if the currently proposed access road up the escarpment does not gain consent, then the residential development will not be able to proceed until such time as formal access to it is obtained. That may well require the Proponents to revisit other less preferred access options.

5.8 Management plans and other strategies

- [225] Section 74(2)(b) of the RMA states that when changing a district plan the Council should have regard to management plans and strategies prepared under other Acts. We are not aware of any such plans or strategies in this case.

5.9 Iwi and hapū management plans

- [226] Section 74(2A)(a) of the RMA states that Council must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the District. We understand the local hapū (Ngāti Parekaawa) and Ngāti Tūwharetoa are relevant iwi in this case. The *Ngāti Tūwharetoa Environmental Iwi Management Plan 2003* (EIMP)¹⁴³ is a relevant iwi management plan for us to consider.

- [227] We were given no assessment or mention of the EIMP in the written or verbal evidence and submissions with which we were provided. Our own assessment of the EIMP follows.

- [228] Page 7 of the EIMP says *‘[t]he Ngāti Tūwharetoa EIMP establishes Ngāti Tūwharetoa environmental base lines and provides tools that will help hapū/whānau and the tribe as a whole to achieve and protect those base lines...The Ngāti Tūwharetoa EIMP is not intended to dictate or limit the economic viability of those [Tūwharetoa economic] authorities or in anyway (sic) impinge on the role of trusteeship as provided for in legislation or to promote the fragmentation of Māori land. The Ngāti Tūwharetoa EIMP is intended to provide all of Tūwharetoa interest’s with clarity and guidelines.’*

- [229] In 2017, the Tūwharetoa Māori Trust Board provided a letter of support to the Proponents for PPC36, noting that *‘[i]n principle, the Trust Board is supportive of our Tūwharetoa Economic Authorities in their development aspirations.’* As previously stated, the Proponents are tāngata whenua, kaitiaki, hapū members, and a recognised Tūwharetoa Economic Authority and so a clear ‘Tūwharetoa interest’. As such, we would have expected the Proponents, Ngāti Parekaawa or Tūwharetoa Māori Trust Board to raise any concerns with PPC36 as it relates to the EIMP if, indeed, any concerns existed.

- [230] Therefore, we think it reasonable that the Proponent’s support for PPC36, other support from tāngata whenua groups discussed in section 5.3.6 of the Decision, our assessment of potential adverse effects in sections 5.3.1 to 5.3.13, and our overall finding in this Decision Report that there is nothing that weighs against approving PPC36, has appropriately taken into account the relevant EIMP.

5.10 Other matters

- [231] No other relevant matters were brought to our attention and we are not aware of any.

¹⁴¹ Initial Request, paragraphs 7.2.9 to 7.2.11. We note that on March 26 2019 the TDC approved Plan Change 34 - Flood Hazard to the District Plan and it became operative on April 15 2019.

¹⁴² Council-operated physical infrastructure including roads, and infrastructure involved in operating the wastewater, stormwater and drinking water systems.

¹⁴³ https://www.waikatoregion.govt.nz/assets/PageFiles/21886/Ngati_Tuwharetoa_Iwi_Environmental_Management_Plan_2003.pdf

5.11 Part 2 matters

[232] Under s74(1)(b) the Council must prepare a district plan in accordance with the provisions of Part 2 of the RMA. Part 2 matters were comprehensively addressed in the Initial Request.¹⁴⁴ We do not disagree with that assessment and find that PPC36 does not offend any Part 2 provisions to an extent that would lead to us declining it.

[233] In saying that, we note and accept the submission of counsel for TDC¹⁴⁵ that “*the settled objectives of the District Plan, and the provisions of the RPS, already achieve and embody the RMA’s statutory purpose of sustainable management.*” We have already assessed those plan and policy provisions earlier in this Decision Report.

[234] We also note and accept the submission of counsel for the Proponents regarding the relevance of s6(e), namely that the shareholders of the Proponent have an ancestral connection with the land that is the subject of PPC36 and that development of that land will assist with providing for their social, economic and cultural wellbeing.¹⁴⁶ Indeed, that is a positive effect of the proposal.

5.12 Amendments to Plan Change 36

[235] We recommend that the matters of control in Rule 4a.3.2 (which the Proponents sought to have apply to the subdivision consent) are amended to include additional matters of control that we listed in section 5.3.14 of this Decision Report.

[236] Mr Bonis recommended an expansion of Policy 3a.2.1(v). In Reply the Proponent agree to the additional text recommended by Mr Bonis. On that basis we agree that the Policy should be expanded, noting it provides additional guidance to future decision-makers. We have made some minor amendments to the wording recommended by Mr Bonis.

5.13 Section 32AA

[237] Appendix 8 of the Initial Request included an assessment under s32 of the RMA. Its overall conclusion was that PPC36 was the most appropriate means of securing a District Plan framework enabling residential subdivision at Whareroa North which is in accordance with a specific concept plan. The reasons¹⁴⁷ for that conclusion included:

- PPC36 is consistent with the TDC and WRC resource management processes for delivering sustainable growth management (i.e. through structure plan and plan change processes set down in the TDP);
- PPC36 brings a comparatively high degree of certainty (primarily through inclusion of the Whareroa North Outline Development Plan) compared to other options considered;
- potential adverse effects (particularly effects on landscape and natural values) are able to be appropriately managed in accordance with the TDP and RPS provisions; and
- PPC36 provides a reasonable level of certainty and efficiency in terms of process and costs and its provisions are, in comparison to other reasonably practicable options, the most efficient and effective means of achieving the desired outcome.

[238] We find no fault with those reasons.

¹⁴⁴ Section 9, pages 58 to 63.

¹⁴⁵ Legal Submissions on Behalf of Taupō District Council, 5 June 2020, paragraph 6.

¹⁴⁶ Legal Submissions for the Proponent, 9 June 2020, paragraph 5.

¹⁴⁷ Initial Request, Appendix 8, page 10.

- [239] We would add that we accept the submission of counsel for the Proponents that PPC36 gives effect to Objectives 3e.2.1 (*Provide for and manage urban growth so as to achieve the sustainable management of the District's natural and physical resources*) and 3e.2.2 (*Ensure that the subdivision and development of Urban Growth Areas for new urban growth occurs by way of a comprehensive Taupō District Structure Plan Process and plan change*) of the TDP and is the most appropriate means of doing so.¹⁴⁸
- [240] Section 32AA of the RMA requires a further evaluation of any changes that are made to a proposal after the initial section 32 report has been completed. The further evaluation may be the subject of a separate report, or referred to in the decision-making record.¹⁴⁹ Clause 10 of Schedule 1 to the RMA directs that the Council's decision on submissions on a plan is to include such further evaluation, to which it is to have particular regard when making its decision.¹⁵⁰ This Decision Report (including its appendices) will form part of the Council's decision-making record.
- [241] We have recommended minor amendments to the Proponent's proposed rule structure as reflected in the new Appendix 8 to the TDP. We set out the reasons for those amendments in sections 5.3.1 to 5.3.14 of this Decision Report. We have also accepted a recommended expansion of Policy 3a.2.1(v). We are satisfied that those amendments are reasonably practicable and they will more effectively and efficiently ensure that the proposed residential development in Whareroa North is appropriately designed and implemented as a result of the subsequent subdivision consent process.
- [242] The changes we recommend will have no discernible adverse effects on economic growth or employment. The benefit of the changes is that future decision-makers on the subdivision consent will have appropriate scope to impose conditions to avoid, remedy, mitigated or offset adverse effects.
- [243] The amended provisions will more effectively achieve TDP Objective 3a.2 (the maintenance and enhancement of the character and amenity of the Residential Environment), Objective 3a.2.2 (to ensure that development in the Residential Environment takes into account the capacity of the supporting infrastructure) and Policy 3a.2.1(ix) which reads:

Avoid, remedy or mitigate adverse effects of subdivision, use and development in the residential areas on cultural, historic, landscape and natural values, as identified through the provision of this Plan.

7 Decisions on Plan Change 36 Submissions

- [244] Pursuant to the powers delegated to us by the Taupō District Council the decisions we have made on submissions to Private Plan Change 36 – Whareroa North are set out in Appendix 2 of this Decision.
- [245] Pursuant to clause 29(4)(a) of Part 2 to Schedule 1 of the RMA the Private Plan Change 36 – Whareroa North is approved with modifications.

¹⁴⁸ Legal Submissions for the Proponent, 9 June 2020, paragraph 43.

¹⁴⁹ RMA, s 32AA(1)(d) and (2).

¹⁵⁰ RMA, Schedule 1, cl 10(4)(aaa).

[246] The modified District Plan text is contained in Appendix 1. The base document is the 'clean version' of the Appendix to the rebuttal evidence of Joanne Lewis. Amendments are shown in grey wash, underlining and ~~strikeout~~.

Signed by the commissioners:

A handwritten signature in black ink that reads "Poto Davies".

Poto Davies

A handwritten signature in blue ink that reads "Rosanne Jollands".

Rosanne Jollands

A handwritten signature in blue ink that reads "Steven Wilson".

Steven Wilson

A handwritten signature in blue ink that reads "Douglas Fairgray".

Douglas Fairgray

A handwritten signature in black ink that reads "Rob van Voorthuysen".

Rob van Voorthuysen (Chair)

Dated: 23 July 2020