

**IN THE MATTER: of the Resource Management Act 1991 (RMA)**

**AND**

**IN THE MATTER: Proposed Plan Change 2:  
Pukehangi Heights to the Rotorua District Plan  
under Part 5, Sub-Part 2 – Streamlined Planning  
process and Schedule 1 Part 5 of the RMA**

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**STATEMENT OF EVIDENCE OF REYNOLD JOHN SINCLAIR MACPHERSON ON BEHALF OF  
ROTORUA DISTRICT RESIDENTS AND RATEPAYERS INC. 23 September 2020**

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## **STATEMENT OF EVIDENCE OF REYNOLD MACPHERSON**

### **INTRODUCTION**

1. My fullname is Reynold John Sinclair Macpherson.
2. I am a co-founder of the Rotorua District Residents and Ratepayers Inc. (RDRR). It was established on 25 September 2015 to defend Rotorua citizens' rights to democratic local government and to promote fiscal responsibility and legal procedure in local government. It aims to make Rotorua a better place for everyone. It currently has about 660 members and associates, and 2,403 followers on Facebook.
3. I was asked on 26 August 2020 by the Chair and Executive Committee of RDRR to review responses to the RDRR's initial submission by Linda Rowbotham<sup>1</sup> because she is leaving Rotorua. I was also asked to consult as best I could, consider the views of other submitters and to report findings to these Hearings. The task was completed in haste.

### **QUALIFICATIONS AND EXPERIENCE**

4. My qualifications include a BA (OU) in mathematics and management, a postgraduate DASE (Reading) in education, an MAdAdmin (UNE) in institutional governance and management, a PhD (Monash) in system governance and leadership, and a PGDip (Waikato) in business studies.
5. I am a specialist in organisational reform. Prior to retirement I served as a professor at the University of Auckland, CEO of Waiariki Institute of Technology, Foundation Chancellor and CEO of Abu Dhabi University, and as a senior governance and management advisor to three ministerial system reforms and to a number of international taskforces.
6. I therefore appear as a non-expert representative of RDRR's members and associates. I have no prior learning or experience of rezoning or resource consenting in local government. As an elected member of Rotorua Lakes Council (RLC), I have requested but not been given RMA training. I therefore present provisional evidence based on opportunistic consultations of members and some of Rotorua's leading developers not represented at these Hearings, desktop research, and rapid analyses of many expert presentations to the Hearings. Please forgive my inevitable misunderstandings.

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<sup>1</sup> 20 February 2020.

## GENERAL POSITION

7. The RDRR continues to take the general view that Rotorua District has long needed additional residential zoned land. The proposed rezoning is considered broadly appropriate. It could enable the future growth of our community and economy, most especially by boosting supply, hopefully moderating prices and helping sustain churn in the housing market in the Covid-19 context.
8. RDRR's general recommendation is that the proposed Plan Change 2 (PC2), as introduced by the S42A Planning Report,<sup>2</sup> should proceed, but only if our concerns are addressed to the satisfaction of expert Commissioners.
9. RDRR endorses Kathleen Thiel-Lardon's "a long-term risk management perspective, including climate change, residual risk and having a 'no risk' precautionary approach to risk and uncertainty."<sup>3</sup> Especially, as Nathan Te Pairi put it,<sup>4</sup> with regard to flooding in the Utuhina catchment, "none of this work [in the BOPRC and RLC] is significantly progressed to provide the necessary level of certainty that off-site mitigation options could be relied upon for the plan change."

## NATURAL HAZARDS

10. RDRR accepts Mark Ivamy's Statement on behalf of the Bay of Plenty Regional Council (BOPRC)<sup>5</sup> that reported acceptable risk assessments for landslip and liquefaction, providing more detailed geotechnical and design information are provided at the subdivision stage.
11. It also accepts that his preliminary flood risk assessment *did not confirm* that PC2 *would not* increase the flood risk outside the Pukehangi development site. It is essential, in RDRR's view, to use a double positive, ensure that mitigations seek to prevent or at the very least, do not make worse the already dire flooding risks in the lower Utuhina Basin.
12. This position coheres with local knowledge. For example, the recent clearance of Mangakakahi Stream by the BOPRC is not believed to guarantee adequate flood flows under Sunset Road and Old Taupo Road. Business owners in Riri Street and adjacent streets believe that the maximum potential flow under those bridges continues to be so restricted

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<sup>2</sup> 17 February 2020.

<sup>3</sup> 18 September 2020.

<sup>4</sup> 18 September 2020.

<sup>5</sup> 18 September 2020.

as to be the predictable cause of future back up and the repeat flooding of businesses in the area. RDRR suggests that the capacity of flood flows under Sunset Road and Old Taupo Road be checked in the light of potential extreme weather events.

13. Corrected information on downstream effects was provided in the updated Stormwater Report by Katrina Dahm<sup>6</sup> and later confirmed by Phillip Wallace<sup>7</sup> who opined that “mitigation options in Scenario 15 will lead to a general decrease in peak run off and in peak flood levels and velocities downstream of the Proposed Plan Change Area.” (p. 6)
14. Based on the effects’ assessments presented about on-site mitigation modelled under Scenario 15, as advanced by the RLC, RDRR provisionally considers that PC2 can result in no increase to flood risk outside of the Development Site.
15. This would also give effect to RPS Policy NH 4B regarding approval. Given the inevitable degree of error in estimates, however, RDRR suggests that the proposed development should be held to a reasonable standard, that is, that on-site, upstream and and downstream mitigations should together be expected to help prevent and significantly lessen flooding in the lower Utuhina Basin.

## SEDIMENT

16. Mitigation plans do not appear to anticipate sediment runoff problems. The mitigations recommended on pp. 62-3 of WSP’s Stormwater Report<sup>8</sup> are welcomed, specifically to do with ‘first flush’ and detention methods and overland flow refinements.
17. There is an *a priori* and unaddressed problem. When the groundwork started in ‘Sunny Downs’ on Pukehangi Road about two years ago, there was a build up in silt and debris in the Benvale pond between Rimuvale and Tawavale Streets. Ben Benfield had to clean it out at personal expense so that the natural flowpaths could be restored.
18. RDRR was therefore pleased to note in the Stantec Report to Council (p. 11),<sup>9</sup> that Construction Management Plans will be needed as part of resource consents prior to the approval of subdivisions, and will “cover such items as access, times of operation, dust and noise control.” We suggest that sediment runoff management be added to the list.

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<sup>6</sup> 14 September 2020.

<sup>7</sup> 18 September 2020.

<sup>8</sup> 14 September 2020.

<sup>9</sup> August 2020.

## **GUIDANCE FOR DEVELOPERS**

19. The RDRR was repeatedly made aware of the impediments that developers and their contracted consultants face when submitting applications to the RLC. They commonly face years of delays and what appears to be arbitrary unwillingness by officials to clarify their expectations. A central theme is the near absence of systematic guidance on process and criteria for some applicants in sharp contrast with active support provided to others.
20. It would be immensely helpful to the Rotorua community if the Commissioners could standardize appropriate approval procedures and standards and insist on the political neutrality of officials as they clarify their recommendations regarding PC2 to the Minister.

## **ANOMALIES REQUIRING POLICY INNOVATION**

21. Two policy anomalies confronted the RDRR. The first is where Ngāti Kearoa Ngāti Tuarā still seek access to Pukehangi Pa (and urupa) for profoundly important spiritual and cultural reasons, but which is surrounded by a gated community established over a decade ago, apparently denying them basic human rights. This is unacceptable.
22. The second is where RLC has proposed a series of retention ponds covering up to 16 hectares within the proposed PC2 site, at significant cost to developers, without exploring fewer and larger retention dams upstream from the PC2 site. This is unacceptable.
23. The common factor is that these potential innovations of significant spiritual, cultural and commercial importance are outside the scope of a PC2 determination but which presumably could be referred to the BOPRC and RLC by the Commissioners for urgent policy consideration.

## **HOUSING DENSITY AND DECISION MAKING**

24. The plans propose a mix of low and medium density housing and larger-lot residential housing, along with small-scale commercial centres.
25. It is still not clear to RDRR how these different densities will be defined and how they are to be regulated and distributed in each development and across all projected 700-900 houses. RDRR does not have the expertise to advise regarding 'pre-intensification' subdivisions.

26. On the other hand, RDRR understands that if the rezoning application is favorable, then Construction Management Plans will be provided as part of resource consenting prior to the approval of subdivisions.

27. The consequential challenge to RDRR, and to the leading developers consulted, is that the role, sequence, criteria and processes, and relationships between the long promised Stormwater Master Plan, the Structure Plan, the PC2 Construction Management Plans, the PC2 Stormwater Management Plan and the operative District Plan are not clear, lack coherence and impede development. It is considered crucial by the RDRR that the PC2 Commissioners provide clarity in this matter and recommend coordinated Organisation Development in the BOPRC and RLC to remove forever this organizational congestion.

### **PROVIDING FOR TANGATA WHENUA AS AFFECTED PARTIES**

28. Katrina Dahm's Correction to Section 42a Report<sup>10</sup> recommended new wording to create an exception, specifically that "any application 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, and Te Arawa Lakes Trust in order to proceed without limited notification.

29. RDRR's first concern, with great respect to mana whenua, is that the ambiguity of "potential effects" could unintentionally create a low bar enabling vexatious interventions and gaming that could in turn introduce additional costs, retard housing developments and enable discord, contrary to the public interest.

30. RDRR's second concern, shared by Rowan Little on behalf of the Hunt Family submission (para 43),<sup>11</sup> is that "matters of water quantity, water quality and Lake Rotorua quality currently fall outside the jurisdiction and functions of RLC as a territorial authority and what RLC is able to consider in regards to the effects of a land use or subdivision consent. These matters or functions rest with BOPRC as a Regional Council." RDRR also supports Little's subsequent arguments (paras 44-52).

31. RDRR therefore recommends that Katrina Dahm's Correction not be accepted for fear of creating another area of wasteful and dysfunctional contestation between BOPRC and RLC officials.

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<sup>10</sup> 14 September 2020.

<sup>11</sup> 18 September 2020.

## **TRAFFIC CONGESTION AND DANGER POINTS**

32. The RDRR acknowledges the comprehensive response to its concerns about traffic dangers in the Stantec Report to Council (pp. 10-14).<sup>12</sup> It provisionally accepts the expert advice about potential impacts of additional traffic on roading networks at various times of the day and near schools, providing these issues continue to be monitored.
33. It also acknowledges Duncan Tindall's statement for Waka Kotahi (NZTA),<sup>13</sup> most especially his advice that "the Malfroy Road / State Highway 5 intersection is the only location where I have identified an adverse effect, and this is consistent with the commentary in the s32 report."
34. It is therefore of great interest to RDRR that the long-recommended widening of the Malfroy/ SH5 intersection is endorsed through the RLC's Long-Term Plan process and funded by NZTA. It similarly suggests that the need for additional traffic management aids (such as lights and roundabouts), and the value of slip lanes (off Pukehangi Road into Devon, Malfroy, Sunset, Hodgkins, Bloomfield and Clayton Roads), be kept under review.
35. Local residents, however, suggest that fresh attention be paid to the problem of vehicles commonly exceeding the speed limits down the hill on Pukehangi Road from Luxor Place past the T junction with Devon Street West and on to the Utuhina Stream bridge. The recently installed pedestrian crossing points have not slowed traffic at all and the dangers will only be intensified by additional traffic coming from the proposed Pukehangi housing developments.
36. An additional source of danger is when drivers and pedestrians are blinded when they look up the hill from the West Devon Street T junction with Pukehangi Road into the setting sun. RDRR suggests that the combined dangers of speeding and sun strike be mitigated by the Commissioners recommending that speeding limits be lowered or a roundabout be installed.

## **MATIPO AVENUE CONSTRUCTION ACCESS**

37. RDRR supports Te Arawa Group Holdings (TAGH) Ltd.'s request for an amendment to subdivision performance standards to enable Matipo Avenue to be considered as one of a

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<sup>12</sup> August 2020.

<sup>13</sup> 18 September 2020.

range of options for construction traffic. Michael Norman noted<sup>14</sup> that there were no traffic engineering reasons, including safety, that should “exclude Matipo Avenue as an option for construction traffic that could not be managed by a typical construction traffic management plan.”

38. It is also considered reasonable by RDRR to remove the potential reliance on getting third party approval for access or gaining access to the site with high environmental impacts. On the other hand, RDRR requests that the construction traffic management plan have sunset clauses to ensure that Matipo Avenue returns to being a cul-de-sac when it has finished serving as a construction access road.

## STORMWATER

39. The continuing absence of a completed Rotorua District Stormwater Master Plan continues to mean that there is no surety that two sets of projections can be integrated in practical ways to actively help prevent flooding in the lower Uthina Basin:
- a. stormwater flow management in a context of increasingly extreme climate changes, and
  - b. the further development and maintenance of stormwater infrastructure for PC2 and downstream in the Uthina Basin.
40. The RDRR is therefore ambivalent about the professional opinion of Mark Pennington (p. 2)<sup>15</sup> that “there has been sufficient analysis and investigation undertaken for the proposed plan change to give confidence that potential adverse flood and stormwater effects can be mitigated on site. Furthermore, I think it is important to allow flexibility in delivery of final detailed design to ensure that efficient approaches are adopted.”
41. This professional opinion may be warranted but lacks the evidence in the submission to sustain the two conclusions offered. RDRR takes the view that integrated mitigations should be considered urgently onsite, upstream and downstream. It is not sure what ‘flexibility’ means in this context but would be dismayed if it meant further delays to publication of the Stormwater Master Plan.
42. Liam Foster’s expert evaluation of proposed dry retention basins<sup>16</sup> was more convincing because they were considered as being “of a scale that is appropriate for not worsening the

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<sup>14</sup> 18 September 2020.

<sup>15</sup> 14 September 2020.

<sup>16</sup> 14 September 2020.



flood risk downstream. The devices are appropriate to the proposed land use change context, and consistent with the skills and resources of the maintenance personnel available to Council.” Again, given the inevitable errors in measurement, RDRR regards ‘not worsening the flood risk downstream’ as an appropriate and absolute minimum standard with self-evident potential for prevention and improvement.

43. The other point here is that Foster’s evaluation of the level of detention required was based on multiple trials and multiple measures using parameters agreed *a priori* with BOPRC staff. This action research will presumably be extended through further investigations during the detailed design of stormwater mitigations for future subdivisions and during Phase 2 of the Council’s Stormwater Master Plan’s development. This approach is highly commended for its learning methodology and the ongoing contribution it could make to the growth of knowledge about preventing flooding downstream.
44. It follows that RDRR is not uncritically supportive of David Marshall’s proposal on behalf of Te Arawa Lakes Trust<sup>17</sup> - that development should reduce the level of nitrogen within the nutrient limits of the land, reduce the level of nutrients entering Lake Rotorua and thereby contribute to water quality improvements in Lake Rotorua.
45. One reason is that I was confused by Joanne Watts’ presentation about best to measure nutrient discharge before and after the Pukehangi development, and manage a Nitrogen Discharge Allocation Plan for the site, consistent with the Environment Court’s interim decision on PC10 on 9 August 2020.
46. RDRR’s view is that inclusive policy making and self-managed implementation (reinforced by standards, systematic measurement and incentives) tend to be more effective at achieving long-term improvements than command systems. It is because normative/ re-educative processes tend to achieve transformational cultural change in New Zealand organizations far more effectively than power/ coercive and empirical/ rational methods on their own.

## A LEARNING METHODOLOGY

47. RDRR would therefore appreciate its understanding of the Council’s Stormwater Master Plan process being confirmed. Phase 1 involves conceptual alternatives being assessed to identify preferred options by making use of both existing and to-be-built stormwater/flood models. Presumably, this includes a systematic review of the relevant international research literature.

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<sup>17</sup> 20 September 2020.

48. Phase 2 involves practical design and trials of preferred options *in situ*, presumably as disciplined and collaborative action research.
49. It is understood that Phase 1 is to be delivered by mid-October this year, although, if form is any guide, then further delays might be expected. Phase 2, however, will comprise the detailed designing for the Pukehangi Heights developments that will both inform and be informed by the Council's Stormwater Master Planning process, which, sadly, could provide yet further reason for delays to be expected.
50. If this understanding of the Stormwater Master Plan methodology is verified, then a critical determinant of successful development will be the *a priori* resolution of jurisdictions and authoritative interpretations of design standards, or Phase 2 will inevitably be slowed by yet more conflict. In RDRR's view, with respect, this is a critical challenge for Commissioners.

#### **DIVERGENCE IN VIEWS OF EXPERTS**

51. The RDRR was alarmed by the opinion of RLC's Group Manager Strategy<sup>18</sup> concerning "a divergence in views between experts advising Bay of Plenty Regional Council (Regional Council) and RLC on the appropriate modelling assumptions for the design of stormwater management systems to provide a reasonable level of flood risk management for existing developed urban areas in the catchment."
52. The divergence problem is compounded by the apparently hardened view in the RLC of its "infrastructure networks managers ... [that the] ... modelling assumptions adopted by the Regional Council are unduly conservative and are not premised on verified or recognized standards or practices." Not only were the assumptions considered to "lack a robust evidential basis," it was intimated that they would significantly boost the scale of stormwater assets required and potentially undermine the commercial viability of the Pukehangi Heights developments.
53. The RDRR regards these claims as extremely serious and inappropriate for three reasons. First, Kathleen Thiel-Lardon provided a systematic and evidence-based rebuttal.<sup>19</sup> Second, it is crucial for public confidence in public policy making and for future housing developments in Rotorua to advance in a prompt and orderly manner. To this end RDRR suggests that the Commissioners:

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<sup>18</sup> 21 August 2020.

<sup>19</sup> 18 September 2020.

- a. set aside and delegitimize partisan opinion by officials,
  - b. arbitrate this matter with scientific rigor, as far as possible,
  - c. determine, interpret and apply appropriate criteria, and
  - d. set precedents for future decision-making process and criteria.
54. These disputes between regional and district officials and experts are unacceptable to the RDRR for a third reason. Neither set of officials nor their selected advisers have a mandate or legal right or responsibility to misappropriate scarce public resources on contesting jurisdictional boundaries and stormwater design and evaluation criteria. While scholarly conjecture and refutation are essential to the growth of knowledge, the power to define and interpret standards are located by law with the BOPRC and that should be the end of the matter.
55. It follows, from RDRR's perspective, that the chief executives of BOPRC and RLC be asked by the Commissioners to resolve this matter of divergence urgently within the terms of the law and for insisting on cooperative action in the public interest to advance development.
56. To illustrate, an early candidate for their attention is the use of 24-hour or 72-hour nested storm patterns, taking Rotorua's pumice soils and other relevant factors into account. I found the advice from Peter Blackwood<sup>20</sup> and Peter West<sup>21</sup> compelling in favour of 72-hour nested storm patterns being used, in general.
57. The key point is that, without decisive and coordinated intervention by CEs, the urgent and successful completion of Phase 2 becomes increasingly implausible and potentially sets the stage for ongoing disputes delaying developments and yet more wasteful litigation being funded by ratepayers. RDRR considers this prospect unacceptablePSP.

Thank you for the opportunity to make a submission.

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<sup>20</sup> 18 September 2020.

<sup>21</sup> 18 September 2020.