

**PROPOSED PRIVATE PLAN CHANGE 2:
TE AWA LAKES**

to

HAMILTON CITY DISTRICT PLAN

**CLOSING STATEMENT OF 42A REPORTING
PLANNER**

04 December 2019

1 Introduction

- 1.1 My name is Grant Robert Eccles.
- 1.2 I have the qualifications and experience set out in my 42A report dated 14 October 2019.
- 1.3 This closing hearing statement focuses on PPC2 issues addressed and still in contention, addresses some outstanding submission points, and provides my final recommendation to the Hearing Panel on PPC2.

2 Key Issues Addressed and In Contention

Strategic Landuse and Reverse Sensitivity

- 2.1 There were three aspects where I had expressed some qualification of my opinion as to the consistency of PPC2 with the relevant RPS provisions. Those aspects related to geotechnical¹, transport², and flood hazard and stormwater management³ matters.
- 2.2 Through the evidence presentation that has occurred at the hearing, and associated formal and informal expert conferencing, I am now satisfied that the qualifications in the areas set out above have been resolved. I have also had the benefit of reviewing Mr O'Dwyer's rebuttal evidence with regards to Strategic Landuse matters and his own assessment of the relevant RPS provisions that aligns with my own. My firm view is that acceptance of PPC2 with the latest plan provisions to be presented by Mr Olliver that have been the subject of significant collaboration will give effect to the Waikato RPS.
- 2.3 In reaching this position, I have given a great deal of thought to what might constitute "incompatible adjacent land use" given that the RPS development principle o) seeks to avoid such landuse occurring. In my view, whether a landuse is compatible or otherwise with another must be grounded in an assessment of the effects of each activity.
- 2.4 For example, the Ruakura Inland Port at face value could be regarded as incompatible with the residential and rural-residential landuse that is adjacent to it in places. Yet, following a thorough assessment of the effects of the inland port proposal the Board of Inquiry for that project saw fit to approve it immediately adjacent to those landuses.
- 2.5 In the case of PPC2, after consideration all of the relevant evidence, and the measures proposed by the applicant to address reverse sensitivity, I remain of the

¹ RPS Development Principle m)

² RPS Policy 6.3

³ RPS Development Principle p)

view that there is no reason to reject PPC2 on strategic landuse or reverse sensitivity grounds.

Geotechnical

2.6 At the beginning of the hearing I advised the hearing panel that, despite the planning provisions that had arisen as a result of informal conferencing amongst the geotech and planning experts prior to the hearing, my concerns with regards to applying residential zoning to Areas Q, R, and X (in the Business 6 zone) were not resolved. However, as a result of the further discussions between the geotechnical experts throughout the hearing and the planning provisions developed by myself and Mr Olliver as set out in our Joint Witness Statement dated, I am now comfortable to recommend to the panel that the requested residential and business zoning be applied to those areas.

2.7 That is because there are now plan provisions recommended that require the primary cause of the geotechnical risk at Areas Q, R and X (ie creation of an excessive hydraulic gradient between the linear lake and the Waikato River) to be addressed in the design of the linear lake and its outlet structures. When combined with the plan provisions that were developed pre-hearing that place stringent controls on the activities that can take place on the landform itself, the outcome will be a high level of control over the design of the landform and the activities that can take place on it both during construction and on an enduring basis thereafter.

RMA Section 32 tests

2.8 I am satisfied that in light of the enhanced understanding of the geotechnical issues inherent in development of the site, and the provisions developed to respond to them, the risk of acting as it relates to available information has been reduced to an acceptable level.

2.9 In terms of effectiveness and efficiency, applying the residential zoning to the site as sought (subject to the plan provisions that have been iteratively developed before and during the hearing) and in particular to Areas Q, R And X (in the Business 6 Zone), and allowing urban use of those parts of the site as a whole to be considered further through the consent process, is more efficient than applying an open space or greatly more restrictive zoning to Areas Q, R and X and effectively sterilising that part of the urban land resource now without any opportunity to apply for a higher and better use of that part of the site. The future landuse and subdivision consent application process is an effective mechanism to allow the appropriateness or otherwise of specific development proposals to be determined.

2.10 In reaching this view I have taken account of the high level s32 comparison of various zoning options for Areas Q, R and X that was undertaken by Ms Rolfe for Hamilton City Council (as submitter) and presented as an attachment to her Evidence in Chief. That assessment indicated that, given the state of understanding of the geotech issues at that point in time, retention of that part of the site as open space appeared to be the preferable option in s32 terms. That outcome may yet come to pass through the application of the consent process – if the required Land Development Plan application for Areas Q, R and X (and Areas I and J – the linear lake) is ultimately unsuccessful, the land will remain vacant until such time as a consentable design is put forward.

2.11 I am also satisfied that the process that has given rise to the relevant planning provisions, and the content of the provisions themselves, reflects a precautionary

approach to a matter that has the potential to have significant adverse effects on the Waikato River, as required by Te Ture Whaimana.

Alligator Weed/Biosecurity

- 2.12 During the course of the hearing, alligator weed management at the site during and after development has assumed greater import in my overall assessment of the merits of PPC2.
- 2.13 Evidently, the Waikato Regional Council (WRC) does not regard it as possible to eradicate the weed from the site altogether give the scale of the infestation, and thinks it is more realistic that a management regime will need to be put in place at the site to prevent the spread of the weed. This has led to the amended Alligator Weed Management Plan provisions put forward by Mr Olliver, based on those set out in the supplementary evidence of Ms Hepplethwaite for WRC/NZTA⁴.
- 2.14 Those provisions require, amongst other things and assuming that eradication efforts are unsuccessful, consent notices to be placed on all titles created at the site requiring compliance with the alligator weed management plan and the measures set out within it.
- 2.15 While I have no issues with this approach as it relates to private property, I do have a concern (which is shared by HCC staff) that such a consent notice could be applied to land to vest in HCC such as reserves and roads. HCC as a local authority of significant expertise in management of urban land simply does not need the explanatory benefit of such a consent notice. However, my concern is ultimately addressed by my understanding that land to vest in HCC will not have a title created for it.
- 2.16 A further concern is that HCC may have land vested in it that contains alligator weed and will require ongoing management. I do not regard it as fair or equitable that HCC and ultimately its ratepayers may have to foot the bill for such management as a result of development of the Te Awa Lakes site. To partly address this concern, the alligator weed management plan provisions have been amended to require consultation with HCC (as utility operator) in addition to the Waikato Regional Council in preparation of the management plan. I also note the evidence of Mr Russell as to the (apparently preferred) option for costs to be shared between WRC, the applicant, and the future landowners (ie excluding HCC). Mr Embling also explained the process for the setting of biosecurity rates by Waikato Regional Council and the option of setting a targeted biosecurity rate for Te Awa Lakes.

Design 100 year flood level

- 2.17 There was uncertainty at the time of completing my 42A report as to the design flood level to be used for formation of development at the site. That has been resolved with confirmation from WRC of the latest 100yr flood level for the Waikato River as it may affect the site. The applicant has responded to this by inserting a rule into planning provisions that will apply to the site requiring a building freeboard clearance above the design 100 year flood level. This "freeboard" provision imports the effect of the existing Flood Hazard Overlay provisions in the Hamilton City District Plan, without actually applying the overlay to the site. In my view, this is an effective and efficient response which adequately addresses the uncertainty I expressed in the 42A report with regards to flood level matter.

⁴ I note that during his hearing appearance Mr Embling altered his opposition to PPC2 to a position of non-opposition based on these agreed provisions

Outstanding Submission Points

2.18 I have reviewed the relief sought through submissions, particularly the extensive list of relief requested by HCC (as submitter). The evidence of Ms Rolfe for HCC indicated that four points remained outstanding as at the time of preparation of her evidence. Of those four points, my view is that three have been resolved either through agreement with the applicant or through amendments developed by myself and Mr Olliver. Those resolved points relate to affordable housing and how it is to be distributed throughout the development, geotechnical restrictions, the standard of water quality to be maintained in the lakes, and the provision of esplanade/open space around the main linear lake.

2.19 The outstanding points relate to the Cost of Infrastructure (submission point 47.03) and the application of the Waikato River and Gully Hazard Area to the site (submission point 47.44).

2.20 Ms Rolfe correctly notes in her evidence in chief that I recommend that HCC submission point 47.03 be accepted. However, I do not recommend that the hearings panel insert the rule as requested below :

“All land use and development within the Te Awa Lakes Structure Plan Area shall be in accordance with:

c) The requirements of any Private Developer Agreement entered into between the developer and Council”.

2.21 In my view, the requested addition is unnecessary. A Private Developer Agreement is effectively a binding contract between a developer and HCC – remedies are available at law if either party does not fulfil the requirements of the contract – there is nothing to be gained in resource management terms from writing the need for compliance into the District Plan.

2.22 Despite the above, there is no need for my initial recommendation on HCC submission point 47.03 to be amended. There is reference to a Private Developer Agreement in the descriptive section of the plan change and that is sufficient to give effect to the submission point.

2.23 HCC submission point 47.44 is addressed through my discussion on the 100 year flood level above. My recommendation to accept that submission point stands.

3 Final Recommendation

3.1 For the purpose of decision making pursuant to Clause 10 of the First Schedule of the RMA, based on the information currently available to me, my recommendation is that Plan Change 2 – Te Awa Lakes be accepted.

G R Eccles
Consultant Planner
04 December 2019

