

WAIKATO DISTRICT COUNCIL

Hearings of Submissions on the Proposed Waikato District Plan

Report and Decisions of Independent Commissioners

Decision Report 14: Residential Zone

17 January 2022

Commissioners

Dr Phil Mitchell (Chair)

Mr Paul Cooney (Deputy Chair)

Mr Dynes Fulton

Ms Janet Gibb

Ms Linda Te Aho

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1 Introduction

1. Hearing 10 related to all the submissions received by the Waikato District Council (Council) on the Residential Zone provisions within the Proposed Waikato District Plan (PDP), including related provisions in the Urban Environment (Chapter 4) and Residential Zone (Chapter 16), as well as Definitions (Chapter 13) and Appendices and Schedules (Section D).
2. The purpose of the provisions located in Chapters 4 and 16 is to set the parameters in which activities, buildings and subdivision can occur in the Residential Zone. It ensures that residential development and land use activities in this zone are enabled in a coherent and consistent manner.
3. The Residential Zone applies to the residential areas within the district's towns (Tuakau, Pōkeno, Te Kauwhata, Raglan, Huntly and Ngaaruawaahia) and the smaller towns (Meremere, Taupiri, Gordonton, Horotiu, Te Kowhai, Whatawhata, Matangi and Rangiriri). The purpose of the Residential zone is to accommodate primarily residential and complementary activities, such as home occupations, childcare centres, health care facilities. For the main towns, the location of the Residential Zone and the activities within the zone also support the nearby Business and Business Town Centre Zones.

2 Hearing Arrangement

4. The hearing was held in person on 25 and 26 February 2020 in Council's offices at 15 Galileo Street, Ngaaruawaahia. All of the relevant information pertaining to this hearing (i.e., section 42A reports, legal submissions and evidence) is contained on Council's website.
5. The Panel heard from the following parties on the Residential Zone provisions of the PDP:

| Submitter organisation | Attendee at the hearing |
|------------------------|---|
| Council | Alan Matheson and Louise Allwood (co-authors of section 42A report) |
| Kāinga Ora | Daniel Sadlier (legal counsel) Alex Devine (legal counsel) Philip Stickney (planning) Cameron Wallace (urban design) |

Decision Report 14: Residential Zone

Report and Decisions of the Waikato District Plan Hearings Panel

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| | Philip Osborne (economics) |
| Te Kauwhata Lands Ltd | Dr Joan Forret and Pervinder Kaur (legal counsel) Ian McAlley Stephen Gascoigne (planning) |
| Pokeno Village Holdings | Chris Scrafton |
| Hamilton City Council | Laura Gault |
| Waikato Regional Council | Miffy Foley |
| Horticulture NZ | Vance Hodgson |
| Terra Firma Resources Ltd | Lucy Smith |
| Hynds Pipes | Chanel Hargraves |
| Waka Kotahi New Zealand Transport Agency | Tanya Running |
| Sandra Ellmers | In person |
| Fire and Emergency New Zealand | Craig Sharman |
| Ports of Auckland | Mark Arbuthnot |
| Whaingaroa Housing | Fiona McNabb Hannah Palmer (planning) |
| Annie Chen Shui, CSL Trust and Top End Properties | Peter Fuller (legal counsel) David Gibbs (urban design) Sir William Birch (proposal overview) |

| | |
|------------------------------|-------------------------|
| | James Oakley (planning) |
| Simon Upton | In person |
| Isabelle and Spencer Wheeler | In person |
| Shaun McGuire | In person |
| Waikare Golf Club | Patricia Gutry |
| Perry Group | Aaron Collier |

6. Although they did not attend the hearing, written material and/or evidence was filed by the following parties:
- a. A joint statement from Vodafone New Zealand Ltd, Chorus New Zealand Ltd and Spark New Zealand Trading Ltd;
 - b. Leigh Shaw for The Surveying Company (TSC);
 - c. Bevan Houlbrooke on behalf of Greig Metcalfe;
 - d. Alec Duncan on behalf of the Ministry of Education;
 - e. Mark Tollemache on behalf of Havelock Village Ltd, including a rebuttal statement;
 - f. Tim Lester on behalf of Blue Wallace Surveyors Ltd;
 - g. Chanel Hargrave on behalf of Campbell Tyson;
 - h. Jeremy Brydon on behalf of Counties Power;
 - i. Nicola Rykers on behalf of Synlait Milk Ltd; and
 - j. Stephen Chiles on behalf of Waka Kotahi New Zealand Transport Agency (Waka Kotahi).

3 Overview of issues raised in Submissions

7. In the section 42A report, Mr Matheson and Ms Allwood set out the full list of submissions received pertaining to the Residential Zone provisions. In brief, the key matters of relief sought by the submitters relate to:¹
- (a) Crime Prevention Through Environmental Design (CPTED) – inclusion of policies and provisions requiring compliance with national guidelines for CPTED;
 - (b) Emergency service facilities – objectives, policies and provisions to cater for these activities;
 - (c) Retirement villages – amendments to policies, an enabling activity status, relaxed maximum height, removal of minimum net site area, removal of public transport requirement and amendments to outdoor living courts;
 - (d) Reverse sensitivity – inclusion of policies and setbacks to address reverse sensitivity, particularly where the Residential Zone adjoins Rural and Industrial Zones, including existing industrial activities, intensive farming and general farming/horticulture activities. A number of submissions were also received in relation to the Harrisville Motocross Track.
 - (e) Earthworks provisions – to remove or increase setback requirements, alter maximum volume and areas and alterations to importing ‘cleanfill’;
 - (f) Sign provisions – to exclude any type of signage on Heritage Items and Maaori Sites of Significance, change the number and size and durations of real estate signs;
 - (g) Building height and daylight admission – amendments to the daylight angle and height, seeking to increase the maximum height limit, and the location where height is measured from;
 - (h) Building coverage – changes to the maximum building coverage (primarily seeking to increase it);
 - (i) Road setbacks – to alter road setbacks, including for indicative roads and setbacks from state highways and how indicative roads are dealt with once formed;
 - (j) Building setbacks – to include new building setbacks from the Rural Zone, intensive farming activities and railway corridors. Submissions relate primarily to reverse sensitivity;

¹ Section 42A Report Hearing 10: Residential Zones, dated 20 January 2020, Paragraph 28.

- (k) Setbacks from waterbodies – exclusions for maimais and setbacks to be required from named rivers/streams;
- (l) Land use activities – in relation to the rules pertaining to prohibited, permitted, restricted discretionary, discretionary, and non-complying activities. The matters generally submitted on related to:
 - activity status becoming less restrictive;
 - home stays and boarding houses requiring registration;
 - provision of show homes as a permitted activity;
 - more or less restrictive conditions for activities (such as multi-unit development);
 - more flexibility for development at Puketirini;
 - provision of education facilities; and
 - more controls around home occupations.
- (m) Housing options – in relation to the provisions relating to housing options, such as dwellings, minor dwellings and multi-unit developments. Many were seeking to create more enabling higher density provisions within the PDP, largely around the removal or reduction in minimum net site areas and provisions for two or more dwellings on a site as a permitted activity;
- (n) Outdoor living courts – to reduce the minimum dimension and living court requirements, change to living court orientation, and changes in activity status;
- (o) Service courts – to reduce the minimum area and dimensions and alteration of the activity status from discretionary to restricted discretionary where the permitted activity rules cannot be met;
- (p) Affordable housing - generally seeking the incorporation of affordable housing provisions into the plan;
- (q) Medium Residential Housing Area – the creation of an additional residential zone or area enabling medium density housing;
- (r) Noise – address drafting errors and update the metrics of the standards, with two others seeking specific provisions for noise associated with education facilities and intensive farming;
- (s) Subdivision – the majority of submissions sought amendments to correct drafting or grammatical errors. There are also a number of submissions that sought the subdivision provisions of the Operative District Plan – Franklin Section be included and reduction in minimum dimensions for subdivided lots. Other submissions sought the inclusion of subdivision for infrastructure; and
- (t) Drafting errors and/or similar grammatical/consistency errors.

3.1 Overview of evidence

8. This section summarises the key matters raised by submitters at the hearing, in the order in which they appeared.
9. Mr Daniel Sadlier presented legal submissions on behalf of Kāinga Ora - Homes and Communities (Kāinga Ora), focussing on the key matters sought in the relief sought being: a lack of alignment between higher level policy and lower order provisions and rules within the PDP; the appropriateness of the proposed Medium Density Residential Zone (MDRZ) and the proposal by the section 42A reporting planners with respect to the drafting of a revised set of MDRZ provisions; and building setbacks from the rail corridor and state highway network.
10. Mr Philip Osborne provided economic evidence in support of the relief sought by Kāinga Ora. With reference to the higher order directions and objectives of the PDP, he identified the importance of enabling a competitive environment in which the market could provide intensified housing to enable the achievement of urban consolidation outcomes. In his view, the MDRZ was more likely to achieve these outcomes than the Residential Zone. He concluded that the provisions as proposed by Kāinga Ora would better meet the objectives of the PDP from an economic perspective.
11. Mr Cameron Wallace presented urban design evidence in support of the relief sought by Kāinga Ora. While Mr Wallace supported the overall strategic direction of the PDP, he concluded that in practice the provisions of the Residential Zone will perpetuate a status quo approach to managing growth in a manner that is inconsistent with good urban design practice and the strategic direction of the PDP. In his view, the provisions proposed by Kāinga Ora would better meet the objectives of the PDP from an urban design perspective.
12. Mr Philip Stickney presented planning evidence in support of the relief sought by Kāinga Ora. Mr Stickney's evidence identified a misalignment between the strategic directions and associated objectives, which seek "forward looking" outcomes, and the zone-specific policy framework and provisions, which essentially seek retention of the status quo. In this context, he considered the introduction of a MDRZ to be appropriate, necessary and entirely consistent with the higher order planning documents and would also be supported from a section 32 perspective. Mr Stickney's evidence also provided a detailed overview of the specific zone provisions sought by Kāinga Ora. He concluded that from a planning perspective the provisions proposed by Kāinga Ora would better meet the objectives of the PDP.
13. Dr Joan Forret and Ms Pervinder Kaur presented legal submissions on behalf of Ian McAlley (Te Kauwhata Land Ltd (TKL)), the owner of 16.5 hectares of land within the Te Kauwhata West Residential Zone. Dr Forret stated that the PDP did not contain a structure plan for the subject area and on that basis, she submitted that specific reference to Te Kauwhata West should be removed and that the area be fully

integrated into the general Residential Zone, particularly as there is no policy support for the separation and no supporting section 32 analysis for treating the land differently from other adjoining residential areas. In addition, she opposed the requirement to comply with a 'future' structure or master plan in the Residential Zone provisions generally on the basis that such references created unacceptable uncertainty.

14. Mr Stephen Gascoigne presented planning evidence on behalf of TKL. He considered that there is no evidential support for a separate set of provisions applying to Te Kauwhata West and nor is there any need for the Te Kauwhata West Residential Area overlay to be identified in the planning maps. He concluded that the use of the general Residential Zone provisions is a more appropriate method of managing residential subdivision and development in the Te Kauwhata West area and would be a more efficient and effective way of giving effect to the strategic objectives and policies of the PDP. Mr Gascoigne's evidence also provided a detailed overview of the relief sought in respect of Chapters 4.2 – Urban Environment and 16 – Residential Zone to ensure the use of residentially zoned land is not inappropriately constrained through the protection of landscapes, vistas and viewshafts that are unsupported by a landscape assessment.
15. In addition, Mr Gascoigne provided supplementary planning evidence in response to questions raised by us relating to the timeline of planning and Environment Court decisions; and the changes in circumstances that would support the application of the general Residential Zone rules to the Te Kauwhata Land Ltd site.
16. Mr Christopher Scrafton presented planning evidence on behalf of Pokeno Village Holdings Ltd, which covered provisions relating to building height; multi-unit development and a MDRZ; earthworks; and the Pokeno Structure Plan. In particular, he considered that enabling multi-unit development in the Residential Zone, albeit as a restricted discretionary activity, is problematic. Mr Scrafton considered that the wide, spatial application of the Residential Zone across the district could lead to resource consents being granted for multi-unit development in areas which are not best suited for this housing typology. Mr Scrafton therefore favoured a more targeted approach to enabling differing and more intense housing typologies within the district that focus on identifying the most appropriate locations for such development. For example, a MDRZ could be applied to urban areas serviced with the appropriate infrastructure including social services, amenities, and close to employment.
17. Ms Laura Galt presented planning evidence on behalf of Hamilton City Council (HCC). Ms Galt noted that HCC supported any increased density within existing towns to achieve the principles of the Waikato Regional Policy Statement (RPS) and the Future Proof Growth Strategy 2009, including the 2017 review (Future Proof). She also considered that the amendment sought to Policy 4.2.17 will ensure that it clearly identifies the areas with public reticulation and that a greater range of housing types is

encouraged in these areas, which was consistent with the directive of the (then draft) National Policy Statement for Urban Development 2020 (NPS-UD).

18. Ms Miffy Foley presented planning evidence on behalf of Waikato Regional Council (WRC), which focussed on minimum setbacks from waterbodies for earthworks; the location of multi-unit development close to public transport; and allowing for intensification of subdivision adjoining the Business Town Centre Zones at Huntly, Ngaaruawaahia, Pōkeno, Raglan, Te Kauwhata and Tuakau. Overall, she stated that WRC would support a number of the recommendations made in the Residential Zone section 42A report but requested a small number of changes to better implement the regional direction.
19. Mr Vance Hodgson presented evidence on behalf of Horticulture New Zealand (HortNZ). He stated that rather than imposing a generic five-metre setback for all buildings, a better approach would be to strengthen policy and ensure reverse sensitivity is specifically addressed in the subdivision process. Similarly, he stated that imposing a 100-metre setback for 'sensitive land use' activities from a boundary with the Residential Zone is not the most efficient and effective provision, and that a robust subdivision assessment framework and structure planning process was a better resource management approach. In addition, he requested an explicit permitted activity status for Agriculture, Horticulture, Viticulture and Ancillary Farming Earthworks in the Residential Zone to acknowledge that there are areas of 'live' residentially-zoned highly productive land where the value of food production supports retaining rural activities until residential activity supersedes the current use. He was also of the view that a generic 10-metre buffer strip at the rural/urban interface was not an appropriate standard to introduce to the subdivision standards (as originally sought by HortNZ) and that it would be more appropriate to provide clear policy and subdivision assessment criteria.
20. Ms Lucy Smith presented evidence on behalf of Terra Firma Resources Ltd (TFR). TFR sought to relax provisions that would otherwise apply to their proposed residential development at Puketirini, which is the subject of a rezoning request on the PDP. The amendments sought to the Residential Zone provisions are intended to allow more flexibility for development at Puketirini in relation to the ability to establish community facilities; activities permitted to occur on undeveloped land; the ability to undertake commercial activities within a business overlay (if this is preferred to a Commercial Zone); and the hours of operation within a business overlay.
21. Ms Chanel Hargrave presented planning evidence on behalf of Hynds Pipe Systems Ltd (Hynds), being a heavy industrial activity within the Pōkeno area that utilises approximately 22 hectares of land. Hynds operates 24 hours a day, seven days a week, in order to manufacture and supply concrete construction materials. Hynds therefore had concerns about the reverse sensitivity effects that would result from some of the zoning included in the PDP, and from the re-zoning requests made by a number of submitters.

22. Hynds did not make specific submission points on the Residential Zone provisions, given that the notified PDP did not include any residential zoned land adjacent to the Hynds site. However, Ms Hargrave stated that as the issue of reverse sensitivity was raised in Hynds' submission, the evidence relating to the Residential Zone building setback and matters of discretion for subdivision addressed in evidence are within the scope of its submission. To this extent, she confirmed that Hynds supported the building setback provisions for sensitive land uses and the title boundary setbacks for subdivision from intensive farming and extractive industry activities. In addition, Hynds sought the inclusion of reverse sensitivity as a matter of discretion for subdivision. Overall, Ms Hargrave considered that a combination of methods, including compatible zoning, setback rules and discretion over reverse sensitivity, should be used to avoid and manage reverse sensitivity, giving effect to Policy 4.7.11.
23. Ms Tanya Running presented planning evidence on behalf of Waka Kotahi New Zealand Transport Agency (NZTA). Ms Running addressed a number of Residential Zone provisions, including those relating to signs, building setbacks, housing options, multi-unit development, and home occupations. Her submissions considered the impacts of these respective provisions on the need to provide safe and efficient state highways that meet the requirements of road users and communities.
24. With respect to the submission point seeking to increase the building setback for sensitive land uses from the Waikato Expressway to 35 metres, Ms Running relied on the (tabled) evidence provided by acoustician, Dr Stephen Chiles. Dr Chiles advised that the 25-metre setback in the PDP would not be adequate to manage the most significant noise effects. Ms Running was also supportive of a spatial zoning approach to higher density development to ensure that such housing typology occurs in locations where it can integrate effectively with public transport and alternative modes of transport. Similarly, she considered that the proposed permitted activity rules are enabling retirement villages to the potential detriment of the amenity and the traffic safety and efficiency in the Residential Zone and that likewise, heavy vehicle movements associated with home occupations should also be limited.
25. Ms Sandra Ellmers provided a verbal presentation in support of her and her husband's submission relating to a number of Residential Zone provisions. Their submissions particularly concerned enabling retirement village complexes to establish on smaller allotments, with an increased maximum building height. She also considered that the minimum site area for duplex units should be decreased to provide for a greater range of affordable housing, together with more enabling provisions for apartments, the relaxation of the associated bulk and location requirements for all forms of higher density living, and the provision of reserves and walkways within residential areas.
26. Mr Craig Sharman presented planning evidence on behalf of Fire and Emergency New Zealand (Fire and Emergency). Fire and Emergency sought to ensure that the PDP provides for their ability to undertake training activities for firefighters, including live fire

training and equipment training; to establish fire stations throughout the district to respond to population growth and to enable efficient responses to emergencies; and to arrive quickly at emergencies and to effectively fight fires. Mr Sharman addressed a number of specific submission points on the Residential Zone chapter to achieve these outcomes, including a new objective and amended policies relating to non-residential activities that contribute to the health, safety and wellbeing of the community; a permitted activity status for their training and management activities; a restricted discretionary status for emergency service facilities; and the ability to consider 'water supply for firefighting purposes' for multi-unit developments and as part of any residential subdivision.

27. Mr Mark Arbuthnot presented planning evidence on behalf of Ports of Auckland Ltd (POAL). Of key concern to POAL is the potential for reverse sensitivity effects to arise from the establishment of retirement villages and multi-unit developments in proximity to industrial-zoned land and activities. In response to these issues, Mr Arbuthnot reinforced that the proposed "no complaints" covenant rule for the Horotiu Acoustic Area is a valid planning tool available to Council that will achieve the purpose of the RMA. He also highlighted the need for the Horotiu Acoustic Area to apply to any multi-unit development proposed within this overlay, noting the section 42A report recommendation to remove the applicable land use standards would result in the Horotiu Acoustic Area rules having no effect. In addition, Mr Arbuthnot provided a supplementary statement of evidence in response to the late statement of evidence that was filed by Mr Collier on behalf of Perry Group Limited. Mr Arbuthnot's supplementary evidence reiterated his earlier evidence with respect to the appropriateness of the proposed "no complaints" covenant rule as it applies to residential intensification within Horotiu.
28. Following introductory comments by Ms McNabb, Ms Hannah Palmer presented planning evidence on behalf of the Whaingaroa Raglan Affordable Housing Project (WRAP). Ms Palmer addressed the appropriateness of including affordable housing provisions in the PDP and the associated relief sought by WRAP to give effect to this directive. The submission points presented by WRAP primarily focus on ensuring that Council has the ability to consider housing affordability when assessing resource consent applications (through objectives, policies and matters of discretion); and allowing efficient use of land by maximising site potential through reductions in building setbacks, decreasing the size of living courts and minimum floor area for multi-unit developments, and increasing the number of dwellings allowed on a site.
29. Mr Peter Fuller presented legal submissions on behalf of Annie Chen Shui, CSL Trust and Top End Properties. He stated that the submitters generally supported the proposed residential objectives, policies and rules, as they would be applied to the proposed urbanisation of the submitters' land at Pōkeno West, which is subject to a rezoning request. In particular, he highlighted that it was important that the provisions (as would be applied to Pōkeno West) provided flexibility to facilitate the provision of

more intensive residential development. He also considered that it was preferable for this flexibility to be provided through the consenting process and in response to individual applications that respond to site characteristics and market demand, rather than creating a range of different zones that can be somewhat “arbitrary” and out of step with development that is both commercially viable and meets the purpose of the RMA by the time a project is proposed.

30. Mr Fuller also outlined that the main difference between the economic witnesses for Kāinga Ora and the submitters’ economic expert, Mr Adam Thompson, is that Mr Thompson considers that there will be a lower uptake of intensification housing than has been assumed due to a range of commercial factors. Mr Thompson is therefore supportive of there being sufficient greenfield development opportunities to ensure that affordable housing is able to be provided.
31. Mr Alexander Gibbs presented urban design evidence on behalf of Annie Chen Shui, CSL Trust and Top End Properties. He was generally supportive of the Chapter 16 provisions as recommended in the section 42A report, although he noted instances where provisions were either lacking specificity or, in other cases, were not offering sufficient development flexibility. In those circumstances, he generally found that the submissions of others dealt well with those matters and provided support, especially the relief sought by Kāinga Ora.
32. A joint statement of evidence on behalf of Annie Chen Shui, CSL Trust and Top End Properties was filed by Sir William Birch (proposal overview) and Mr James Oakley (planner). They confirmed their support for the section 42A report recommendations regarding the objectives and policies of the Residential Zone, except for a minor change to Policy 4.2.26; and the recommended housing options and development controls. They also considered that the single Residential Zone is generally fit for purpose across the district, together with an enabling policy framework that will allow for more intensive subdivision which reduces the need for another residential zone. Notwithstanding, they stated that it was important that there is a diverse housing stock comprising typologies across the spectrum to cater to the different market preferences and price-points. To enable this, the submitters sought that the minimum net site area for Multi-Unit Development subdivision be reduced to 200m² from the 300m² which is currently proposed for multi-unit development.
33. Mr Simon Upton provided a verbal presentation in support of his submission opposing the extension of the Residential Zone in the notified PDP between Rangimarie and Saalbrey Roads, Ngaaruawaahia. In doing so, he referred to the outcomes sought in the Urban Environment and Residential Chapters, noting that under Policy 4.7.2, subdivision location and design should be “sympathetic to the natural and physical qualities and characteristics of the surrounding environment”. He also referred to the key attributes of residential subdivision Policy 4.7.3 regarding accessibility and

connectivity of public spaces and requested that these matters be applied to a reappraisal of the Residential Zone in this location.

34. Spencer and Isabelle Wheeler provided a verbal presentation in support of their submission regarding the lifting of the Raglan navigational beacon, which would in turn allow the current height restriction that runs through their 1920s bach to also be lifted. Mr & Mrs Wheeler therefore requested that the activity status for any building that obscures the sight line to the navigational beacon under Rule 16.1.1 be changed from prohibited to non-complying. We have already addressed this matter separately from this decision and do not address it further.
35. Mr Shaun McGuire provided a verbal presentation in support of his submission opposing the notified Residential Zone provisions on the basis that they are unnecessarily restrictive for greenfield development. In particular, he sought an increase in the permitted height limit to 8m; relaxed recession plane controls; and the ability to install on-site wastewater and stormwater treatment and disposal systems on residential allotments in Tuakau.
36. Ms Patricia Gutry presented a statement on behalf of Waikare Golf Club objecting to a proposed walkway through the golf course, which would have the effect of changing the current 18 hole course to a 9 hole course and causing significant economic loss to the Club. Ms Gutry therefore requested that the requirement for the walkway be removed from the PDP. We have decided to remove all indicative walkways from the Planning Maps as part of our Infrastructure and Energy decision (Decision Report 13), therefore we do not consider this matter further.
37. Mr Aaron Collier presented planning evidence on behalf of Perry Group Ltd. He outlined the nature of Perry Group's submissions on Chapter 16, which focused on ensuring that the plan provisions provided certainty in development outcomes. He then went on to focus on Perry Group's further submission opposing POAL's request to introduce a permitted standard to the Horotiu Acoustic Area overlay, which would require a restrictive no complaints covenant in favour of POAL. Overall, Mr Collier stated that he agreed with the section 42A authors that POAL's submission introduces a standard that is "not required if compliance with the permitted activity rule is achieved in the Industrial Zone". He therefore considered that the standard was unnecessary and should not be inserted into the PDP.

4 Panel Decisions

38. We note that 637 primary submission points were received on the Residential Zone provisions and these were considered in a comprehensive section 42A report prepared Mr Matheson and Ms Allwood. Mr Matheson also prepared rebuttal evidence recommending a number of additional changes. We have therefore focused our decision on the areas of contention and where the Panel has an alternative view to the recommendations of the section 42A authors. We have summarised our decisions on

all the Residential Zone provisions but to varying degrees of detail depending on how contentious the subject matter was.

39. Given the overlap between submitters on a number of outstanding issues before us, the following sub-sections have been grouped by issues. We also note that our decisions on the Residential Zone provisions are closely related to our findings on the introduction of a Medium Density Residential Zone (MDRZ).
40. Notwithstanding, we acknowledge that at the time of writing, the government has released the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (the Bill). The Bill is designed to improve housing supply by enabling more medium density homes within those areas identified as a Tier 1 council, which includes Waikato District Council. The Bill is scheduled to be enacted in mid-December 2021.
41. While we are cognisant of the proposed legislative changes, we consider that it is appropriate that we determine the provisions of the Residential Zone based on the information and evidence that we have received to date. Our decisions will therefore provide a cohesive planning framework upon which the Council can later promulgate a plan change to align the district plan with the new medium density residential standards, once legislated.

4.1 Objectives and Policies

42. All of the objectives and policies relating to the Residential Zone are contained in Chapter 4 'The Urban Environment'. In our consideration of the submissions on the objectives and policies, we have paid careful attention to the zone descriptions set out in the National Planning Standards, the policy direction set out in the RPS, the NPS-UD, the National Policy Statement for Freshwater Management 2020 (NPS-FM), and the applicable National Environmental Standards. We have also had regard to the relevant provisions of the Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao and Maniapoto Environmental Management Plan - Ko Ta Maniapoto Mahere Taiao.
43. While we have considered every submission in our deliberations, where we have rejected submissions that sought amendments to the objectives, policies, or rules we have not necessarily addressed them individually, but record here that they have been rejected for one or more of the following reasons:
 - a. It is not the most appropriate way to achieve the purpose of the Act (in the case of objectives);
 - b. It is not the most appropriate way to achieve the objectives (in the case of policies and/or rules); or
 - c. It does not give effect to the relevant national policy statements and/or the RPS.

4.2 Zone Description and Purpose

44. The notified PDP does not include general zone descriptions, and while we recognise that such zone descriptions do not in themselves carry statutory weight, we nonetheless consider that they have value because they provide a succinct 'plain English' indication of what the zone is intending to achieve. We have therefore included zone descriptions at the start of each set of zone-specific objectives and policies. This approach is consistent with the National Planning Standards.
45. The purpose of the notified Residential Zone aligns with that anticipated for a 'General Residential Zone' under the National Planning Standards, which has a broad description of "areas used predominantly for residential activities with a mix of building types, and other compatible activities". These outcomes are generally encapsulated within the following objectives of the PDP:
- 4.2.1 Objective – Residential Character**
(a) Residential character of the Residential Zone is maintained.
- 4.2.3 Objective – Residential built form and amenity**
(a) Maintain neighbourhood residential amenity values and facilitate safety in the Residential Zone.
- 4.2.9 Objective – On-site residential amenity**
(a) Maintain amenity values within and around dwellings and sites in the Residential Zone.
- 4.2.14 Objective – Earthworks**
(a) Earthworks facilitate subdivision, use and development.
- 4.2.16 Objective – Housing options**
(a) A wide range of housing options occurs in the Residential Zones of Huntly, Ngaaruawaahia, Pokeno, Raglan, Te Kauwhata and Tuakau.
(b) Residential zoned land near the Business Town Centre Zone and close to transport networks is used for higher density residential living with access to public transport and alternative modes of transport.
- 4.2.20 Objective – Maintain residential purpose**
(a) Residential activities remain the dominant activity in the Residential Zone.
46. While there were few submissions challenging these overarching objectives, it was apparent that there are differing views among submitters and the section 42A authors on the subject matter of residential intensification. The submitters and authors had differing views as to whether residential intensification should be enabled throughout the Residential Zone via a suite of multi-unit provisions, or through the introduction of a new MDRZ. If the latter, a new MDRZ should spatially identify where a higher

concentration of residential activities would better achieve a well-functioning urban environment.

47. We have determined that the inclusion of a MDRZ will give effect to the NPS-UD and the RPS, being the higher order planning documents. On that basis, we consider it important that a distinction is made between the outcomes sought for the MDRZ compared to the wider Residential Zone. The comparatively lower density anticipated in the Residential Zone is also a key determinant for setting the associated character, built form and amenity outcomes for the zone, which is necessary for creating a cohesive suite of provisions that work together to achieve the anticipated outcomes. As such, we consider that it is appropriate to amend Objectives 4.2.1 and 4.2.16 to reflect that while a range of housing typologies are anticipated within all Residential Zones, the density of development will be lower than that enabled in the MDRZ, which is designed to allow for higher density and mixed-use developments close to transport hubs, town centres and community hubs. The remaining objectives are considered appropriate within this context and the merits of specific policies and rules are discussed in further detail below as relevant to the identified issue.

4.3 Housing options

48. The PDP approach was not to zone specific areas for higher-density residential development. Rather, its approach was to provide for multi-unit development as a restricted discretionary activity throughout the zone and to set out a policy framework that supported development of higher density in areas where the policy criteria were met (such as connected to public services, well-served by transport and in close proximity to town centres). As set out above (and discussed in detail in the MDRZ decision), we have found that this ‘pepper-potting’ approach is not the most efficient or effective way to provide for residential intensification.
49. On the basis that a MDRZ is to be applied to the central areas of the main towns within the district, we do not consider that it is appropriate to continue to provide for multi-unit development throughout the remainder of the Residential Zone. In our view, the character of the Residential Zone needs to be distinguishable from that of the MDRZ and this is most effectively achieved through limiting residential density to one dwelling per site, while also enabling the establishment of a minor dwelling. We were also not provided with any compelling evidence as to why the 450m² subdivision minimum net site area should be varied in light of the potential change in approach with respect to providing for medium density development. However, we agree with evidence of TSC that the minimum net site area for a minor dwelling should be reduced from 900m² to 600m² to provide greater flexibility to accommodate smaller residential units, while maintaining a built form that is reflective of a low-density living environment.
50. Overall, we agree with a number of submitters, including the expert evidence presented on behalf of Havelock Village Ltd, Kāinga Ora, Pokeno Village Holdings Ltd and WRC, that this package of provisions will better achieve the desired character for

the wider residential area, with multi-unit development instead being directed to those areas that can support this level of intensification.

4.4 Te Kauwhata West

51. TKL submitted that there was no evidential support for a separate set of provisions applying to Te Kauwhata West and nor is there any need for the Te Kauwhata West Residential Area overlay to be identified on the Planning Maps. The submitter therefore sought for the general Residential Zone to replace the bespoke provisions that are currently included in the Operative District Plan, some of which have subsequently been incorporated into the PDP. The Surveying Company (TSC) and Campbell Tyson also sought to reduce the 875m² minimum average net site area requirement in the Te Kauwhata West Residential Area to 700m² and identified that while elements of the Te Kauwhata Structure Plan have been carried over into the PDP, the Structure Plan does not exist within the PDP.
52. In considering these requests, we accept that the current suite of provisions were developed prior to the NPS-UD, which provides overarching support for increasing densities within existing urban areas. We are also mindful that the specific outcomes sought in the Te Kauwhata Structure Plan are encapsulated within both the Council and Environment Court decisions on Variation 13, and embodied within Policies 4.1.12 and 4.7.13 of the PDP. However, we agree with Mr Gascoigne that there is an absence of evidential support for a separate set of provisions applying to the Te Kauwhata West Residential Area, with only a general reference in Policy 4.7.13(b) to achieving minimum lot sizes and recognising views of natural features and landscapes. We are therefore comfortable that the use of the general Residential Zone provisions is a more appropriate method of managing residential subdivision and development in the Te Kauwhata West Residential Area.

4.5 Reverse sensitivity

53. We heard from a number of submitters seeking amendments to the PDP to address potential reverse sensitivity effects. We are also mindful of the direction from the RPS to:
- a. Minimise land use conflicts, including minimising potential for reverse sensitivity (Objective 3.12(g));
 - b. Avoid or minimise the potential for reverse sensitivity (Policy 4.4);
 - c. Avoid or minimise the potential for reverse sensitivity effects (Implementation Method 4.4.1); and
 - d. Discourage new sensitive activities (Implementation Method 6.1.2).
54. We agree with Mr Hodgson for HortNZ, who sought to strengthen the policy and subdivision assessment framework to ensure that reverse sensitivity effects were specifically addressed prior to the establishment of the sensitive activity, rather than

imposing generic building setbacks. Therefore, we have included a new Policy 4.2.10 to complement 'Urban subdivision and development' Policy 4.7.11, as follows:

4.2.10 Policy- Reverse Sensitivity

(a) Avoid or minimise the potential for reverse sensitivity through:

- (i) the use of building setbacks, the design of subdivisions and development;
- (ii) acoustic insulation requirements for noise sensitive activities.

55. In addition, we agree that reverse sensitivity effects should be included as a matter of discretion in Subdivision Rule 16.4.1, as recommended by Mr Matheson in his rebuttal evidence and supported by Ms Hargrave on behalf of Hynds.
56. The setbacks from the rail corridor and the state highway network could also be considered in the context of reverse sensitivity and were raised in the evidence of number of submitters, including Kāinga Ora, Waka Kotahi, Vodafone New Zealand Ltd, Chorus New Zealand Ltd, Spark New Zealand Trading Ltd, Synlait Milk Ltd and Kiwi Rail. We have found that the five-metre setback requirement from the railway corridor is appropriate to minimise potential reverse sensitivity effects on KiwiRail's operations. We note however that this setback only applies to new buildings and building alterations, and excludes poles, lines and other network utility infrastructure provided for in Chapter 14 of the PDP, as well as telecommunications equipment provided for in the NESTF. Similarly, we are satisfied that the remaining building setbacks for sensitive activities recommended in the section 42A report will avoid or minimise potential reverse sensitivity effects, including the 25-metre setback from the designated boundary of the Waikato Expressway. With respect to the latter, we note that Waka Kotahi has the ability to designate a wider area to increase this buffer, if required.
57. The Horotiu Acoustic Area overlay is another planning tool used in the PDP to minimise the potential for reverse sensitivity effects on activities within the Horotiu Industrial Park. As notified, Rule 16.3.10 requires that any new, or addition or alteration to a building used for a noise sensitive activity within the Horotiu Acoustic Area is designed and constructed to achieve the internal design sound level specified in the corresponding appendix. In addition to this requirement, POAL requested that noise sensitive activities are also subject to a restrictive 'no-complaint' covenant in favour of POAL, a proposition that was opposed by Perry Group Ltd. While we consider that it is appropriate that the PDP addresses potential reverse sensitivity effects on the Horotiu Industrial Park, we are satisfied that the requirement for internal acoustic insulation for noise sensitive activities within the identified overlay is the most efficient and effective means of achieving the outcomes sought by the relevant policy framework, including new Policy 4.2.10 outlined above, without the need for imposing additional costs associated with a third-party legal encumbrance.

4.6 Non-residential activities

58. HortNZ sought the inclusion of a permitted activity status for agriculture, horticulture, viticulture and ancillary farming earthworks in the Residential Zone to enable the land to continue to be used for rural purposes until such time as it is developed for residential activities. Mr Hodgson's evidence provided an example of horticultural activities around Buckland Road in Tuakau to illustrate where this could be an issue, however he did not assess other potential growth areas.
59. In addressing this matter, we note that while activities such as horticulture, viticulture, ancillary farming earthworks or other types of more intensive agricultural activities may be appropriate in Residential Zones, there is also the potential for reverse sensitivity effects to arise from the adjoining urban area. Any of these types of activities that are currently undertaken on undeveloped residentially-zoned land are also able to rely on 'existing use rights'. In the absence of specific evidence addressing potential 'activity specific conditions' or further refinement of the broad types of rural activities sought, we do not consider that it is appropriate to expand the list of permitted activities to include those sought by HortNZ.
60. TFR sought to amend the Residential Zone provisions to allow more flexibility for development at Puketirini in relation to the ability to establish community facilities; activities permitted to occur on undeveloped land; the ability to undertake commercial activities within a business overlay; and the hours of operation within a business overlay. We note that these matters were considered as part of the rezoning request for Puketirini in Hearing 25, the result being that there is no need to amend the Residential Zone provisions in the manner requested by TFR.
61. Fire and Emergency sought to include a new objective and amended policies relating to non-residential activities that contribute to the health, safety and wellbeing of the community; a permitted activity status for their training and management activities; a restricted discretionary status for emergency service facilities; and the ability to consider 'water supply for firefighting purposes' for multi-unit developments and as part of any residential subdivision. We acknowledge the critical role of emergency service facilities and the need for them to be located in the communities they serve. We therefore wish to enable these facilities and training activities while managing adverse effects on the surrounding character and amenity.
62. We have included an objective and policy to provide recognition of the role of emergency services in the community. We are also comfortable with Mr Matheson's recommended changes to permit 'emergency services training and management activities' (subject to a new definition); and that 'emergency service facilities' themselves are a restricted discretionary activity to enable an assessment of potential adverse effects on the receiving environment.
63. Fire and Emergency also sought that Subdivision Rule 16.4.1 (General) be amended to require all new lots to be connected to a water supply that is sufficient for firefighting

purposes, with applications becoming a discretionary activity where such supply is not available. We agree that the “provision for new infrastructure and the operation, maintenance, upgrading and development of existing infrastructure including water supply for firefighting purposes” is an appropriate condition of all subdivision applications within the Residential Zone to provide for the health, safety and wellbeing of the community.

4.7 Retirement villages, home occupations and educational facilities

64. Garth and Sandra Ellmers sought to relax the permitted activity conditions for the establishment of retirement villages, while POAL were concerned that such activities could generate reverse sensitivity effects in proximity to industrial activities. Waka Kotahi also advised that additional controls were necessary to address potential effects on traffic safety and efficiency.
65. Subject to the exceptions identified below, we are satisfied that the permitted activity conditions for retirement villages provide an appropriate level of flexibility to enable this form of residential development, while managing potential adverse effects on the surrounding environment. To this extent, we note that any retirement village established within the Horotiu Acoustic Area overlay is subject to the acoustic insulation requirements of Rule 16.3.10 as a ‘noise sensitive activity’. Based on our earlier decision that the installation of acoustic insulation is sufficient to minimise the potential for reverse sensitivity effects on the Horotiu Industrial Park, we are satisfied that the same principle also applies to retirement villages.
66. However, in addressing potential effects on traffic safety and efficiency, we agree with Waka Kotahi that an inappropriately located, scaled or designed retirement village, including any related signage, could adversely affect people’s health and safety, and surrounding amenity values. It is not clear to us why other activities establishing in the Residential Zone are limited to 100 vehicle movements per day as a permitted activity (Rule 14.12.1 P4(1)(a)), whereas there is no ability to assess and determine the level of effect of a retirement village activity and that it is suitable for its proposed location. As such, we have determined that conditions (g)(i) and (i)(i) to Rule 16.1.2 P3 should be deleted.
67. Waka Kotahi have also raised concerns that while home occupations are subject to the traffic generation condition in Rule 14.12.1 P4(1)(a), such activities should not involve heavy vehicles and that any proposal to do so should be subject to a new restricted discretionary rule. In considering this matter, we are mindful that while some home occupations have the potential to cause adverse environmental effects, we are comfortable that the parameters contained in both the home occupation and traffic generation permitted activity standards will sufficiently limit the scale of any home occupation activity, without imposing additional restrictions.

68. The Ministry of Education supported the section 42A report authors' recommendation to change the activity status of 'education facilities' in the Residential Zone to restricted discretionary, rather than being subject to the default non-complying activity status for activities not otherwise provided for. We agree with the Ministry that the majority of education facilities should be located within residential areas and constitute essential social infrastructure to support residential areas. However, such facilities also have the potential to create adverse effects, particularly in terms of amenity and traffic generation, and therefore a restricted discretionary activity status is considered appropriate. We also note that Mr Duncan's evidence states that he accepts the section 42A authors' recommendation that a specific noise standard for educational facilities is unnecessary; we record that we concur with this conclusion.

4.8 Bulk and location requirements

69. There were a number of submitters that sought a range of amendments to various bulk and location requirements for permitted activities. Having reviewed this evidence, we are satisfied that the amendments recommended in the section 42A report (as updated through the rebuttal evidence), will provide a level of amenity and functionality that is appropriate to a low-density living environment.

4.9 Earthworks

70. Pokeno Village Holdings Ltd have raised concerns regarding the section 42A recommended amendment to Rule 16.2.4.1 (P1(a)(i)), which would increase the earthworks setback from one and a half metres to five metres and also apply the setback to include "any infrastructure", not just waterways, open drains or overland flow paths as referred to in the rule. Mr Scrafton's evidence also provided an illustration of the implications of the recommended rule, including a five-metre setback from any road reserve, water, stormwater and wastewater pipelines; and power and communications on a residential property.
71. We agree with Mr Scrafton that this amendment is unnecessarily onerous and it would likely be difficult for a landowner to accurately identify the location of all infrastructure services on their property in order to ascertain compliance, particularly for domestic-related earthworks, such as gardening or erecting fence posts. We are also mindful that earthworks are otherwise required to be set back one and a half metres from all boundaries, including the road boundary, where most services are likely to be located and that other instruments, such as easements and designations are available to protect infrastructure, where necessary. On this basis, we do not consider that the inclusion of the term "infrastructure" in Rule 16.2.4.1 (P1(a)(i)) and related Policy 4.2.15(b) is the most efficient or effective means of managing the potential effects of earthworks.
72. WRC requested that the permitted activity standards for earthworks in all zones be amended to provide for a minimum five-metre distance from any waterbody or

overland flow path to align with the permitted rule in the Waikato Regional Plan as a 'precautionary approach'. On the basis of the amendments to Rule 16.2.4.1 P1(a)(vii) relating to the stabilisation and revegetation of earthworks, we do not consider that it is necessary to apply a precautionary approach of widening the setback from waterways when such works are already subject to compliance with relevant regional rule requirements.

4.10 Signs

73. Waka Kotahi sought changes to Policy 4.4.7 - Managing the adverse effects of signs, on the basis that illuminated, flashing or moving signs on roads (with a speed limit of over 50km) have the potential to reduce the safety and efficiency of state highways (and roads in general) and that such effects should be avoided. While we agree that potential adverse effects on traffic safety need to be considered, we are satisfied that this can be achieved through a restricted discretionary activity status (in accordance with Rules 16.2.7.1 and 16.2.7.2). On this basis, we are satisfied that Policy 4.4.7 should refer to 'discouraging', rather than 'avoiding' signs that may generate adverse effects from illumination, light spill, flashing, moving or reflection.
74. Waka Kotahi also requested some minor amendments to the Rule 16.2.7.2 P1 Signs - Effects on traffic regarding reference to the maximum number of words, symbols or graphics on a sign, which we note Mr Matheson agreed with in his rebuttal evidence (albeit with slightly different wording). We agree with this amendment, however we prefer NZTA's suggested text that includes reference to 'graphics'.
75. Greig Metcalfe requested changes to Rule 16.2.7.1 P3 to insert additional permitted activity requirements to provide greater control over real estate signs in the Residential Zone. Considering the temporary nature of real estate signs and that they are anticipated to occur within a residential environment, we are not satisfied that additional controls on the dimensions and duration of such signs are necessary.

4.11 Rezoning requests

76. A number of submitters, including Havelock Village Ltd, Blue Wallace Surveyors Ltd, Kāinga Ora, Pokeno Village Holdings Ltd, TFR, Annie Chen Shui, CSL Trust and Top End Properties and Simon Upton sought amendments to the Residential Zone provisions to provide better alignment with their submissions to rezone land in the PDP. These matters have been specifically considered in the context of Hearing 25: Rezoning and as such our decisions on those submission points should be referred to in relation to any subsequent changes to the Residential Zone provisions.

5 Conclusion

77. The Panel accepts and or rejects the section 42A reports and the evidence filed by the submitters for the reasons provided in this Decision, collectively forming the section 32AA assessment informing this Decision.

78. Overall, the Panel is satisfied that the Residential Zone provisions as amended will provide a suitable framework for managing the ongoing use and development of the Residential Zone whilst managing any adverse effects.

For the Hearings Panel



Dr Phil Mitchell, Chair

Dated: 17 January 2022