
To: Wayne Allan – Group Manager District Growth and Regulatory Services **Cc:** Nick Williamson, Align Planning

From: Tony Quickfall manager District Plan and Growth

Date: 19 August 2022 **File Ref:** ECM #10808550

Subject: Private Plan Change 20 – Titanium Park Limited and Rukuhia Properties Limited – Northern Precinct Extension

INTRODUCTION

Titanium Park Limited and Rukuhia Properties Limited have collectively lodged a private plan change request to the Waipā District Plan (WDP), identified as Private Plan Change 20 (PPC20). PPC20 seeks to:

1. Rezone approximately 89ha of land to the northwest of the Airport, from Rural to Airport Business Zone.
2. Amend the Airport Business Structure Plan contained in Appendix S10 of the Waipā District Plan.
3. Amend the Airport Business Zone (Titanium Park) provisions contained in section 10 of the Waipā District Plan.
4. Amend the infrastructure, Hazards, Development and Subdivision provisions contained in section 15 of the Waipā District Plan.
5. Amend the Assessment Criteria and information requirements contained within section 21 of the Waipā District Plan.

Consequential changes may also be made by the Hearings Commissioners, if the plan change is approved, provided any consequential changes are to give effect to the draft plan change and are within the scope of the substantive plan change proposal.

Clause 25 of Schedule 1 of the Resource Management Act 1991 (RMA) directs Councils to consider a request for a private plan change and to make a determination as to whether the plan change process should be accepted as requested, be adopted by Council, rejected, or processed as a resource consent. Schedule 1, Clause 5(1)(b) of the RMA requires that once accepted, Council is to publicly notify or give limited notification of the proposed plan change under Clause 5A. The purpose of this report is to make a recommendation regarding **acceptance** and **notification** of PPC20.

PRIVATE PLAN CHANGE REQUEST

Section 73(2) of the RMA states:

- (2) *Any person may request a territorial authority to change a district plan, and the plan may be changed in the manner set out in Part 2 or 5 of Schedule 1.*

Part 2 of Schedule 1 outlines the process for a private plan change request, which has been lodged under the standard provisions of the RMA. Part 5 refers to the streamlined review process whereby the Minister for the Environment essentially must take responsibility for issuing directions for the

review process and making a decision on any plan change. There are no rights of appeal under the streamlined process.

PPC20 has been lodged in accordance with Part 2 of Schedule 1. Part 2 sets out a number of statutory provisions regarding the form of the plan change request (Clause 22), a further information process (Clause 23), and the opportunity to modify the request (Clause 24).

It is considered that the plan change application satisfies the statutory requirements for the form of the plan change in that it includes:

- Sufficient information regarding the purpose of and reasons for the plan change;
- Discussion of the alternatives; and
- An assessment of cost and benefits as required under Section 32 of the RMA.

The plan change request also includes an assessment of environmental effects relative to the proposal.

With regards to further information, a request for further information was issued pursuant to Clause 23(1) on the 12 August 2022, a response to the request was received on 19th August 2022. The plan change request and information response received provides sufficient information to enable both Council and any submitters the opportunity to understand the nature and scope of PPC20 and the specific changes requested to the WDP. It is noted that the notification process may identify further matters that need to be considered by Council, which may lead to a further information request.

CLAUSE 25 CONSIDERATIONS AND ASSESSMENT

Clause 25 of Schedule 1 sets out the decision-making process that Council must follow once a private plan change request has been received as follows.

25 Local authority to consider request

- (1) A local authority shall, within 30 working days of—
 - (a) receiving a request under [clause 21](#); or
 - (b) receiving all required information or any report which was commissioned under [clause 23](#); or
 - (c) modifying the request under [clause 24](#)—whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.
- (1A) The local authority must have particular regard to the evaluation report prepared for the proposed plan or change in accordance with [clause 22\(1\)](#)—
 - (a) when making a decision under subclause (1); and
 - (b) when dealing with the request under subclause (2), (3), or (4).
- (2) The local authority may either—
 - (a) adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—
 - (i) the request must be notified in accordance with [clause 5](#) or [5A](#) within 4 months of the local authority adopting the request; and
 - (ii) the provisions of [Part 1](#) or [4](#) must apply; and
 - (iii) the request has legal effect once publicly notified; or
 - (b) accept the request, in whole or in part, and proceed to notify the request, or part of the request, under [clause 26](#).
- (2AA) However, if a direction is applied for under [section 80C](#), the period between the date of that application and the date when the application is declined under [clause 77\(1\)](#) must not be included in the calculation of the 4-month period specified by subclause (2)(a)(i).
- (2A) Subclause (2)(a)(iii) is subject to [section 86B](#).
- (3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of [Part 6](#) shall apply accordingly.
- (4) The local authority may reject the request in whole or in part, but only on the grounds that—
 - (a) the request or part of the request is frivolous or vexatious; or
 - (b) within the last 2 years, the substance of the request or part of the request—
 - (i) has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
 - (ii) has been given effect to by regulations made under [section 360A](#); or
 - (c) the request or part of the request is not in accordance with sound resource management practice; or
 - (d) the request or part of the request would make the policy statement or plan inconsistent with [Part 5](#); or
 - (e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.
- (4A) A specified territorial authority must not accept or adopt a request if it does not incorporate the MDRS as required by [section 77G\(1\)](#).
- (5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision, including the decision on notification.

In accordance with subclause 1A, a Section 32 analysis of the plan change request has been included in the application and this has been given particular regard to.

The key decision pathways for Council in relation to PPC20 are set out in subclauses 2, 3 and 4. Each of these are considered as follows:

- Subclause 2 provides the option for Council to adopt the plan change as a Council led plan change, and then to follow the statutory plan review process. Alternatively, it can accept the

plan change, in whole or in part, and then the plan change may be notified and assessed by Council as a private plan change.

- It is **recommended that Council accept PPC20 as a private plan change**. Council has not indicated support for adopting as a council plan change. Given that matters such as roading networks and infrastructure will require further consideration as part of the plan change, processing this as a private plan change retains a degree of independence. Finally, council has not budgeted for progressing this as a council plan change. As a private change, Council is able to recover the processing costs from the applicant companies.
- Subclause 3 allows for Council to consider the changes sought as a resource consent application through the provisions of Part 6 of the RMA.
 - The scale and nature of the proposal mean it would be inappropriate to process this as a resource consent.
- Subclause 4 sets out specific grounds where Council may reject the plan change which would negate the opportunity for the plan change to be considered under the RMA. It is considered that the grounds identified within subclause 4 do not apply to this plan change request, as outlined below.
 - a. *The request or part of the request is frivolous or vexatious*
Not applicable. PPC20 is neither frivolous nor vexatious.
 - b. *within the last 2 years, the substance of the request or part of the request:*
 - *has been considered and given effect to, or rejected by, the local authority or the Environment Court; or*

The substance of the request was considered by the Future Proof Implementation Committee between January and May 2022 as part of the review of the Future Proof Strategy (FPS). The Regional Airport Company lodged a submission seeking to identify the area of PPC20 as future development in the revised FPS. The Future Proof Implementation Committee in its decision of July 2022 did not accept the Airport submission seeking to include the plan change area. Consequently the revised 2022 FPS does not identify the area of the plan change as future development.

While the substance of the request was considered and rejected by Future Proof, in this instance it is **recommended that Council exercises its discretion not to reject PPC20 on these grounds**. The reasons for this are:

- The plan change has been in preparation and Council has been engaged by the Airport company for 18 months prior to lodgement.
- Waipā District Council is on record as stating its in-principle support for the merits of PPC20, in that it accords with the general spatial planning framework of the Waipā District Plan; it is a natural and logical extension of the Northern Precinct; it accommodates demand for additional and possibly specialised commercial land in close proximity to the regional airport; and matters relating to roading network and infrastructure can be assessed and considered through the plan change process.
 - a. *has been given effect to by regulations made under [section 360A](#); or*
Not applicable.

- b. *the request or part of the request is not in accordance with sound resource management practice; or*

The proposed plan change follows sound resource management practice, and has included extensive pre-application engagement with relevant agencies.

- c. *the request or part of the request would make the policy statement or plan inconsistent with [Part 5](#); or*

Not applicable.

- d. *In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.*

Not applicable.

Subclause (4A) requires that Council must not accept or adopt a request if it does not incorporate the Medium Density Residential Standards ('MDRS') as required by s77G(1) of the Act. That section requires Councils to give effect to Policies 3 and 5 of the National Policy Statement for Urban Development for every residential zone in the urban environment. Neither the existing or proposed zones constitute a 'residential zone' for the purposes of this section, so subclause (4A) causes no impediment for the plan change to proceed.

Clause 26A of Schedule 1 *Mana Whakahono a Rohe* explicitly requires Council to comply with any iwi participation agreements. There are no existing agreements.

NOTIFICATION ASSESSMENT

The RMA requires a decision as to whether the application should follow a public notification or a limited notification¹ process. The purpose of the limited notification process is to provide an alternative to full (public) notification where full notification may be disproportionate or inefficient in the circumstances.

The RMA states² that a local authority may give limited notification of a proposed plan change, but only if it is able to identify all the persons directly affected by the proposed change. The RMA provides no guidance as to how to determine whether a person is directly affected. The Ministry for the Environment guidance³ suggests that limited notification is likely to be used for "minor, small scale, or discrete plan changes, for example aligning zones to new property boundaries, or a spot zoning".

Limited notification is not considered appropriate for PPC20 as there may be affected parties who are located outside the immediate geographic area of the site. Limited notification is a more appropriate tool in circumstances where geographic scope is limited.

There is also a higher potential for a limited notification decision to be legally challenged via a judicial review by any parties not directly notified who feel that they are directly affected and are excluded. This could have potentially severe implications on the plan change process.

¹ As set out in Schedule 1, subclause 5A of the RMA

² Schedule 1, subclause 5A(2)

³ Resource Legislation Amendments 2017 – Fact Sheet 4, Ministry for the Environment

Council staff have consulted with the Titanium Park Limited and Rukuhia Properties Limited consultants on notification, who have confirmed that they anticipate a public notification process.

Given the above, it is **recommended that PPC20 is publicly notified** pursuant to Clause 5(1)(b)(i) of the First Schedule to the RMA and that the procedure set out in Clause 5(1A)(a) of the RMA be followed in regard to notification, which would involve a public notice and direct notification to the directly affected parties surrounding the site.

In terms of directly notified parties, it is **recommended that the ratepayers identified in Appendix B to this report be directly notified** of PPC20. In addition, the Minister for the Environment, and the relevant iwi authorities as identified within the plan change documentation, being Ngati Apakura, Ngati Maniapoto, Raukawa and Waikato-Tainui are also directly notified as required through Clause 3 of Schedule 1 of the RMA.

RECOMMENDATION

Pursuant to Clause 25(2)(b) of the First Schedule to the RMA, it is **recommended to accept the whole of the request for PPC20 by Titanium Park Limited and Rukuhia Properties Limited for processing as a private plan change** .

Pursuant to Clause 5(1)(b)(i) of the First Schedule to the RMA, it is **recommended that Council publicly notify PPC20** and the procedure set out in Clause 5(1A)(a) be followed with direct notification to the persons identified above and in Appendix B.

Reasons for decision:

1. Sufficient information has been provided to ensure that any person who may wish to submit on PPC20 can clearly understand what is proposed.
2. The plan change applicants (proponents) have provided the necessary information pursuant to the requirements of the RMA.
3. There is no merit in Council adopting PPC20 as a Council plan change and a resource consent process would not provide an effective planning process or outcome to achieve the outcomes sought by the plan change request.
4. Council is satisfied that the plan change proponents have undertaken an appropriate consultation process.
5. The grounds on which Council may reject the plan change request are not applicable or justifiable in relation to the plan change request.

Recommendation:



Tony Quickfall
MANAGER, DISTRICT PLAN AND GROWTH
22 August 2022

Authorised under delegated authority:



Wayne Allan
GROUP MANAGER DISTRICT GROWTH AND REGULATORY SERVICES
23 August 2022

APPENDIX A - DIRECTLY AFFECTED PROPERTIES TO BE NOTIFIED

All properties identified in in the blue boundaries to be directly notified (including KiwiRail and HCC)

