

## Decision following the hearing of Private Plan Change 7 – Rotokauri North to the Hamilton City Plan 2017 under the Resource Management Act 1991

This decision is made pursuant to Clause 10 of Schedule 1 of the Resource Management Act 1991.

Proposed Private Plan Change 7 – Rotokauri North is **APPROVED** as set out below.

<b>Plan Change number:</b>	Plan Change 7 ( <b>PPC7</b> )
<b>Type of Plan Change:</b>	Private – Greenseed Consultants Limited ( <b>Greenseed</b> )
<b>Hearing Panel:</b>	David Hill (Chairperson) Alan Watson Shane Solomon
<b>Appearances:</b>	<p><u>For the Proponent – Greenseed:</u> Simon Berry – legal counsel Helen Andrews – legal counsel Gary Noland – corporate Norman Hill – Tangata whenua working group Sonny Matenga – Mana whenua Ian Munro – urban design Leo Hills – traffic &amp; transportation Renee Fraser-Smith – planning Mark Tollemache – planning</p> <p><b>Note:</b> A number of the Greenseed witnesses were excused the hearing given their evidence had been pre-read and there were no questions from the Commissioners. Those witnesses were: Andrew Holland – geotechnical Terre Nicholson - site contamination Eugene Vodjansky – three waters Bernie Milne – surveying Rob Pryor – landscape Arden Cruickshank – archaeology Dean Miller – ecology Tim Heath – economics</p> <p><u>For the submitters:</u></p> <p><u>NZTA Waka Kotahi:</u> Mike Wood Duncan Tindall, traffic and transportation consultant</p> <p><u>Waikato Regional Council:</u> Hannah Craven</p> <p><u>Lorraine van Asbeck:</u> For self, Hugh Asbeck &amp; Kristen Neill-Kendall</p>

	<p><u>Kay Moroney:</u> Cate Thorley Barbara Barris Shane Withey Dennis Dove Heather Perring</p> <p><b>Note:</b> There were other submitters on-line during the hearing.</p> <p><u>For Hamilton City Council:</u> Lachlan Muldowney – legal counsel Shaye Thomas – legal counsel Alastair Black - traffic and transportation consultant Craig Sharman – planning consultant and reporting officer Steve Rice - hearing administrator</p> <p><u>In attendance</u> Tim Manukau Jamie Sirl - Council Amy Viggars - Council Claire Guthrie - Council</p>
<b>PPC7 Accepted by Council:</b>	5 September 2019
<b>PPC7 Limited notified:</b>	21 February 2020
<b>Submissions closed:</b>	23 March 2020
<b>Further submissions closed:</b>	18 December 2020
<b>Hearing commenced:</b>	Monday, 20 October 2021
<b>Hearing continued:</b>	Thursday, 28 October 2021. Closing legal submissions and two statements of rebuttal evidence received on Friday 12 November 2021
<b>Hearing adjourned:</b>	Friday, 12 November 2021
<b>Commissioners’ site visit:</b>	Friday, 17 December 2021
<b>Hearing closed:</b>	Monday, 22 November 2021.

The above dates were all affected by the COVID-19 situation in New Zealand and by the proponent providing additional information to address relevant matters.

## INTRODUCTION

1. This decision is made on behalf of the Hamilton City Council (**Council**) by Independent Hearings Commissioners David Hill (Chair), Alan Watson and Shane Solomon appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (**RMA**).
2. The Commissioners have been given delegated authority by the Council to make the decision on Private Plan Change 7 (**PPC7**) to the operative Hamilton City District Plan (**the ODP or the District Plan**) after considering all the submissions and further submissions, the section 32 RMA evaluation, the reports prepared by the Council’s officers/consultants for the hearing, and legal submissions and evidence presented during and after the hearing of submissions.

3. PPC7 is a private plan change by Greenseed (**the proponent**) that has been prepared following the standard RMA Schedule 1 process. The background to it is set out in the section 42A RMA report<sup>1</sup> (**s42A report**). That describes how the points of contention relating to the integrated catchment management plan and transport considerations have been further addressed in response to issues that arose during the Council officers' consideration of PPC7.
4. Eighty submissions (including three late submissions) and eight further submissions were received to PPC7. The s42A report advises nineteen were in support, five supported in part and fifty six submissions were opposed to PPC7.
5. The details of the submissions are described in the s42A report, tabulated in an effective manner, along with a recommendation on each submission from Craig Sharman<sup>2</sup>.
6. The late submissions were from Waikato Regional Council, Te Whakakitenga o Waikato Incorporated and Lorraine van Asbeck. We have considered those submissions and the recommendation, with reasons, in the s42A report that they be accepted. We agree and accordingly resolve that the three late submissions be accepted in accordance with ss37 and 37A RMA for reasons including the interests of no persons being compromised; the interests of the community being better served by receiving the submissions; and the acceptance not creating any unreasonable delay in the consideration of PPC7.
7. Nine Directions were issued by the Chair during the course of the proceedings associated with PPC7 and there were also four expert conferencing sessions with associated Joint Witness Statements. The Directions assisted with confirming matters and keeping parties up-to-date – including as to revised dates for expert witness conferencing and evidence exchange. We acknowledge the assistance from Ms Marlene Oliver as Facilitator of the expert conferencing sessions and the value those sessions provided to the parties and to ourselves with our considerations.

## **SUMMARY OF PLAN CHANGE**

8. PPC7 is summarised in the s42A report<sup>3</sup> as follows, including our edits for consistency.
9. The private plan change request submitted by Greenseed seeks to rezone approximately 140 hectares of land within Rotokauri North from Future Urban Zone to Medium Density Residential Zone (137.6 hectares) and Business 6 Zone (1.2 hectares). PPC7 also seeks to insert the Rotokauri North Structure Plan (**RNSP**) into the District Plan and give it statutory weight, in place of the existing RSP in respect of Rotokauri North.

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<sup>1</sup> Section 42A RMA report, paragraphs 1.15 to 1.24.

<sup>2</sup> Ibid, paragraphs 3.7 to 3.16.

<sup>3</sup> Section 42A RMA report, paragraphs 2.1 to 2.5.

10. A series of amendments to the District Plan provisions are proposed to give effect to the RNSP and to apply some bespoke plan provisions to the structure plan area. The existing Natural Open Space Zone covering the land containing the significant natural area (SNA 11 Kereru Bush, alternatively known as Burbush Road Forest or Perkins Bush) remains unchanged. The approximate housing yield within Rotokauri North is estimated by the PPC7 proponent as being up to 2,000 houses.
11. In more detail, PPC7 proposes changes to the zoning and policy notations applying to land within the Rotokauri North growth cell; the insertion of the RNSP to apply to the growth cell in substitution for the existing RSP; and proposes various amendments to several chapters of the District Plan.
12. PPC7 applies to approximately 140 hectares of land in Hamilton's north west referred to as the RNSP area. The land is currently zoned Future Urban as it forms part of Rotokauri Stage 2 (the RSP will continue to apply to Rotokauri Stage 1 and the remainder of the Rotokauri Stage 2 area not within the proposed RNSP area. The RSP will have no statutory effect within the RNSP area but would continue to apply to the remainder of the Rotokauri growth cell (referred to in this report as Rotokauri South). The key elements of PPC7 include:
  - i. Applying the Medium Density Residential Zone to approximately 137 hectares, to enable up to 2000 residential units comprising a mixture of single dwellings, duplex dwellings, terraced houses and ancillary dwellings.
  - ii. Applying the Business 6 Zone to approximately 1 hectare, to enable a neighbourhood commercial centre.
  - iii. The insertion of the RNSP within Chapter 3 Structure Plans and Appendix 2 Structure Plans.
  - iv. Amendments to the District Plan planning maps within Appendix 17 Planning Maps to display the altered zonings and policy notations.
  - v. Amendments to the following chapters and appendices of the District Plan to give effect to the plan change:
    1. Chapter 3 – Structure Plans
    2. Chapter 4 – Residential Zone
    3. Chapter 23 – Subdivision
    4. Chapter 25 – City-wide
    5. Appendix 1 – District Plan Administration
    6. Appendix 2 – Structure Plans
    7. Appendix 9 – Natural Environments
    8. Appendix 15 – Transportation
    9. Appendix 17 – Planning Maps – Maps 12A, 12B, 13A, 13B, 14A, 14B and Locality Plan/Legend.
13. Section 3.2.3 of the PPC7 document contains a table displaying the various amendments to chapters and appendices of the District Plan as proposed within PPC7. Attachment 4 to the PPC7 document then contains those chapters and

appendices with text changes shown in blue annotated text, and with replacement diagrams. The Attachment 4 chapter and appendices also display changes proposed by Private Plan Change 2, Te Awa Lakes and Plan Change 6, Regulatory Efficiency and Effectiveness and Programme. Both of these plan changes are now operative, and the 'tracked change' chapters and appendices now include the operative text introduced through these other plan changes.

14. We note that the amendments to the District Plan proposed within PPC7 have been drafted to have statutory effect only within the RNSP area. The scope of our considerations is therefore limited to the above chapters of the District Plan and as they relate to the RNSP area.
15. A range of issues are raised in the submissions to PPC7 that largely relate to the proponent seeking to bring forward the development at Rotokauri North, that is ahead of the scheduled time in the District Plan and other related statutory documents. In doing so, the effects of concern to submitters largely relate to traffic and transportation which we give particular attention to in our discussion below.

## **RELEVANT STATUTORY PROVISIONS AND PLANS CONSIDERED**

16. The RMA sets out an extensive set of statutory requirements for the formulation of plans and changes to them, as put before us by Mr Berry and his planning witnesses and included in the s42A report from Mr Sharman. We confirm that we have considered PPC7, and the submissions made thereon, in accordance with those statutory requirements.
17. We have also had regard to the National Policy Statements on Urban Development Capacity 2016 and Freshwater Management 2020 insofar as we must give effect to their relevant provisions. The former has, since the notification of PPC7, been replaced with the National Policy Statement on Urban Development 2020 (**NPS UD**) which came into effect in August 2020. Also, we have had regard to the Waikato Regional Policy Statement 2016 (**RPS**) provisions that are particularly relevant to a consideration of PPC7 (and which must also be given effect under s75(3) RMA) and to Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy for the Waikato River) and the key elements of the Future Proof Sub-regional Growth Strategy 2017 (**Future Proof**).
18. Finally, we must also be satisfied that PPC7 is not inconsistent overall with the operative Hamilton City Plan 2017.
19. Other planning documents (both statutory and non-statutory) referred to us by witnesses and Mr Sharman included the following:
  - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.
  - Waikato Regional Plan 2021.
  - Hamilton Urban Growth Strategy 2010.

- Waikato-Tainui Environmental Plan – Tai Tumu, Tai Pari, Tai Ao 2013.
  - The Waikato Plan 2017.
  - Waikato Regional Public Transport Plan 2018-2028.
  - Waikato Regional Land Transport Plan 2015-2045 (2018 update).
  - Regional Walking and Cycling Strategy.
  - Access Hamilton Urban Growth Strategy 2010.
  - Hamilton-Waikato Metropolitan Spatial Plan 2020.
20. These documents are addressed in the PPC7 request documents, in the s42A report and particularly by the planning witnesses for the proponent. From our discussion of the issues below, we find that PPC7 is consistent with these various statutory instruments and plans.

### **SUMMARY OF EVIDENCE**

21. The Council planning consultant's (Craig Sharman) s42A report and all expert evidence was circulated as directed prior to the hearing, pre-read by the Commissioners, and largely taken as read at the virtual hearing. Witnesses for the proponent and or the submitters typically provided a written summary and update at the hearing. The hearing was conducted by video to accord with Covid-19 limitations for meetings (remote access facility). We also received memoranda from Counsel for the proponent prior to the hearing and at the hearing, these responding to our Directions and/or addressing matters of relevance. The proponent provided further statements of reply evidence from its traffic engineer and from its planning consultants along with its closing legal submissions.
22. As that evidence was extensive, we have decided, in the interest of brevity, to deal with the summary of that evidence by way of our discussion on the issues, as below, where those have been found to be determinative of our overall decisions on submissions.
23. For the record we received evidence from the following persons (as noted at the head of this decision):

#### For the Proponent – Greenseed:

Simon Berry – legal counsel (listed for completeness but noting he presented legal submissions rather than evidence)

Helen Andrews – legal counsel (legal submissions)

Gary Noland

Norman Hill

Sonny Matenga

Ian Munro

Leo Hills

Renee Fraser-Smith

Mark Tollemache

**Note:** A number of the Greenseed witnesses were excused the hearing given their evidence had been pre-read and there were no questions from the Commissioners.

Those witnesses were:

Andrew Holland  
Terre Nicholson  
Eugene Vodjansky  
Bernie Milne  
Rob Pryor  
Arden Cruickshank  
Dean Miller  
Tim Heath

For the submitters:

NZTA Waka Kotahi:

Mike Wood  
Duncan Tindall

Waikato Regional Council:

Hannah Craven

Lorraine van Asbeck:

For self, Hugh Asbeck & Kristen Neill-Kendall

Kay Moroney:

Cate Thorley  
Barbara Barris  
Shane Withey  
Dennis Dove  
Heather Perring

**Note:** There were other submitters on line during the hearing.

For Hamilton City Council:

Lachlan Muldowney – legal counsel (legal submissions)  
Shaye Thomas – legal counsel (legal submissions)  
Alastair Black  
Craig Sharman

## **PRINCIPAL ISSUES IN CONTENTION**

24. Having considered the submissions and further submissions received, the s42A report, the legal submissions and evidence presented at the hearing, the Council officers' responses and the proponent's responses and reply, we determined that the principal determinative issues in contention were as we list below. We acknowledge the useful presentations by legal counsel for the proponent (Mr Berry) in defining and responding to these issues as the hearing progressed.
- (i) Maori cultural and spiritual matters including consistency or otherwise with Te Ture Whaimana.
  - (ii) Traffic and transportation including transport triggers for roading

upgrades/changes, traffic safety, access from and the design of the collector road/SH39 intersection and identification of walking/cycling and public transport networks on the RNSP.

- (iii) Urban design.
- (iv) Planning and consistency or otherwise with Future Proof and the operative Waikato RPS and provisions to ensure the desired outcomes are achieved.

25. These were the principal issues in contention. We address other issues under that header below - these other issues not being principal issues in contention but nonetheless of relevance to our decision making.

## **FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION**

### **Introduction**

26. It was common ground that the land in question had been set aside under various planning instruments, with the larger area of adjoining land to the south, being for future development on the northern perimeter of Hamilton city. Development is planned, or programmed to occur in a sequenced manner, proceeding from south to north. PPC7 seeks to change that programme and provide for the northern area, that is the land that is the subject of this decision, to be developed earlier than planned.
27. It then becomes the case that we need to consider, or assess, the effects of such a proposed change, both in absolute terms and against the planning documents. We address the effects below, initially considering impacts on mana whenua and then the traffic impacts, that being a principal concern of submitters opposing PPC7. We later address the planning documents, all in the context of considering the submissions.

### **PPC7 Iwi/Vision and Strategy/Archaeology**

28. We heard evidence from Mr Norman Hill who was engaged by the proponent to prepare a statement of evidence on the cultural effects of PPC7 to the District Plan. He also facilitated the writing of the Cultural Impact Assessment (**CIA**) by the Tangata Whenua Working Group (**TWWG**) related to the application. We also heard from Mr Sonny Matenga a member of the TWWG who gave a historical account of the site and the relationship of mana whenua to the area and the importance of the waterways and the greater catchment. There were no other Iwi submitters.
29. The following matters, among others were considered in Mr Hill's evidence:
- (a) *Relevant RMA provisions and key statutory documents (Section 3);*
  - (b) *Tangata Whenua in the Project Area (Section 4);*
  - (c) *Establishment and composition of the TWWG (Section 5);*
  - (d) *Consultation with TWWG (Section 6);*



(e) *Cultural and environmental effects of interest to tangata whenua (Section 7);*<sup>4</sup>

### **Cultural, Social and Environmental Effects**

30. In his evidence, Mr Hill noted that the proponent's engagement with Tangata Whenua since 2018 has resulted in the establishment of the TWWG and the CIA that includes appropriate, cultural, and environmental recommendations. The CIA was lodged in support of the application. His evidence confirmed that Tangata Whenua were satisfied that the proposed development provided for by PPC7 would *"assist in the restoring the mauri of the site, particularly through the opportunity to enhance ecological values across the site, especially in relation to watercourses, PC7 also creates the opportunity for positive cultural, environmental, and social effects that will enhance the holistic well-being of mana whenua."*<sup>5</sup>
31. Additionally, mana whenua through the CIA requested the creation of a formal cultural reserve by way of covenanting Kereru Reserve, which reaffirms cultural connectivity and whakapapa to place and space (which the proponent has agreed to and is provided for in the provisions).
32. The TWWG is made up of one primary representative and one proxy member representative of Waikato-Tainui, Ngaati Wairere, Ngaati Haua, Ngaati Tamainupo, Ngaati Maahanga and Ngaati Reko.<sup>6</sup>
33. In terms of consultation, Mr Hill gave evidence that this has resulted in a good faith partnership and relationship.<sup>7</sup> This relationship will be ongoing when the land is developed.

### **Statutory Framework**

34. Mr Hill's evidence addressed the relevant statutory framework relevant to Tangata Whenua and Maori values, specifically the RMA, the Local Government Act 2002 and the RPS.
35. In effect, his evidence concluded that PPC7 met the requirements of the statutory framework, and that where adverse effects are identified, that the proponent could show that they could avoid, remedy or mitigate those adverse effects. Furthermore, because of the consultation undertaken between the proponent and Tangata Whenua sections 6, 7 and 8 of the RMA have been satisfied.<sup>8</sup> Also, that PPC7 satisfies section 4 of the Local Government Act and in addition, relevant provisions of the Heritage New Zealand Pouhere Taonga Act 2014.<sup>9</sup>

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<sup>4</sup> Evidence of Norman Hill, paragraph 1.8.

<sup>5</sup> Ibid, paragraph 2.4.

<sup>6</sup> Ibid, paragraph 5.2.

<sup>7</sup> Ibid, paragraph 2.3.

<sup>8</sup> Evidence of Norman Hill, paragraph 3.2.

<sup>9</sup> Ibid, paragraph 3.4.

36. Mr Hill was very particular about PPC7's compliance with Te Ture Whaimana.<sup>10</sup> He noted that the TWWG reaffirmed the obligations to recognise and uphold Te Ture Whaimana o Te Awa o Waikato, the Vision and Strategy for the Waikato River, as the primary direction setting document for the Waikato River. Mr Hill advised that the proponent has responded by:

*"...ensuring that the various objectives the environmental and cultural aspects of the Waipa River related activities were planned and managed to achieve the vision. This has included reconsidering stormwater management solutions in the Integrated Catchment Management Plan for stormwater ("ICMP") which includes methods relating to the restoration of natural streams forming part of the Waikato River catchment, as well as stormwater management to ensure stormwater runoff is at a quality and quantity to minimise degradation of the watercourse network across the site and associated freshwater values."*<sup>11</sup>

37. We are satisfied through the evidence of Mr Hill that the Vision and Strategy has been given particular regard to and the relevant Environmental Management Plans have been incorporated into PPC7 to reflect Iwi values.

### **Archaeology**

38. Mr Arden Cruickshank provided evidence. His evidence notes that there is no evidence of pre-1900 archaeology or heritage, or significant 20th century heritage including built heritage, within the PPC7 land. Nor is it likely that such evidence is present on the site. Therefore, there is no restriction placed on the proposed development that would be provided for by PPC7. He also recommended that all works be undertaken under an accidental discovery protocol and noted that the proponent has accepted that recommendation.<sup>12</sup>

### **Section 42A Report**

39. We concur with the commentary in the s42A report that there has been a high level of genuine engagement by the proponent with mana whenua and further strong endorsement and support by mana whenua for PPC7, premised on the recommendations embedded in the CIA.<sup>13</sup>

### Findings

40. We find agreement with the evidence for the proponent that there would be a continuing relationship between mana whenua and Greenseed, and that the partnership facilitated by the TWWG will ensure mana whenua values are recognised and protected and that any concerns raised can be appropriately responded to.

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<sup>10</sup> Ibid, paragraph 7.7.

<sup>11</sup> Ibid, paragraph 7.8.

<sup>12</sup> Evidence of Arden Cruickshank, paragraph 5.3.

<sup>13</sup> Section 42A RMA report, paragraph 4.58.

Further, an accidental discovery protocol is appropriate to take account of any unanticipated archaeological or heritage matters that may arise.

**Traffic and transportation including transport triggers for roading upgrades/changes, traffic safety, access from and the design of the collector road/SH39 intersection and identification of walking/cycling and public transport networks on the RNSP**

41. The traffic impacts were addressed further as the hearing progressed, as were the various other issues we are to consider, and the associated issues that were left for us to determine were reduced.

**Transport triggers**

42. As a result of the expert transportation conferencing, Mr Sharman and Leo Hills for the proponent confirmed during the hearing that the unresolved transport-related matter essentially related to the appropriate triggers for transport upgrades in Table 2 of Rule 3.6A.4.2f. Alastair Black, transport witness for the Council, agreed with some of those upgrades but disagreed with Mr Hills on how and when those upgrades were to be carried out.
43. From the evidence we note that Mr Hills agreed that the additional measures sought by Mr Black were important but disagreed that they should be addressed by way of transport triggers in PPC7. He did, however, accept additional provisions in PPC7 that would address Mr Black's concerns. As we note below, that is largely by way of additional information requirements in PPC7 for on-going development and specific matters being addressed by means of required Integrated Transport Assessments (ITAs) that will be used to assess and resolve potential transport effects of such on-going development as they arise.
44. The upgrades and associated triggers requested by Mr Black are listed in his evidence dated 22 October 2021<sup>14</sup> with these to be included in Table 2 of Rule 3.6A.4.2f as being:
- Exelby Road south of Burbush Road, an additional upgrade to 9.5m sealed width after 700 dwellings/lots unless the minor arterial is constructed.
  - Exelby Road north of Burbush Road, upgrade to 7.7m sealed width after 500 dwellings/lots or the first dwelling with access on Exelby Road.
  - Burbush Road (between Rotokauri North and Exelby Road), an additional upgrade to 9.5m sealed width after 700 dwellings/lots unless the minor arterial is constructed.
  - Exelby Road/Rotokauri Road intersection, upgrade to a roundabout after 500 dwellings/lots or the first dwelling with access on to Exelby Road.

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<sup>14</sup> Evidence of Alistair Black, Attachment 4.

45. Mr Hills set out in his two reply statements of evidence (dated 28 October 2021 and 19 November 2021) the reasons for his disagreement, but importantly for our considerations, the manner in which the matters raised by Mr Black could be incorporated into PPC7. In short, Mr Hills agrees that the measures raised by Mr Black are important, but their disagreement is whether those measures should be addressed in PPC7. We acknowledge the reasons Mr Hills provides, as summarised in Mr Berry's closing submissions, and find agreement with Mr Hills - particularly given that in doing so he also provides the manner in which Mr Black's concerns could be incorporated into the PPC7 provisions.
46. In these respects, we note the concern of submitters regarding the need for specific upgrades on Exelby and Burbush Roads and for wanting to retain the existing relatively low level of crash rates rather than introduce further potential traffic conflicts. As pointed out by Mr Hills, these concerns can be addressed by reducing speed limits on these roads, an action available to the Council and one that is supported by local residents. In addition, and again as covered in the evidence from Mr Hills, traffic modelling results for Exelby Road north of Burbush Road shows that the volume of traffic along this corridor fronting the PPC7 land do not exceed 1,500 vehicles per day (**vpd**) even with the PPC7 land fully developed. We were told in evidence from Mr Hills that this is below the threshold of 2,500 vpd, which is when the road classification changes from a local to a collector road and then requires upgrading.
47. We agree with submitters that irrespective of traffic analysis a concern for traffic remains to be addressed. We agree too with Mr Hills that the factors and uncertainties he raises regarding the future nature of the roading network mean it is difficult to identify today the extent of all upgrades that may be required or the appropriate trigger for upgrades. As he noted, an effective and industry standard manner to address these future upgrades is by way of Integrated Transportation Assessments for particular development stages - that being an approach often adopted to take account of future development, and one that provides for timely and robust assessment of future changes/development that impact on roading and the ability of the transport network to cope with additional traffic volumes.
48. Mr Hills noted in evidence dated 19 November 2021 that it is important the Council be involved in reviewing each ITA for on-going development and consent being required for each development proposed. This would then mean that limitations could be imposed to restrict development should the transport network not be able to cope with the projected additional traffic volumes from that particular development or development stage. We agree that is a pragmatic manner in which to determine appropriate upgrades to each road/intersection.
49. In these respects, Mr Hills accepted that to address the matters raised by Mr Black, the information requirement provision in the District Plan (Rule 1.2.2.23g) be amended to:
  - require that the specific matters identified as needing to be addressed in ITAs for PPC7 apply to all ITAs (not just "Broad ITAs" as originally drafted);

- add an additional intersection in 1.2.2.23g clause (i), that being the Exelby Road/Lee Road intersection; and
  - add a new requirement 1.2.2.23g clause (iii), requiring an ITA addressing the intersections listed in clause (i) be provided, where the cumulative total of all consented lots/units reaches 700.
50. We acknowledge the detailed reporting by Mr Black for the Council, and Mr Hills being receptive to make amendments to take account of the matters we discuss above. The above amendments have accordingly been made in Appendix 1: District Plan Administration, which was provided with Mr Berry's closing submissions.

### Findings

51. As we have noted, we find agreement with the above and the manner in which provisions were amended during the hearing to accommodate an improved traffic situation, and particularly to address concerns raised through submissions and the Council's reporting to accord with the on-going development occurring, and planned to occur, in the wider area.

### **Traffic Safety**

52. Traffic safety was an understandable concern of the submitters, and it was apparent that they had sought to have the Council address this issue for some time. From the evidence and from our site/locality visit, the traffic safety concerns largely arise from the speed at which vehicles are allegedly driven on roads that are not designed for higher vehicle speeds. The design of these roads cannot be unexpected given the function those roads serve as rural collectors rather than serving a more intensely developed catchment area. Problems arise too when motorists decide to use these rural roads as "short cuts" or alternatives to the usual routes which are designed to accommodate them.
53. We received informed evidence from Kay Maroney, Cal Thorley, Barbara Barris and Shane Withey in which they detailed concerns based on their residency in the area. Their concerns included increased road usage, higher speeds of vehicles on the roads, limited visibility, the lack of existing provision for cyclists and pedestrians and, their conclusion that roads needing to be upgraded before developments proceeds. Heather Perring supported their concerns in planning evidence.
54. Their concerns we find are real, but also that they largely relate to land situated to the south of the PPC7 land and, as we have stated above, a reduction in the speed limit for vehicles is an option available to the Council to address their concerns.
55. We find from the evidence presented by Mr Hills, that the manner in which PPC7 would impact on these matters has reasonably been taken into account by Greenseed - including both within the PPC7 area and also in the wider road network. His evidence was that PPC7 will not add noticeably to the traffic levels on Exelby or Burbush Roads, prior to 500 lots/dwellings being established or there being any

connection from the PPC7 land on to Burbush Road. He pointed out that those two events have been adopted as the relevant triggers for:

- undertaking seal widening on both Exelby Road (south of Burbush Road) and Burbush Road (between Rotokauri North and Exelby Road) and,
  - upgrading the Exelby Road/Burbush Road intersection to a single priority intersection with a right turn bay. (*Refer to Table 2 in 3.6A.4.2f, Staging and Information Provision.*)
56. The trigger for those works being carried out is the establishment of 500 lots/dwellings as agreed between Messrs Hills and Black on the basis of the extensive traffic modelling undertaken as part of PPC7.
57. The provision included in PPC7 that “... *the first new dwelling/lot shall provide a collector transport corridor to SH39 and a new roundabout to that intersection with SH39*”<sup>15</sup> means an intersection is to be provided that will result, from modelling, in a minimal increase in traffic being expected to utilise the Exelby Road and Burbush Road link, with up to 500 dwellings constructed on the PPC7 land. We note that modelling does not assume local road speed reductions which, if implemented by Council, makes that conclusion even more valid.
58. We acknowledge the concerns expressed by the submitters but are bound to point out that Greenseed cannot be held responsible for fixing roads that have existing deficiencies nor to resolve existing and wider traffic safety issues at Rotokauri North. Their responsibility lies with managing effects from the development they propose, bearing in mind they seek to carry it out in a manner that is out of sequence with what is planned for the wider area.

### Findings

59. We find that PPC7 will not result in a significant increase in traffic on the Exelby Road/Burbush Road link and will not exacerbate the existing traffic issues highlighted by submitters, prior to those roads being upgraded in accordance with Table 2 of Rule 3.6A.4.2f as proposed by PPC7. That in turn means that there is no basis for requiring those road upgrades to occur any earlier.

### **Construction traffic**

60. Submitters were concerned regarding construction traffic and the associated impacts on local residents and traffic movements along Exelby and Burbush Roads. Their issues included the safety of other road users, activity levels, hours of operation, noise and dust.
61. These are concerns, as was pointed out to us in evidence, that are usually addressed by way of a construction management plan (**CMP**) - or a Construction Traffic

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<sup>15</sup> Rule 3.6A.4.2f ii

Management Plan if the scale of development warrants a separate plan - that have become a standard condition of resource consents for development. That has been anticipated in PPC7 and is addressed at Rule 25.14.4.3n. We support the inclusion of that provision.

62. That is not to say that a CMP automatically means that all effects will be addressed, and we recognise that there needs to be careful consideration of the provisions included in a CMP and the experience of Council officers and others applied to the preparation of such plans. We recommend a clear point of contact (name and cellphone number) be included in the CMPs for anyone concerned about construction related activities that may be creating a problem.

#### Finding

63. Construction traffic can be managed satisfactorily by way of the adoption of CMPs or similar as is proposed by PPC7.

#### **Access from and design of the collector road/SH39 intersection**

64. This was raised as a concern by Ms van Asbeck as the owner of 336, 338 and 360 Te Kowhai Road, properties that are located close to the intersection. Her concerns related to safe access to her properties and with ensuring the intersection design does not exacerbate existing stormwater runoff/flooding that occurs at the southern frontage of her properties.
65. We heard technical evidence for the proponent regarding this issue and how it would be addressed, including conferring with Waka Kotahi NZTA and the respective councils. As Mr Berry highlighted, this is an existing issue, not one that arises through the development facilitated by PPC7. Nevertheless, Mr Berry submitted the construction of the new intersection is an opportunity to resolve this issue and there had been meetings with Ms van Asbeck to consider potential solutions. He submitted that it was not therefore appropriate to include any provision in PPC7 requiring consultation with Ms van Asbeck in respect of the intersection design.
66. We disagree and find from the evidence of Ms van Asbeck, supported again by our locality visit, that this is an issue that should be resolved in consultation with her as an adjoining landowner. We are not prepared to leave that to be resolved without appropriate consultation with her as a potentially affected person/party.

#### Finding

67. The access from and design of the collector road/SH 39 intersection shall be arranged in consultation with Ms van Asbeck and, if she finds it necessary, her appointed representatives, so that we are assured she has input to that design. An appropriate provision is included in PPC7 as approved - see additional provision at 1.2.2.23g ii C.

#### **Walking/cycling and public transport networks on the RNSP**

68. We agree with the planning evidence from Ms Fraser-Smith and Mr Tollemache that

the most satisfactory active and public transport routes are identified once development is proceeding rather than endeavouring to do so beforehand. To adopt this approach does require us to have confidence in the process to be implemented through PPC7, but we find that to be acceptable given the representations and detailed evidence we received from the proponent and the reporting by Council.

69. This was a matter addressed in one of the expert caucusing sessions and the resultant Joint Witness Statement dated 12 October 2021. Mr Sharman confirmed at the hearing that he saw little purpose served in trying to articulate the future active transport network at the time of the RNSP but rather considered it is best left to the resource consent stage.

#### Finding

70. We find the most satisfactory routes for walking/cycling and public transport are best identified once development is proceeding rather than endeavouring to do so at this point.

#### **Overall Findings on traffic and transport issues**

71. We find that PPC7, along with the various amendments made during the course of the hearing and by our decision, suitably addresses all the traffic and transport effects that we are required to consider in making our decision on PPC7.

#### **Urban design**

72. Urban design input was provided by Ian Munro for the proponent with associated input to the s42A report for the Council from Colin Hattingh. There were some differences of opinion between these two experts but, following discussion at the hearing, we find no matters that cannot be dealt with as part of the application of the PPC7 provisions to future development proposals. Their points of disagreement related to three matters:
- (i) the manner in which on-site car parking is to be provided;
  - (ii) the use of rear lanes for access; and
  - (iii) the on-site design for proposed duplex units.
73. We had the opportunity to enter into discussion at the hearing with Mr Munro on these matters, with our concern being as to whether the PPC7 provisions were sufficient for the Council to secure the intended design outcomes. Mr Munro was able to draw on his experience with other developments and to satisfy us that the provisions are sufficiently clear to understand and certain to apply.
74. Our residual concern related to the provision for visitor or overflow parking on the street. With intensive development, that often includes reduced carriageway widths, it can be the case that there is limited or no available on-street space for additional car parks – a relevant consideration until such time as active and public transport options become routine. This was shown to be the case when we visited Auranga at Drury,



following the advice of the proponent that this development demonstrated the practical merits of the duplex design and other provisions proposed (and for which Messrs Munro and Tollemache had provided expert advice). While we accept it is a matter for later detailed design we raise it as part of this decision so it is not lost sight of in the proponent's on-going considerations.

75. We find the PPC7 provisions are sufficiently certain to ensure appropriate urban design outcomes from the development of the PPC7 land. We note in this respect the reference by Mr Sharman to the restricted discretionary activity consenting process which he said provides for assessment of various layouts that may be considered.<sup>16</sup>
76. In these considerations of urban design matters we acknowledge the comprehensive approach taken by Mr Munro, supported in the application of the urban design principles by the planning input of Ms Fraser-Smith and Mr Tollemache, with Mr Hattingh providing independent evidence confirming the effectiveness of the provisions.

#### Finding

77. Matters of urban design can be adequately dealt with by the provisions of PPC7.

#### **Planning and consistency or otherwise with Future Proof and the operative Waikato RPS and provisions to ensure the desired outcomes are achieved**

78. We note that the sequence or timing of land to be rezoned has been reinforced at the regional level both through the RPS and through the co-operative inter-regional planning instrument known as **Future Proof** (the Waikato Sub-Regional Growth Strategy).
79. An assessment of PPC7 against these two statutory documents is covered in the evidence of Ms Fraser-Smith and Mr Tollemache. This analysis is important because it goes to the very heart of what we are asked to consider, that is, whether PPC7 can proceed earlier than it is scheduled in Future Proof and the RPS.
80. To consider this matter we need to look at the implications of bringing development in the PPC7 area forward, essentially ahead of schedule. That includes a consideration of the effects of doing so and importantly, an assessment against the statutory documents, those being principally Future Proof and the RPS. The proponent's approach was to structure its approach accordingly, both in the documents submitted with the request for PPC7 and in expert evidence.
81. Mr Berry submitted that the main implication arising from the change in timing is to ensure that development can be safely and adequately serviced by all necessary infrastructure. In this respect, he called expert evidence relating to "Three Waters" infrastructure, being the provision of water, stormwater management and wastewater services, from Eugene Vodjansky who had reported on these aspects of future

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<sup>16</sup> Summary Statement of Evidence, Craig Sharman, paragraph 27.

development as part of the application for PPC7. His evidence, circulated prior to the hearing, comprehensively dealt with this issue to the extent that we found it not necessary for him to present at the hearing. Given the importance of this infrastructure, however, we record Mr Vodjansky's overall conclusions below <sup>17</sup>:

*In summary, based on the assessment outlined above, I consider that:*

- (a) The extension of bulk water and wastewater services to Rotokauri North will ensure timely provision of this infrastructure for the PC7 area. It will also aid in allowing other development in the area to progress.*
- (b) The proposed wastewater management system, as revised by BBO, provides connectivity, managed water quality, and flood control, while improving aquatic habitat and introducing native riparian habitat. Further, the design revisions to the ICMP are the result of a collaborative process with HCC and the TWWG, and are based on robust hydraulic and hydrologic modelling.*

*Accordingly, in my opinion the PC7 land can be adequately serviced with water supply, stormwater and wastewater management solutions. As such, I consider PC7 can be supported with respect to three waters management.*

- 82. That evidence dealt effectively with stormwater management, which had been a key issue for PPC7 as it had been progressed through the plan change process. It satisfies us that these matters have been addressed.
- 83. We find, from the evidence, that PPC7 is consistent with Future Proof and its guiding principles and key intentions - its guiding principles being identified as a key to the effective implementation of the Future Proof strategy. PPC7 is consistent with these guiding principles in that the proposed development will appropriately:
  - (i) manage reverse sensitivity;
  - (ii) promote increased densities in a new residential development;
  - (iii) ensure the neighbourhood centre does not compromise existing economic areas of influence;
  - (iv) directly respond to the need for contributions to the housing stock and land supply by providing housing and lifestyle choice and good urban design outcomes;
  - (v) facilitate partnership with the TWWG to ensure that the values and place of tāngata whenua are recognised; and

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<sup>17</sup> Evidence of Eugene Vodansky, paragraphs 10.1 and 10.2.

- (vi) utilise the best practicable option for avoiding adverse effects on water quality and ecosystems, by enabling restoration and ecological enhancement on the PPC7 land to result in positive ecological effects.
84. This was detailed to us in the evidence of Ms Fraser-Smith and Mr Tollemache who also assessed PPC7 against the development principles in Section 6A (Policy 6.19) of the RPS given that PPC7 is out of sequence with the RPS strategy for growth. They concluded that PPC7 is consistent with those principles pointing out, among other things, that<sup>18</sup>:
- (a) *As growth at Rotokauri North falls outside the identified Urban Limit, the growth is considered to support existing (and planned) urban areas rather than creating a new urban area.*
  - (b) *The installation of new infrastructure to service the development will not compromise the safe, efficient and/or effective operation of any existing or planned infrastructure.*
  - (c) *Effects on transportation infrastructure can be managed at resource consent stage, to align with specific development stages.*
85. We find, from the evidence, that PPC7 aligns with the provisions of Future Proof and the RPS, noting too that this was agreed by Mr Sharman and was not contradicted by Ms Craven for Waikato Regional Council (and who withdraw their request to appear, being satisfied). It is apparent to us that the proponent has expended considerable time and effort in ensuring all relevant considerations are addressed such that PPC7 will not conflict with any of the particularly relevant provisions in these statutory documents.
86. The PPC7 land is identified as an urban growth cell with an existing structure plan in place. It is therefore clear that Rotokauri North will be urbanised in the future as an extension of Hamilton city. PPC7 seeks to bring that time forward but, in doing so, is able to manage all the associated effects that may be of concern.
87. We find that these are the two principal planning documents for consideration, noting that the PPC7 request and the planning evidence covered all of the statutory documents of relevance to a decision on PPC7. For the record, we note that the NPS-UD had been updated during the processing of PPC7 but that it had in turn been addressed and evaluated in the planning evidence for the proponent and in the s42A report. From that, PPC7 was found to be consistent with it.
88. In relation to the range of effects for consideration, we record that we received expert evidence from the proponent relating to geotechnical engineering, site contamination, traffic and transportation (addressed along with consideration of upgrade triggers,

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<sup>18</sup> Joint Statement of Evidence of Renee Fraser-Smith and Mark Tollemache, paragraph 7.32.

above), landscape and visual, archaeological, ecological and economic/retail effects that we are satisfied is sufficient for the purposes of determining PPC7.

### Findings

89. PPC7 is consistent with the relevant statutory documents and particularly with the detailed provisions in the RPS and in Future Proof.

## **OTHER ISSUES**

### **Consistency with the District Plan**

90. We confirm our finding, from all our considerations, that PPC7 is consistent with the District Plan. We note in this respect the efforts of the proponent to ensure that is the case and the input of the Council's officers in reviewing the PPC7 provisions and making amendments accordingly. The final version of the PPC7 provisions provided in reply were agreed as between the proponent and Council.

### **Positive effects**

91. A range of positive effects arising for PPC7 were identified in the planning evidence for the proponent<sup>19</sup> and in the s42A report<sup>20</sup>.
92. These include enabling housing and limited business development to occur to meet the strong demand in the City, with the provisions also including an "affordability" provision directed at assisting first home buyers. The medium density urban form provided would assist to meet national directives to provide for more intensive forms of residential development along with arranging appropriate infrastructure to accommodate it.

### **Part 2 RMA**

93. We find from the evidence that PPC7 is consistent with Part 2 and all aspects of it.

### **Consultation**

94. Through submissions and at the hearing concern was expressed by submitters regarding consultation and how committed the proponent was to public engagement. Concerns were expressed in this respect by Ms Maroney, Thorley and Barris, and Mr Withey.
95. It was apparent from all the presentations we received that consultation by the proponent had been directed to landowners within and directly adjacent to the PPC7 area and to a range of statutory agencies, as would be expected. The above submitters are all located outside the PPC7 area, some 2km to the south of it. However, these submitters did receive advice by way of the limited notification of

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<sup>19</sup> Joint Statement of Evidence of Renee Fraser-Smith and Mark Tollemache, paragraphs 5.36 and 5.37.

<sup>20</sup> Section 42A RMA report, paragraphs 4.4 to 4.7.

PPC7 by the Council which, in part, addresses their concern. Furthermore, those persons were parties to the proceedings and their concerns have been heard and determined by the Panel.

96. The issue of concern expressed through their submissions relates principally to traffic, in common with many of the submissions. The submitters are understandably concerned regarding the safety of road users and when road improvements would be made. Those concerns are addressed above in this decision report.
97. We accept that consultation could have reasonably extended to a wider area and that did not occur- but neither was it required. As noted above, the submitters were able to participate effectively in the proceedings as a consequence of the Council including them in the limited notification process.

#### Finding

98. We find that while consultation by the proponent was not as extensive as it could have been, submitters from the wider community were able to participate effectively in the PPC7 proceedings because the Council included them in the limited notification process – and which was not opposed by the proponent.

#### **Potential implications of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (now Act) 2021**

99. Mr Berry sought in his closing submissions (dated 19 November 2021) that we “*make an observation*” when we give notice that the hearing is closed that we include reference to the hearing being “*completed*” in order to accord with the Bill. We have noted in our Direction/Minute #9 of 22 November 2021 that the hearing is closed and added that we are “... *not persuaded that adding this statement makes any real difference to how the Bill, if enacted, is to be construed should our decision not be released prior to that date makes any real difference* (the date being 20 February 2022). *However, we see no harm in including it as that accords with a plain English reading of the phrase.*”
100. During the passage of the Bill and with its enactment commencing on 20 December 2021, that date reference was deleted and is no longer a relevant consideration.

#### **The submissions**

101. All of the above considerations relating to the effects of PPC7 and the statutory and non-statutory documents have been assessed in the context of matters raised in the submissions received to PPC7.
102. The eighty submissions (including the three late submissions that we accepted) are analysed in the s42A report<sup>21</sup>. Mr Sharman helpfully sets out in tabulated form in that report the submitters’ concerns, and he makes a recommendation on each. We note,

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<sup>21</sup> Section 42A RMA report, section 3.

to be of assistance, that we have adopted that approach as part of our decisions on the submissions and the overall decision to approve PPC7.

103. While opposing submitters may not agree with our decision, we point out that PPC7 has been the subject of intense investigation and reporting by specialists to arrive at a conclusion that the PPC7 land can be rezoned to provide for its development ahead of the time it had otherwise been scheduled. Transport and the effects of traffic movements were highlighted in submissions as being of concern. This was addressed by the proponent who also, in dealing with the range of effects raised, called further expert evidence to address the points raised by submitters. Mr Hills provided additional evidence during the hearing as did Ms Fraser-Smith and Mr Tollemache.
104. For submitters, Heather Perring provided expert planning evidence supporting their concerns. That was particularly useful in highlighting matters of concern. The proponent was able to consider those matters and address them as part of PPC7 and the hearing. We compliment Ms Perring and the submitters she represented on their input noting, in our view, the concerns were able to be resolved by the proponent and/or by the above discussion.
105. Other matters raised in the opposing submissions included the effects on existing amenity of residents and the loss of the ruralness, and stormwater management. The former is a consequence of urbanisation which is planned for this location and the latter was comprehensively addressed leading to the hearing such that we did not need to hear from the Council or the proponent in this matter.
106. As we state above, we respond to the individual submissions in our Appendix 1.

## **SECTIONS 32 AND 32AA RMA EVALUATIONS**

107. Section 32AA of the RMA requires us to include a further evaluation of any proposed changes to the plan change arising from submissions (to be undertaken in accordance with section 32AA).
108. We have not included a further analysis under section 32AA as we have decided to approve PPC7 as per the version provided in reply with only relatively minor changes. We have adopted the conclusions reached by Mr Sharman with respect to the original s32 analysis and his subsequent s32AA evaluation, contained within the s42A report at Appendix C.
109. In doing so we note his discussion in the s42A report<sup>22</sup> where he concludes that the s32 Assessment Report has been evaluated and considered robust and thorough and suitable for supporting PPC7. Mr Sharman undertook a further s32AA evaluation<sup>23</sup> noting that the proponent had made changes, and the Council's officers, in evaluating PPC7, had proposed further amendments from a workability, effectiveness, clarity and

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<sup>22</sup> Section 42A RMA Report, section 6.

<sup>23</sup> Ibid, Appendix C.

consistency perspective - those amendments not representing any significant change to the intent of the provisions.

110. In the s32AA report Mr Sharman concludes that the amendments represent enhancements in effectiveness and clarity, achieve greater consistency with the District Plan, avoid any statutory impact outside of the Rotokauri North plan change area, and do not challenge the structure of the District Plan. We see the provisions as being appropriate in relation to the plan change and the RMA.
111. We have reviewed the amendments, together with the additional amendments we make as a consequence of hearing PPC7 and submitters. We find agreement with the analyses carried out and the conclusions that this work meets the requirements of s32AA. We adopt the conclusions accordingly.

### **CONCLUSIONS:**

112. Overall, we find the rezonings proposed by PPC7 to be appropriate as:
- (i) the rezonings do not result in any conflicts with the relevant statutory and plan/policy criteria for the consideration of plan changes and, in particular, the evidence presented demonstrated the manner in which PPC7 gives effect to the WRPS, and is not inconsistent with the District Plan for Hamilton;
  - (ii) the rezonings have due regard to the interests of mana whenua/tangata whenua who have supported PPC7, noting the rezonings are not inconsistent with the direction of Te Ture Whaimana o Te Awa o Waikato and the recommendations in the Cultural Impact Assessment Report, which have been adopted by the proponent;
  - (iii) the rezonings will not result in any adverse effects on the environment that are not capable of being avoided or appropriately mitigated by the provisions in the PPC7, with those provisions being further amended during the course of the hearing and those amendments addressing relevant matters raised by submitters;
  - (iv) the rezonings will achieve the sustainable management purpose and the principles of the RMA; and
  - (v) concerns raised by submitters are specifically addressed by the PPC7 provisions and can, in most instances where appropriate, be addressed at the detailed design and resource consent application stages.

### **DECISION ON SUBMISSIONS**

113. Pursuant to Schedule 1, Clause 10 of the RMA we determine that PPC7 to the Hamilton City Plan is approved with the amendments adopted.
114. Submissions on PPC7 are accepted and rejected in accordance with this decision and on the basis of the recommendations set out in the section 42A RMA report and as

complemented with amendments following our consideration of the submissions as per Appendix 1 attached.

115. In addition to the findings we have made above, the summary reasons for this decision are that Private Plan Change - Rotokauri North:

- (i) will assist the Council in achieving its functions under s31 RMA and the Part 2 sustainable management purpose and principles of the RMA;
- (ii) will give effect to the National Policy Statements on Urban Development Capacity 2020 and Freshwater Management 2020;
- (iii) will give effect to the Waikato Regional Policy Statement 2016;
- (iv) is supported by necessary evaluations in accordance with sections 32 and 32AA RMA;
- (v) is aligned with and will further assist with the effective implementation of the operative Hamilton City Plan 2017; and
- (vi) as required by s.18A Procedural Principles, includes only those matters relevant to the purpose of the RMA and is worded in a way that is clear and concise.



**David Hill**  
**Chairperson (and for Commissioners Alan Watson and Shane Solomon)**

**Dated:** 7 March 2022



**Appendix 1: Private Plan Change 7 – Rotokauri North  
Decisions on Submissions and Further Submissions**