

(PC2)

Recommendations following the hearing of Plan Change 2 (PC2) – Pukehāngi Heights to the Rotorua District Plan under the Resource Management Act 1991

Proposal: To rezone approximately 160 hectares of Rural zoned land within the Pukehāngi Heights Development Area to enable residential development to occur on two distinct upper and lower terraces, and large lot rural residential development to occur on the north facing escarpment located between the two terraces. Two small scale local centres are also proposed to provide limited commercial services that are easily accessible by walking. Re-vegetation or partial re-vegetation is sought in parts of the development area. The residential development yield is expected to be in the range of 750 – 900 units.

Plan Change ~~PC2~~ – Pukehāngi Heights is recommended for **APPROVAL** as amended by us. The reasons are set out below.

Hearing panel:	David Hill (Chairperson) Rob van Voorthuysen Antoine Coffin
Plan Change number:	Plan Change 2
Site address:	Pukehāngi Heights, Rotorua
RLC's SPP application:	12 September 2019
Minister's SPP direction:	19 December 2020
PC2 Notified:	21 January 2020
Submissions closed:	20 February 2020
Submissions summary:	5 March 2020
Further submissions:	19 March 2020
Minister's cl81 extension:	22 June 2020
Hearing:	21 - 23 September 2020
Appearances:	<u>For Council:</u> Theresa Le Bas – Counsel Wendy Embling – Counsel Kate Dahm – Planning and Lead s42A author Craig Batchelar – Planning Liam Foster – Water Resources Scientist Mark Pennington – Water Resources Engineer Gregorio Manzano – Infrastructure Planning (Tabled) Anna Nepia-Eparaima – Hearings Advisor <u>For the Submitters:</u> Ngāti Kearoa Ngāti Tuarā: <ul style="list-style-type: none">○ Eru George○ Robyn Bargh Ngāti Whakaue:

	<ul style="list-style-type: none"> o Lani Kereopa <p>Te Arawa Lakes Trust:</p> <ul style="list-style-type: none"> o Lara Burkhardt (Counsel) o Nicola Douglas o David Marshall (Planning) <p>Bay of Plenty Regional Council:</p> <ul style="list-style-type: none"> o Mark Harding – Counsel o Kathy Thiel-Lardon (Stormwater) o Peter Blackwood (Flood frequency and Rainfall) o Phillip Wallace (Hydraulic modelling) o Peter West (Hydrological modelling) o Joanne Watts (Water Quality) o Mark Ivamy (Natural hazards) o Nathan Te Pairi (Planning) <p>Hunts Farm:</p> <ul style="list-style-type: none"> o Stephen Hunt o Rowan Little (Planning) <p>Te Arawa Group Holdings Ltd:</p> <ul style="list-style-type: none"> o Matt Allott (Planning) o Graham Norman (Traffic) <p>Matipo Ave Residents Incorporated Society (MARIS):</p> <ul style="list-style-type: none"> o Ronald Finn o Andrew Morton o Ken Scott o Roger Shrouder o Dr Margriet Theron <p>Waka Kotahi – NZTA</p> <ul style="list-style-type: none"> • Rodney Albertyn (Planning) • Duncan Tindall (Traffic) <p>WL Gracie:</p> <ul style="list-style-type: none"> o Bill Gracie <p>Rotorua Residents and Ratepayers Association:</p> <ul style="list-style-type: none"> o Reynold Macpherson & Shirley Trumper <p>Utuhina Valley Farms:</p> <ul style="list-style-type: none"> o Linden Hunt <p>Jill Revel & Gerald Stock</p> <p>Dean Witehira & Jaylene Mitchell</p> <ul style="list-style-type: none"> o Gareth Buchanan – Forestry Consultant <p>David Crowley</p>
Commissioners' site visit	20 September 2020
Hearing adjourned	23 September 2020
Reply received:	2 October 2020
Hearing closed:	5 October 2020

INTRODUCTION

1. This recommendation to the Minister for the Environment is made on behalf of the Rotorua Lakes Council ("the Council" or "RLC") by Independent Hearings Commissioners David Hill (Chair), Rob van Voorthuysen and Antoine Coffin appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("the RMA").
2. The Commissioners have been given delegated authority by the Council to make a recommendation to the Minister for the Environment on Plan Change 2 ("PC2") to the operative Rotorua District Plan ("the ODP") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing and submissions made and evidence presented during and after the hearing of submissions. That delegation has been extended to cover the eventuality of the Minister referring PC2 back to Council under clause 84(1)(a)(ii) of Schedule 1 of the RMA for further consideration.
3. PC2 ~~Pukehāngi Heights~~ was prepared and considered under the streamlined planning process (SPP) of Part 5 of Schedule 1 to the RMA. The process, as directed by the Minister, is fully described in section 3 of the s42A report and is not repeated here.
4. PC2 was publicly notified on 21 January 2020 following the pre-notification process involving Iwi, as required by Clause 4A of Schedule 1 RMA.
5. The submission period closed 20 February 2020. A summary of submissions was notified for further submissions on 5 March 2020, closing on 19 March 2020. A total of 47 submissions (including 2 late submissions) and 8 further submissions (including 2 late submissions) were made on the plan change.
6. All late submissions were accepted by us for the reasons identified in section 4 of the s42A report – there being no objections to that outcome and having taken into account the matters stated in s37A(1) RMA.
7. The hearing commenced on 21 September 2020, within the timeframe directed by the Minister in his 22 June 2020 extension approval.
8. A comprehensive s42A report was jointly prepared by Ms Kate Dahm (lead author), Mr Craig Batchelar and Ms Kim Smith. The report was prepared with the assistance of technical reviews as follows:
 - Rebecca Ryder, Boffa Miskell ~~Ltd~~ – Landscape and visual effects;
 - Grant Smith, Stantec – Transport and traffic issues;
 - James Bell-Booth, Marshall Day Acoustics ~~Ltd~~ – Speedway noise and reverse sensitivity.
9. The s42A report recommended that PC2 should be approved with the amendments identified therein.

10. We issued 3 timetabling and other directions under s41 RMA for reports and evidence exchange, stormwater / flooding expert conferencing, and hearing procedure. We also issued a Minute and s42 RMA order (dated 15 September 2020) for the protection of sensitive cultural information provided by and as sought by Ngāti Kearoa-Ngāti Tuarā.
11. We record our thanks to all parties for complying with and adhering to those directions. In particular, we express our gratitude to those involved in the expert conferencing for the work undertaken in advancing what was the most contentious matter requiring resolution – modelling of the downstream potential for flood effects.
12. The experts' Joint Witness Statement – Stormwater (JWS-S) was dated 1 September 2020 and made available to the parties. The expert facilitation was conducted virtually by Greg Hill on 25 August 2020 with the following experts:
- Liam Foster;
 - Peter Blackwood;
 - Peter West;
 - Kathy Thiel-Lardon;
 - Phil Wallace;
 - Greg Manzano;
 - Sean Finnigan;
 - Mark Townsend; and
 - Mark Pennington.
13. In summary, the JWS-S records that the experts agreed that Mr Foster's WSP modelling was "appropriately conservative"; with the exception of the pond drain-down times the parameters used were appropriate for the assessment undertaken; and, for the scenarios modelled, the assessments showed that maximum flood depth and flood velocity in the areas downstream of the proposed plan change area were likely to change by the amounts shown in the figures presented by WSP. Furthermore, all agreed that further assessment was required, and agreed to an approach for that work, summarized as follows:
- (a) The drain-down performance of proposed ponds needs to be checked against relevant criteria. Several criteria were proposed, with the following performance agreed as the most appropriate: 50% of the volume stored within detention ponds that can only drain via the lowest outlet, shall drain within 24 hours.
 - (b) Should the proposed ponds not meet the above performance criterion, then the pond configuration shall be re-designed.
 - (c) Following such re-design, the revised outlet analysis shall be provided to the Bay of Plenty Regional Council (BoPRC) for input to the Greater Uthina Catchment Model (GUCM).
 - (d) The GUCM and the WSP models shall be used to assess the performance.

- (e) Should the revised ponds meet the required performance criterion, then the approach can be confirmed, and the results accepted.
- (f) An amended stormwater report is required that addresses the re-analysis, and also the language changes.

It was agreed that only the 1% AEP event need be used at this stage (checking the 2% AEP and 0.2% AEP could follow confirmation of the pond performance for the 1% AEP event).

MINISTER'S SPP DIRECTION – CL78 SCHEDULE 1 RMA

- 14. The Minister's Streamlined Planning Process direction was issued on 17 December 2019 (the notice published in the 14 January 2020 issue of the New Zealand Gazette).
- 15. Apart from the administrative directions regarding timeframes, specific parties to be notified, and reporting requirements, the Minister's Statement of Expectations noted:
 - *the recommended Plan Change 2: Pukehāngi 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.*
- 16. Furthermore, in his 19 December 2019 letter to Council, the Minister records the reasons for his decision to issue the Direction as:
 - *The SPP to be implemented will allow urban growth issues to be responded to in a timely way, and is proportionate to the complexity and significance of this planning issue. RLC has demonstrated that use of the SPP is appropriate in this case as an alternative to using the standard Schedule 1 process; and*
 - *RLC has demonstrated that it is satisfied that the proposed planning instrument will implement a national direction, being the National Policy Statement for Urban Development Capacity and meet a significant community need for housing.*
- 17. Council's application for a 67-working day / 3 month extension to the overall timeframe was approved by the Minister under clause 81 Schedule 1 RMA on 22 June 2020. That approval was sought and given in respect of the need to complete the modelling necessary to understand the identified stormwater and flood risk, and share that information with submitters.

SUMMARY OF PLAN CHANGE

- 18. The proposed plan change is described in detail in the s42A report.
- 19. In summary, it is proposed to rezone approximately 160 hectares of Rural zoned land within the Pukehāngi Heights Development Area to enable residential development to occur on two distinct upper and lower terraces, and large lot rural residential development to occur on the north facing escarpment located between the two terraces. Two small scale local centres are also proposed to provide limited commercial services that are easily accessible by walking. Re-vegetation or partial re-

vegetation is sought in and over parts of the development area. The residential development yield is expected to be in the range of 750 – 900 units.

20. The land comprises three ownership blocks:

- The Sumner Block to the north;
- The Hunt Block south of the Parklands development (Area B); and
- The Te Arawa Group Holdings (TAGH) Block to the south (Area A).

21. The two parts of the development / plan change area are separated by the existing Parklands development.

22. The following changes were proposed to the ODP:

Objectives and Policies

New place-based objectives and policies to address landscape, urban design, cultural landscape, and natural hazard risk management issues specific to the Pukehāngi Heights Development Area. These supplement the general objectives and policies for the Residential 1 Zone and Rural 2 Zone.

Structure Plan

A Pukehāngi Heights Development Area Structure Plan to guide the future development of the land in relation to landscape management, urban design, protection and enhancement of cultural values, access and connectivity (including active transport modes), and stormwater infrastructure.

The Structure Plan identifies:

- the upper and lower terraces;
- the mid-site escarpment and upper escarpment;
- the Escarpment Transition Areas – these are areas with an underlying residential zoning, but specific provisions in recognition that these areas are more visually sensitive; and
- archaeological sites and the Pukehāngi Pā.

Also identified on the Structure Plan are indicative features, the exact location or size of which may alter to some extent when the sites come to be developed. These include areas for stormwater detention and recreation, medium density development, community, retail and commercial areas, primary and additional roads, overland flow paths, walkways, cycleways and bus stops.

Operative and Proposed Zonings

Zoning of land within the plan change area:

- Under the ODP:
 - the lower terrace and parts of the mid-site escarpment are zoned Future General Residential;

- much of the ~~mid-site~~ ^{N E U T} escarpment and upper terrace are zoned Future Rural Lifestyle; ^{and}
- the exception to this is the ~~mid-site~~ ^{N E} escarpment across the Te Arawa Group Holdings Block is currently zoned General Residential.
- PC2 proposes:
 - rezoning the Lower and Upper Terraces to General Residential (Residential 1); and
 - rezoning ~~mid-site~~ ^{N E} escarpment to Rural Lifestyle (Rural 2).
- The zoning of the following areas remains unchanged:
 - the ~~southern~~ ^S slopes of the Te Arawa Group Holdings ~~block~~ ^B, near Great West Road, remains as Rural 2 Zone; and
 - the ~~upper~~ ^{U E} escarpment (above the 385m contour) remains as Rural 1 Zone.

The Twin Oaks Development Plan notation is also removed from the Te Arawa Group Holdings ~~Ltd land~~ ^X block, along with the associated provisions in the ODP. The Development Plan provisions anticipated a retirement facility with up to 120 residential units, village facilities and a 30-bed hospital.

Land Use and Subdivision Rules

New provisions to address landscape, urban design, cultural landscape, natural hazard risk, and traffic management issues specific to the Pukehāngi Heights Development Area are added to supplement the general provisions for the Residential 1 Zone, Rural 1 Zone and Rural ~~2~~ ¹ Zone. This includes provisions relating to:

- Mitigating effects of development on the landscape and visual values of the Lake Rotorua ~~caldera~~ ^C;
- Requiring a Stormwater Management Plan and Natural Hazard Risk Assessment as part of any subdivision consent application;
- Facilitating small scale convenience retail and childcare facilities at walkable centres adjacent to Pukehāngi Road;
- Facilitating small medium density housing areas adjacent to the walkable centres and open space; and
- Protecting and enhancing identified and future cultural heritage sites and values.

Resource consent notification rules are also proposed so that where subdivision and development proposals meet the proposed standards, applications for resource consent will not be notified to the public or affected parties.

23. The background rationale for the plan change – i.e. to meet anticipated and current demand for residential land and affordable housing – is summarised in section 6 of the s42A report. There is no need to repeat that material here as that is, broadly, the basis

upon which the Minister has agreed to direct this plan change to the SPP track.

HEARING PROCESS

24. The Sunday prior to the hearing the Commissioners visited the general location of the plan change and the surrounding areas, including Pukehāngi Pā.
25. The hearing took place over 3 days and was then adjourned for the purpose of receiving further reply evidence from Mr Foster and Mr Batchelar, and Council's written reply.
26. Following receipt of that material (dated 2 October 2020) the Commissioners determined that the hearing was complete and formally closed the hearing on 5 October 2020.

PROCEDURAL MATTERS

27. Other than the acceptance of the late submissions as noted above, one other procedural matter was raised initially for consideration.
28. Submitter Freedom Villages had sought inclusion of land neighbouring the development area to the north to be zoned for medium density residential development (a proposed retirement village). However, after consideration Council had determined that was out of scope of the plan change and the submitter then formally withdrew the application. No further action from us is therefore required.

RELEVANT STATUTORY PROVISIONS CONSIDERED

29. The RMA (and settled caselaw) sets out an extensive set of requirements for the formulation of plans and changes to them. These requirements were fully set out in the application documentation, legal submissions and evidence, the s42A Report and its companion section 32 assessment. As those provisions were not in dispute, we see no need to repeat them again. We note also that repeated reference was made in the various legal submissions to the relevant and now well-known and established caselaw on the matter. We confirm that we have taken careful consideration of those requirements and the companion caselaw in making our determinations. While this plan change is proceeding under the SPP provisions, the only additional matter that we are required to take into consideration is the Minister's direction and expectations (which we have done and have noted above).
30. Clause 10 of Schedule 1 RMA requires that this recommendation must include the reasons for accepting or rejecting submissions. The recommendation must also include a further evaluation of any proposed changes to the plan change arising from submissions after the s32A RMA evaluation report was prepared; with that evaluation to be undertaken in accordance with section 32AA.
31. With regard to Section 32AA, where we have subsequently accepted and recommended a change not specifically recommended in the s42A report, the evidence presented by the relevant party effectively represents this assessment and, where we have determined that a change to PC2 should be made, that material should

be read in conjunction with this decision. That is particularly the case with respect to the further elaboration on the flooding / stormwater management matter at issue.

32. For the record we note that the provisions of PC2, as recommended by us, generally adopt the standard provisions of the ODP except where a modification is required to achieve the overall purpose of PC2. Minimal necessary change was both the Council's intention as it is ours.

LEGAL SUBMISSIONS AND EVIDENCE HEARD / READ

33. In accordance with the Commissioners' s41B RMA Direction, issued on 25 September 2019, the Council planning officer's s42A report and supporting evidence, and submitters' expert evidence was circulated prior to the hearing and taken as read.

34. Additional expert evidence was received from Council as follows:

- Craig Batchelar – Planning;
- Liam Foster – Flooding and stormwater management; and
- Mark Pennington – Flooding and stormwater management.

35. Legal submissions and expert evidence were received from submitters as follows:

- Bay of Plenty Regional Council:
 - Mark Harding (Counsel);
 - Kathy Thiel-Lardon (Stormwater);
 - Peter Blackwood (Flood frequency and Rainfall);
 - Phillip Wallace (Hydraulic modelling);
 - Peter West (Hydrological modelling);
 - Joanne Watts (Water Quality);
 - Mark Ivamy (Natural hazards);
 - Nathan Te Pari (Planning).
- Waka Kotahi – NZTA
 - Rodney Albertyn (Planning).
- Te Arawa Lakes Trust
 - Lara Burkhardt (Counsel);
 - Dave Marshall (Planning).
- Te Arawa Group Holdings
 - Graham Norman (Traffic and transportation);
 - Matt Allott (Planning)

36. In addition, we received legal submissions in reply and supplementary evidence from Council's technical reviewers in response on 2 October 2020 as follows:

- Theresa Le Bas (Counsel);
- Craig Batchelar (Planning); and

*Hunts Farm
o Lower Little (Planning)*

- Liam Foster (Flooding and stormwater management).
37. The evidence presented was extensive and often contested. As such we see little merit in providing a summary of that evidence but, rather, deal with the evidence by topic below where that evidence concerns relevant matters of significance in contention.
38. We also note for the record that we were particularly assisted by the legal submissions and responses from Ms Le Bas and Ms Embling (for Council), Mr Harding (for the BoPRC), and Ms Burkhardt (for Te Arawa Lakes Trust, Ngāti Kearoa-Ngāti Tuāhā and Ngāti Whakaue). This was not a straight-forward exercise.

MINISTER'S YIELD REQUIREMENT

39. We note that there was no firm consensus on the matter of residential dwelling unit yield – in the absence of any detailed master planning exercise or equivalent. However, we were assured by Mr Batchelar¹ that the Minister's expectations of some 790 dwelling units was within the theoretical range calculated based on standard assumptions about infrastructure, servicing needs and average lot sizes – even with the enlarged area of stormwater detention ponds (an 8% increase) now under consideration (discussed further below). Mr Batchelar indicated² an upper yield of 810 household units if this pond area increase is confirmed as being required.
40. We simply note that we have accepted this yield number for present purposes, but no evidence was, or could be, provided at this stage to give greater confidence. We asked whether, in the absence of any greater certainty, a minimum density approach (i.e. stipulating absolute minimum lot sizes) should be contemplated in the provisions. Mr Batchelar responded that such an approach was not currently provided for in the ODP and he doubted that we had scope to pursue that under the present plan change. We accept that the work required to bring such a provision through at this stage has not been done to a sufficient s32A or s32AA RMA standard and therefore, regardless of scope issues, that is not a present option.

PRINCIPAL ISSUES RAISED

41. We have identified four broad issues that were the focus of submissions, evidence and representations at the hearing:
- the adequacy of the modelling and provisions with respect to the management of on-site stormwater and consequent risk of downstream flooding;
 - the requirement for compensatory nutrient management reduction;
 - the adequacy of cultural values recognition; *and*
 - the provisions for managing transportation effects.

¹ Batchelar, Evidence in reply, paras 117 - 124.

² Batchelar, Evidence in reply, para 122.

42. On other matters, we have accepted the analysis made and conclusions drawn in the s42A report and in the reply evidence and closing submissions – discussed summarily below.

DISCUSSION AND FINDINGS ON THE PRINCIPAL ISSUES RAISED

Stormwater

The Issue

43. Stormwater was one of the main issues of contention for PC2.
44. When any rural area is urbanised the inevitable increase in impervious surfaces (roads, driveways, parking areas, roofs and even compacted earth) leads to an increase in surface water runoff during rainfall events. This can be mitigated (but not avoided) by the use of what is commonly called “source control”, “water sensitive design” or “low impact water management”. That includes minimising the formed width of roads, using grass swales instead of road side gutters, and using soak holes for capturing roof runoff. This low impact design approach is appropriately intended here and it is one of the “Principles” set out in section A5.2A.1 of PC2.³
45. Nevertheless, there will be increased stormwater runoff which needs to be managed to avoid adverse effects downstream. This is particularly important here because while, as described in the evidence of Kathleen Thiel-Lardon for the BOPRC, the streams which will receive stormwater from Pukehāngi Heights (the Utuhina, Ōtamatea and Mangakākahi Streams) are part of the Kaituna Catchment Control Scheme and have some degree of flood protection works associated with them, those works are not meeting their desired level of service.⁴ Ms Thiel-Lardon noted that a number of culverts under roads are undersized causing the flooding of roads, including SH5. Significant flooding is also currently affecting a large number of residential, commercial and industrial buildings, particularly in areas adjoining the Utuhina Stream. This existing problem will be exacerbated by climate change.
46. Many submitters attested to this existing flooding problem, particularly in the industrial area of the Utuhina catchment downstream of SH5 (as was graphically recounted by Mr Gracie).
47. Ms Thiel-Lardon considered that the existing downstream flooding risk was “high”. Policy NH 2B of the Bay of Plenty RPS titled “Classifying risk” describes a “high” natural hazard risk as one beyond what should be tolerated. For land that is subject to urban development RPS Policy NH 4B requires a “low” natural hazard risk to be achieved on development sites after completion of the development (without increasing risk outside of the development site) by controlling the form, density and design of greenfield development. Policy NH 2B describes a “low” level of risk as one that is generally acceptable.

³ Objective 2 also refers to “integrated management of land use and stormwater” and this is further expanded on in Policy 2.3.

⁴ Coping with a 1 in 100 year storm event.

- Q. Exists but is not 'dire.'
48. The upshot of the existing situation and the provisions of the RPS⁵ is that 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. This approach is often referred to as one that is "hydraulically neutral", namely one that does not worsen downstream flood effects.
49. In that regard we agree with Ms Thiel-Lardon that off-site mitigation is not appropriate here because of the limited opportunities available downstream for normal flood mitigation options (stopbanks and floodwalls) due to the highly urbanised nature of Utuhina Stream in particular (there is simply no room to build such structures); the limited opportunities for detention dams in the upper catchments of the Utuhina, Ōtamatea and Mangakāhahi Streams; and in the Lower Utuhina there are geotechnical challenges due to the existence of geothermal vents. In the Ōtamatea Stream, while there are two recreational reserves of sufficient size that have the potential to help reduce the existing flood risk, robust modelling would be required to assess effects on the wider catchment, and that has not yet occurred.
50. We agree with counsel for BoPRC that any limited opportunities that do exist in the downstream Utuhina catchment to manage flood risk need to be retained for the increased flooding effects of future climate change and future infill within the downstream catchment itself.⁶
51. We find that PC2 should clearly state that stormwater is to be managed and controlled on-site within the Pukehāngi Heights Development Area.

The Proposed Solution

52. As part of the Pukehāngi Heights Structure Plan process the RLC developed a stormwater management solution that involved the use of numerous dry stormwater detention ponds located primarily on the lower part of the Pukehāngi Heights Development Area adjacent to Pukehāngi Road. The configuration of stormwater ponds in the final 1 October 2020 version of the Proposed Structure Plan presented to us showed fifteen ponds covering around 14ha in area. The ponds would be designed to capture the stormwater runoff and slowly release it downstream in a way that would largely avoid adverse effects.
53. The impact of this solution on downstream flooding was jointly modelled by RLC and BoPRC using the ~~Greater Utuhina Catchment Model (GUCM)~~ ^{GUMC.}. Separate RLC sub-catchment models generated Pukehāngi Heights stormwater inputs to the GUCM. It was eventually agreed between the councils to use a 72-hour nested rainfall storm event pattern provided by BoPRC as the basis for the modelling. RLC initially opposed this as being overly conservative but later conceded it to be appropriately conservative.⁷ A range of return period storms were modelled from the 1 in 10 year storm to a 1 in 500 year climate change adjusted storm. The modelling predicted

⁵ Under s75(3) of the RMA the RLC District Plan (including PC2) must give effect to the RPS.

⁶ Legal Submissions on Behalf of Submitter Bay of Plenty Regional Council, 22 September 2020.

⁷ ~~Stormwater~~ ^{JWS} Paragraph 12.

changes in flood depth, flow velocity and flood duration between the Pukehāngi Heights Development Area and Lake Rotorua for the Utuhina, Ōtamatea and Mangakāhahi Streams. Both existing urban development and future maximum urban development⁸ adjacent to those streams was modelled.

54. We find the modelling to be comprehensive and appropriate.
55. The modelling concluded that for all storm events there would be either a neutral or positive effect on peak flood water levels and peak velocities in the Utuhina, Ōtamatea and Mangakāhahi Streams. In some cases there would be a small increase in flood flow duration. Possible adverse effects of that increased duration (stream bank erosion or prolonged backing up of urban stormwater drains) could be mitigated by routine engineering solutions if required.⁹
56. The modelling shows that it is feasible to develop a stormwater management solution for the Pukehāngi Heights Development Area that is appropriately hydraulically neutral. RLC has stressed that the final stormwater solution may be different than that modelled and request that flexibility be provided accordingly. We accept that, provided of course that the same positive outcome is achieved.
57. However, it is essential that an integrated approach to stormwater management across the whole Pukehāngi Heights Development Area is taken. We acknowledge that RLC is currently preparing a stormwater masterplan to identify integrated flood management solutions to facilitate future urban growth. However, we understand that this stage of the masterplan process will only present conceptual options rather than detailed solutions.
58. More relevant is the fact that RLC's Long Term Plan includes the development of a Stormwater Management Plan (SMP) for the Pukehāngi Heights Development Area.
59. The PC2 provisions referred to a requirement for a ~~Stormwater Management Plan~~ ^{SMP} for any area that is to be subdivided. We queried that at the hearing and the RLC witnesses agreed that such a SMP needed to encompass the whole Pukehāngi Heights Development Area and, as it would necessarily require the use of the RLC and BoPRC stormwater runoff models referred to above (or their equivalent), the area-wide SMP could logically only be prepared by the RLC and not be left to disparate landowners or developers to do in a piecemeal fashion.
60. We find that the PC2 provisions need to reflect that fact, and that there should be no implication that SMPs can be prepared by developers in the absence of a SMP for the whole Pukehāngi Heights Development Area having first been prepared by RLC.
61. By the conclusion of the hearing there remained disagreement between RLC and BoPRC regarding the form of a 'flood risk management' performance standard for PC2 and the inclusion of 'design criteria' performance standards.

⁸ Called the 'city future' scenario which is based on current residential zoned land being intensified as permitted under the RLC District Plan.

⁹ Such as armouring stream banks or by increased riparian planting.

62. On the first matter we find that it is appropriate to refer to the RPS Appendix L – Methodology for Risk Assessment as was sought by RLC. However, we consider given the circumstances of this case (and the already compromised Utuhina lower catchment as discussed above) that an additional performance standard is required that refers to avoiding any more than a minor increase in downstream flood flow velocity, flooding depth and flooding extent. As with the SMP discussed above, the ‘flood risk management’ assessment must be undertaken by RLC for the whole Pukehāngi Heights Development Area and not be left to individual developers.
63. The second area of disagreement relates to the extent to which the modelling design parameters used to date need to be contained within PC2 by way of specific performance standards. The BoPRC sought that precise details of the parameters used to date be included, whereas RLC sought greater flexibility. We find this matter can be addressed by requiring the design criteria to be used in the modelling that will underpin the eventual Pukehāngi Heights SMP to include the same range of criteria pitched at a level that is at least as conservative as those used in the stormwater modelling report titled “Rotorua Lakes Council, PC2 - Pukehāngi Heights Stormwater Report, WSP, 14 September 2020”. We understand that report includes the detailed design parameters that BoPRC now wish to see included in PC2. Additionally, in the unlikely event that alternative model platforms are used to inform the SMP (RLC also seeks flexibility in that regard) then the alternative model should either be calibrated against the BoPRC’s GUCM or produce results that are consistent with it.
64. RLC has advised that an application for a discharge consent for stormwater discharge from the entire Pukehāngi Heights Development Area will be prepared by RLC following the confirmation of PC2.¹⁰ That is appropriate and the PC2 provisions need to recognise that fact. That discharge consent process will provide BoPRC with an additional avenue to ensure that the proposed stormwater management solution (and its technical basis) is appropriate from its perspective.
65. Ngāti Kearoa Ngāti Tūarā, Ngāti Whakaue, and Te Arawa Lakes Trust sought a policy requirement that the RLC should refuse to grant resource consents where subdivision and development would cause an increase in downstream flood risk. That policy would link to a non-complying activity status. This was accepted by RLC in Reply and we agree it is an appropriate response to the circumstances of this catchment and the clearly enunciated views of the iwi groups regarding the need to not make downstream flooding matters worse than they already are.

The PC2 Provisions

66. We note that in response to submissions the RLC agreed¹¹ to amend the PC2 stormwater provisions to, amongst other things:

¹⁰ Le Bas, Legal Submissions in Reply.

¹¹ Le Bas, Legal Submissions in Reply.

- Have separate objectives and policies relating to stormwater effects and flood hazard risk where previously there was a single objective and policy relating to both of these issues;
- Have limited notification to BoPRC where subdivision applications do not comply with the performance standards relating to stormwater management or flood hazard risk;
- Include new performance standards setting out the matters to be included in a stormwater management plan; and
- Clarify in a new performance standard that applications for subdivision consent are to be submitted at the same time as any required applications to the BoPRC for discharge consents.

67. We find those amendments to be appropriate. However, we have made numerous further amendments to better reflect the position relayed to us by RLC at the hearing that the SMP for the whole Pukehāngi Heights Development Area would necessarily be prepared by the RLC and that the RLC would be seeking a stormwater discharge consent for the whole Development Area. Once RLC has completed both of those tasks then individual subdivisions can safely proceed (in terms of stormwater management) under the umbrella of the SMP and the Pukehāngi Heights Development Area discharge consent.

Nutrient Management

The Issue

68. Lake Rotorua has poor water quality mainly as a result of excess nutrient inputs from rural land use and wastewater discharges. The BoPRC Regional Policy Statement (RPS) sets a sustainable nitrogen load limit for Lake Rotorua of 435 tonnes per annum. The BoPRC's recent PC10 introduced a comprehensive regime for managing nutrient inputs to the Lake to achieve that limit.
69. The Pukehāngi Heights Development Area predominantly ~~comprises rural land use activities, apart from the Parklands development in the centre of the site.~~ ^{is} Each block of land within the Development Area currently has a nitrogen discharge allowance (NDA) assigned to it by the BoPRC. When the Development Area is urbanised, grazing livestock will be removed reducing nitrogen losses from the land and hence nitrogen loading to the Lake. However, all of the additional dwellings will have their sewage reticulated to the RLC wastewater treatment plant (WWTP) which discharges indirectly to the Lake. That will increase the nitrogen loading to the Lake. *rural x Parklands not part of PHD Area.*
70. Where the NDAs attached to the rural land are not large enough to accommodate the nitrogen losses from the urban land use and the increased WWTP discharges then a shortfall exists which must be addressed in order to achieve the RPS outcomes for the Lake. RLC has advised that a shortfall is likely to arise for the Pukehāngi Heights Development Area.

The Solution

71. Submitters, particularly Ngāti Kearoa Ngāti Tuarā, Ngāti Whakaue, and Te Arawa Lakes Trust, considered that PC2 should result in a reduction in nitrogen loading to the Lake. RLC has agreed to this and has proposed a revised objective with a consequential amendment to the “General Principle” in the Introduction section of PC2.
72. There is a 2017 Memorandum of Understanding (MOU) between RLC, BoPRC and the Te Arawa Lakes Trust that sets out a formula for calculating urban nitrogen losses when rural land is urbanised. We were told that a revised MOU is due for completion in December 2020 that will amend and simplify the formula for calculating those losses, including recognition that pastoral losses are attenuated¹² and WWTP losses are not.
73. Where an urban subdivision or development suffers from a shortfall, we were told that the revised MOU will provide that the shortfall can either be:
- (a) Transferred from another part of the property or another property in the Rotorua Lake catchment; or
 - (b) Purchased through catchment nitrogen trading (as will be allowed from 2021 under BoPRC’s PC10); or
 - (c) Purchased through an RLC nitrogen offsetting system.¹³
74. RLC intends having a nitrogen offsetting policy in place by July 2021, through the current review of its Long Term Plan, with implementation to follow thereafter. This means that the nitrogen offsetting option is likely to be available before subdivision of the Pukehāngi Heights Development Area commences.

PC2 Provisions

75. 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.
76. BoPRC also sought for PC2 to require RLC to do a Nutrient Management Plan for the entire Pukehāngi Heights Development Area prior to subdivision occurring. That proposition was initially appealing to us, but we accept RLC’s view that options for managing nitrogen can only be finally confirmed when on-site development is planned in detail, and information is available to make the necessary urban nitrogen loss calculations. RLC stressed that will occur at subdivision consent stage and was an issue that can, and should, be addressed by landowners who own the NDA asset.¹⁴

¹² Attenuated means that, in the case of rural land use, nitrogen discharged as fertiliser or animal excreta to the ground is reduced (through decomposition, mineralisation or plant uptake) as it travels through the soil and the underlying groundwater before reaching the Lake. Attenuation factors are typically around 50%.

¹³ Batchelar, Statement of Evidence in Reply.

¹⁴ Batchelar, Statement of Evidence in Reply.

77. The result of that approach will be that subdivisions should not be allowed to proceed if the developer cannot remedy any NDA shortfall resulting from the subdivision. PC2 needs to clearly indicate that and we have recommended a minor amendment to Policy 5.2 accordingly.
78. We also note that this means that if a developer wishes to purchase an offset from RLC to address any shortfall they will not be able to do so, or proceed with their subdivision, prior to RLC's nitrogen offsetting system being up and running. That is an unavoidable consequence of RLC's preferred approach to this issue.

CULTURAL SITES, CONSULTATION AND NOTIFICATION

The Issue

79. Archaeological survey and exploratory investigations commissioned by RLC identified 3 archaeological sites, these being two shell middens and an obsidian find within the plan change area. A cultural impact assessment prepared by Ngāti Kearoa/Ngāti Tuara¹⁵ has identified the broad context of occupation and traditional relationships with the cultural landscape, including important landmarks and customary resources.
80. The archaeological sites were identified on the notified structure plan; however, it was not clear to us what protection measures if any would be afforded to the archaeological sites and any other cultural sites known to the tangata whenua in response to urbanisation of the plan change area.
81. Iwi submitters indicated that a number of sites of significance to Māori would be potentially affected beyond the Pukehāngi Heights plan change area as a result of increased stormwater flows in the Utuhina Stream and Mangakākahi Streams.
82. Iwi submitters sought involvement throughout the development process to ensure that their values for cultural sites and streams were accounted for.

The Solution

83. The Iwi submitters in opposition supported the changes recommended in the Council's s42A report which seek to recognise the relationship of iwi with the Pukehāngi Heights area, recognise and protect cultural sites, and provide for notification of iwi as affected parties where a resource consent has the potential to affect culturally significant sites.¹⁶
84. Concerns were raised during the hearing regarding the wording of the non-notification rule, and whether it created uncertainty for applicants. The Council supported amending the rule so that the iwi groups are identified as affected parties for any application which relates to cultural sites, or downstream water quantity or quality (rather than requiring an assessment of the extent of the effects at this stage).
85. While consideration was given to identification of iwi groups as affected parties in respect of all applications within the Development Area, the submissions for the Iwi

¹⁵ Te Runanga o Ngāti Kearoa/Ngāti Tuara. Cultural Impact Assessment. An Assessment of the cultural impact of the proposed Pukehāngi Heights Development. Prepared for Rotorua Lakes Council. August 2019.

¹⁶ Burkhardt, Legal submissions, paragraph 31.

submitters made it clear that this would not be the most efficient method to achieving the objectives, as it would create significant resourcing issues for the groups, in respect of applications in which they have no interest.¹⁷

86.

A question arose regarding the identification of iwi groups for the purpose of consultation in performance standard A5.2.3.4.10a where reference is made to consultation with "Ngāti Kea Ngāti Tuarā and, where relevant, with other Te Arawa iwi and hapu". The submissions for the Iwi Submitters support the retention of this wording as there may be other iwi groups affected by future applications.¹⁸ The Council submitted that the wording is appropriate as the Council maintains a record of iwi groups and the land in which they have an interest, which can be used by applicants to identify parties for consultation.¹⁹

87. Lani Kereopa on behalf of Te Komiro o te Utuhina (Submitter No. 42) advised that there is currently no entity mandated to address environmental issues for Ngāti Whakaue. Te Komiro o te Utuhina was mandated to work on the Plan Change in 2018. On this basis Council recommended that the reference to Ngāti Whakaue is amended as follows to provide greater guidance for applicants:

Ngāti Whakaue (as represented by Te Komiro o te Utuhina or its successor).

88. The supplementary submissions for the Iwi submitters requested a new "Method" providing for resourcing of tangata whenua participation. This method was supported by the Council, with minor rewording.

PC2 Provisions

89. We note that in response to submissions 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

¹⁷ Memorandum of Counsel in relation to Supplementary Matters dated 22 September 2020, paragraph 7.

¹⁸ Memorandum of Counsel in relation to Supplementary Matters dated 22 September 2020, paragraph 5.

¹⁹ Advised by Ms Kate Dahm in response to questions during the hearing.

relate to culturally significant sites, downstream water quantity, downstream water quality or Lake Rotorua water quality; *and.*

- Make minor amendments to the structure plan to refer to cultural sites and archaeological sites.

Finding

90. 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.

TRANSPORTATION AND TRAFFIC

The Issues

91. Two traffic issues presented themselves for determination:

- (a) The use of Matipo Avenue for construction traffic; and
- (b) The potential effect of Pukehāngi Heights generated traffic on the Malfroy Road / SH5 intersection.

Matipo Avenue

92. The intersection of Matipo Avenue with Pukehāngi Road is proposed to be closed when the main access to the proposed plan change area, a roundabout connecting it at the Pukehāngi Road / Malfroy Road intersection, is constructed. Once that connection is made all traffic into the southern part of the plan change area (both into the Hunt land as well as the TAGH land) would be through that corridor (referred to as the Spine Road). However, if that option does not eventuate in a timely fashion, TAGH sought to use the lower part of Matipo Avenue for construction traffic access to its land – its development plans apparently being more advanced.

93. The Matipo Avenue Residents Incorporated Society (MARIS) noted that it had reached a successful compromise in the Environment Court with respect to the previous Twin Oaks development on the TAGH land in 2015. Under that agreement, temporary construction traffic access was generally to be via Great West Road rather than Matipo Avenue, except for the lower terrace residential development area²⁰. MARIS sought the same or similar exclusion under PC2.

94. Having assessed and reviewed the 4 options plus a hybrid, Mr Norman concluded that the Matipo Avenue option should be retained as an option because otherwise the development of the TAGH land would effectively be held hostage to prior development on the Hunt land. He confirmed his expert traffic opinion that the four contrary reasons advanced by MARIS in submissions – being the steepness of gradient, narrow carriageway, unsafe intersection, and amenity effects – were not impediments in terms of construction traffic capability (in the main), traffic management or traffic safety. While he did not feel able to comment on adverse amenity effects, he agreed with Council's traffic and transportation reviewer (Stantec) that those are matters to be

²⁰ Norman, Statement of evidence, para 5.3.

addressed once formal development plans and applications are made; they are not matters that need to be resolved at the plan change stage. As he concluded²¹:

From a traffic engineering perspective, I see no critical issues or effects that should exclude Matipo Avenue as an option for construction traffic that could not be managed by a typical construction traffic management plan.

95. In that respect, Mr Norman sought amendments to subdivision performance standards A5.2.3.4.12 and A5.2.4.4.8 to enable that outcome.
96. MARIS produced 2 witnesses on this matter – Mr Andrew Morton (retired civil engineer) and Mr Ken Scott (retired roading and transportation engineer). Their professional expertise was not challenged.
97. Mr Morton proposed alternatives in the event that Matipo Avenue has to be used for construction traffic because of development sequencing issues arising between the TAGH and Hunt land. Those alternatives both concerned a short 50m cul-de-sac from Matipo Avenue producing different smaller subdivision options of 6-8 lots. Those reflect MARIS' concern that a through road to/from Matipo Avenue not be provided that might endure should the proposed closure of the intersection with Pukehāngi Road not occur (for whatever reason).
98. Mr Scott gave detailed evidence about the safety and pavement serviceability of Matipo Avenue in concluding that the road was not suitable for construction traffic. In particular, he discussed issues related to pavement and construction loading and the significant effect heavy vehicle construction traffic would have on the residual life of the pavement.
99. Mr Morton recorded that MARIS' support for the closure of Matipo Avenue was contingent upon the Pukehāngi Road / Malfroy Road roundabout proceeding, since the present T-intersection was considered less hazardous than the alternative cross-roads intersection otherwise proposed at Malfroy Road.
100. The evidence we received – confirmed in part by our site visit - regarding construction traffic access from Great West Road was persuasive as to why that option is not to be preferred.
101. We note that we have left the indicative additional primary road connection link between the Hunt land and upper Matipo Avenue in the structure plan at this stage. We were not persuaded that we had sufficient evidence against that prospect to remove it, despite that being the clear preference of MARIS. That is a matter that can and should be properly assessed in due course.

The Solution

102. While we are sympathetic to the concerns of MARIS we do not see why development on TAGH's part of the plan change area should be retarded (and potentially arrested) by potential issues related to sequencing or staging programmes on the Hunt land. Hopefully, of course, those developments can and will be co-ordinated – but that

²¹ Norman, Statement of evidence, para 8.2.

cannot be guaranteed. If they are co-ordinated then there will be no need for general construction traffic to access Matipo Avenue.

103. If that access is to be used, we accept that the pavement and associated issue raised by MARIS will need to be addressed directly and up-front. However, we consider it appropriate that the Matipo Avenue option only be authorised following evidence that access from the Hunt land is not practicable at the time the relevant resource consents are sought.

PC2 Provisions

104. Mr Batchelar, in his reply for Council, noted²² that, as notified, construction traffic access via Matipo Avenue is a discretionary activity – though pavement design is not explicitly referred to. He recommended that this be made explicit if access is proposed and included recommended amendments to the Construction Traffic Management Plan (CTMP). That proposed provision (amending performance standards A5.2.3.4.12 and A5.2.4.4.8) reads:

A Construction Traffic Management Plan shall be submitted, which shall include (but not be limited to):

- Pavement rehabilitation condition and monitoring;
- Number of heavy vehicle movements;
- Temporary speed limits;
- Parking restrictions;
- Hours and duration of operation;
- Details of truck washing facilities;
- Application of turning restrictions and truck routes.

105. We accept those amended provisions along with appropriate amendments in line with our conclusion above.

Malfroy Road / SH5 Intersection

106. Waka Kotahi / NZTA had noted that Malfroy Road provides a direct connection between the Pukehāngi Heights development area and SH5, and that traffic modelling indicated a concern about whether there was sufficient residual capacity at the Malfroy Road / SH5 intersection to accommodate additional traffic associated with the potential development. The current traffic modelling forecasts a level of service deterioration from LoS E to LoS F on one or more legs before complete build-out of the development area.
107. Waka Kotahi / NZTA had commissioned a review of Stantec's modelling (and associated traffic effects) by Mr Duncan Tindall (Technical Director – Traffic Engineering and Transport Planning at GHD New Zealand) – based on an additional 755 dwellings.

108. While an upgrade to that intersection is included in Council's ~~Long Term Plan (LTP)~~ ^{LTP},

²² Batchelar, Evidence in reply, para 113.

the exact nature and timing for that remains uncertain.

109. Waka Kotahi / NZTA therefore sought a number of amendments to PC2, including additional assessment criteria, performance criteria (Traffic Impact Assessments addressing that intersection issue to be submitted with subdivision applications once 500 residential lots are exceeded), and notification once 500 residential subdivision lots are exceeded.
110. Mr Batchelar acknowledged that its traffic and transport reviewer, Stantec, agreed that the intersection would likely be at capacity as stated, noting that the upgrade is identified in Council's Land Transport Activity Management Plan and capital funding is provided in the LTP. However, he did not consider any amendment necessary to PC2 as those facts satisfy the "infrastructure ready" test of the NPS-UD. Should the issue of concern to Waka Kotahi / NZTA materialise as forecast, that can be addressed as subdivision applications arise in time. All parties are on notice.
111. However, in reply for Council, Mr Batchelar accepted that such a provision as that sought by Waka Kotahi / NZTA is not entirely unmerited and proposed a provision for consideration at the 500 lot threshold – noting that failure to meet the provision would default to a discretionary activity in any event.

The Solution

112. Mr Batchelar's proposed provision reads:

Add an additional subdivision performance standard for development traffic in Rural 2 zone and Residential 1 zone, A5.2.4.4(7):

Where a total of 500 or more residential lots, or the equivalent number of vehicle trips during the evening peak hour, are proposed within the Pukehāngi Heights Development Area a traffic assessment shall be provided to confirm that the level of service at the intersection of Malfroy Road and State Highway 5 is unlikely to exceed delays of 80 seconds after the development is complete.

113. While we accept Council's argument that the provisions satisfy the "infrastructure ready" aspect of the NPS – UD, we see no harm in including Mr Batchelar's provision as that will either be redundant if the upgrade has already proceeded at that particular point in time, or it will not and a traffic assessment on the issue would likely prove useful.

PC2 Provisions

114. We recommend including Mr Batchelar's additional performance standard based on subdivision applications once applications for 500 lots are exceeded. We recommend adding this to performance standard A5.2.3.4(11) as well as to A5.2.4.4(7).

OTHER MATTERS

115. Other matters addressed by us include:
- (a) Whether the structure plan is indicative or directive, and is consistent with Method 18 of the BoPRPS;

- (b) The proposed notification exceptions;
- (c) Review status of the 2017 MoU on Nitrogen Accounting Approach for the Rotorua Wastewater Treatment Plant discharge between Council and the BoPRC – and its relationship with / to the NPS - FM;
- (d) Clarification on terms – *agricultural activity* is an undefined term used in a performance standard applying to the rural residential zone in the mid-site escarpment (no such activity is permitted);
- (e) Extension of the forestry reverse sensitivity (minimum 30m yard) standard;
- (f) Clarification as to who bears the onus for mitigating reverse sensitivity effects on the Rotorua Speedway; and
- (g) The request for the availability for pre-intensification subdivision.

116. Those matters were formally and satisfactorily addressed by Mr Batchelar and Ms Le Bas in reply. In short, we note the following with reference to the above:

- (a) The Structure Plan has elements of both direction and indication, and is consistent with the RPS Method 18 (which requires structure plans for large scale (i.e. >5ha) land use changes) and the approach generally adopted for the 12 "Mahere Whakawhanake – Development Plans" in the ODP. We accept that conclusion;
- (b) Amendments are recommended to more clearly identify the iwi groups (where appropriate) required to be consulted and notified and to avoid uncertainty for applicants. We agree that is sensible;
- (c) We were told that the reviewed MoU is due to be completed in December 2020 and this would bring it into line with the NPS – FM. Furthermore, Council will consider a plan change to implement the provisions of the BoPRC's proposed Plan Change 10 (which sets nitrogen load limits for Lake Rotorua of 435 tonnes per annum allocated to rural and urban land uses);
- (d) This term is proposed to be amended to reflect the term defined in the RDP of "agricultural production activity". We agree;
- (e) The forestry reverse sensitivity yard standard of 30m is recommended. We agree that is prudent to avoid potential harm;
- (f) The speedway reverse sensitivity Policy 2.10 is recommended for amendment to clarify that the onus for mitigation lies with the subdivider or developer. We accept that as the proper approach; and
- (g) The Hunt family had sought an exemption from the detailed assessment requirements of the performance standards in order to be able to advance initial small lot subdivision applications to front load finance for the larger development. Council opposed this on the ground that a non-complying activity application was the proper route in order to avoid the possibility of ad hoc subdivision undermining the ability to achieve integrated development across the

Development Area. We agree with Council. If a small lot subdivision is consistent with the structure plan and the objectives and policies for this development area it should have no difficulty securing consent.

STATUTORY PROVISIONS

117. As we noted earlier in this decision, the RMA sets out a range of matters that must be addressed when considering a plan change. We confirm that we have addressed those matters.
118. We also note that s32 RMA clarifies that the required analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
119. As we have taken account of the NPS - Urban Development 2020 and the NPS for Freshwater Management 2020 we see no need to make (or benefit to be gained from) explicit reference to Part 2 RMA. We are satisfied that PC2, as amended by us, satisfies the sustainable management of natural and physical resources purpose and its principles.
120. Having considered the evidence and relevant background documents, we are satisfied, overall, that PC2 has been developed in accordance with the relevant statutory and planning policy requirements and will clearly assist the Council in its effective administration of the ODP.

SUBMISSIONS

121. For the record we note that we have generally accepted (and recommend) the recommendations on submissions made in sections 7 and 8 of the s42A report except as indicated in the summary table, Appendix 5 **[Note: to be completed in the final Recommendation Report]**.
122. We also note that as a result of the development of the flooding, stormwater and nutrient management issues throughout this process – and particularly up to and including the hearing – the related and broadly agreed provisions have been re-organised in the version that we now recommend. We are confident that the provisions recommended are within scope of the submission made and evidence given.

PROVISIONS AND MAPS

123. Many of the recommended changes to the notified provisions are in the manner of editorial – tidying up the wording (without changing the provision's meaning or import) or re-organising them in a more consistent manner (for example by bring objectives forward to the objectives section). This is entirely within the scope of submissions made, in our view.
124. Having accepted Council's advice that the Structure Plan contains both directive and indicative matters, we have not recommended any further changes to that (or the zoning map) provided by Mr Batchelar in his evidence in reply.

125. The more substantive changes recommended arise from our consideration of the flowing / stormwater, nutrient management and construction traffic access matters.

Appendices

126. Attached and integral to this decision are 4 Appendices as follows:

- Appendix 1 = Recommended Plan Change 2: Pukehāngi Heights provisions;
- Appendix 2 = Track changes version of Appendix 1 Provisions;
- Appendix 3 = Pukehāngi Heights Structure Plan and Zoning Map;
- Appendix 4 = Summary Table of Decisions on Submissions.

RECOMMENDATION DECISION

127. Pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, we recommend that the Minister approve Plan Change 2: Pukehāngi Heights to the Rotorua District Plan, subject to the modifications as set out in this recommendation decision and the provisions attached as Appendix 1 and the plans attached as Appendix 3.

128. Submissions on the plan change are recommended to be accepted and rejected in accordance with this recommendation decision as indicated in the Summary Table attached as Appendix 4. In general, these recommendations follow the recommendations set out in the Council's section 42A report, except as identified above in relation to matters in contention.

129. The reasons for the recommendation are that Plan Change 2: Pukehāngi Heights:

- a. will assist the Council in achieving the purpose of the RMA;
- b. gives effect to the Bay of Plenty Regional Policy Statement, the NPS - Urban Development 2020 and the NPS for Freshwater Management 2020;
- c. accords with the purpose and principles of Part 2 of the RMA;
- d. is supported by necessary evaluations in accordance with sections 32 and 32AA RMA, and
- e. will help with the effective implementation of the Rotorua District Plan.

David Hill

Chairperson

& for Commissioners Rob van Voorthuysen and Antoine Coffin

Date: 15 November 2020

Appendix 1 – Plan Change 2: Pukehāngi Heights Provisions

[TO BE COMPLETED ONCE TEXT FINALISED]

Draft Report - 17 November 2020

Appendix 2 – Plan Change 2: Pukehāngi Heights Provisions (Track Changes).

Draft Report - 17 November 2020

Appendix 3 – Plan Change 2: Pukehāngi Heights Structure Plan
Draft Report - 17 November 2020

Draft Report - 17 November 2020

Appendix 4 – Summary of Decisions on Submission Points

[TO BE COMPLETED IN FINALISED REPORT]

Draft Report - 17 November 2020