

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Private Plan Change 21 to the Waikato
District Plan (Franklin Section)

**DECISION REPORT FROM THE
INDEPENDENT HEARINGS COMMISSIONER**

May 2018

1. The Proposed Plan Change

Pokeno Village Holdings Limited (**PVHL** or **the applicant**) applied to the Waikato District Council (**the Council**) to rezone an area of land adjacent to the Pokeno Village. The Proposed Plan Change 21 (**the plan change** or **PC 21**) proposes the rezoning of 26ha of land in Pokeno from Rural to Residential 2 Zone in the Waikato District Plan – Franklin Section (**the District Plan**).

The plan change area, relative to the existing Pokeno settlement is shown in **Figure 1** on the following page.

In addition to the above, the plan change, as notified, proposes to:

- Relocate the Large Lot Overlay in the southern part of the plan change area from land already zoned Residential 2;
- Incorporate the plan change area into the existing Pokeno Structure Plan area;
- Remove two Taraire Trees (Item C.33) from the Historic Buildings, Structures, Trees and Areas Schedule (Schedule 8A);
- Include a Rewarewa tree and Taraire tree located in the plan change area into Schedule 8A;
- Identify two wetlands and associated areas on the Pokeno Structure Plan Area map; and
- Remove the Central Rural Management Area from the plan change area.

The plan change is intended to provide for the continued growth of the Pokeno Village.

The plan change is estimated to provide for up to approximately 100 stand-alone residential dwellings. The plan change also proposes to relocate the existing Large Lot Overlay which currently applies to land already zoned Residential. This overlay is proposed to be relocated to the southern corner of the plan change area. This change could enable approximately 50 additional residential dwellings to be developed in an area that is already earmarked for residential development.

Collectively, the plan change affects approximately 47ha in total, and is estimated to provide for approximately 150 additional dwellings for the Pokeno Township.

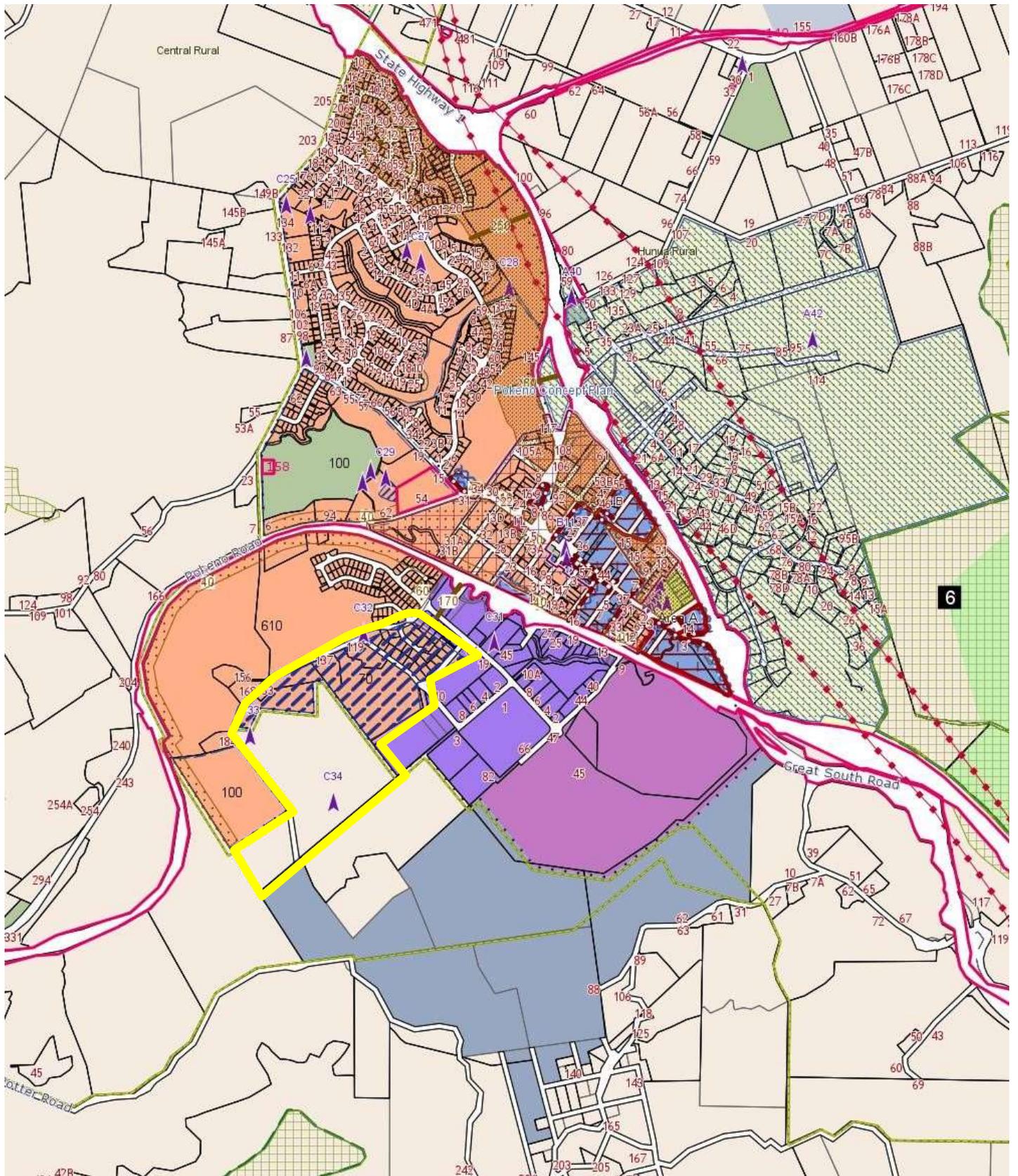


Figure I: Plan Change Area in the context of Pokeno

2. Structure of this Decision Report

This report is set out in sections as follows:

- Section 1 The Proposed Plan Change, which summarizes the proposal.
- Section 2 Structure of this decision report.
- Section 3 Submissions and further submissions.
- Section 4 Statutory framework for the decision on the plan change and the submissions.
- Section 5 The hearing.
- Section 6 The issues.
- Section 7 Statutory considerations and plans.
- Section 8 Section 32AA of the RMA.
- Section 9 The overall decision.
- Attachment 1 The decisions on the submissions.
- Attachment 2 The plan change as modified by the decision.

3. Submissions and Further Submissions

3.1 Notification

PC 21 was publicly notified on 15 September 2017, with a closing date for submissions of 13 October 2017. The summary of submissions was publicly notified on 10 November 2017. The period for further submissions closed on 24 November 2017.

Three submissions and two further submissions were received. No late submissions were received.

3.2 Submissions

The submitters and further submitters are listed in the Table 1 below.

Table 1: Submissions and Further Submissions Received

Submissions

Submitter Number	Submitter
1	Future Proof
2	Waikato Regional Council
3	New Zealand Transport Agency
Further submissions	
<i>FS4</i>	<i>Ngati Te Ata</i>
<i>FS5</i>	<i>Ngati Tamaoho Trust</i>

The submissions and further submissions can be referred to for details but, in short, the following summarises the respective positions of the submitters and further submitters.

The **Future Proof Implementation Committee (Future Proof)** supported the plan change in terms of Pokeno now being incorporated into the Future Proof Strategy as an area to accommodate growth whilst noting that the Strategy and the Waikato Regional Policy Statement would usefully be referenced in the PC documentation.

The **Waikato Regional Council (WRC)** was neutral or opposed in part to some of the plan change provisions. Matters included the management of areas of significant indigenous vegetation and areas of indigenous biodiversity. The changes sought were helpfully detailed in the submission.

The **New Zealand Transport Agency (NZTA)** opposed the plan change largely for reasons that it may be inconsistent with the Waikato Regional Policy Statement (**WRPS**) and the Future Proof Growth Strategy which look to ensure an integrated approach is taken to managing growth in the region. Concern was expressed for additional analysis of PC 21 against the higher-level documents. Again, the submission provided detailed supporting comments.

Ngati Te Ata, as a further submitter supported the WRC in relation to managing areas of indigenous vegetation. In relation to their earlier cultural values reports, they recommended further discussions in relation to stormwater management, offset mitigation for the loss of parts of the wetland gully, the use of native trees and vegetation and incorporating the wetlands as part of the walkways and cycleways at Pokeno.

Ngati Tamaoho, as a further submitter supported the WRC in relation to managing areas of indigenous vegetation. In relation to their earlier cultural values assessments reports, they highlighted their support for wetlands rather than ponds for stormwater treatment and support for “off line” treatment. The offset mitigation offered for the loss of two large wetland systems was not considered adequate because what was offered (riparian planting and enhancement of the riparian margins) was part of the development rather than offset mitigation.

3.3 Decisions on submissions

When making this decision, clause 10 of the First Schedule of the Resource Management Act 1991 (**RMA**) requires reasons to be given for accepting or rejecting any submissions. The decision may also include consequential amendments arising out of submissions and any other

matters considered relevant and within the scope of aspects raised in submissions. The decisions are addressed below.

4. Statutory Framework

4.1 Statutory framework

The statutory framework for assessing the provisions of PC 21 includes Part 2 of the RMA (purpose and principles), sections 31 and 32 (functions, powers and duties) and sections 72, 74 and 75 (standards, policy statements and plans). These include particularly, PC 21 aligning with other RMA policy and planning instruments.

Particular regard is to be given to the section 32 report on the notified version of PC 21 and a further evaluation, under section 32AA of the RMA, is to be completed of the changes that have been made since that report. That includes changes that are made as part of the decision on PC 21.

Clause 10 of Schedule 1 of the RMA then sets out the requirements of this decision in respect of PC 21. There is the need to give a reasoned decision on the submissions received. It also requires that the decision include, and have particular regard to, a further evaluation of PC 21 that is undertaken in accordance with section 32AA.

4.2 Relevant statutory documents

In relation to the relevant statutory documents:

Section 75(3) of the RMA requires that PC 21 must “give effect to”:

- Any national policy statement; and
- Any New Zealand Coastal Policy Statement;
- A national planning standard; and
- A regional policy statement.

The relevant documents under section 75(3) are the National Policy Statement on Urban Development Capacity (**NPSUDC**) and the WRPS. I note that *Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River*, is set out in Section 2 of the WRPS, and that it is relevant here.

Section 75(4) of the RMA also requires that PC 21 not “be inconsistent with” a water conservation order or regional plan for any matter specified in section 30(1). I am satisfied that I do not need to consider section 75(4) in coming to a decision.

Section 74(2) of the RMA requires that I must “have regard to”:

- Any proposed regional policy statement; or
- Any proposed regional plan; or
- Any management plans or strategies prepared under other acts.

There are no proposed regional policy statements or proposed regional plans that I need to consider.

The following management plans/strategies were identified as being relevant:

- The Future Proof Implementation Strategy;
- Waikato Regional Plan;
- Iwi Management Plans;
- The Waikato Regional Land Transport Plan;
- The Waikato District Development Strategy;
- The Waikato District Long Term Plan.

5.0 The Hearing Process

5.1 The hearing

The hearing associated with PC 21 and the submissions was held [in the Waikato District Council at the Council chambers- Committee Rooms 1 and 2](#) in Ngaruawahia on 21 March 2018. It was attended by the following:

Applicant

Sue Simons, legal counsel

Colin Botica, Director and Project Manager for PVHL

Wes Edwards, traffic engineer

Stuart Barton, arborist

Richard Peers, arborist

Christopher Scrafton, planner

Submitters

Adrian Tester, Senior Policy Advisor, Waikato Regional Council

Council officers/consultants

Kathryn Drew, planning consultant and section 42A RMA report writer

Samuel Foster, planning consultant and section 42A RMA report writer

Kevin Stokes, Strategic Planner for Waikato District Council and hearing co-ordinator.

5.2 The process of the hearing

Ms Simons had earlier sent a memorandum dated 26 February 2018 to Council to provide an update on progress made by the applicant to resolve issues raised in the submissions and seeking directions in relation to the hearing in view of that progress. Ms Simons stated in the memorandum that the applicant had been liaising with the submitters and further submitters in relation to their submissions and provided an account of the progress. Ms Simons also sought to confirm the position the Council would take in its section 42A report. Further, whether some of the applicant's witnesses may not need to prepare statements where matters are beyond contention.

Having considered the memorandum and the matters addressed in it, my view, passed onto Mr Stokes at the Council on 26 February, was that I was unlikely to issue directions until such time I had read the plan change details, perused the section 42A report and carried out a visit to the subject area. I also pointed out, I would not expect there would be a need to hear all the applicant's witnesses where matters were not in contention. Their evidence was to be pre-circulated before the hearing but whether witnesses appeared or not was a call to be made by the applicant.

Later, having read and considered the pre-circulated evidence from the applicant, I provided advice to Mr Stokes at Council on 20 March that I was of the view I need not hear from all the applicant's witnesses. That was with the qualification, as above, that would be a call made by the applicant. The persons I advised I need not hear, and who, apart from Messrs Barton and Peers, subsequently did not attend the hearing, were:

- Tim Heath, property consultant, retail analyst and urban demographer
- Shane Lander, geotechnical engineer
- Mike Smith, civil engineer
- Ray Mayor, environmental engineer
- Rob Pryor, landscape architect
- Gary Bramley, ecologist
- Richard Montgomerie, arborist
- Richard Peers, ecologist

- Sarah Macready, archaeologist
- Jon Styles, acoustics.

At the hearing, **Ms Simons** presented legal submissions after which **the applicant's witnesses** who were present spoke to their evidence and addressed questions.

Mr Tester presented a statement of evidence in support of the **WRC's** submission and responded to questions. His evidence pointed out that through discussion with the applicant and the Council, the submission points in the WRC submission had been adequately addressed. Those points related to the management of indigenous vegetation and habitats of indigenous fauna.

For **the Council**, Ms Drew and Mr Foster jointly presented a statement of evidence, further to their section 42A report, that addressed issues arising from submissions and the position of the Council with regard to density, reverse sensitivity, indigenous biodiversity and Future Proof. They appended revised plan change provisions resulting from their considerations of the submissions.

The hearing was closed at the conclusion of the presentations. I advised the parties at the hearing that the decision would be delayed a few weeks because of the need for me to be away from my office. Due to that circumstance, I advised orally, that having heard from the parties and considered the matters I need to, I would be issuing a decision that approved PC 21. That was a fair and reasonable approach to adopt given the delay in issuing my written decision.

6.0 The Issues

6.1 Introductory remarks

It is appropriate to record at the outset that the issues for consideration in PC 21 were reduced given the approach of the parties to resolving differences and accommodating others' points of view, all in the best interests of the plan change and resource management considerations.

In this respect, the WRC, NZTA and Future Proof had advised that there was no need for them to attend the hearing given the amendments that had been made to PC 21 as a result of their submissions in order to accommodate their concerns. WRC was however later represented at the hearing albeit to confirm agreement with the amended PC 21 provisions. I record however, that the points raised in all the submissions and the further submissions have been considered. I acknowledge the points raised by submitters were relevant and served to refine and/or improve the provisions of PC 21.

I also acknowledge the input of Mr Stokes and that of Ms Drew and Mr Foster, the section 42A report writers, in resolving points of difference and reaching agreements.

6.2 Density

The concern regarding density in relation to PC 21 related to whether it met the densities sought by the various planning documents.

The Franklin Development Growth Strategy (**DGS**) is to continue to apply until the updated Future Proof Growth Strategy is included in the District Plan and effectively replaces the DGS. Both documents are then of relevance for consideration at this time and a weighting needs to be applied to each in accordance with the stage that the updated Future Proof Growth Strategy is at in the statutory process of being included in the District Plan.

The DGS seeks to achieve average densities greater than 10 dwellings per hectare and the evidence was that could be achieved. However, in the update of the Future Proof Growth Strategy, which is now to include Pokeno, it is sought that greenfields developments and centres outside of Hamilton achieve an average gross density of 12 to 15 households per hectare.

It was commonly accepted that the physical characteristics of the PC 21 site, being relatively steep and comprising gully formation, would limit the density to less than that sought by the Future Proof Growth Strategy, although still meeting the densities sought by the DGS. This is evidenced in the section 42A report and in the evidence of Mr Scrafton. It was also accepted by Mr Tester in his evidence for the WRC.

I accept the evidence of the parties in this respect and that the residential density sought to be achieved by PC 21 is appropriate in all the circumstances. I note it will serve to achieve a compact urban environment as also sought by the planning documents.

6.3 Indigenous biodiversity

The WRPS policies seek to promote positive indigenous biodiversity through the protection, maintenance and enhancement of a range of ecosystems types. The significant ecological values of the site are largely associated with two wetlands which are proposed for protection by PC 21.

The submission from WRC (supported by Ngati Te Ata) sought to strengthen these provisions in relation to managing the effects on significant indigenous vegetation and significant habitats of indigenous fauna. That was accepted by the applicant and agreement reached on additional provisions.

In relation to the inclusion of the two wetlands in Schedule 8A of the District Plan, Mr Scrafton had investigated this matter further, as a result of the WRC submission. Subsequently revised provisions were provided that appropriately recognise the two wetlands without the need to add them to the Schedule 8A. These revised provisions had been developed in consultation with the WRC and both the WRC and the Council's reporting planners were satisfied with those updated provisions as alternative relief in meeting the WRC submission.

I find the revised provisions appropriately deal with indigenous vegetation and particularly, meet the WRPS policy of maintaining or enhancing indigenous biodiversity and protecting significant indigenous vegetation and significant habitats of indigenous fauna.

6.4 Reverse sensitivity and the Large Lot Overlay

The issue of reverse sensitivity arises from the Residential 2 zoned land covered by the Large Lot Overlay (**LLO**) that lies adjacent to the Light Industrial zone in the north east corner of the

PC 21 site. The LLO was applied in this area to limit the number of residential lots proximate to the industrial uses and to the vineyard along Hitchen Road. It is proposed as part of PC 21 to remove the LLO from this area and to apply it to the southern end of the PC 21 area.

In the section 42A report the planners conclude that the relocation of the LLO to this portion of the PC 21 area is an appropriate response to the steep topography of it. It is also then located so that it provides a transition between future residential development and the adjacent Rural zone.

The concern then becomes whether the relocation of the LLO in this manner will give rise to reverse sensitivity effects between existing and future development. This was addressed in the evidence of Mr Scafton. He did not see reverse sensitivity effects resulting for reasons relating to land already having been subdivided and subject to restrictive covenants that do not allow further subdivision, and which also include no complaints clauses. Further, the land to the south, where there is a potential interface between light industrial and residential zoned land, will be buffered by a reserve. In relation to the Aggregate Extraction zone, which could potentially result in development that could create problems for residential development, Mr Scafton stated that resource consent for the extraction of aggregates from this area had expired some 10 years ago. Further, that a new resource consent would be required to initiate any extraction and it appeared that zoning would be uplifted as part of a future District Plan review.

In all the circumstances, I find that the LLO proposed as part of PC 21 will not result in reverse sensitivity effects beyond those that may arise from the usual application of the District Plan zonings and any effects would be acceptable in the context of this area.

6.5 Trees

PC 21 includes the removal of two Taraire trees from the Historic Buildings, Structures, Trees and Areas Schedule, that being Schedule 8A in the District Plan. As mitigation, a Rewarewa tree and another Taraire tree are proposed to be added to the Schedule.

In the section 42A report it is stated that the Council's Group Manager of Parks and Reserves, Jacki Remihana had reported that the two Taraire trees are mature specimens of fair form and in reasonably good health. While they exhibit some structural defects the overall stability of the trees is not compromised. Their removal is however sought because they are not likely to survive the removal of the surrounding exotic and indigenous vegetation that is intended as part of the residential development of the PC 21 site. On the other hand, the two trees to be added to the Schedule are in an area of native planting that is well maintained and relatively weed free and, they are considered to be in better health by Abor Connect.

For the applicant, comprehensive evidence was provided by Stuart Barton addressing the related matters. His evidence included an assessment of the two Taraire trees in terms of the criteria for scheduling trees in the District Plan and under the STEM method. Both approaches saw the trees score less than that of the Council and less than would warrant inclusion in the notable tree list in the District Plan. His supplementary evidence provided further support as did the evidence of Richard Peers. Both attended the hearing to support their views.

I note there was no submission from any party in relation to the trees on the PC 21 site and what was intended by the PC.

I find agreement with the evidence for the applicant and note the comprehensive manner in which Messrs Barton and Peers dealt with this aspect of PC 21. Accordingly, I agree that the two Taraire trees be removed from the protected trees Schedule in the District Plan and the two additional trees, a Rewarewa and a Taraire, be added as part of PC 21.

7.0 Statutory Considerations and Plans

In relation to the statutory framework for this decision (Section 4.1 above), I note the various provisions of the RMA were addressed in PC 21 as it was lodged and in the evidence from the applicant at the hearing. I find those provisions have all been satisfactorily addressed. I address the further evaluation of PC 21 as amended, as required by section 32AA of the RMA, under Section 8 below.

In relation to the relevant statutory documents, I find similarly that PC 21 as lodged and the evidence for the applicant at the hearing satisfactorily addressed these documents and plans. These documents are comprehensively addressed in the PC 21 documents and in the section 42A report.

The amendments made to PC 21, as a result of submissions and prior to the hearing, saw the inclusion of WRPS matters that address the management of indigenous vegetation and the habitats of indigenous fauna.

In all the above respects, matters raised in the submissions from the WRC, NZTA and Future Proof have been addressed. Consequently, the matters raised in the further submissions from Ngati Te Ata and Ngati Tamaoho have also been addressed as far as can be provided through the further submissions process.

8.0 Section 32AA RMA

Section 32AA requires a further evaluation of any changes that have been made to or are proposed to PC 21 since the evaluation report for the original plan change proposal was completed. This further evaluation must be undertaken at a level of detail that corresponds to the scale and significance of the changes and be published in an evaluation report that is made available for public inspection at the same time as the decision on the proposal is released or, be referred to in the decision-making record in sufficient detail to demonstrate that the evaluation was undertaken in accordance with this section.

The PC 21 proposal as lodged with the Council by the applicant included an analysis as required by section 32 of the RMA and covered the provisions as then proposed. I have no issues with that analysis.

Following notification and public participation by way of submissions and further submissions, PC 21 was amended, in particular, to give effect to WRPS policies 11.1 and 11.2 relating to the protection, maintenance and enhancement of indigenous biodiversity. The amendments

address concerns of the WRC, those concerns being supported in the further submissions from Ngati Te Ata and Ngati Tamaoho. Otherwise, there are no amendments that need to be made to PC 21 following the hearing and this decision.

A further evaluation, in accordance with section 32AA of the RMA, was received by the Council. That analysis is noted as being *Waikato District Private Plan Change 21 – Section 32AA RMA Further Evaluation* as prepared by Beca Limited and dated 22 February 2018.

I agree with the analysis included in the further evaluation and adopt it as part of this decision on PC 21.

9.0 Overall Decision

Pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, I have determined, for all the reasons above, that:

- a. Plan Change 21 is approved, with amendments to the notified version, as per Attachment 2.
- b. The submission that supports Plan Change 21 is accepted in part to the extent that changes are made to the notified version, as per Attachment 2. Those changes do not conflict with any matters referred to in the submission but rather, are to improve it.
- c. The submissions that are neutral, opposed in part and opposed are accepted to the extent that Plan Change 21 is approved, with amendments to the notified version, as per Attachment 2.
- d. The further submissions are similarly accepted to the extent that amendments are made to the notified version of Plan Change 21, as per Attachment 2.



AR Watson

Independent Hearings Commissioner

2 May 2018

Attachment 1 Decisions on the Submissions and Further Submissions

Attachment 2 Plan Change 21 as Approved (tracked version).