

# Decisions on provisions and matters raised in submissions following the hearing of Plan Change 1 - Putaruru Urban Growth and Related Matters, and Plan Change 2 Infrastructure Management to the South Waikato District Plan under the Resource Management Act 1991

**Proposal:**

**PC1 Putaruru Urban Growth and Related Matters** – to provide for 1% per annum population growth through to 2030 by establishing four new Growth Cells (3 residential and 1 business).

**PC2 Infrastructure Management** – to introduce provisions to ensure that new development with significant demands for either reticulated water and/or reticulated wastewater would be managed to avoid significant impacts on levels of service for that infrastructure, in a manner that ensures Council remains in compliance with the requirements of the regional resource consents for that infrastructure.

Plan Change 1 (PC1 - Putaruru Urban Growth and Related Matters) and Plan Change 2 (PC2 – Infrastructure Management) are **APPROVED** as amended by us. The reasons are set out below.

<b>Hearing panel:</b>	David Hill (Chairperson) Antoine Coffin
<b>Plan Change number:</b>	Plan Changes 1 and 2
<b>PC1 &amp; PC2 Notified:</b>	13 May 2020
<b>Submissions closed:</b>	24 June 2020
<b>Submissions summary:</b>	8 July 2020
<b>Further submissions:</b>	22 July 2020
<b>Hearing:</b>	14 October 2020
<b>Appearances:</b>	<u>For Council:</u> Patrick McHardy (Senior Planner and PC1 s42A author) James Witham (Senior Planner and PC2 s42A author) Sharon Robinson (Group Manager Regulatory) Alan Moss (Planning Manager) Andrew Pascoe (Development Engineer) Judith Makinson (Transportation Engineer, CKL NZ Ltd) Campbell McGregor (Technical Director Urban Development, HG Ltd) Damian Ellerton (Acoustic Engineer – Marshall Day Consultants) Julie Cathie (Planning Officer)

	<p><u>For the Submitters:</u></p> <p>Raukawa Charitable Trust:</p> <ul style="list-style-type: none"> <li>○ Vanessa Eparaima (Chair)</li> <li>○ Giles Boundy (Planner – GMD Consultants Ltd)</li> </ul> <p>Nicholson Surveying Ltd:</p> <ul style="list-style-type: none"> <li>○ Tim Bailey</li> </ul> <p>DPS Developments Ltd:</p> <ul style="list-style-type: none"> <li>○ Michael Kemeys (Veros)</li> </ul>
<b>Commissioners’ site visit</b>	14 October 2020
<b>Hearing adjourned</b>	14 October 2020
<b>Reply received:</b>	30 October 2020
<b>Hearing closed:</b>	10 November 2020

## INTRODUCTION

1. These decisions are made on behalf of the South Waikato Council (“the Council”) by Independent Hearings Commissioners David Hill (Chair) and Antoine Coffin appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“the RMA”).
2. By resolution dated 25 August 2020, the Commissioners have been given delegated authority by the Council to hear and make decisions on Plan Changes 1 and 2 (“PC1 and PC2”) to the operative South Waikato District Plan (“the ODP”) after considering all the submissions, the section 32 evaluations, the reports prepared by the officers for the hearing, and submissions made and evidence presented during and after the hearing of submissions.
3. While PC1 and PC2 are not directly related, as we heard both plan changes together on the hearing day we have elected to produce one decision text for both – with separate provision texts. In the event of any appeals on those provisions we do not see a single decision text creating any particular difficulty.
4. PC1 and PC2 were publicly notified together on 13 May 2020 following the pre-notification process involving Iwi, as required by Clause 4A of Schedule 1 RMA.
5. The submission period closed 24 June 2020. A summary of submissions was notified for further submissions on 8 July 2020, closing on 22 July 2020. A total of 8 submissions and 1 further submission were made on PC1; 5 submissions and no further submissions were made on PC2.
6. The hearing commenced on 14 October 2020 in the Council ‘s offices at Tokoroa, and was adjourned following the hearing for the purpose of receiving further advice from Council regarding the road designation matter (discussed further below) and reply responses on matters raised at the hearing. The hearing was closed on 10 November 2020 following receipt of that further information and reply.

7. Comprehensive s42A and companion s32 reports were prepared by Patrick McHardy (PC1 s42A author) and James Witham (PC2 s42A author). Those reports provide thorough assessments of the submissions made – noting that no submitter sought the deletion of either plan change but, instead, proposed amendments. The PC1 s42A report also assessed the proposed roading designation (notice of requirement D.59) notified concurrently. Both authors recommended that the plan changes be approved with the amendments identified therein.
8. We issued a direction under s41 RMA on 11 September 2020 regarding reports and evidence exchange, and hearing procedure.
9. Following the hearing supplementary reports were provided on 30 October 2020 by Messrs McHardy and Witham discussing matters raised at the hearing and detailing further amendments recommended as a consequence. In this decision we take those latter reports as the starting point for our narrative.
10. For the record we record that we are satisfied that the two s32 RMA reports and the further analysis provided in the supplementary reports, which effectively constituted s32AA evaluations, are sufficient for the purpose.

#### **SUMMARY OF PLAN CHANGE 1**

11. In summary, PC1 proposes to rezone four specific "Growth Cells" around Putaruru's perimeter from Rural, Business and Rural Residential to Putaruru Residential in the case of Growth Cells 1, 2 and 3, and from Rural to Putaruru Business in the case of Growth Cell 4. These Growth Cells (GC) are shown on the proposed amendments to the District Planning Maps, and are as follows:

<b>Growth Cell No.</b>	<b>Location</b>	<b>Current Zoning</b>	<b>Proposed Zoning</b>	<b>Section Yield</b>
GC1	Overdale Road	Rural	Residential	328
GC2	Ruru Cres	Rural Business	Residential	70
GC3	Kennedy Drive	Rural Residential	Residential	105
GC4 (Business)	Princes St south	Rural	Business	200 HUEs

The proposed re-zoning will cater for new sites for dwellings, and industries and is anticipated to provide ample supply and choice of building sites for at least the 10-year timeframe of the District Plan. In that regard PC1 is considered to meet the requirements of the National Policy Statement – Urban Development 2020 (NPS-UD).

12. Changes to the ODP necessary to give effect to those growth cells are proposed, including to key objectives and policies.
13. A number of amendments were proposed by Mr McHardy in response to submissions in his s42A report. Further amendments were proposed in his supplementary recommendations report. These are discussed further below.
14. Allied to PC1 was a proposed public works designation, D.59, notified concurrently, to

provide for a future road into the enlarged Business zone (GC4) from Princes Street.

15. Subsequent to matters raised at the hearing regarding the designation the Council decided to abandon that proposed designation in favour of introducing a new performance standard provision directly into PC1 that requires access from Princes Street with an indicative notation on the planning map showing a “Possible Future Road”. That option resolves DPS’s objection and is supported by Council’s transport expert, Ms Makinson and Waka Kotahi/NZTA’s concerns<sup>1</sup>.
16. Accordingly, we have no need to discuss the notice of requirement application any further.

## **SUMMARY OF PLAN CHANGE 2**

17. In summary, PC2 proposes to “correct” a deficiency in the ODP, which, it is contended, lacked a robust basis for ensuring that new development with significant demands for either reticulated water and/or reticulated wastewater would be managed to avoid significant impacts on levels of service for that infrastructure, in a manner that ensures Council remains in compliance with the requirements of its regional resource consents for that infrastructure. Relevant to that concern, and as presented to us by Raukawa Charitable Trust (RCT), is a concern about the health and mauri of the Waikato and Waihou Rivers and their immediate tributaries.
18. The recently operative National Policy Statement on Freshwater Management 2020 (NPS-FM) – and its associated National Environmental Standard - is also directly relevant, as are the Waikato Regional Policy Statement 2016 (WRPS) and its companion Te Ture Whaimana – The Vision and Strategy for the Waikato River.
19. PC2 defines the level of service expectations of Council, as set out in its asset management plans, and inserts specific performance standards for the Tokoroa Business Zone (Chapter 18 – 18.4.13), Putaruru Business Zone (Chapter 22 – 22.4.12) and Industrial Zone (Chapter 27 - 27.4.13) with respect to permitted takes of municipal water and discharges of wastewater into the reticulated network. Contingent amendments are made to the assessment criteria. A daily water take and/or wastewater discharge limit of 10m<sup>3</sup> is proposed in the business and industrial zones, with exceedance being a restricted discretionary activity. Council had identified 9 current users who exceed that limit noting that these would not require consents under the proposed rule as they are deemed to be existing uses<sup>2</sup>.
20. A number of amendments were proposed by Mr Witham in response to submissions in his s42A report. No further amendments were proposed in his supplementary recommendations report.

## **PROCEDURAL MATTERS**

21. No procedural matters were raised for consideration.

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<sup>1</sup> McHardy, Supplementary recommendations, 30 October 2020, paras 27-37.

<sup>2</sup> McGregor, Statement of evidence, para 6.6.

## RELEVANT STATUTORY PROVISIONS CONSIDERED

22. The RMA (and settled caselaw) sets out an extensive set of requirements for the formulation and consideration of plans and changes to them in sections 73-76 RMA, cross-referenced to the Council's RMA functions under s31. Those requirements were summarised variously in the plan change documentation, the s42A Reports and their companion section 32 RMA assessments. As those provisions were not in dispute, we see no need to repeat them again. We confirm that we have taken careful consideration of those requirements and the companion caselaw in making our determinations.
23. Clause 10 of Schedule 1 RMA requires that decisions must include the reasons for accepting or rejecting submissions, as well as a further evaluation of any proposed changes to the plan change arising from submissions after the initial s32A RMA evaluation reports were prepared. That further evaluation is to be undertaken in accordance with section 32AA. In anticipation we note that we are satisfied that the further amendments accepted by us, particularly in relation to PC1, are satisfactorily explained and evaluated in the supplementary statements provided by Messrs McHardy and Witham, and nothing further is required by or from us.
24. We also note that the provisions of PC1 and PC2, as confirmed by us, generally adopt the standard provisions of the ODP except where a modification is required to achieve the overall purpose of those changes. Minimal necessary change was both the Council's intention as it is ours.

## EVIDENCE RECEIVED

25. In accordance with the Commissioners' s41B RMA Direction, issued on 11 September 2020, the Council planning officer's s42A reports and submitters' statements of evidence were circulated prior to the hearing and taken as read.
26. Tabled statements were received as follows:
  - PC1 and PC2
    - Ministry of Education, Alec Duncan, Planner (Beca Ltd); and
    - Fire and Emergency New Zealand, Alec Duncan, Planner (Beca Ltd).
  - PC1
    - KiwiRail Holdings Limited, Sheena McGuire, Access Provision Advisor with an acoustic appendix from Dr Stephen Chiles.
27. Statements of evidence were received as follows:

### PC1 and PC2

- Vanessa Eparaima, Chair, Raukawa Charitable Trust and Raukawa Settlement Trust
- Raukawa Charitable Trust, Giles Boundy, Planner (GMD Consultants Ltd).

28. We also examined the following Council peer reviewers (wastewater servicing and water supply, and noise/vibration) by virtual platform:
- Campbell McGregor, Harrison Grierson;
  - Damian Ellerton, Marshall Day Acoustic Consultants.
29. In addition, we received supplementary statements of evidence from Council's s42A authors in response to the matters raised at hearing on 30 October 2020.

### **PRINCIPAL ISSUES RAISED**

30. We have identified the following broad issues that were the focus of submissions, evidence or representations at the hearing (in no particular order):
- Access to GC4 (business zone) and the roading notice of requirement (NoR);
  - reverse sensitivity provisions with respect to the rail network boundary;
  - prescribed information required for development concept plans;
  - requirement for consent notices;
  - expansion of GC2;
  - inclusion by direct reference of Raukawa's section 6 relationships to water supply and the Blue Spring (Waihou river));
  - whether the public water supply usage exclusion for FENZ' emergency and training purposes is necessary;
  - mechanical amendments to certain provisions (notification, activity status and performance standards).
31. 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.
32. We note that no-one at the hearing contested the strategic need for the growth provisions or the replacement of the key operative urban containment growth objective 4.2.7 with the more enabling urban expansion objective proposed. While the more recent National Policy Statement on Urban Development 2020 (NPS-UD) generally promotes an urban *intensification* approach where it applies, we heard no evidence that this approach was currently appropriate or viable in the Putaruru housing (or business) market.

### **DISCUSSION AND FINDINGS ON THE PRINCIPAL ISSUES RAISED**

#### **Access to GC4 – Business zone**

##### **The Issue**

33. Council wants to secure legal public access into GC4. It had determined that the most appropriate route for that purpose was via existing Princes Street and had notified a

designation Notice of Requirement in tandem with PC1 – to be determined by us in conjunction with the present hearing.

34. At the hearing Commissioners raised a number of issues of concern with the proposed designation – both process and content matters – as did Mr Kemeys (Veros Property Services on behalf of DPS Developments Ltd). Mr Kemeys noted that DPS owned the land subject to the proposed designation, has an interest in the development of GC4, but was opposed to the designation – preferring an alternative approach.
35. We invited Council to consider that matter further during the proposed adjournment.

### **The Proposed Resolution**

36. In reply, Mr McHardy advised that Council now proposed to require access by means of an amendment to the roading performance standards in the ODP as follows:

*22.4.13 Provision of New Road to Putaruru Growth Cell 4 (Business).*

- a) *Any development of the land within Putaruru Growth Cell 4 shown on the Planning Maps for a permitted activity shall provide access to that activity by way of a new legal road from Princes Street, constructed to the standard set out in RITS.*

37. In addition, a number of related consequential amendments are required to address Waka Kotahi / NZTA's involvement (because of the Princes Street / SH1 intersection), design and location, planning map notation, and activity status. We have reviewed those consequential amendments and are satisfied that they meet the relevant RMA tests. Furthermore, we note that Council has provided those draft provisions to Mr Kemeys, Waka Kotahi/NZTA and Ms Makinson (Council's transport reviewer), and we are told that the form and wording of those provisions is generally agreed.
38. Mr McHardy noted that this approach leaves the matter of roading development contributions and the timing of the road construction in the hands of the developer – Council had identified some \$900,000 over 3 years in the current LTP for that purpose. That would now need to be negotiated with the developer through a Private Developer Agreement or similar – but he saw no particular difficulty with that mechanism as no material development is likely to occur without the required road, it then being a non-complying activity, and no change is required to Council's relevant contributions policy.

### **PC1 Provisions**

39. As provided by Mr McHardy the proposed amendments are as follows:

- a) Insert a new Policy 7.3.23 in Chapter 7 (Objectives and Policies for the District's Infrastructure and Development), to read:

*7.3.23 New activities shall not establish in Putaruru Growth Cell 4 (Business) shown on the Planning Maps prior to the formation to the appropriate standard and vesting in Council of the Possible Future Road identified on the Planning Maps connecting Growth Cell 4 and Princes Street.*

- b) Insert a new Clause v) in Rule 8.3.1(j) (Reservation of Control - Controlled Activity Land Use Applications) to read:

*v) The design and location of the legal road providing access to Princes Street shown as Possible Future Road on the Planning Maps where this has not already been vested in Council.*

- c) Insert a new Clause zg) in Rule 8.3.2 (Reservation of Control – Controlled Activity Subdivision Applications) to read:
- zg) For Putaruru Growth Cell 4 (Business) as shown on the Planning Maps, the design and location of the legal road providing access to Princes Street shown as Possible Future Road on the Planning Maps where this has not already been vested in Council.
- d) Insert a new Clause v) in Rule 8.3.4 (Additional Matters of Control and Restricted Discretion) to read:
- v) For subdivisions and land use activities locating in Putaruru Growth Cell 4 (Business) as shown on the Planning Maps, the design and location of the legal road providing access to Princes Street shown as Possible Future Road on the Planning Maps where this has not already been vested in Council.
- e) Insert a new Clause b) in Rule 8.4.11A (Matters of Discretion for Discretionary Activities in Putaruru Growth Cell 4) to read:
- b) For Putaruru Growth Cell 4 (Business) as shown on the Planning Maps, the design and location of the legal road providing access to Princes Street shown as Possible Future Road on the Planning Maps where this has not already been vested in Council.
- f) Insert a new Clause vii) in Rule 10.3.1(d) (Non-Complying Subdivision Activities) to read:
- vii) Any subdivision within Putaruru Growth Cell 4 shown on the Planning Maps that does not comply with Performance Standard 10.5.4A – Provision of New Road to Putaruru Growth Cell 4 (Business).
- g) Amend Rule 10.5.4A (Provision of New Road to Putaruru Growth Cell 4 (Business)), as follows:
- a) Any subdivision creating new allotments within Putaruru Growth Cell 4 (Business) shown on the Planning Maps shall provide access to those allotments by way of a new legal road vested in Council from Princes Street, constructed to the standard set-out in RITS on the land identified as Possible Future Road on the Planning Maps.
- h) Amend Rule 22.3.2A(g) (Controlled Activities in the Putaruru Business Zone), as follows:
- g) Farming activities not lawfully established on the land concerned as at 13 May 2020, except for the establishment of intensive farming activity excluding non-compliance with Performance Standard 22.4.13 which is a Non-Complying Activity:
- i) Amend Rule 22.3.3 (Restricted Discretionary Activities in the Putaruru Business Zone), as follows:
- a) Any activity listed in Rules 22.3.1 or 22.3.2A that does not comply with the Performance Standards in Rule 22.4 below, excluding non-compliance with Performance Standard 22.4.13 which is a Non-Complying Activity.
- j) Amend Rule 22.3.5 (Non-Complying Activities in the Putaruru Business Zone), by adding a new Clause e) as follows:
- e) Non-compliance with Performance Standard 22.4.13 - Provision of New Road to Putaruru Growth Cell 4 (Business).
- k) Amend Rule 22.4.13 (Provision of New Road to Putaruru Growth Cell 4 (Business)) as follows:
- a) Any development of the land within Putaruru Growth Cell 4 (Business) shown on the Planning Maps for a permitted controlled, restricted discretionary, or discretionary activity shall provide gain access to that activity from Princes Street by way of a new legal road from Princes Street, constructed to the standard set-out



in RITS- vested in Council on the land identified as Possible Future Road and shown on the Planning Maps.

40. Commissioners accept those amendments and, accordingly, submissions 5.35 and 5.30 by DPS Developments Ltd are accepted in part.

### **Reverse Sensitivity – Rail Network Boundary**

#### **The Issue**

41. KiwiRail sought noise and vibration reverse sensitivity provisions for new dwellings built within 100m of the rail network boundary (noise) or within 60m of the rail network boundary (vibration).
42. Mr McHardy noted in his supplementary statement that his s42A recommendation to add specific reference to railway noise mitigation in ODP Chapter 15 satisfied that aspect of the submission (4.5) and nothing further is required. He relied upon the evidence of Mr Ellerton, an acoustic consultant, who we questioned via virtual link during the hearing. Mr Ellerton was satisfied, as were we, that the volume and composition of noise from railway operations was relatively predictable, and able to be mitigated through feasible and affordable building design amendments that are well-understood.
43. As Mr McHardy noted, vibration mitigation controls are a different matter. KiwiRail sought a provision requiring development within 60m of the rail network boundary to establish a vibration baseline which would then require any subsequent building to be designed to mitigate that baseline, if required, to the identified Norwegian Standard.
44. Mr Ellerton had provided written evidence on the matter and we questioned him further via virtual platform at the hearing. In particular we were concerned that the technical methodology, reliability and cost components of the proposition for each potentially affected site were largely unknown – and therefore would likely not satisfy the minimum requirements of s32 RMA.
45. We note that KiwiRail was not represented at the hearing and therefore the only expert evidence we had was from Mr Ellerton. We found his evidence persuasive and in the absence of other evidence to the contrary accept his opinion.

#### **The Proposed Resolution**

46. With respect to railway noise mitigation, as noted above, Mr McHardy recommended a relatively simple amendment to the relevant noise provisions to include railway noise as part of the wider land transport building design noise controls and a specific new rule relating to internal design sound levels based on the land transport rule set.
47. We note that section 32 RMA requires consideration of the benefits and cost of the effect of any proposed change as well as an assessment of its efficiency and effectiveness. With respect to vibration mitigation, we are not persuaded that sufficient detail is provided to substantiate the scale of the relief sought, and therefore reject that submission from KiwiRail.

#### **PC1 Provisions**

48. Submission point 4.5 from KiwiRail is accepted in part and the amendments recommended to policy 7.3.12 and to new rule 15.3.4 are confirmed as follows:

7.3.12 Protect the safety and efficiency of the land transport road network from the adverse effects of inappropriate noise-sensitive activities located close to State Highways.

**15.3.4 Internal Design Sound Levels for Putaruru Urban Growth Cells 1 to 4 – Railway Activities**

Noise Sensitive Activities within Putaruru Urban Growth Cells 1 to 4 located within 100m of a Rail Network Boundary shall meet Rule 15.3.4.1 below:

15.3.4.1 Indoor railway noise

- a) Any new building or alteration to an existing building that contains an activity sensitive to noise:
- i) Shall be designed, constructed and maintained to achieve design noise levels resulting from the railway that do not exceed the maximum values in Table A4:

<b><u>Table A4 – Internal Noise Limits</u></b>		
<b><u>Building Type</u></b>	<b><u>Occupancy/activity</u></b>	<b><u>Maximum railway noise level, dB L<sub>Aeq(1h)</sub></u></b>
<u>Residential</u>	<u>Sleeping spaces</u>	<u>35dB</u>
	<u>All other habitable spaces</u>	<u>40dB</u>
<u>Education</u>	<u>Lecture rooms/theatres, music studios, assembly halls</u>	<u>35dB</u>
	<u>Teaching areas, conference rooms, drama studios, sleeping areas</u>	<u>35dB</u>
	<u>Libraries</u>	<u>45dB</u>
<u>Health</u>	<u>Overnight medical care wards</u>	<u>40dB</u>
	<u>Clinics, consulting rooms, theatres, nurses' stations</u>	<u>45dB</u>
	<u>Places of worship, marae</u>	<u>35dB</u>

b) Mechanical ventilation

If windows must be closed to achieve the design noise levels in clause (a)i), the building shall be designed, constructed and maintained with a mechanical ventilation system that:

- (i) For habitable rooms for a residential activity, achieves the following requirements:
- provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and
  - is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and

- provides relief for equivalent volumes of spill air;
- provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser

(ii) For other spaces, is as determined by a suitably qualified and experienced person.

#### **15.3.4.2 Acoustic Report**

A report shall be prepared by a suitably qualified and experienced acoustic consultant and submitted to the council demonstrating compliance with Rule 15.3.4.1 above (as relevant) prior to the construction or alteration of any building containing an activity sensitive to noise. In the design:

(a) Railway noise is assumed to be 70 dB LAeq(1h) at a distance of 12 metres from the track and must be deemed to reduce at a rate of 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres.

(b) Railway noise spectrum at 12 metres shall be assumed to be:

Table A5: Train noise octave band data for calculation

<b><u>Octave Band Centre Frequency (Hz)</u></b>							
<u>63</u>	<u>125</u>	<u>250</u>	<u>500</u>	<u>1000</u>	<u>2000</u>	<u>4000</u>	<u>dBA</u>
<u>78</u>	<u>72</u>	<u>69</u>	<u>66</u>	<u>66</u>	<u>63</u>	<u>58</u>	<u>70</u>

49. We make no further amendment in respect of the proposed vibration provision. This may be a matter that is assessed more comprehensively and in greater detail during the next district plan review.

### **Development Concept Plans**

#### **The Issue**

50. Council proposed a provision (rule 8.1.3(b)) requiring Development Concept Plans (DCPs) to be provided with subdivision applications for the GCs. A list of information requirements is included in the provision.
51. DPS opposed that requirement as being unduly onerous and inflexible.

#### **The Proposed Resolution**

52. Mr Kemeys submitted at hearing that as the first stage of any development might only involve a few subdivision lots, requiring a DCP for the entire GC would, in that instance, be unreasonable and impracticable.
53. Mr McHardy agreed and recommended a more discretionary wording change to rule 8.3.4(u) as follows:

- b) *In addition to any relevant matters listed in 8.1.3a) above, a Development Concept Plan (DCP) shall be submitted with all subdivisions for a subject site that is wholly or partly within a Putaruru Growth Cell.*

*A DCP shall ~~shall~~ should show, as appropriate:*

*i)... to xiii)”*

### **PC1 Provision**

54. The provision as now proposed by Mr McHardy is accepted.
55. DPS submission point 5.11 is accepted in part, and the further submission by KiwiRail, relating to that matter, is rejected.

### **Consent Notices**

#### **The Issue**

56. Council proposed a provision (rule 8.3.4(u)(viii)) requiring consent notices on subdivisions in GC1 and GC4 - relating to limits in terms of traffic generation in GC4 and water supply and sewerage in both GCs. This was opposed by DPS with respect to GC4.
57. No further explanation as to the underlying reason for DPS' submission was provided.

#### **The Proposed Resolution**

58. Mr McHardy recommends no substantive change to his primary recommendation.

### **PC1 Provisions**

59. The provisions as proposed by Mr McHardy, with the addition of GC2 added in response to submission point 6.3 (Nicholson Surveying Ltd), are accepted. We agree that consent notices are a lawful mechanism, routinely used on subdivision consents, that their purpose in this instance is potentially helpful, and no good resource management reason has been advanced for deleting those provisions.
60. DPS submission point 5.16 is accordingly rejected.

### **Expansion of notified GC2**

#### **The Issue**

61. Nicholson Surveying Ltd sought an increase in the size of GC2 (Ruru) – an increase to 5.45ha of residential - to better reflect the surrounding topography, provide better residential amenity in terms of views, and for stormwater management purposes.
62. Mr McHardy expressed concern that this enlargement exceeded existing water servicing capacity.

#### **The Proposed Resolution**

63. Mr McHardy recommended accepting that proposition subject to a Household Unit Equivalent (HUE) limit related to water supply and wastewater services, similar to that applied to GC1 (Overdale). That limit is proposed at 67 HUEs.

## PC1 Provision

64. We find Mr McHardy's recommendation to be an appropriate response and accept it with the following amendments to rule 8.3.3(u):
- u) In assessing applications for subdivision and land use activities within Putaruru Growth Cell 1 (*Overdale*) or Growth Cell 2 (*Ruru*) that do not comply with Rules 10.4.6, ~~10.4.7~~, or 23.4.14 or 23.4.15 relating to the maximum number of HUEs to be provided for in ~~this~~ these Growth Cells, the matters in respect of which the Council has restricted its discretion are:
    - i) .....to vi)" (unchanged)
- and rule 8.3.4(u):
- u) Where the subdivision affects land wholly or partly within a Putaruru Growth Cell shown on the Planning Maps:
    - i) .....to vii)" (unchanged)
    - viii) Where the subdivision affects land wholly or partly within Putaruru Growth Cells *1, 2 or and 4* shown on the Planning Maps, requiring consent notices to be placed on the titles of newly-subdivided allotments to alert prospective purchasers to the requirements of Rules 22.4.11d), 22.4.12, or 23.4.14 or 23.4.15.
65. Submission 6.3 by Nicholson Surveying Ltd is, accordingly, accepted in part.

## Raukawa and section 6 and section 8 RMA

### The Issue

66. Raukawa Charitable Trust (RCT) sought to ensure that their section 6 and section 8 interests are reflected in and at subdivision stage both in terms of matters of control / discretion (and associated assessment criteria), and also in terms of notification.
67. The context for these matters is detailed in the Raukawa Iwi Environmental Management Plan and Te Ture Whaimana (Vision and Strategy for the Waikato River), and are accurately reflected in the s42A report.<sup>3</sup>
68. RCT made it clear to us that their particular concern is with the health and wellbeing of the Blue Spring water supply source and with any discharge effect on the Waihou River. While the water take consent issue is not one before Council as regulator, the potential for HUE exceedances to put additional stress on the spring is a matter of significant concern.

### The Proposed Resolution

69. Mr McHardy proposed an amendment to rule 8.3.4(u) as follows:
- ix) *Means to mitigate effects of the additional demand for water supply and/or wastewater disposal capacity upon the relationship of Raukawa and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

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<sup>3</sup> Evidence in Chief of Giles Boundy, paragraph 3.3 and Summary of Evidence of Mr Giles Boundy, paragraph 2.

70. In response to Commissioners' questions as to what practically might be expected from applicants in the way of mitigation, Mr McHardy noted the following two options:  
 a) a Cultural Impact Assessment, and b) limited notification.
71. Mr Boundy, planner for RCT, noted that the proposed amendment only related to subdivision applications and sought that be extended to apply to land use applications where the stipulated HUE is exceeded. Mr McHardy supported that further amendment, adding that such should also apply to the HUE limit for GC4.
72. Mr Witham recommended consequential limited notification amendments (including more broadly to Iwi and Hapū) to Chapter 8 for non-compliance with the water and wastewater rules in the Tokoroa and Putaruru Business Zones and the Industrial Zone.

### **PC1 Provisions**

73. We agree that the amendments proposed by Mr McHardy are within scope and are appropriate as follows:
- a) Adding a new Rule 8.3.4(u)(ix) to Rule 8.3.4 - Additional Matters of Control and Restricted Discretion, as follows:  
*ix) Means to mitigate effects of the additional demand for water supply and/or wastewater disposal capacity upon the relationship of Raukawa and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*
- b) Adding a new Rule 8.3.3(t)(vi) to Rule 8.3.3t - Matters where Discretion is Restricted - Restricted Discretionary Activities, as follows:  
*vi) Means to mitigate effects of the additional demand for water supply and/or wastewater disposal capacity upon the relationship of Raukawa and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*
- c) Adding a new Rule 8.3.3(u)(vi) to Rule 8.3.3u - Matters where Discretion is Restricted - Restricted Discretionary Activities, as follows:  
*vi) Means to mitigate effects of the additional demand for water supply and/or wastewater disposal capacity upon the relationship of Raukawa and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

### **PC2 Provisions**

74. We agree that the proposed amendments by Mr Witham are within scope and are appropriate as follows:

(Chapter 8 – Administration of the Plan)

#### **8.2 Notification Considerations**

- a) The Council is precluded from giving public notification of any application for a resource consent for a controlled activity or a restricted discretionary activity, except where Rule 8.2g) applies, and for applications for resource consent for non-compliance with Rules 18.4.13, 22.4.12, and 27.4.13.

..

- fa) For non-compliance with Rules 18.4.3, 22.4.12, and 27.4.13, limited notification to Iwi and Hapū is not precluded

#### **8.3.3 Matters where Discretion is Restricted – Restricted Discretionary Activities**

w) In assessing the effects of non-compliance with rules 18.4.13, 22.4.12 and 27.4.13, and in addition to criteria 8.3.4n) and 8.3.4r), Council restricts its discretion to the degree of non-compliance and the extent to which that non-compliance results in adverse effects on waterbodies, including cultural effects.

75. Submission 8.7 from RCT is accepted, and submission point 8.13 is accepted in part.

## **Exclusion for Fire and Emergency Purposes**

### **The Issue**

76. Fire and Emergency NZ (FENZ) had sought amendments to a number of rules relating to the 10m<sup>3</sup> limit on taking water from Council's reticulated water supply that apply in the Tokoroa Business, Putaruru Business, and Industrial zones. FENZ was concerned that these rules might be held to apply to its activities relating to fire, emergency and training exercises.

### **The Proposed Resolution**

77. Mr Witham had proposed accepting FENZ' submission points 21., 2.2 and 2.3.
78. Commissioners queried whether that was strictly necessary in view of the wide authority granted FENZ under its legislation (the Fire and Emergency Act 2017 (FEA)).
79. In response Mr Witham reviewed the relevant section of the FEA (s48), concluding that the cross-over between the FEA and the RMA is unclear and therefore the amendment should be accepted out of caution.

## **PC2 Provision**

80. While we are not entirely persuaded that the amendment is necessary, in the absence of submissions opposing the amendment sought we are prepared to accept Council's cautious approach. The recommended amendments are as follows:

(Chapter 18 – Tokoroa Business Zone)

18.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m<sup>3</sup> per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017) (RMA s14(3)(e)).
- b. A requirement to discharge wastewater to a public sewer exceeding 10m<sup>3</sup> per connection per day.

(Chapter 22 – Putaruru Business Zone)

22.4.12 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m<sup>3</sup> per connection per day (this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017). (RMA s14(3)(e))

- b. A requirement to discharge wastewater to a public sewer exceeding 10m<sup>3</sup> per connection per day.

(Chapter 27 – Industrial Zone)

#### 27.4.13 Water and Wastewater

No activity, or combination of activities on a site shall have either:

- a. A requirement for water from Council's reticulated supply exceeding 10m<sup>3</sup> per connection per day (*this does not include water required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017*). (RMA s14(3)(e))
- b. A requirement to discharge wastewater to a public sewer exceeding 10m<sup>3</sup> per connection per day.

81. FENZ submission points 2.1, 2.2 and 2.3 are accepted accordingly.

## OTHER MATTERS

82. Other matters addressed by us include:

- (a) The Ministry of Education had sought improvements to pedestrian safety and infrastructure in the vicinity of the growth cells. A measure suggested was barriers placed along the railway to prevent students from Putaruru Primary School and Te Wharekura o Te Kaokaoroa taking 'illegal shortcuts' across the railway. We have accepted the recommendations of the s42A report that no further amendments to the ODP is necessary.
- (b) Nicholson Surveying Ltd submitted that Council should rezone 6 Scotia Glen St from Putaruru Business to Putaruru Residential. This was not a matter notified in the Plan Change and is out of scope. We accept the s42A recommendation that no change be made to the ODP.
- (c) Amending the boundaries of Proposed Putaruru Growth Cell 2 (Ruru) on Planning Map 21 to align with the area shown in dark pink on the final page of Submission 6, except for the 2.75ha of land at the southern end of Ruru Street that is already zoned Putaruru Residential. This will align with the surrounding topography of the area.

## STATUTORY PROVISIONS

- 83. 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.
- 84. 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.
- 85. The NPS - Urban Development 2020 and the NPS for Freshwater Management 2020 were gazetted after PC1 and PC2 were notified. No other newer and relevant higher



order planning instrument applies that has not been taken into account. Therefore, we see no need to refer to (and little benefit to be gained from) Part 2 RMA.

86. Having considered the evidence and relevant background documents, we are satisfied, overall, that PC1 and PC2 have 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**

87. For the record we note that we have generally accepted the recommendations on submissions made in the s42A reports and as modified in the supplementary reports. Accordingly, other than as noted above and to avoid unnecessary repetition, we have not repeated the recommendations on submission points made in those reports and simply confirm those.
88. We are confident that the provisions recommended for approval are within scope of the submissions made and the evidence given.

## **PROVISIONS AND MAPS**

89. 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.
90. The more substantive changes arise from our determinations on the matters heard and raised in submissions.

## **Appendices**

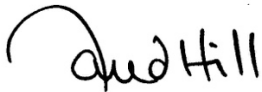
91. Attached and integral to this decision are 5 Appendices as follows:
- Appendix 1 = Plan Change 1: Putaruru Urban Growth and Related Matters provisions;
  - Appendix 2 = Track changed version of Appendix 1 Provisions;
  - Appendix 3 = Plan Change 2: Infrastructure Management provisions
  - Appendix 4 = Track changed version of Appendix 3 Provisions
  - Appendix 5 = Planning Maps.

## **DECISION**

92. Pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, Plan Change 1 Putaruru Urban Growth and Related Matters to the South Waikato District Plan is approved subject to the modifications as set out in this decision and the provisions attached as Appendix 1 and the planning maps 20-22 attached as Appendix 5.
93. Pursuant to Schedule 1, Clause 10 of the Resource Management Act 1991, Plan Change 2 - Infrastructure Management to the South Waikato District Plan is approved

subject to the modifications as set out in this decision and the provisions attached as Appendix 3.

94. Submissions on the plan change are recommended to be accepted and rejected in accordance with this decision. In general, the recommendations set out in the Council's two section 42A reports and supplementary reports, except as identified above in relation to matters discussed, are accepted.
95. The reasons for the recommendation are that both Plan Change 1 and Plan Change 2:
  - a. will assist the Council in achieving the purpose of the RMA;
  - b. give effect to the Waikato Regional Policy Statement 2016, the NPS - Urban Development 2020 and the NPS for Freshwater Management 2020;
  - c. accord with the purpose and principles of Part 2 of the RMA;
  - d. are supported by necessary evaluations in accordance with sections 32 and 32AA RMA; and
  - e. will help with the effective implementation of the South Waikato District Plan.



**David Hill**  
**Chairperson**  
**& for Commissioner Antoine Coffin**

**Date: 21 December 2020**

## **Appendix 1 – Plan Change 1: Putaruru Urban Growth and Related Matters Provisions**

**Appendix 2 – Plan Change 1: Putaruru Urban Growth and Related Matters  
Provisions (Track Changes from Notified Version).**

**Appendix 3: Plan Change 2 – Infrastructure Management Provisions**

## **Appendix 4: Plan Change 2 – Infrastructure Management Provisions (Track Changes from Notified Version)**

## **Appendix 5 – Plan Change 1: Planning Maps**

## Appendix 5 – Planning Maps



