

BEFORE

the Hearing Panel

IN THE MATTER

of the Pukehāngi Heights Streamlined Planning Process (**SPP**) under Part 5, Sub-Part 5 and Schedule 1 Part 5 of the Resource Management Act 1991 (the **Act**)

AND

IN THE MATTER

of Rotorua Lakes Council's Proposed Change 2: Pukehāngi Heights to the Rotorua District Plan

MEMORANDUM OF COUNSEL IN RELATION TO DRAFT REPORT

DATED 1 DECEMBER 2020

LARA BURKHARDT
Barrister & Solicitor

PO Box 4432
Mount Maunganui South 3149

Telephone: +64 7 575 2569
+64 27 222 8656

Email: lara@laraburkhardt.co.nz

COMMENTS ON DRAFT REPORT

1. In accordance with the Minister's Direction, the Hearing Panel's Draft Report dated 17 November 2020 has been provided to the parties for comment before it is finalised.
2. This memorandum responds to that direction on behalf of Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and Te Arawa Lakes Trust (**Trust**). It is acknowledged that the scope of comments is limited to identification and correction of minor or technical errors or omissions only.
3. Comments are made in relation to three matters:
 - (a) Amendments to the non-notification rules A5.2.3.2, A5.2.4.2 and A5.2.5.2 (Appendix 2 to Draft Report);
 - (b) The notation "Potential lower catchment stormwater attenuation" on the Pukehāngi Heights Structure Plan (Appendix 3 to the Draft Report); and
 - (c) Two statements made in the Nutrient Management section of the report (at paragraph 75 of the Draft Report).

Non-notification rules

4. The Draft Report includes a section 'Principal Issues Raised'. Four issues are identified (along with 'Other Matters'). These topics are reflected in Rotorua Lakes Council's closing submissions. Council also provided reply evidence from s42A planner, Craig Batchelor which set out the additional changes Council supported following the hearing of submissions.
5. In addressing each of the Principal Issues, the Draft Report notes the Council's position and proposed amendments to provisions. A finding is then made as to whether those changes are appropriate together with any further amendments recommended by the Hearing Panel.

6. In relation to the issue headed 'Cultural Sites, Consultation and Notification', the Draft Report records out at paragraph 89 that:

"...RLC has agreed to amend the PC2 stormwater provisions to, amongst other things:

- Link consultation outcomes with Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue (as represented by Te Komiro o te Utuhina or its successor), and Te Arawa Lakes Trust directly to the preparation of the Stormwater Management Plan;
- Add additional requirements to the protection of Cultural Identity and Sites of Archaeological or Cultural Importance including wider requirements of consultation, recognising cultural landscape and downstream sites and values, protocols and processes for discoveries, and more explicit measures for protection and recognition of cultural sites and archaeological sites at development stages;
- Add a cultural historic heritage inventory;
- Amend the non-notification rules to require written approval from Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue (as represented by Te Komiro o te Utuhina or its successor), and Te Arawa Lakes Trust, for applications that relate to culturally significant sites, downstream water quantity, downstream water quality or Lake Rotorua water quality;
- Make minor amendments to the structure plan to refer to cultural sites and archaeological sites."

7. The Draft Report goes on to record in the next paragraph that:

"We find those amendments to be appropriate. However, we have made several further amendments to the use of te reo Māori to reflect the use of appropriate macrons."

8. Mr Batchelor sets out in his reply evidence the track-changes to the non-notification rules A5.2.3.2, A5.2.4.2 and A5.2.5.2 that reflect the fourth bullet point above, as follows:

"Non-Notification

Any application for resource consent for the activities listed in Table A5.2.3.1 a 4 - 11 shall be considered without public or limited notification ~~or the need to obtain the written approval from affected parties~~ if the Land Use and/or Subdivision are consistent with the ~~principles of the Pukehāngi Development Area Structure Plan~~ Pukehāngi Development Area Structure Plan and Performance Standards, with the exception that:

a. any applications that relate to that has potential effects on culturally significant sites, downstream water quantity, downstream water quality or Lake Rotorua water quality will require the written approval of Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue (as represented by Te Komiro o te Utuhina or its successor), and Te Arawa Lakes Trust in order to proceed without limited notification."

9. Appendix 2 of the Draft Report however records clause a. in the above rules as follows:

“a. Applications that are inconsistent with the SMP prepared by Rotorua Lakes Council under Policy 2a.1 will require the written approval of Te Rūnanga o Ngāti Kearoa Ngāti Tuarā Trust, Ngāti Whakaue (as represented by Te Komiro o te Utuhina or its successor), and Te Arawa Lakes Trust in order to proceed without limited notification.”

10. Appendix 2 does not accurately reflect the Hearing Panels findings at paragraph 90 of the Draft Report and is therefore an error which Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and the Trust consider to have significant implications in terms of their respective interests and involvement in the plan change.
11. Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and the Trust consider that the wording for non-notification rules A5.2.3.2, A5.2.4.2 and A5.2.5.2 as attached to Mr Batchelor’s reply evidence accurately reflects the Hearing Panel’s recommendations and should be inserted in Appendix 2 to correct this error.

Structure Plan notation

12. Paragraph 48 of the Draft Report states:

“...the development of Pukehāngi Heights and the provisions of PC2 must ensure that the additional stormwater generated by that development is managed and controlled on-site so as to not exacerbate the already dire downstream flooding problem”.

13. Having regard to the statement that stormwater mitigation must be onsite with no downstream increase in flooding, Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and the Trust consider the notation “Potential lower catchment stormwater attenuation” which appears in three places on the Pukehāngi Heights Structure Plan should be removed as a minor error. The Hearing Panel may also wish to consider if the two “Potential upper catchment stormwater attenuation” notations shown on the Structure Plan, but outside of the structure plan area, have also been included in error.

Nutrient Management

14. Paragraph 75 of the Draft Report states:

“As notified, PC2 already contained provisions dealing with the nutrient management issue. Performance standards required provision of a nutrient management plan at the time of subdivision to confirm the NDA of the parent site, calculate the nitrogen losses from the proposed development, and set out the manner in which any shortfall would be addressed. Amendments were sought by submitters, particularly BoPRC. RLC has recommended refinement of the provisions in response to submissions and we agree that those refinements are appropriate.

15. The opening statement that *‘As notified, PC2 already contained provisions dealing with the nutrient management issue. Performance standards required provision of a nutrient management plan at the time of subdivision...’* is incorrect. The notified version of the plan change did not address nutrient management for Lakes Water Quality. The only place nutrients were mentioned was in Policy 2.2 in relation to the nutrient management benefits of revegetation.

16. In addition, the omission of reference to Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and the Trust in the statement that *‘Amendments were sought by submitters, particularly BoPRC’*, is incorrect given the importance of this issue to these submitters and their efforts throughout the plan change process to ensure this matter is adequately addressed. The following sentences are suggested to correct these errors.

“As notified, PC2 did not address nutrient management other than through policy for the partial revegetation of the Mid-site Escarpment”

“Amendments were sought by submitters, particularly BoPRC, Te Arawa Lakes Trust, Ngāti Kearoa Ngāti Tuarā and Ngāti Whakaue to ensure that the Plan Change adequately addressed nutrient management in order to contribute to achievement of Lake Rotorua water quality objectives.”

DATED 1 December2020

Lara Burkhardt

Counsel for Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, Te Arawa Lakes Trust