

Under the Resource Management Act 1991

And

In the matter of Proposed Plan Change 2 to the Rotorua District Plan

**OPENING LEGAL SUBMISSIONS OF COUNSEL
ON BEHALF OF ROTORUA LAKES COUNCIL
Dated 21 September 2020**

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INTRODUCTION

1. The Rotorua Lakes Council (the Council) proposes a change to the Operative Rotorua District Plan (District Plan) to enable residential development to occur in the Pukehangi Heights Development Area (Development Area).
2. The primary purpose of Plan Change 2 is to meet the Council's obligations under the National Policy Statement for Urban Development Capacity 2016, which was recently replaced by the National Policy Statement for Urban Development 2020 (NPS-UD), to increase the immediate and longer-term supply of land to improve the affordability of housing. For this reason, the Streamlined Planning Process was requested. The Minister's Statement of Expectations records that:

The recommended Plan Change 2: Pukehangi Heights should provide sufficient development capacity for a minimum housing yield of approximately 790 dwellings, comprising a mix of densities and typologies that will meet demand, while recognising the constraints that apply to the land that is subject to the rezoning.

3. The challenge for the Council, and for you as the Hearing Panel, is to fulfil the requirements of the NPS-UD in a way which also:
 - (a) Recognises and provides for the relationship of mana whenua with their waahi tapu and other taonga;
 - (b) Achieves the objectives and policies of the Bay of Plenty Regional Policy Statement (RPS) in terms of water quality and quantity, and natural hazards; and
 - (c) Achieves the objectives and policies of the District Plan in terms of mitigating potential effects on traffic and landscape and amenity values.

THE CURRENT ZONING OF THE LAND

4. Future residential zoning of the Development Area has been identified in the District Plan since 2016. In particular:
 - (a) The majority of the Development Area is identified as a “Future Growth Area” and is currently zoned Future Residential 1 and Future Rural 2 in the District Plan. These zones enable subdivision to occur as a controlled activity once a “Development Plan” has been approved by Council (as a discretionary activity). Subdivision without a Development Plan is a non-complying activity.
 - (b) The remainder of the Development Area adjacent to Matipo Avenue is currently zoned Residential 1 and Rural 2 but is subject to the “Twin Oaks Development Plan” which enables the creation of 20 residential lots on the Residential 1 zoned part of the site, and a retirement facility consisting of 120 residential units and a 30-bed hospital on the Rural 2 zoned part of the site.

5. It is the Council’s submission that retaining the current zoning of the Development Area fails to meet the Council’s obligations under the NPS-UD, the RPS and the District Plan as it:
 - (a) Results in applications for subdivision consent being considered on an “ad hoc” basis without the benefit of a specific framework or structure plan to enable a high level of urban amenity, and the integrated management of potential environmental effects;
 - (b) Involves a two-stage process requiring approval of a development plan which affects the activity status of subdivision; an approach which has been held to be ultra vires by the Environment Court in the context of other district plans which did not clearly align the resource consent process with a use or development of land¹;

¹ *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2014] NZEnvC 93.

- (c) Imposes disproportionate obligations on landowners to meet the requirements of servicing development, without the ability to consider servicing in a comprehensive and integrated manner across the Development Area; and
- (d) For the above reasons, is unlikely to result in an efficient and co-ordinated supply of residential land in the short to medium term.

THE PROPOSED PLAN CHANGE

- 7. The Council's reporting planners have provided a detailed description of Plan Change 2 in their s32 evaluation, and the s42A report prepared for this hearing; this will be summarised by Mr Craig Batchelar today.
- 8. In essence, Plan Change 2 provides a framework, in the form of a structure plan, objectives, policies, performance standards and assessment criteria, to guide the future development of the Development Area in respect of landscape management, urban design, access and connectivity, and stormwater infrastructure.
- 9. In the Council's submission, the Plan Change is the most efficient and effective means of meeting the Council's obligations under the Resource Management Act 1991 (RMA), the NPS-UD, the RPS and the District Plan. A comprehensive evaluation as required by s32 and s32AA of the RMA is provided in the Council's s32 and s42A reports. For the purpose of these submissions, I wish to focus on the following key issues which are raised in submissions on the Plan Change:
 - (a) Appropriate protection of cultural sites and waahi tapu;
 - (b) Stormwater management and potential downstream effects;
 - (c) Nutrient management as a result of the change of land use;
 - (d) Traffic effects; and
 - (e) Effects on landscape and amenity values.

PROTECTION OF CULTURAL SITES AND WAAHI TAPU

10. The Council commissioned an archaeological assessment of the Development Area, and a cultural impact assessment. These assessments record that a number of cultural sites are located within the Development Area, and that there is a strong cultural association with the area. Plan Change 2 provides an opportunity for this cultural relationship to be better recognised and provided for than would be the case under the current District Plan provisions. In particular:
 - (a) A specific policy is proposed to ensure that subdivision, use and development expresses the cultural history and identity of tangata whenua, recognises and protects the values of cultural sites, and that consultation takes place with tangata whenua through the design and planning stages of development (Policy 2.9);
 - (b) Restricted discretionary subdivision rules where the subdivision site includes an archaeological or cultural site (A5.2.3.1.11 and A5.2.4.1.7); and
 - (c) Performance standards that require resource consent applications to identify how archaeological and cultural sites will be protected, including provision for access by tangata whenua (A5.2.3.4.10 and A5.2.4.4.6).
11. A number of prehearing meetings have taken place between Council and iwi representatives, and changes to the Plan Change have been recommended as a result of these meetings.

STORMWATER MANAGEMENT AND POTENTIAL DOWNSTREAM EFFECTS

12. The Pukehangi Heights Development Area lies within the Utuhina Stream Catchment. Changing the land use from rural to urban will increase the volume of stormwater flows from the site due to an increase in impervious surfaces.
13. The RPS requires that the Plan Change:

- (a) Adopts an integrated approach to resource management (Policy IR 3B);
 - (b) Gives regard to the cumulative effects of development (Policy IR 5B); and
 - (c) Achieves a low natural hazard risk after completion of development (Policy NH 4B).
14. This Plan Change forms part of a bigger picture in terms of the management of stormwater within Rotorua. The Council holds comprehensive stormwater discharge permits for the Rotorua district, including the wider Utuhina catchment. Council is currently preparing a "Stormwater Masterplan" which will inform both the renewal of its comprehensive stormwater discharge consents and the programming of infrastructure works within the district. The Council may choose to renew its discharge permits on a catchment basis, which will enable it to prioritise particular catchments within the district. The progress of these processes has the potential to affect the management of stormwater at the time of development within the Pukehangi Heights Development Area.
15. In addition, stormwater discharge permits will be required from the Regional Council under the Regional Natural Resources Plan (Regional Plan) for development within the Development Area, reflecting the Regional Council's functions in respect of water quality and quantity.
16. Plan Change 2 requires that, before subdivision and development can take place within the Development Area, the following processes are required:
- (a) A flood risk assessment using a catchment-wide model to show that risk is not increased to downstream urban areas (Policy 3.1). The performance standards require this assessment to be undertaken in accordance with the RPS Appendix L – Methodology for Risk Assessments (A5.2.3.4.8 and A5.2.4.4.5).
 - (b) Preparation of a stormwater management plan guided by Policy 2.3 and containing the details expressed in the performance standards (A5.2.3.4.7 and A5.2.4.4.7).

- (c) The Structure Plan shows indicative areas for stormwater detention and overland flow paths. Detailed design is required before subdivision and development can occur.
17. Submissions on Plan Change 2 requested that Council carry out modelling as part of the plan change process to provide confidence that stormwater can be managed in a way that ensures no downstream adverse effects. This modelling has been carried out collaboratively by Mr Liam Foster of WSP on behalf of Council and the Regional Council and has been the subject of expert caucusing (as recorded in the Joint Witness Statement – Stormwater, dated 1 September 2020).
 18. In carrying out the modelling, Mr Foster has endeavoured to incorporate the design parameters requested by the Regional Council, with the result that the modelling contains conservative assumptions which Council has accepted as appropriate at the plan change stage.
 19. The conclusions of Mr Foster are set out in his updated Stormwater Report, dated 14 September 2020, and will be summarised by Mr Foster in evidence. In summary, Mr Foster concludes that the proposed stormwater design, which includes dry detention basins, is appropriate for managing stormwater runoff from the area and can service the development in a way that has minimal effects downstream.
 20. Council has engaged Mr Mark Pennington of Tonkin & Taylor to peer review the stormwater assessment. Mr Pennington confirms that the proposed stormwater concept represents one way of managing stormwater from the site. Mr Pennington emphasises that it is important that Plan Change 2 is not unnecessarily prescriptive regarding the management of stormwater, as other on-site or off-site options may be available by the time subdivision consents are sought and then implemented. This is particularly the case given the work currently being carried out by Council as part of its Stormwater Masterplan.

NUTRIENT MANAGEMENT AS A RESULT OF A CHANGE OF LAND USE

21. The Regional Council has expressed concern that the proposed change of land use in the Development Area from rural to urban has the potential to increase the discharge of nutrients to Lake Rotorua. Like stormwater, Plan Change 2 is part of a much larger picture in respect of water quality within the Lake Rotorua catchment. This includes:
- (a) Plan Change 10 to the Regional Plan. The majority of Plan Change 10 provisions became operative three months ago as a result of the issue of an Environment Court Consent Order on 2 June 2020 (June Consent Order)². These provisions are designed to reduce nitrogen loss from pastoral activities within the catchment's rural area; they do not regulate subdivision of rural land less than 5 hectares.
 - (b) The need for the Regional Council to implement a Nitrogen Accounting System to enable the transfer of Nitrogen Discharge Allocations required under Plan Change 10.
 - (c) The Council's discharge permit for its wastewater treatment plant which allows the discharge of nutrients from the Council's reticulated sewerage system. This permit expires next year. A resource consent application to replace this permit will be lodged with the Regional Council within the next few months.
22. The Court's issue of the June Consent Order and the very recent conclusion of the second hearing on the Plan Change 10 appeals, is likely to result in the notification of a plan change to the District Plan to ensure alignment between the Regional and District Plans on nutrient management.
23. While a consistent approach through a district-wide plan change is preferred, Council accepts that it is appropriate for provisions relating to nutrient management to be

² The Consent Order is signed and dated Friday 29 May 2020, but was formally issued to the parties on Tuesday 2 June 2020 following the Queen's Birthday public holiday on Monday 1 June 2020.

considered for inclusion in Plan Change 2 following the issue of the June Consent Order on Plan Change 10. If necessary these provisions can subsequently be updated as part of a district-wide plan change at a later date.

24. Accordingly, Council's s42A report recommends including in Plan Change 2:
- (a) An objective and policies to ensure that subdivision and development is designed to avoid exceeding the nutrient limits of the land, unless nutrient losses can be offset (Objective 5 and Policies 5.1, 5.2 and 5.3); and
 - (b) Performance standards for subdivision which require the provision of a Nutrient Management Plan enabling calculation of nitrogen losses and the identification of any offsets (A5.2.3.4.14 and A5.2.4.4.10).

TRAFFIC EFFECTS

25. The proposed policies for the Pukehangi Heights Development Area provide for:
- (a) An indicative internal primary road network;
 - (b) Appropriate locations for new intersections onto Pukehangi Road and Matipo Avenue; and
 - (c) Walkways and cycleways within the Development Area, and along Pukehangi Road.
26. The potential traffic effects of development have been assessed for the Council by Grant Smith of Stantec. His conclusion is that the increase in traffic volume from development will not have adverse effects with one exception: The intersection of Malfroy and Old Taupo Road will be close to, or at, capacity with household growth from the development of Pukehangi Heights and other areas. The upgrade of this intersection is already planned by Council.

27. A number of submitters have raised concerns regarding potential traffic effects within the Development Area. While Plan Change 2 provides indicative locations for traffic flows and connectivity within the Development Area, more detailed assessment will take place at the time of subdivision consent. In particular:
- (a) Policies ensure that construction and development traffic maintains connectivity, safety and amenity (Policy 2.4); and
 - (b) Specific performance standards limit the use of Matipo Avenue (A5.2.3.4.11 and A5.2.4.4.7).

LANDSCAPE AND AMENITY VALUES

28. The Council engaged Boffa Miskell to carry out a landscape and visual effects assessment of the Development Area. Based on that report, the Structure Plan identifies the areas that are appropriate for residential use and those areas, such as the more prominent mid site escarpments, which require careful design in order to mitigate potential visual effects.
29. Plan Change 2 seeks to ensure that development achieves a high quality outcome by:
- (a) Including objectives and policies identifying the landscape values that are to be protected for each part of the Plan Change (Objective 1 and Policies 1.1 to 1.9);
 - (b) Including specific performance standards to mitigate potential visual effects such as reducing reflectivity (A5.2.3.3.7 and 8 and A5.2.4.6 and 7); and
 - (c) Requiring a landscape assessment as part of an application for subdivision consent (A5.2.3.4.4 and A5.2.4.4.3).

CONCLUSION

30. The Council seeks the Hearing Panel's recommendation that Plan Change 2 be adopted in the form attached to the Council's s42A report together with those further amendments to be addressed by the Council's witnesses in evidence.
31. The Council wishes to call the following witnesses to present a summary of their evidence and/or reports:
 - (a) Mr Craig Batchelar, planner of Boffa Miskell and co-author of the s42A report;
 - (b) Mr Liam Foster, stormwater engineer of WSP and author of the Stormwater Report;
 - (c) Mr Mark Pennington, stormwater engineer of Tonkin & Taylor, who provided a statement of evidence dated 14 September 2020.
32. In addition, the following people are available at the hearing today to answer the Hearing Panel's questions:
 - (a) Ms Kate Dahm, Team Lead Planning of Council and co-author of the s42A report;
 - (b) Ms Kim Smith, Senior Policy Advisor of Council and co-author of the s42A report;
 - (c) Mr Jean-Paul Gaston, Group Manager, Strategy of Council, who provided a statement of evidence dated 21 August 2020; and
 - (d) Mr Grant Smith, traffic engineer of Stantec, the author of the traffic assessment forming part of the s42A report.

Dated 21 September 2020

Theresa Le Bas Wendy

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