

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
APPOINTED BY THE WAIKATO DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991  
(**RMA**)

**AND**

**IN THE MATTER** of the Proposed Waikato District Plan

**BETWEEN** **RANGITAHİ LIMITED**

Submitter [No. 343]

**AND** **WAIKATO DISTRICT COUNCIL**

Local Authority

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**LEGAL SUBMISSIONS FOR RANGITAHİ LIMITED**

**HEARING 23**

**2 December 2020**

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**MAY IT PLEASE THE HEARING COMMISSIONERS:**

**INTRODUCTION**

1. I appear for Rangitahi Limited (submitter 343).
2. Rangitahi owns land within the Rangitahi Peninsula, and is the developer of the Rangitahi Peninsula Structure Plan introduced into the Operative Waikato District Plan (**OWDP**) by Plan Change 12. The plan change rezoned the land from Rural Zone to Rangitahi Living Zone.
3. The Proposed Waikato District Plan (**PWDP**) carries over the Rangitahi Peninsula Zone, with some key changes. These include removing the provisions relating to Comprehensive Development Plan (**CDP**) land use consents and changes to the activity status and standards for subdivision. Rangitahi supports those changes.
4. Rangitahi's submission on the PWDP seeks amendments to the Rangitahi Peninsula Zone provisions, including amendments related to ecological and habitat values, mapping of Significant Natural Areas (**SNAs**), assessment criteria for subdivisions and a secondary access to the Rangitahi Peninsula.
5. Rangitahi will be calling evidence from:
  - (a) Ian Clark – Traffic Planner
  - (b) Ben Inger – Planner
6. Rangitahi worked collaboratively with the Council on draft provisions for the Rangitahi Zone prior to notification of the PWDP, and Mr Inger has continued to have discussions with the Council's s42A report author both prior to and following the exchange of evidence. This engagement has led to agreement on the majority of the submission points, with an agreement in principle on amendments to the provisions for the secondary access. Mr Inger's highlights package confirms the topics where agreement has been reached following the exchange of Rangitahi's evidence.
7. In light of the agreed changes my submission will focus on:

- (a) The Rangitahi Structure Plan, and the confirmation of Opororu Road as the primary access point to the Rangitahi Peninsula;
- (b) Agreed changes to the policy related to the secondary access, and the proposed assessment criteria to give effect to that policy;
- (c) Mapping of Significant Natural Areas (**SNAs**); and
- (d) Appropriateness of the relief sought.

### **RANGITAHİ PENINSULA STRUCTURE PLAN**

- 8. The Rangitahi Peninsula was rezoned in 2015 from rural to Rangitahi Living Zone following a comprehensive structure planning process and a private plan change.
- 9. The plan change enabled a planned residential community, with development staged across seven precincts (known as Precincts A – G). Titles for the first stages of development of Precincts A and B issued in June 2020, and work has commenced on Precinct D.
- 10. The Operative zone included provision for a CDP land use consent. Following the decision of the Environment Court that similar provisions in the Auckland Unitary Plan were ultra vires,<sup>1</sup> these provisions are not carried over into the PWDP. This has required adjustments to the land use and subdivision rules, and some of those changes are addressed in the relief sought.
- 11. The development of the Rangitahi Structure Plan is supported by significant developer-led infrastructure investment. Of primary relevance to this hearing, the investments included significant upgrades to Opororu Road and the construction of a new bridge over an inlet of the Whaingaroa Harbour.
- 12. The access road to the Peninsula was a focus of the PC12 hearing. Questions were raised during that hearing concerning the design and potential effects of upgrading Opororu Road. The hearing was adjourned to allow the proponent of the plan change – Raglan Land Company – time to undertake further consultation and technical work to address those questions.

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<sup>1</sup> *Re Auckland Council* (2016) 19 ELRNZ 425.

13. The decision on PC12 confirmed an upgraded Oporuru Road and a new causeway and bridge (connecting Oporuru Road with the Rangitahi Peninsula) as most appropriate primary access to the Rangitahi Peninsula.<sup>2</sup>
14. Secondary access to the PC12 area was proposed via Benseman Road and Te Hutewai Road. At the hearing the issue of construction traffic using Oporuru Road was raised. In response it was proposed that all construction traffic (apart from the bridge related construction traffic) would use this secondary access. That proposal has been implemented for the development of Precincts A, B and D – with all construction traffic using the secondary access.<sup>3</sup>

### **SECONDARY ACCESS**

15. The OWDP makes specific provision for a secondary access in Policy 15B.3.34:

Provision shall be made for secondary public access to be constructed:

- a) From the beginning of development of the Rangitahi Peninsula Structure Plan Area up to completion of the permanent secondary access, an interim alternative access shall be provided to a usable standard for use at any time the primary access may be closed.
  - b) [The] permanent secondary access shall be constructed to an engineering standard suitable for its secondary function; and
  - c) The permanent secondary access shall be constructed either:
    - (i) At an appropriate time to more fully complement and provide access choices for the full development enabled within the Structure Plan Area; or
    - (ii) At any time additional access is considered necessary to ensure safe and efficient operation of the primary access and surrounding road network.
16. The operative policy makes a clear distinction between the “interim alternative access” and a “permanent secondary access”. The former must be constructed to “a usable standard” from the beginning of the development of the Structure Plan area, and be available for use “at any time the primary access may be closed”.

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<sup>2</sup> Final Decision and Report on Private Plan Change 12 to the Waikato District Plan, Section 5.

<sup>3</sup> Refer Evidence of Ben Inger, at [86].

17. The permanent secondary access is required to be constructed “*to an engineering standard suitable for its secondary function*”. The timing of the secondary access is not set but is to be determined either at “*an appropriate time*” to provide access choices or “*at any time*” that additional access is “*considered necessary for the safe and efficient operation of the primary access*”. It is implicit that the necessity to construct a secondary access will be assessed at some future point when either the full development enabled with the Structure Plan is completed or the safe and efficient operation of the primary access is compromised.
18. Policy 9.3.5.4 of the PWDP carries over parts of the operative policy, with some substantive modifications:
- (a) From the beginning of development of the Rangitahi Peninsula Structure Plan Area up to completion of the permanent secondary access, an interim alternative access shall be provided to a usable standard for use at any time where the primary access may be closed.
  - (b) A permanent secondary access must be constructed:
    - (ii) Prior to development of any of the Precincts E, F or G; and
    - (iii) In accordance with access and road performance standards suitable for its secondary function.
19. Subparagraph (a) is identical to the operative policy. Subparagraph (b) introduces a new trigger point for the construction of the permanent secondary access – namely “*prior to the development of any of the Precincts E, F or G*”. The basis for this change is not addressed in the s 32 report. The evaluation is limited to a statement that the intention of introducing a trigger was to make the plan provisions clearer.<sup>4</sup> However, there is no evaluation of the requirement for a secondary access prior to the development of Precincts E, F or G, nor is there an evaluation of whether the proposed policy (and methods to give effect to it) is the “*most appropriate*” provision.
20. While there are no requirements in s 32 specifying the level of detail that is required in an evaluation, s 32(1)(a) states a report should: “*contain a level of detail that corresponds to the scale and significance of the environmental,*

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<sup>4</sup> Refer Evidence of Ben Inger, at [91].

*economic, social, and cultural effects that are anticipated from the implementation of the proposal.*” The effects of constructing a permanent secondary access are unquantified but likely to be significant.<sup>5</sup>

21. In my submission the s 32 evaluation is inadequate and fails to satisfy the Council’s duties stipulated in ss 74(1)(d) and (e). This leaves a large gap in the evaluation of the appropriateness of the policy (and methods<sup>6</sup>), the identification of other reasonably practicable options and the benefits and costs of bringing forward the construction of a permanent secondary access.
22. The Council’s failure to undertake a s 32 evaluation of the provisions for a permanent secondary access runs directly counter to the decision of the High Court in *Kirkland v Dunedin City Council*. The High Court held that s 74(1) reinforces the obligation on local authorities to comply with the s 32 duty. Section 32(5) also requires record of the action taken and the documentation prepared to be publicly available. Together these provisions indicate an underlying statutory intention that local authorities observe the s 32 duty imposed on them and as such it would seem contrary to that intention for non-compliance to be condoned.<sup>7</sup>
23. The absence of a s 32 evaluation leaves the Commissioners in the dark as to other reasonably practicable options – including but not limited to the effects that are sought to be addressed by the secondary access, the effects on the environment of constructing the secondary access, and the financial implications and other effects on the environment of the proposed option compared to other options.<sup>8</sup>
24. While it is not the submitter’s role to undertake the s 32 evaluation, the s 42A report invites traffic evidence on the necessity of the secondary access to inform an assessment of whether further amendments are appropriate, including removing the requirement in its entirety.<sup>9</sup>

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<sup>5</sup> Refer Evidence of Ben Inger, at [100].

<sup>6</sup> Rule 28.4.2 C1(a)(vi) and Rule 28.4.1 RD1(a)(v) addressed in the Evidence of Ben Inger, at [93].

<sup>7</sup> *Kirkland v Dunedin City Council* (2000) 7 ELRNZ 44, at [13].

<sup>8</sup> Refer the Court’s finding in *Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council* [2017] NZEnvC 51, that it was appropriate to identify reasonably practicable options by reference to a range of matters.

<sup>9</sup> Section 42A Report, at [108].

25. Rangitahi has provided expert evidence from Ian Clark, a traffic planner. Mr Clark addresses the existing environment including the Primary Access provided via the upgraded Oporuru Road and new bridge, and the development envisaged by the Rangitahi Structure Plan. Mr Clark concludes that the Primary Access has sufficient capacity for the planned development and that the resilience benefits of a permanent secondary access are minor.
26. Mr Inger considers that while there may be rationale in the future for a permanent secondary access to be constructed and vested as a public road, the need for a secondary access is not able to be determined in the context of this PWDP hearing. Further planning processes and assessment is required to give effect to the development outcomes identified in Waikato 2070, and the infrastructure needed to service that development.
27. Rangitahi signals that its evidence to be presented in the PWDP Zone Extents hearing will seek a structure planning process for the future growth of Raglan West, and the wider Raglan area. Mr Inger considers that this structure planning process – to give effect to Waikato 2070 – is the most appropriate process for the consideration of the purpose and benefit and costs of a secondary access.
28. Rangitahi submits that a decision to impose further infrastructure costs on development needs to be clearly signalled in the Council's Long Term Plan and consulted upon through public planning processes. The proposed provisions are premature, and are not supported by a proper evaluation that meets the duties under ss 32 and 74.
29. Mr Inger's evidence supported deleting Policy 9.3.5.4 of the PWDP, and the associated rules to give effect to the policy in Rule 28.4.2 C1(a)(vi) and Rule 28.4.1 RD1(a)(v).
30. Following the exchange of the s42A rebuttal report Mr Inger and the report planner have agreed:
  - (a) To retain Policy 9.4.5.4 with amendments to address the provision of a secondary access to Benseman Road to be used by heavy construction vehicles and the creation of an easement to provide for use of the secondary access by emergency vehicles at times when the

Primary Access is closed. The “*secondary access*” to Benseman Road referenced in the amended policy is the “*interim alternative access*” referenced in operative Policy 15B.3.34.

- (b) Inserting new assessment criteria (Rule 28.4.1 RD1) related to the maintenance of the secondary access to a suitable standard and the creation of easements for emergency vehicles upon the completion of the Spine Road.
31. Rangitahi seeks confirmation of the proposed amended text attached to Mr Inger’s highlights package. The amended provisions make appropriate provision for a secondary access for use by construction traffic and in emergencies. The question of a permanent secondary access (to service future growth) is set aside for a future planning process.

#### **MAPPING SNAs**

32. Mr Inger’s highlights package addresses agreed amendments to the policy and rules for ecological and habitat values and SNAs. Rangitahi seeks confirmation of these changes as the most appropriate provisions for balancing the protection of the identified natural values with the development that is contemplated by the Rangitahi Structure Plan.
33. Rangitahi further seeks amendments to the mapped SNAs for Rangitahi Peninsula.<sup>10</sup> The s42A rebuttal report notes that Hearing 21A recommended that SNA maps are removed from the PWDP unless they have been “*ground truthed*”, and that this includes SNAs at Rangitahi Peninsula.
34. Rangitahi supports the Hearing 21A recommendation to remove the mapped SNAs. In the alternative, Rangitahi seeks confirmation of the changes to the mapped SNAs set out in Attachment 2 to Mr Inger’s evidence.

#### **APPROPRIATENESS OF RELIEF SOUGHT**

35. The evidence to be presented for Rangitahi demonstrates that:

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<sup>10</sup> Evidence of Ben Inger, Attachment 2.



- (a) The upgraded Opoturu Road has sufficient capacity to service development within the Rangitahi Structure Plan area;
- (b) A secondary access is not required to address the effects of the development contemplated by the Rangitahi Structure Plan;
- (c) There is no s 32 evaluation to support bringing forward the construction of a secondary access in advance of future urban growth in Raglan West;
- (d) The controls on earthworks and removal of indigenous vegetation within SNAs should protect the values of the SNA from significant adverse effects, and the amendments sought by Rangitahi are more appropriate provisions to achieve that objective;
- (e) The proposed rules for Restricted Discretionary Activity subdivisions are too prescriptive, and the assessment criteria sought by Rangitahi are more appropriate provisions to manage the effects of subdivision within the Structure Plan area;
- (f) The relief sought is the more appropriate way to give effect to the PWDP objectives and Part 2 of the RMA.

**Dated** 2 December 2020



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**Brianna Parkinson**  
**Counsel for Rangitahi Limited**