

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Private Plan Change 20 to the Operative
Waipā District Plan

LEGAL SUBMISSIONS OF COUNSEL FOR WAIPĀ DISTRICT COUNCIL

Dated 16 March 2023

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1. INTRODUCTION

1.1 These Legal Submissions are submitted on behalf of Waipā District Council in respect of Private Plan Change 20 to the Operative Waipā District Plan (PC20).

1.2 These submissions will address:

- (a) The scope of PC20 and the role of the Hearing Panel;
- (b) The evaluation of PC20 under the NPS-UD and the NPS-HPL;
- (c) The relevance of future development in the vicinity of PC20;
- (d) The level of detail required to be included in PC20; and
- (e) Matters raised during the hearing.

2. THE SCOPE OF PLAN CHANGE 20

2.1 PC20 is a private plan change which seeks to amend the Operative Waipā District Plan (District Plan) to:

- (a) Rezone approximately 89ha of land to the north of the current Airport Business Zone from Rural to Airport Business;
- (b) Replace the current Airport Business Zone Structure Plan and the rules that apply to it, in Section 10 and Appendix S10 of the District Plan, for the whole of the Airport Business Zone; and
- (c) Make consequential changes to sections 15 and 21.

2.2 The Hearing Panel has delegated authority from Waipā District Council (the Council) to make a decision on PC20 (rather than make a recommendation to the Council). As it is a private plan change, your decision will be made under Clause 29(4) of Schedule 1 of the Resource Management Act 1991 (the Act):

After considering a plan or change, undertaking a further evaluation of the plan or change in accordance with section 32AA, and having particular regard to that evaluation, the local authority-

- (a) may decline, approve, or approve with modifications the plan or change; and
- (b) must give reasons for its decision.

2.3 Clause 29 authorises the Hearings Panel to evaluate and make modifications to the plan change and is not limited to making decisions on submissions.¹

2.4 PC20 does not propose to rezone land outside of the current Airport Business Zone, or the proposed 90ha extension to the zone. The Hearing Panel has confirmed, in Minute 4, that submissions seeking rezoning of additional land are outside the scope of PC20 and will not be considered as part of this hearing.

3. NATIONAL POLICY STATEMENTS

3.1 As PC20 seeks to extend the Airport Business Zone into land that is currently zoned Rural, there are two National Policy Statements that are particularly relevant to the Hearing Panel's assessment.

National Policy Statement – Urban Development 2020 (NPS-UD)

3.2 Policy 8 of the NPS-UD requires that:

Policy 8: Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

- (a) unanticipated by RMA planning documents; or
- (b) out-of-sequence with planned land release.

3.3 To implement Policy 8, clause 3.8(8) provides that:

- (1) Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

3.4 The criteria required by clause 3.8(3) has recently been included in the Waikato Regional Policy Statement (WRPS) by Change 1 which was publicly notified on 18

¹ Compare to Clause 10 of Schedule 1 in respect of Council initiated or adopted plan changes.

November 2022. While submissions and further submissions have closed, hearings have not yet been held on Change 1.

3.5 Change 1 includes criteria for assessment of out of sequence or unplanned development at APP11 and APP13. As Change 1 was notified after public notification of Plan Change 20, these criteria are assessed in the Addendum to the Plan Change provided in January 2023. The Council's s42A author has reviewed the assessment and agrees with its conclusions.

3.6 The following policy has been proposed to be added to the District Plan by Proposed Plan Change 26 (notified 19 August 2022):

Policy – Out of sequence and out of zone plan changes

1.3.3.2 To have regard to potential plan changes that are otherwise not enabled or not in sequence with the planned release of land where that plan change would:

- (a) Contribute to a well-functioning urban environment; and
- (b) Provide the necessary infrastructure required for the proposed development; and
- (c) Be well connected to public transport and transport corridors; and
- (d) Provide significant development capacity.

3.7 While both Change 1 to the WRPS and Plan Change 26 to the District Plan have been recently notified (and the weight to be given to them will be reduced accordingly), the evidence for the Applicant shows that these criteria can be met by PC20.

National Policy Statement – Highly Productive Land 2022 (NPS-HPL)

3.8 The NPS-HPL came into effect on 17 October 2022, after notification of PC20 and is a matter now required to be given effect by the Hearing Panel.

3.9 The objective of the NPS-HPL is:

Objective: Highly productive land is protected for use in land-based primary production, both now and for future generations.

3.10 Until highly productive land is mapped in Regional Policy Statements, the NPS-HPL defines highly productive land in clause 3.5(7) as follows:

(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

- (a) is
 - (i) zoned general rural or rural production; or
 - (ii) LUC 1, 2, or 3 land; but
- (b) is not:
 - (i) identified for future urban development; or
 - (ii) subject to Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

3.11 The land the subject of the proposed extension to the Airport Business Zone is currently zoned Rural in the District Plan and consists of LUC 1, 2 or 3 land.

3.12 The phrase “identified for future urban development” is defined in Part 1.3 of the NPS-HPL as:

- (a) identified in a published Future Development Strategy as land suitable for commencing urban development over the next 10 years; or
- (b) identified:
 - (i) in a strategic planning document as an area suitable for commencing urban development over the next 10 years; and
 - (ii) at a level of detail that makes the boundaries of the area identifiable in practice.

3.13 A “strategic planning document” is defined in Part 1.3 as “any non-statutory growth plan or strategy adopted by local authority resolution”. The Future Proof Strategy 2022 meets this definition. However, while a submission was made by Waikato Regional Airport Limited to identify the proposed extension of the Northern Precinct as part of the review of Future Proof in 2022, the Future Proof Implementation Committee did not accept the submission as it considered the suitability and timing of this land should be assessed through a plan change process. Consequently, the extension to the Northern Precinct is not reflected in the Future Proof Strategy 2022, and the exemption in clause 3.5(7)(b)(i) does not apply.

3.14 As PC20 is a private plan change (and was not initiated or adopted by Council) the exemption in clause 3.5(7)(b)(ii) also does not apply.

3.15 Consequently, and as accepted by the Applicants, the proposed extension of the Airport Business Zone must be treated as highly productive land. The Hearing Panel must be satisfied that the proposed rezoning meets the criteria of clause 3.6 of the NPS-HPL:

3.6 Restricting urban rezoning of highly productive land

- (1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:
 - (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
 - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
- (2) In order to meet the requirements of subclause 1(b), the territorial authority must consider a range of reasonably practicable options for providing the required development capacity, including:
 - (a) greater intensification in existing urban areas; and
 - (b) rezoning of land that is not highly productive land as urban; and
 - (c) rezoning different highly productive land that has a relatively lower productive capacity.
- (3) In subclause (1)(b), development capacity is **within the same locality and market** if it:
 - (a) is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020; and
 - (b) is for a market for the types of dwelling or business land that is in demand (as determined by a Housing and Business Assessment in accordance with the National Policy Statement on Urban Development 2020)

...
- (5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.

3.16 As the NPS-HPL came into effect on 17 October 2022, the applicants' assessment of the NPS-HPL is contained in the Addendum provided in January 2023. The Council's s42A author has reviewed that assessment and agrees with its conclusions.

4. RELEVANCE OF FUTURE DEVELOPMENT IN THE VICINITY

4.1 A number of submissions have sought that PC20 makes specific provision for future infrastructure and development in the vicinity of the site, where that future infrastructure or development has varying levels of certainty. In order to achieve integrated management, it is appropriate that the PC20 be planned in such a way that it does not preclude these future developments taking place, however, it is not appropriate for the PC20 to require positive actions to be taken where there is still significant uncertainty. In particular:

- (a) While the Southern Links transport network is designated, the evidence of Waka Kotahi is that it is uncertain when the road will proceed, and whether it will proceed as currently designated. Accordingly, it is appropriate for traffic effects to be considered without Southern Links, while ensuring that future connections are not precluded. In the same way, the Hearing Panel should consider the potential visual effects of PC20 for the period prior to construction of the Southern Links, regardless of whether the designation is considered to form part of the future receiving environment.²
- (b) As no designation or planning process has commenced in respect of the Proposed Wastewater Treatment Plant, it would be premature to make assumptions regarding whether appropriate approvals will be obtained for the Plant on the currently proposed site. Any indicative location for cycleway/walkway connections should therefore be based on the current land use, while ensuring that modifications can be made to the indicative location in the future should that become necessary.

² As proposed in paragraphs 9.7 to 9.17 of the Applicants' Opening Legal Submissions. The relevance of temporary effects has been confirmed by the Court in *Trilane Industries Limited v Queenstown-Lakes District Council* and in *Norman v Tupuna Maunga o Tamaki Makaurau Authority* [2022] NZCA 30.

- (c) As no private plan change or resource consent process has commenced for the Tabby Tiger Land to the south of Airport Road/State Highway 21, it would be premature to make assumptions regarding whether approvals will be obtained for urban development of this site. While traffic design in the vicinity should not preclude future development of the land, it would not be appropriate for PC20 to require design changes to the intersection to accommodate an as yet unknown future use.

5. THE LEVEL OF DETAIL REQUIRED TO BE INCLUDED IN PLAN CHANGE 20

- 5.1 The purpose of the current process is to confirm the appropriate zoning of the proposed extension to the Northern Precinct, and to put in place a Structure Plan to guide future development of the site. However, further resource consents will be required which will provide an opportunity for detailed design, servicing and assessment of effects.
- 5.2 The District Plan currently provides for a comprehensive development plan process in advance of individual resource consents. However, decisions of the Environment Court have confirmed that this process is not appropriate as consent cannot be granted to a “plan” (as opposed to an “activity”), and the status of future activities cannot be determined by the comprehensive development plan, which is a matter outside of the District Plan.³
- 5.3 As part of replacing the comprehensive development plan process, it is appropriate for the Airport Business Zone Structure Plan to include some of the additional detail that would previously have been included in the comprehensive development plan.⁴ However, while the Hearing Panel should be satisfied that the effects of the Airport Business Zone can be appropriately managed, and that the site can be adequately serviced, it is not necessary for the final details of those matters to be included in the

³ *Queenstown Airport Corporation v Queenstown Lakes District Council* [2014] NZEnvC 93 and *Re Auckland Council* [2016] NZEnvC 56.

⁴ Previously rule 15.4.2.93 and addressing matters such as the provision of an integrated traffic assessment, comprehensive wastewater treatment, suitable potable and firefighting water supply, management of stormwater, proposed staging, internal road layout including public transport and pedestrian and cycle linkages, consistency with operational requirements of the airport and associated infrastructure.

Structure Plan at this stage. Doing so would have the effect of “locking in” the details in such a way that sensible modifications would be unable to take place as the development progresses over time.

- 5.4 As a result of the changes proposed to the Airport Business Zone Structure Plan, both in the notified version of PC20 and in response to submissions on it, the Structure Plan represents a significant improvement over the Structure Plan currently contained in the District Plan, particularly in respect of landscaping, setbacks, transport upgrades and the protection of pekapeka.

6. **MATTERS RAISED DURING THE HEARING**

- 6.1 I wish to address two matters raised in questions during the hearing:

- (a) First, Commissioner Coffin questioned whether it is appropriate for the District Plan to refer to external documents (such as Codes of Practice) which may be updated. This is addressed in Part 3 of Schedule 1 of the Act. While standards, requirements or recommended practices of international or national organisations and technical material may be included in a District Plan by reference, they can only be updated by a variation or change to the District Plan.
- (b) Commissioner Coffin queried whether a Significant Natural Area (SNA) could be identified as part of PC20. The WRPS, and the District Plan, have processes for identifying and scheduling SNAs which have not formed part of the preparation of PC20. In addition, the rules applying to SNAs seek to restrict certain activities (such as removal of indigenous vegetation) but the rules are unable to require positive actions to be taken by a landowner. Consequently I agree with the Applicant that the Bat Habitat Area proposed in PC20 provides better protection for pekapeka than scheduling an SNA on the site.

7. **EVIDENCE**

- 7.1 The Council’s s42A report and technical evidence has been provided by:

- (a) Nick Williamson, consultant planner with Align Limited (s42A author);
- (b) James Tinnion-Morgan, of Aurecon Limited (transport);
- (c) Claire Scrimgeour, of Beca Limited (three waters); and
- (d) Angela Brown, of Align Limited (landscape).

Signed this 16th day of March 2023



W J Embling
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