Before the Independent Hearing Panel
at Taupo

in the matter of: Proposed Plan Change 36 to the Taupo District Plan – Request under Schedule 1 of the RMA to rezone Rural Land to Residential at Whareroa North by The Proprietors of Hauhungaroa No. 6

to: **Taupo District Council**

Applicant: **The Proprietors of Hauhungaroa No.6**

Statement of Evidence by **Merilyn Connolly** on behalf of The Proprietors of Hauhungaroa No.6

PROPRIETORS OF HAUHUNGAROA NO. 6

PRIVATE PLAN CHANGE FOR NORTHERN SIDE

STATEMENT OF EVIDENCE OF MERILYN RUTH CONNOLLY

1. NAME AND POSITION/ROLE

1.1 My name is Merilyn Ruth Connolly and as part of my employment as a Legal Executive with the firm of solicitors, Phillips and Powell of Otorohanga, I have been involved with the Maori Incorporation, the Proprietors of Hauhungaroa No. 6 (Hau.No. 6) since it was formed on the 26th August, 1965. When Mr Phillips retired in 1996, I took over from him as Incorporation Secretary and have remained in that position ever since. When the firm of Phillips and Powell merged with Wallace Bain Law Office in 1996, I then became employed by that firm, but still looked after the affairs of Hau. No. 6. In 1998 the firm Whenua Kete Ltd was set up by Wallace Bain Law Office, expressly for the purpose of administration of Maori Trusts and Incorporations, which was not really legal work. The Shareholders of Whenua Kete Ltd are myself, and Margaret Wereta, who had also been employed by Phillips and Powell, and Wallace Bain Law Office for many years as their Trust Accountant, and we thereupon took over the administration work previously done by Phillips and Powell and Wallace Bain Law Office. This has continued from 1998 until today.

1.2 In my position as Incorporation Secretary therefore, I have retained all of the books and records of the Incorporation since its inception.

2. HISTORY AND BACKGROUND TO PPC36

2.1 I have been involved in the application for the Plan Change ever since it became obvious that Hau.No. 6 was getting nowhere in its negotiations with Council in regard to putting into effect the Southern Settlement Structure Plan and that a Private Plan Change was required to keep up the momentum to protect the money Hau. No. 6 has spent in complying with Council requirements, and referred to in 3.7 below.

2.2 I have been involved with RMA planning steps in regard to Hau. No. 6 ever since the RMA came into being, and before then with the planning steps required under the Town and Country Planning Act and the Local Government Act.

2.3 All that the Plan Change is trying to achieve for the land owners is to get their land back to the Lakeshore residential zoning it previously had from 1973 until 2000 when the Taupo District Council brought out its proposed District Plan under the RMA and with a stroke of a pen changed the zoning from Residential to Rural. Further, about 2008, Council designated a considerable area on the eastern end of the Northern side as SNA, thus in effect endeavouring to obtain extensive further public reserves without paying a cent in compensation. Ever since that time Hau. No. 6 has battled seemingly against all odds to reverse that rezoning, until the Southern Settlement Structure Plan in 2013 eventually provided Council support for the development on the Northern side to continue.

2.4 Up to 2000, when the Council changed the zoning from Residential to Rural , Hau. No. 6 had already spent $1,056,587 in providing some of the infrastructure required for the subdivision on the Northern Side, by way of the main access road, sewage and wastewater disposal, electric power and telephone and water supply facilities.

2.5 From 1 July 2004 to 30 June 2019 Hau. No. 6 has carried on in its endeavours to get going with the development on the Northern side, and has spent a significant sum in obtaining professional

reports and other information that Council required and that has been to ensure that the expectations from the original development plans can be achieved.

2.6 I am advised that the Council costs for the hearing alone will be about $150,000 and we have already paid more than $50,000 to Council for this Plan Change. In addition Hau. No. 6 has continued to pay rates to the Council on all of the land it owns including the land that is SNA and will not be developed.

2.7 If the Private Plan Change is not agreed to, then the Incorporation will have wasted a huge amount of money, and in effect lost its principal asset, its residual land, which will no longer be of any practical use. Hau. No. 6 is not a professional developer, but is a small Maori Incorporation, trying to do its best to carry out the wishes of its several hundred shareholders and complete the development commenced so many years ago when the land was identified for this purpose. The Incorporation should be entitled to rely on the planning framework that signals this as being an appropriate site for residential growth without having to prove that point over and over and over again.

3. WHAREROA VILLAGE DEVELOPMENT

3.1 Whareroa Village was originally settled probably at least 250 years ago, when Parekaawa left her home at Maraekowhai, at the eastern end of Whakaipo Bay, Taupo, and established her family at Poukura and Whareroa. The stone and plaque at the entrance to the Village were erected in her memory, and unveiled at a ceremony on the 2nd March 1991. Their gardens were at the foot of the Rangitukua Cliff face, now the Scenic Reserve immediately to the south of Whareroa and their protective fortified Pa was Piripekapeka, in the Cliffs above their gardens. This continued until the summer of 1829, when through trickery most of the Parekaawa people were enticed to come out of their Cliff refuge and were virtually wiped out by a marauding war party of Ngati Maru and Ngati Tamatera under Hihitaua. The survivors continued to live at Poukura and Whareroa.

3.2 **Attached and marked with " A"** are copies of Pages 237 and 248 – 251 inclusive from Volume 2 of *Nga Tohu A Tainui by F.L.Phillips* which tell the story. The story is also told in Sir John Grace's book *Tuwharetoa.*

3.3 By 1965, although Poukura was still settled with people living there and supporting the Marae, the only houses at Whareroa were some baches erected probably at least 60 years previously, and occupied by keen fishermen as holiday homes. These people obtained access either direct from the Lake or by a track over what is now the farm. A photograph of the last of these baches, taken about 1980, with myself in the foreground, is **attached marked "B"**

3.4 In 1965 the whole of the Hauhungaroa No. 6 block was being developed into what is now known as Whareroa Station, by the Departments of Maori Affairs and Lands and Survey, and there was some concern at the Development debt that was accumulating and charged against the land. At that time also, the original lake side subdivisons at Kuratau and Omori were commenced, and the owners of Hauhungaroa No. 6 felt that the time had come to develop the lakeward portion of their land as a means of paying off the Development Debt and financing the farm.

3.5 Accordingly on the 26th August 1965 Hau. No. 6 was formed as a Maori Incorporation with its stated purpose and intent to be to sever an area estimated at 200 acres or 80.9371 hectares, being the lakeward portion of the larger farming block, to obtain road access, and to develop that area as a residential village, to take the place of the ancient village which had existed in former times.

3.6 The first action of Hau. No. 6 was to obtain the consent of the Departments of Maori Affairs and Lands and Survey to the withdrawal of this portion of the block from the Development on satisfactory terms and conditions, and it was not until 1971 that the consent of the Departments was

obtained, with the only conditions being reimbursement for some minor improvements such as fencing and tracking.

3.7 However, part of the negotiations for the exclusion of the land from Development was an exchange with the Department of Lands and Survey whereby the Department received the area of the Rangitukua Cliff face and the area in scrub below the Cliff face and reaching to the Lake edge, as a Scenic Reserve, and Hau. No. 6 received a piece of land at Omori suitable for subdivison, together with some cash. Hau. No. 6 was then left with a net area of 52.4948 hectares on which to set out the Village at Whareroa. It is important to note that the Reserve was created as a Scenic Reserve only, to protect the ancient Pa and gardens contained within the area. At various times during the last 50 years, approaches have been made to Hau. No. 6 to allow the Cliffs to be used for rock climbing but permission has always been declined.

3.8 Hau. No. 6 then proceeded to create what was called the Piripekapeka subdivision at Omori and to sell the sections obtained therefrom. This commenced in 1972 and the sections were all sold by 1976.

3.9 At the same time Hau. No. 6 was negotiating with the owners of the Waituhi Kuratau Station for road access over their land from the Kuratau Hydro Road into Whareroa station, and from thence through Whareroa Station into the subdivision area. I note from minutes of a Committee meeting held on the 5 December 1973 that the Taumarunui County Council had by that time zoned all the land at Whareroa including the Northern side, as Lakeshore Residential, but that the Ministry of Works had objected on the grounds that considerable areas adjacent to the Lake, should be set aside as Reserves. Accordingly the Committee then proceeded to negotiate with the Ministry of Works as to the Reserve areas, although this eventually entailed an appeal by the Ministry to the Town and Country Planning Board. The records show that this appeal was eventually settled on the day of the hearing with the Ministry of Works agreeing that the appropriate vehicle for the creation of the public reserves was when the County Council approved the scheme plan for subdivision. This does help to explain why the Council required Hau. No. 6 to provide such large areas for public reserves in the initial stages of the development, without any compensation. I particularly refer to the very wide esplanade reserve stretching right along the lake front on both the Southern and Northern sides, which would have been very valuable development land for Hau. No. 6.

3.10 Once the land required for the Whareroa access road had been accomplished, then Hau. No. 6 did the work required to form and metal this road. The Taumarunui County Council required that it be constructed to State Highway standards, and thus providing a road adequate for the finished development of the Village at 360 sections, with Hau. No. 6 paying the whole of the cost. The distance is approximately 5 kilometres. The Council also required that the Kuratau Hydro Road, which at that time was little more than a farm track from the highway, be upgraded to a similar standard, with Hau. No. 6 paying for half of that cost, and the County paying the other half. The distance of that road is also about 5 kilometres. Unfortunately the cash profits from the Piripekapeka subdivision were not sufficient to meet the total cost of all that work and Hau. No. 6 was able to afford only the preparation of the foundations and a coat of metal at that time.

3.11 Hau. No. 6 was also required to meet the whole of the cost of bringing the electric power reticulation from the Kuratau Power Station to the entrance to the Village, a distance of 6 kilometres, as well of course as the whole cost of the internal underground reticulation within the subdivision.

3.12 In November 1984 Hau. No. 6 presented to the Taumarunui County Council the overall concept plan for the whole of Whareroa Village, both the southern and northern sides. A copy of this concept plan is **attached and marked "C"**. From thence the scheme plan for the first two stages of

the subdivision on the southern side was approved on the 13 March 1986. An auction was held on the 26 April 1986 which resulted in the sale of 43 sections for an overall total of $1,540,600. This was enough to pay for the development costs of not only the internal subdivision costs, but also for 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 sections, not just the sections in the first few stages on the southern side.

3.13 In 1989, as a result of local body amalgamations at that time, the Taupo District Council took over the Whareroa Village area from the Taumarunui County Council, and I was present at a meeting held at Whareroa Village on the 24th August 1989 when the Mayor of Taupo and other Councillors were entertained by Hau. No. 6, shown over the Village and what had been achieved at that time, and presented with a report showing the precise details of the state of the subdivision at that time. This report included a copy of the concept plan provided to the Taumarunui County Council in November 1984, so there can be no question that Taupo District Council was not aware of the future intentions of Hau. No. 6. Also of course, the whole of the land in the Whareroa Village was zoned as Lakeshore Residential by the Taumarunui County in its District Scheme and this was taken over and adopted by the Taupo District Council. A copy of this report is **attached marked "D".**

3.14 Following the takeover by Taupo District Council, the development carried on relatively smoothly with the scheme plans for Stages, 3 to 7 being approved; the development work carried out, and sections sold. During the latter part of the 1990 decade, and the early years of the 2000 decade, the demand for sections dropped and it took a while to get Stages 6 and 7 completed. However, in 2000 the Council removed the Lakeshore Residential zoning from the Northern side, denigrating it to Rural, and later in 2008, brought in the SNA provisions in regard to the eastern portion of the area on the Northern side. This seriously affected Hau. No. 6, which pointed out the extensive reserve areas that it had already provided, and cost Hau. No. 6 a considerable amount in legal and other costs to save the situation. Then the Council adopted the Southern Settlements Structure Plan which included the Northern side at Whareroa as Future Urban. Appendix 1 to the Application, titled, Whareroa North project - key Milestones 2006 – 2017, sets out what Hau. No. 6 was required by Council to do, in order to satisfy it that the Northern side be developed into residential sections.

4. PPC36 APPLICATION

4.1 The current application for Private Plan Change was made by Hau. No. 6 at this time, because it appeared to be the only alternative open to it in order to get on with the development of the Northern side and in order not to waste the money already spent in preparation for that development and referred to in para 3.7 above.

4.2 Council seems to consider that there will be no demand for the sections to be provided on the Northern side, saying that this is because there are still 47 sections which have not yet been built on. All that I will say is that not one of these 47 sections is still owned by Hau. No. 6. All have been sold and the fact that they have apparently not yet been built on is nothing to do with Hau. No. 6, or the Council either, for that matter. Presumably the section owners are dutifully paying their rates.

4.3 Of course there is little demand at the present time. Hau. No. 6 has had no sections to offer for sale since Stages 6 and 7 were developed in the 2002 – 2004 period, and it cannot do any advertising of sections on the Northern side as that would be seen as presuming the outcome of this RMA process. If the Private Plan Change is allowed, and the land given residential zoning, then Hau. No. 6 can start doing preliminary advertising at the same time as applying for the appropriate

resource consents required for the first stage of the subdivision. This is all that Hau. No. 6 has been trying to do for the 16 years since 2004 and has been unable to do earlier because it has got nowhere with Council. If it is delayed any later, and Hau. No. 6 then has to proceed to another process to obtain the required zoning, then Hau. No. 6 runs the risk of losing all the money spent on professional reports referred to in Clause 2.5 above and having to start all over again.

4.4 If it should appear that because of Covid-19, demand for sections turns out to be low at the present time, then Hau. No. 6 will simply keep on with obtaining the resource consents for the bridge crossing, access road and the first stage of the subdivision, and then wait for demand to pick up before doing any physical development work on the ground. Once obtained, then the RMA provides that Resource consents can wait a minimum of 5 years before being exercised, and for longer periods if the Council agrees. At least with the zoning confirmed Hau. No. 6 will have some certainty that any further expense towards getting those consents is towards an achievable outcome. Already Hau. No. 6 has seen how the time delay requires more and more expert input to address change and update information.

4.5 Hau. No. 6 has a long history of developing and selling its sections at Whareroa in a staged and orderly manner, and its Committee does not envisage any difficulty in carrying on with this in the future. I would comment that the Covid-19 lockdown that we have all just experienced has brought home to a lot of people just how much more pleasant it is to have a slower and more peaceful life. They will also have discovered how easy it is to work from home. Having a home at Whareroa would be one way of being able to carry on with that experience, and yet still be able to use the amenities that are available in towns like Turangi, Taumarunui or Taupo when required. We have been reminded almost daily during the last few weeks, that there are now 5 million people in New Zealand. There will be only 160 new sections. If Hau. No. 6 cannot find 160 people out of 5 million to either buy or lease these sections, then something is seriously wrong. However, even if this should happen, then it will be Hau. No. 6 which suffers, not the Council.

5. IWI CONSIDERATIONS

5.1 As stated in Clause 4.1 all that Hau. No. 6 is trying to do is to resurrect the ancient village at Whareroa which was commenced about 250 years ago, and has existed almost continuously ever since. Hau. No. 6 has received nothing but encouragement from Iwi to carry on with its work, and this is evidenced by the submission from Kia Paranihi of Ngati Parekaawa (of the nearby Poukura marae).

5.2 The Tuwharetoa Trust Board ("TTB") has been, and continues to be, most sympathetic and supportive in the negotiations Hau. No. 6 has had with the Board in respect of the bridge crossing over the Whareroa Stream, and has agreed a mechanism that will allow for legal access across the stream and Council ownership of the bridge and infrastructure pipes.

5.3 Duncan McKenzie in his evidence will elaborate on any further evidence of Iwi support that may be required.

6. STAGING

6.1. Some of the submitters have expressed their concern that if Hau. No. 6 is allowed to continue with the Northern side, then that the Council will be required to finance a good deal of the development and that accordingly their rates will increase.

6.2 Hau. No. 6 has always made it perfectly clear to the Council, time and time again, that none of the actual physical development work will be undertaken unless and until Hau. No. 6 has sold sufficient sections to cover the cost. Hau. No. 6 has also made it very clear to Council that no part of the development cost will fall on Council, and in any case that is usually set out very clearly by Council when it approves and sets conditions for scheme plans for subdivisions. Hau. No. 6 has made it clear to Council that the development on the Northern side will proceed on the same orderly basis as the first 7 Stages on the Southern side, with development proceeding in Stages, and no physical construction work required by the Council in its scheme plan approval even commencing until sufficient sections had been presold to cover the cost. Obviously the section purchasers cannot be asked to pay anything more than a deposit on their purchase until all the construction works has been completed to the satisfaction of Council and the subdivision plans have deposited with LINZ and separate titles issued.

7. THE SUBMISSIONS TO THE PRIVATE PLAN CHANGE REQUEST.

7.1 My overall comment is that either the submitters have not read all of the documents attached to the Application, which emphasised that the development on the Northern side has always been contemplated right from day one, or have overlooked the planning status of the land that applied until 2000. They have also overlooked the concept plans since the 1980s that have shown the Northern side as the final part of the Whareroa Village.

7.2 I cannot accept the comments from some submitters that the facilities are not adequate for an increase of 160 sections. The facilities were always designed for the 360 or so sections that will complete Whareroa Village.

7.3 The two submitters who said that their parents were advised by Hau. No. 6 representatives at the auction on the 26 April 1986 that the development was limited only to the Southern side are completely wrong. I was present at that auction and can definitely say that no statement was made to that effect. A copy of the advertising material provided to prospective purchasers in regard to the auction is **attached marked "E".** In fact, I note in the minutes of a Committee meeting of Hau. No. 6 with the Real Estate auctioneers, held on the 4th March 1986 for the purpose of planning the auction, that the auctioneers were specifically told that "*any publicity material would have to be carefully worded so as not to give the impression that the subdivision was to consist of the Southern side only".* You will note that the copy of the scheme plan forming part of the advertising material shows the Whareroa Road as continuing on from the Southern side. Because the physical development work in Stages 1 and 2 was required to be completed before section purchasers could obtain title, and this took about 2 years, Hau. No. 6 issued Newsletters to purchasers, and copy of the Newsletter issued on 1 December 1988 refers specifically to planning in regard to the bridge crossing over the Whareroa Stream. Copy is **attached marked "F"**.

7.4 Hau. No. 6 has never made any secret of its overall concept plan for Whareroa Village. After the auction in 1986 and the physical development work commenced, Lewis Wilson was appointed Project Manager for the Village and occupied the house which Whareroa Station had moved to a site just at the entrance to the Village. He had an office which was open to the public and was available for consultation by the public. On a wall in that office he had on display an enlarged copy of the Concept plan, so that the intentions of Hau. No. 6 were publicly advertised at all times.

7.5 Another submitter inferred that the name Whareroa Village had been chosen by section purchasers. In fact the name Whareroa Village was chosen by Hau. No. 6 at a committee meeting on the 19th February 1986, and as you can see, was used in all of the publicity material.

7.6 Another submitter commented that the only people who will benefit from the proposal are those who will sell the land. Hau. No. 6 is not a faceless organisation - it has 236 shareholders who want to do the best for themselves and their families. These shareholders have already ensured that the general public has greatly benefited in the Reserves that have been created, and the facilities they have already installed at Whareroa Village. Why should these 236 shareholders have to prove that what they want to do will benefit other people besides themselves? Without their vision and commitment there would be no public access to the lake at Whareroa and no existing community.

8. COMMENT ON S.42A PLANNING REPORT

8.1 The planning report, and other evidence, all refer to there being an insurmountable legal problem facing access over the Whareroa Stream. That is just not correct. Hau. No. 6 has talked with the TTB who said from an early stage that they do not want to prevent access over the stream and that they will agree to either an easement or a licence to occupy for the bridge. What the TTB does not agree to is giving up ownership of the streambed, now that they have it back after so many years in Crown ownership. Hau. No. 6 has obtained legal advice from Grayson Neal which is a firm that specialises in Crown acquisitions and was very involved in legal arrangements that restored ownership of the bed of Lake Taupo and its tributaries to the TTB. Their verbal advice gave several options for legalising the access and we have received confirmation from TTB that they agree to those options and agree to working on the necessary terms for a formal Deed.

8.2 The details of the options will be in legal submissions on behalf of Hau. No. 6 but in summary:

a) The access rights and access ownership can be confirmed in a Deed between the parties that sets out the rights and obligations of everyone, being TTB; Hau. No. 6 and Taupo District Council. I understand that is also acceptable to NZTA for funding purposes and it is the mechanism that applies to allow the state highways to cross the various streams and rivers that are owned by TTB. A copy of the Deed between TTB and the Crown is **attached and marked "G".** Clause 2.4.1 of that Deed gives the Crown the right to occupy and use its existing structures and the right to repair, maintain and replace those structures and at clause 2.4.7 the Deed refers to Crown ownership of structures. Schedule 3 of the Deed lists numerous bridges and other structures that are vested in the Crown and Department of Conservation including road and foot bridges. If it is good enough for the Crown to negotiate a Deed of Agreement with the TTB that covers bridges then it should be good enough for Taupo District Council.

b) The area of the stream holding the bridge can be declared a Maori Roadway by the Maori Land Court under the Te Ture Whenua Maori Act 1993. The provisions of that Act mean that the Maori Roadway can effectively operate as a public road. I understand that there are provisions in the Local Government Act 1974 and the Land Transport Management Act 2003 that enable councils to do ongoing works and access funding for those maintenance, repair or improvement works on a Maori Roadway. That detail will be in our legal submissions on this issue.

c) My point is that there are mechanisms to surmount this "fundamental, irresolvable problem" described in the S.42A report and Council evidence and I am disappointed and surprised that the Council has not talked to the TTB about it and has been unable to find these options from its own legal research.

8.3 It was always our intention to work with TTB to get a formal agreement over that access. We intended to sort it out in detail with Council and the TTB after the rezoning was confirmed and after the further geotechnical investigation that will decide the exact location of the bridge. This is not an issue that we felt had to be finalised at this point before the rezoning is approved. We expect there would be a joint application to the Maori Land Court and see no reason that would not be supported given the support from the TTB and clear advantages to landowners that are tangata whenua.

8.4 We have requested confirmation of the options for legalisation of the bridge from the TTB and they have provided an email confirming that they agree, "in-principle", to the legal instruments proposed to secure bridge access to the proposed development at Whareroa North. TTB have agreed to this, by way of email on 28 April 2020. A copy of the letter sent to TTB outlining the legal instruments and the email response of TTB is **attached and marked "H"**.

8.5 The S.42A report suggests that there is no provision in the application for papakainga housing for the owners. This is simply because the development is not yet at a stage where papakainga housing can be provided. It has always been part of the long term plan that most of the sections in the development on the Northern side will be leased rather than sold, and papakainga housing or any other form of housing that will be affordable for shareholders will easily be able to be fitted into the development. I did not think papakainga housing was a type of residential development that needed to be specified in the application.

Merilyn Connolly

Secretary: Hauhungaroa No. 6 Incorporation

29 April 2020