

# **SECTION 42A REPORT**

Report on submissions and further submissions on the  
Proposed Waikato District Plan

## **Hearing 25: Zone Extents**

### **Special Purpose Zone - Hopuhopu**

Report prepared by: Betty Connolly

Date: 16 April 2021



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**List of submitters and further submitters addressed in this report**

<b>Original Submitter</b>	<b>Submission number</b>
Lorrain Dixon on behalf of Waikato Tainui	286.2
Lorrain Dixon on behalf of Waikato Tainui	286.3
Lorrain Dixon on behalf of Waikato Tainui	286.17
Lorrain Dixon on behalf of Waikato Tainui (part)	286.1

<b>Further Submitter</b>	<b>Submission number</b>
<i>Pareoranga Te Kata</i>	<b><i>FS1035.8</i></b>
<i>Pareoranga Te Kata</i>	<b><i>FS1035.9</i></b>
<i>Pareoranga Te Kata</i>	<b><i>FS1035.23</i></b>
<i>Perry International Trading Group Limited</i>	<b><i>FS1348.6</i></b>
<i>Waikato Regional Council</i>	<b><i>FS1277.130</i></b>

***Please refer to Appendix I to see where each submission point is addressed within this report.***

# I Introduction

## I.1 Qualifications and experience

1. My full name is Betty Marguerite Connolly. I have been engaged as a Consultant Planner by Waikato District Council (WDC) to prepare this report..
2. I hold the qualifications of Bachelor of Science (Hons) (Geography) and Graduate Diploma Social Sciences from University of Waikato.
3. I was employed at WDC for a number of years, including as a Policy Planner between 2001 and 2018. In this role I undertook the following tasks and responsibilities:
  - policy development in both the WDC Operative District Plan and the Proposed District Plan, and associated s.32 assessments and s.42a report preparation;
  - the preparation of, and consultation on, structure plans; and
  - developing, co-ordinating and processing plan changes, both private and WDC initiated.
4. From 2018 until 2020 I was employed as a Community Planner in the Strategic Team contributing to the development of Council's growth strategy, Waikato 2070 and community development.

## I.2 Code of Conduct

5. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
6. I am authorised to give this evidence on the Council's behalf to the hearings commissioners.

## I.3 Conflict of Interest

7. I declare that I could be perceived as having a conflict of interest in preparing this report as I am registered as a tribal member of Waikato Tainui and whakapapa to the Taupiri Marae. I declare that I do not take part in any marae or tribal activities. I was involved in the preparation of the 2004 district plan review during which time the original provisions for the Hopuhopu site were developed. I prepared the Ngaruawahia, Hopuhopu, Taupiri, Horotiu, Te Kowhai and Glen Massey Structure Plan which resulted in Plan Change 17 – Ngaruawahia and surrounding villages in 2016 (PC17), to the current Operative Waikato District Plan (ODP).

## I.4 Preparation of this report

8. In preparing this report I have worked in partnership with Ms Susan Henderson (GMD Consultants representing Waikato Tainui), to develop provisions to make effective utilisation of this site. Input has also been provided by the Waikato Tainui (WT) commissioned consultancy team (as set out in paragraph 45).
9. The scope of my evidence relates to the evaluation of submissions and further submissions received in relation to the provisions for the site known as Hopuhopu and does not impact on any other submissions or further submissions lodged for or against WT.
10. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons

for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

### **1.5 Non-disclosure of technical reports by Waikato Tainui**

11. In preparing this report I have considered the expert planning evidence provided by Ms Henderson and Mr Gavin Donald on behalf of WT. Ms Henderson's evidence identifies that WT have engaged technical reports in the field of traffic and transport, three waters, geotechnical, archaeological, ecological, land contamination and alligator weed. However, her evidence states at paragraph 12.2 that "I am unable to attach the detailed reports to my evidence because they contain confidential details relating to the development of the site". Instead, Ms Henderson's evidence provides a summary of the conclusions from each technical report.
12. I confirm I have not sighted the technical reports referred to in Ms Henderson's evidence nor engaged with the respective authors of those reports to verify the accuracy of the conclusions as summarised in Ms Henderson's evidence. I note the evidence only identifies the name of the consultancy firm who undertook the investigations, not the name of the technical expert. The basis for claiming confidentiality has also not been disclosed to me.
13. In the circumstances, I have been unable to engage any experts to peer review the technical reports prepared on behalf of WT or to evaluate them myself. This leaves me in a position whereby I am simply unable to provide an unconditional recommendation to the hearings commissioners in respect of the submission by WT.
14. Accordingly, my recommendation (which is to accept WT's submission) is conditional upon the hearings commissioners being satisfied that the technical evidence does not present any impediments to the relief sought and supports a s32AA evaluation. In order for the hearings commissioners to be able to properly discharge their decision-making obligations, I believe it is appropriate for WT to provide the technical reports to the panel on a confidential basis.
15. I have sought advice from Tompkins Wake who advises that such a mechanism may be provided for pursuant to sections 39 and 41 of the RMA, depending on the exact nature of the grounds relied upon by WT for claiming confidentiality. Section 39(1) of the RMA directs the panel to establish a procedure that is appropriate and fair in the circumstances. However it further provides that the hearing must be held in public unless permitted to do otherwise by s42 or the Local Government Official Information and Meetings Act 1987 (LGOIMA).
16. Section 42 relates to the protection of sensitive information. Under that section, the panel may, on its own motion, or on the application of WT, make an order either:
  - a) excluding the public from any part of the hearing at which the information is likely to be referred to; or
  - b) prohibiting or restricting the publication or communication of any information supplied to it or obtained by it, in the course of the proceeding (even if the information is material to the rezoning).
17. However, the panel is only authorised to make such an order if the order is necessary to:
  - a) avoid serious offence to Tikanga Māori or to avoid the disclosure of the location of waahi tapu; or
  - b) avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information.
18. Furthermore, in each case, the importance of avoiding the offence, disclosure or prejudice must outweigh the public interest in making the information available.
19. As I am not aware of the grounds relied upon for claiming confidentiality, I cannot say whether s42 is available to WT.
20. The grounds for excluding the public under s48 of LGOIMA are wide ranging and include where disclosure of the information would:

- a) prejudice the maintenance of the law;
  - b) endanger the safety of any person;
  - c) fail to protect the privacy of natural persons;
  - d) disclose a trade secret;
  - e) unreasonably prejudice the commercial position of the person who supplied or is the subject of the information;
  - f) fail to protect information which is subject to an obligation of confidence and would be likely to prejudice the supply of similar information and it is in the public interest that such information continue to be supplied;
  - g) prejudice measures to protect the health and safety of members of the public;
  - h) prejudice measures that prevent or mitigate material loss to members of the public; or
  - i) fail to maintain legal professional privilege.
21. I invite WT to consider whether any of the above grounds apply to their circumstances and if so, to seek appropriate directions from the hearing commissioners prior to the commencement of the Hopuhopu rezoning hearing.

## 2 Scope of Report

### 2.1 Matters addressed by this report

22. This report is prepared in accordance with section 42A of the RMA. This report considers submissions that were received by the Council in relation to the provisions on the management of the site identified as Hopuhopu within the Waikato Proposed District Plan (WPDP). Provisions relating to the management of Hopuhopu include land use activities, buildings, amenity effects and subdivision.

### 2.2 Overview of the site

#### 2.2.1 Location

23. The Hopuhopu site is situated approximately 3.5kms north of Ngaruawahia adjacent to the Waikato River. The site 137.8640 ha in size and is accessed from the south via Old Taupiri Road and by the north from Great South Road shown in Figure 1 below. The State Highway designation was revoked in June 2014 and this is now classed under the Council Road Hierarchy list as an arterial road.



Figure 1 showing location of site: Ngaruawahia to the south.

24. WDC wastewater treatment oxidation ponds are located to the south west of the site. To the north east there is a mixture of private and council owned small parcels of land. The North Island Main Trunk Line borders the site to the east and is adjacent to the Great South Road. Old Taupiri Road bisects the site to the west. Figure 2 below shows details of the PDP zoning for the site and the WDC designations with M36 being the Council wastewater treatment plant and M33, M35 and M107 are part of Council's water supply network. The majority of land parcels surrounding the site are zoned Rural and the area between Old Taupiri Road and the river, which adjoins the site at the western boundary, is zoned Country Living.

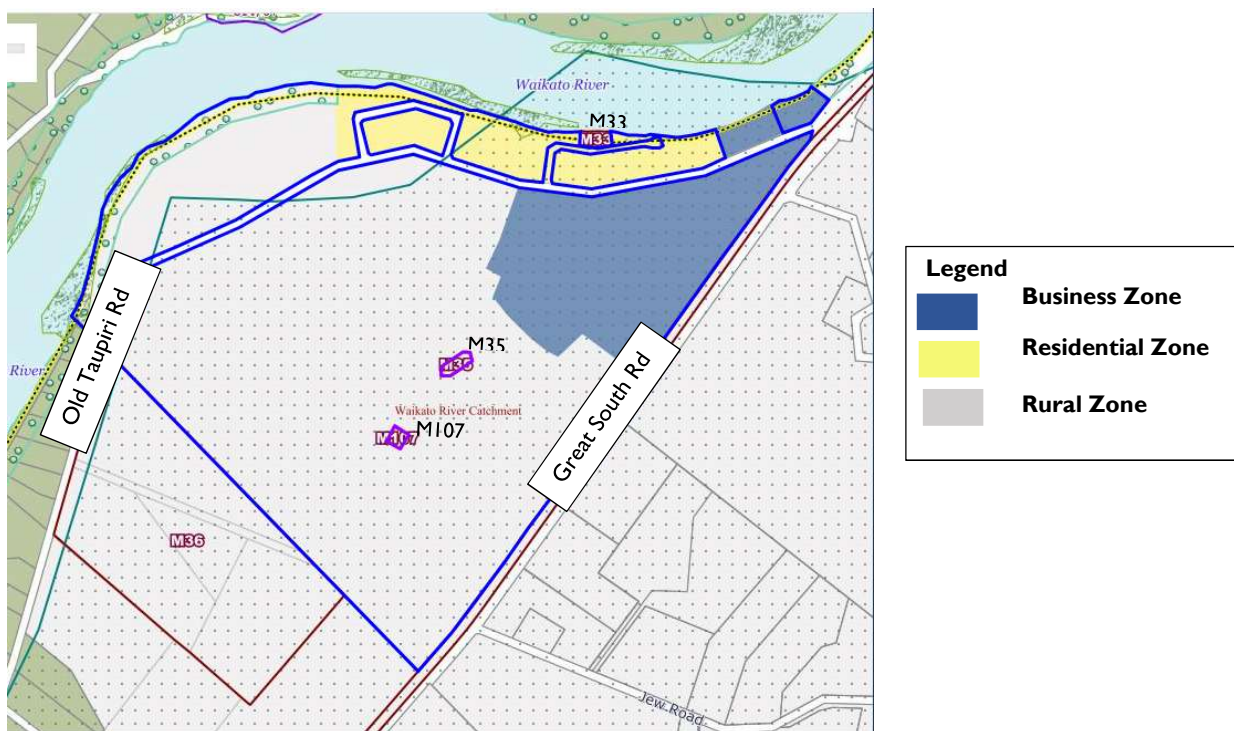


Figure 2 – PDP zoning and designations.

### 2.2.2 History

25. In 1853 the land at Hopuhopu was originally gifted by tangata whenua to the Anglican Church for education purposes and was initially used to build a church and school that local Maori children attended. Over time the site became abandoned although the Anglican Church retained ownership until 1922, when the government issued gazette notices advising the taking of land for the purposes of a military training facility<sup>1</sup>. The land remained as an active military camp until 1989, where as part of a number of base closures across the New Zealand Defence Force, Hopuhopu ceased to be an active military camp.
26. Hopuhopu was a key component in Waikato-Tainui's raupatu (confiscation) Treaty settlement negotiations of 1989-1995 and the land was returned to Waikato-Tainui through the treaty settlement process. The site is held in Te Wherowhero title, created as part of the Waikato Raupatu Claims Settlement Act 1995. Te Wherowhero title land is held by Custodian Trustees for the benefit of all members of Waikato-Tainui. This land is unable to be sold or leased without the approval of King Tuheitia and two other custodial trustees.<sup>2</sup>

### 2.2.3 Site details

27. The site currently comprises of a number of buildings, the most significant one being the Endowed College. There is existing housing, buildings for storage and maintenance and the remaining area is largely sports fields and open space. Maaori Parliament has their operations on site. There is existing infrastructure of reticulated wastewater connected to Council network, an upgraded water reservoir that forms part of the Council reticulated water supply network that includes Hopuhopu and Taupiri and runs between Huntly and Ngaruawahia. Storm water is managed onsite and there are four catchments –
  - Catchment 1 (historic military base) discharges directly to the Waikato River via pipes;
  - Catchment 2 (historic military base and Endowment College) discharges into the existing wet pond, onsite, then has a controlled outlet into an unnamed stream;
  - Catchment 3 (residential Ashwell Crescent) is assumed to discharge via small pipes into the river although I understand pipes have not been surveyed; and
  - Catchment 4 (current farmland, future residential) sheet flows over grass into Waikato River.

### 2.2.4 District Plans

28. Under the ODP the Hopuhopu site consisted of four separate zones being Pa, Rural, Living and Business as shown in Figure 3.

<sup>1</sup> [https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/historic-heritage/appendix-10-4-1-6-historic-overview--6-ngaruawahia.pdf?sfvrsn=8c2480c9\\_2](https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/historic-heritage/appendix-10-4-1-6-historic-overview--6-ngaruawahia.pdf?sfvrsn=8c2480c9_2) Pg 189

<sup>2</sup> Statement of evidence of Gavin Rhys Donald, paragraph 5.1.



29. The ODP identifies the site as containing a Landscape Policy Area that borders the site to the Waikato River, a registered Heritage Item No 145 identified as Rev Ashwell's Mission and designation numbers M33, M35 and M107 relate to Council's designations for water supply.
30. The Pa Zone allowed for mixed uses such as marae, residential, cultural and business and the rules provided the flexibility for tangata whenua to manage activities and effects within the zone as permitted activities. These largely applied to areas of land where marae were already established and included an identified area on the Hopuhopu site which reflected the location of the Endowment College.
31. The remainder of the site was zoned Business, Residential and Rural. There were no special rules for these zones and district-wide Business, Residential and Rural rules applied to the site. My recollection of the identification of these zones from working on the 2014 ODP was from an early concept drawing provided by WT however WT may wish to confirm at the hearing.
32. The Pa Zone provisions did not originally extend to all land owned by Maori. In 2010, Plan Change 2 Rural Subdivision sought to address this by incorporating provisions in the Waikato section of the ODP to enable opportunities for development on Maaori Freehold Land (MFL) for papakaainga housing in the Rural and Coastal zones.
33. During the drafting of the WPDP it was identified that the ODP limited the ability of tangata whenua to utilise their land in both the Waikato and Franklin sections of the plan as the rules in both sections provided for papakaainga housing, but with varying degrees of allowance. The Waikato Section has a designated Pa Zone which is based on where Marae have been established in accordance with the Maaori Land Court (MLC) records. It provides flexibility for development but with some restraints on future land use. The Pa Zone is very permissive, with activities permitted so long as they meet the effects and buildings rules. The only land use activities that require consent include intensive farming, extractive industry, rural industry, onsite solid waste disposal or storage, or a commercial activity. For other MFL where Marae has not established, only papakaainga can establish and only within the Rural and Coastal zones, as per PC2.. The land currently zoned Paa in the ODP is restricted to the individuals who have shares in that particular land parcel. This approach has resulted in some families being afforded Paa zone with some ability to develop whereas other families who do not have a gazetted Marae are restricted to only papakaainga with limited ability to develop.

34. The Franklin Section enables papakaainga housing on MFL in the Rural Zone as a permitted activity but it must be within 1km of a marae, or for papakaainga developments further than 1km from a marae, written approval of the relevant marae committee is required. One difficulty of this approach is that the committee members may not be shareholders of the land and do not have jurisdiction over this matter. Also, as the rule assigns the determination of activity status to a 3rd party (in this case a marae committee), it is ultra vires.<sup>3</sup>
35. The WPDP attempted to address these issues by collaborating with the MLC and allowing the MLC to manage development on MFL rather than the district plan. Under this approach, the WPDP is not concerned with where Marae or papakaainga occurs as this has been decided by the owners through the MLC. This effectively made the provisions available to all owners of MFL without the need for a specific zone, and the rules would apply no matter what zone the MFL was located within. Accordingly, the Pa Zone was not carried over into the WPDP.
36. With the removal of the Pa Zone in the WPDP, the Hopuhopu site is zoned Rural, Business and Residential Zone with the land previously zoned Pa becoming Rural Zone as shown in Figure 4.

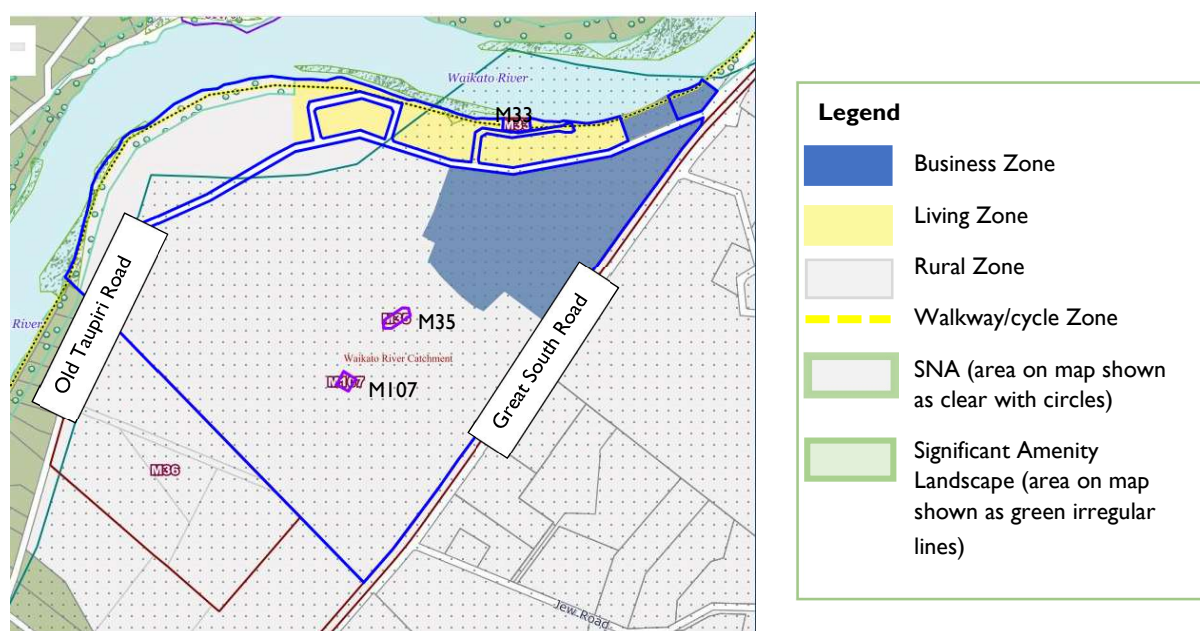


Figure 4 – Hopuhopu WPDP Zones including designations, significant natural area, walkway/cycleway, significant amenity landscape

37. While the new rules for MFL (as explained above) have enabled Maaori much more flexibility, that is not the case for the Hopuhopu site. Treaty settlement negotiations of 1989-1995 saw Hopuhopu returned to WT, however, the land title is not MFL. Rather this is classed as settlement land and registered in Te Wherowhero title. Effectively this means the land has a different status and therefore does not enable the site at Hopuhopu to access the provisions of the WPDP rules in respect of MFL. It is for this reason that WT are seeking a bespoke set of provisions to enable development of the Hopuhopu site. I support this approach.

## 2.2.5 Plan Change 17 - Ngaruawahia and surrounding villages

38. As a result of continuing growth due to the proximity of the Waikato Expressway and the ease of access to South Auckland and Hamilton, Council developed the Ngaruawahia, Hopuhopu, Taupiri, Horotiu, Te Kowhai and Glen Massey Structure Plan which resulted in PC

<sup>3</sup> [https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/s32---11-tangata-whenua-notification-18072018.pdf?sfvrsn=daed80c9\\_2](https://wcdsitetfinity.blob.core.windows.net/sitefinity-storage/docs/default-source/your-council/plans-policies-and-bylaws/plans/district-plan-review/section-32-reports/s32---11-tangata-whenua-notification-18072018.pdf?sfvrsn=daed80c9_2) Appendix 3 Paa Zone Analysis

17 in 2016. In this structure plan, Hopuhopu was acknowledged for the part it played in the history of the Ngaruawahia area and the continuing aspirations of WT. However, no changes were made in the structure plan or PC 17 that affected the Hopuhopu site as the zoning was already in place to enable further development.

## 2.3 Overview of submissions

39. Four submissions were received from WT relating to the Hopuhopu site. The submissions ask for a specific set of provisions that will enable WT to utilise their ancestral land more effectively. The WT submission contends new provisions are necessary as the WPDP rules for development on Maaori land do not apply to Hopuhopu, resulting in WT being incapable of utilising their land to its full potential. Four further submissions were received in support of the WT submissions. Three of WT's submissions are addressed in this report with the fourth having already been addressed in the previous hearing for the Tangata Whenua chapter, submission 286.1 (Waikato Regional Council (WRC) further submitting in opposition). It is noted that WRC submitted evidence to this hearing for this submission point which I have addressed in paragraph 78. While the intent of the submissions was clear, draft provisions were not included in the submission. There were no specific details provided on how bespoke provisions were to be drafted other than that WT and Council work together to create a zone specific to Hopuhopu.
40. Hearing 4: Tangata Whenua, Whaanga Coast and Maori Freehold Land took place on 18 November 2019. While this hearing was principally focused on Chapter 2 Tangata Whenua and the planning provisions for MFL, at that hearing planning and legal representatives for WT highlighted the development constraints they now have at Hopuhopu as a result of:
  - (a) the removal of the Pa Zone from the WPDP; and
  - (b) the title of the land being settlement land as opposed to MFL.
41. The Hearings Panel issued a Minute dated 20 November 2019 as a result of discussions arising from Hearing 4. It directed that further work be undertaken in drafting provisions for MFL and future Settlement Land. Work has been on-going on these provisions and whilst I acknowledge no decisions have been issued, I understand that the Hopuhopu site has been excluded from these newly drafted provisions. Although the Minute made no specific directions regarding the land at Hopuhopu, the Hearings Panel noted during the hearing that they were open to a specific zone being developed for the Hopuhopu site due to its special requirements.
42. I have worked collaboratively with the team engaged by WT to draft the provisions that form part of this report. Taking into account the direction of the Hearings Panel to adopt the National Planning Standards (NPS) where applicable, the rules have been drafted to reflect the site as a Special Purpose Zone – Hopuhopu and dividing the area into precincts as below –
  - Precinct 1 – Residential
  - Precinct 2 – Education and Conference
  - Precinct 3 – Business
  - Precinct 4 – Open Space
  - Precinct 5 – Mixed Use.

## 2.4 Structure of this report

43. The three WT submissions which are the focus of this report broadly seek the same outcome. Section 3 will cover procedural matters and Section 4 will cover the analysis of submissions and further submissions. Appendices will provide details of recommended provisions.

Appendix 1	Table of submission points
Appendix 2	Recommended amendments
Appendix 3	s32AA report
Appendix 4	Minutes of hearings
Appendix 5	Beca review of Transport and Wastewater

## 2.5 Procedural matters

44. In accordance with the Minute issued by the Hearings Panel following Hearing 4 (paragraph 41 above), a number of pre hearing meetings were convened between Ms Henderson of GMD Consultants and myself. These meetings were to collectively draft provisions that meet the outcome sought by WT. This was a collaborative endeavour to achieve an outcome agreeable to both parties.
45. Under the direction of WT, the planning and conceptual design for Hopuhopu has been prepared by a consultancy team comprising Chow Hill Architects, BBO civil engineers and planners, CMW Geosciences, Bluewattle Ecology, NIWA and Warren Gumbley Archaeology. The planning was informed by a series of WT business requirements and has been presented to King Tuheitia for approval. The resulting conceptual design will guide the future development of the Hopuhopu site. The conceptual design has not been included in WT's evidence and nor is it intended that it will form part of the WPDP provisions for this site. Due to confidentiality reasons, I have not seen the conceptual design.
46. BBO have undertaken a simultaneous piece of work focussing on the infrastructure on the site, both above and below ground, as well as working with the wider consultancy team. This work considers both existing and proposed infrastructure requirements.
47. I refer to section 1.5 of this report regarding the invitation extended to WT to provide the technical reports (and conceptual design) to the Hearings Panel on a confidential basis so that they have all necessary information before them when making a decisions on the submissions and further submissions relating to the Hopuhopu site.

# 3 Statutory framework

48. The statutory considerations that are relevant to the content of this report are largely set out in the opening legal submissions by counsel for Council (23 September 2019) and the opening planning submissions for Council (23 September 2019, paragraphs 18-32). The opening planning submissions from the Council also detail the relevant iwi management plans (paragraphs 35-40) and other relevant plans and strategies (paragraphs 41-45). The following sections identify statutory documents with particular relevance to this report and this site. In particular, Appendix I to the opening legal submissions summarise the relevant statutory tests.

## 3.1 Resource Management Act 1991 (RMA)

49. The purpose of the Act is to promote the sustainable management of natural and physical resource in a way or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing while safeguarding the environment. The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter under Section 6 Matters of National Importance. Section 6

matters must be “recognised and provided for” and Section 7 Other Matters ‘...shall have particular regard to’. The section 6 matters that the Panel might consider relevant in this submission are: Section 6(e) - The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. When viewed, alongside section 7(a) (kaitiakitanga) and section 8 (principles of the Treaty of Waitangi) the suite of provisions seek to recognise, protect and provide for Māori cultural and spiritual matters.

50. Ms Henderson has assessed the proposed Hopuhopu provisions against the statutory requirements. I refer the panel to her Statement of Evidence, in particular section 7 - 10 (pgs 8-16) and section 1.6 – 1.8 (pgs 11-15) and Appendices 1 – 5 of the accompanying s32AA which contains her assessment against:

- National Policy Statement for Urban Development
- Vision and Strategy for the Waikato River
- Waikato Regional Policy Statement
- Future Proof 2017
- Waikato 2070
- Waikato-Tainui Environmental Plan
- Proposed District Plan Policy Direction - Framework s42A report

51. I generally agree with Ms Henderson’s analysis of the statutory requirements. I provide further comment on each of the relevant planning documents as follows:

- National Policy Statement for Urban Development
  - a) The NPSUD requires councils to plan for well-functioning urban environments and to ensure the adequate provision of developable land. The NPSUD is not particularly relevant to this site as Hopuhopu is not an urban environment based on Statistics NZ Functional Urban Areas. However, as a tier 1 local authority under the NPSUD, Council is required to provide sufficient development capacity to meet expected demand for housing and business land over the short, medium and long term. In this respect, the proposal gives effect to the intent of the NPSUD, especially Policy 1. The proposed development meets section (a) of Policy 1 as there is a variety of housing options proposed through which Māori will be able to meet their cultural traditions by enabling kaumatua housing along with family homes thus allowing for the generational mix inherent with their culture and traditions. In conjunction with this the development will provide for a variety of different business as encouraged under (b). The size of the site and the activities to be considered in the proposed development are in line with section (c) of this policy.
- Vision and Strategy for the Waikato River
  - a) This document reflects the vision of WT for the River and their relationship with it. Objective (b) and strategy (g) of the Vision and Strategy both look at restoring and protecting the relationships of WT with the Waikato River, including their economic, social, cultural and spiritual relationships. The development of the Hopuhopu site will enable members of WT to live near the river and contribute to restoring their traditions and relationships. Based on the assessment in Ms Henderson’s evidence, it seems that the rules will appropriately avoid, remedy or mitigate any adverse effects

on the Waikato River. On this basis, I consider the proposal gives effect to the Vision and Strategy.

- Waikato Regional Policy Statement
  - a) The WRPS sets out several objectives and policies to support tangata whenua. Objective 3.9 – Relationship of tangata whenua with the environment is of particular relevance to Hopuhopu. The proposed development will enhance the ability of WT to exercise kaitiakitanga over this important piece of tribal land.
  - b) The proposed changes will support opportunities for redevelopment of an already existing developed area taking into account the directions under Policy 6.1 – Planned and co-ordinated subdivision, use and development. I cannot confirm this Policy is given effect to by the proposed zone framework due to not having sighted any technical three waters documents as addressed earlier in this report.
  - c) Policy 6.4 – Marae and papakainga recognises the historical, cultural and social importance of marae and papakainga and the proposal will provide for the ongoing use and development of the Hopuhopu site by providing provision for activities associated with these cultural practices.
  - d) Policy 8.5 – Waikato River Catchment and policy 10.2 Relationship of Maori to taonga are both supported by this proposed development as the proposal recognises the Vision and Strategy and it provides for WT relationship with their culture and traditions on a site which is of strong cultural importance.
- Future Proof 2017
  - a) The Future Proof Growth Strategy 2017 (Future Proof) is a growth strategy developed to guide urban growth in the Waikato, Hamilton and Waipa sub-region. Future Proof 2017 was consulted on in accordance with the Local Government Act 2002 and has been adopted by the Future Proof Councils. Parts of the earlier Future Proof Strategy 2009 are incorporated into the WRPS (policies 6.13 – 6.19).
  - b) Future Proof is focused on guiding the expansion on existing urban centres in the sub-region (and setting limits on urban expansion). As such, the growth targets and limits within Future Proof are not particularly relevant to the proposed SPZ Hopuhopu as the area is outside any of the identified existing or future locations. Hopuhopu is not within the urban/village limits identified in either Future Proof 2009 (embedded in the WRPS) or Future Proof 2017.
  - c) However, within this strategy the unique relationship t̄angata whenua have with the land, waterways, ocean, mountains, wider environment and other people in the sub-region is expressly recognised. As stated, Hopuhopu is outside any of the identified urban limits but given it is a site with existing zoning for urban and business development, and has economic, social, cultural and spiritual relationships to tangata whenua, it is not considered to be inconsistent with the Future Proof strategy.
- Waikato 2070
  - a) Waikato 2070 is the district's growth and economic development strategy. It encourages the partnering with local iwi to help realise their social, cultural, economic and environmental aspirations. The strategy includes the Ngaaruawahia Development Plan 50 years in which Hopuhopu is identified as a Special Activity Precinct with a

development timeframe of 1-3 years with a Hopuhopu Business Park indicated adjacent to the site. The proposed development supports Waikato 2070.

- Waikato-Tainui Environmental Plan
  - a) In the Waikato-Tainui Environmental Plan there are a number of objectives that aim to support iwi in their aspirations. In particular objective 10.3.3 Tribal success, 13.3.1 Papakaainga Development and 25.3.2 Urban and Rural development are important in the relation to the Hopuhopu site. The proposed development will enhance the education and training already occurring, support papakaainga development and allow urban and rural development to occur. The proposal is consistent with this plan.

## 4 Hopuhopu site

### 4.1 Submissions

52. The following submissions were received:

Submission point	Submitter	Decision requested
286.2	Waikato-Tainui	Retain areas of Hopuhopu in the Residential Zone being managed under the ordinary rules of that zone.
<i>FS1035.8</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
286.3	Waikato-Tainui	Retain areas of Hopuhopu in the Business Zone being managed under the ordinary rules of that zone.
<i>FS1035.9</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
286.17	Waikato-Tainui	To remove confusion and provide clarity around future uses, Waikato-Tainui consider that providing for a Hopuhopu Zone is appropriate. The variety of activities that currently occurs at Hopuhopu and, the future aspirations for the site demand greater clarity. Waikato-Tainui considers that sufficient time will be available pre-hearing, that a Hopuhopu Zone can be drafted and presented to commissioners. This should be developed as a partnership between Waikato District Council and Waikato-Tainui.
<i>FS1035.23</i>	<i>Pareoranga Te Kata</i>	<i>Support</i>
<i>FS1348.6</i>	<i>Perry International Trading Group Limited</i>	<i>Support</i>
286.1	Waikato-Tainui	To enable the land at Hopuhopu to be planned for, developed and used in accordance within the mandate of the Te Wherowhero title. This submission addresses a gap in the Proposed Plan.



		Hopuhopu will not get the benefit of the proposed new rules that confer additional permitted activities on Maaori freehold land, because Hopuhopu is in special Te Wherowhero title created under the Waikato Raupatu Claims Settlement Act 1995
FS1277.130	Waikato Regional Council	Oppose

## 4.2 Analysis

53. Through evidence, the submitter has provided the following proposed provisions:

- objectives and policies
- rules
- definitions
- consequential amendments – Chapter 14 Infrastructure
- consequential amendments – Appendix 5 Hazardous Substances
- maps
- planning evidence – Ms Henderson
- overview evidence – Mr Donald
- section 32AA evaluation

As previously noted, I have worked closely with Ms Henderson to draft provisions that are acceptable to both parties. These provisions have been drafted in line with the long term vision that WT have for the site.

54. It was noted early on in my discussions with Ms Henderson that having a number of zones on the site was not the most appropriate method as many activities overlapped. For this reason, and in line with the implementation of the NPS, a Special Purpose Zone has been created called – Special Purpose Zone-Hopuhopu. In accordance with the NPS, a special purpose zone must only be created when the proposed land use activities or anticipated outcomes of the additional zone meet all of the following criteria:

- are significant to the district, region or country
- are impractical to be managed through another zone
- are impractical to be managed through a combination of spatial layers. <sup>i</sup>

55. It is considered that Hopuhopu meets the above criteria in that:

- it is significant to the district and the region for the historical reasons set out in Mr Donald's evidence.
- it is impractical to manage a number of zones on site nor are the zones compatible to the expected activities.
- individual precincts identify specific areas as opposed for the need to have a number of spatial layers which are not compatible to the site.

56. The creation of Special Purpose Zone-Hopuhopu enables a comprehensive approach to managing development of the site, recognises the unique nature of the Hopuhopu site, the current uses and anticipated future uses. WT have a vision for the future of the Hopuhopu



site as their home. This vision includes provision for young and old through such ways as educational, housing, business and recreational opportunities.

57. The Special Purpose Zone-Hopuhopu identifies 5 Precincts as follows:

- Precinct 1 – Residential
- Precinct 2 – Education and Conference
- Precinct 3 – Business
- Precinct 4 – Open Space
- Precinct 5 – Mixed Use.

58. The purpose of the precincts is to delineate where activities will occur. In some cases there are similar activities which can occur in several precincts i.e. Wharenuī which is permitted in Precincts 2, 3 and 5 (Education, Business and Mixed use respectively) while in others, activities will be restricted to one precinct only i.e. a plant nursery can only take place in Precinct 4 – Open space. WT are looking to site their activities to gain the most of the land and the concept of multigenerational living.

59. A key component when drafting was to ensure that the objective of recognising the special nature of the title was inherent in the rules and that the land was for the benefit of all WT whānau. As previously discussed, the Te Wherowhero title means the land is not Māori freehold and is effectively classed as General Title. General title land allows for fragmentation. At the time of the treaty settlement claim it was widely discussed that WT had no intention of allowing settlement land to become alienated. This has been acknowledged in writings of that time.<sup>4</sup> To this end, an objective, policy and a non-complying activity rule have been included that discourages subdivision except where required for roads or network utilities. I have been advised verbally by Ms Henderson and Mr Dawson (refer paragraph 45) that the provisions as submitted in evidence and briefly outlined below, have been presented and discussed with King Tuheitia.

#### **4.2.1 Drafted Provisions**

60. Five objectives have been drafted that:

- enforce the uniqueness of the site for tribal members;
- recognise the area as the headquarters of WT and the importance of the Endowment College;
- will ensure development is compatible with the special nature of the site;
- enables activities that benefit the whole of WT; and
- recognises the special nature of the treaty settlement land and ensures this is held for the benefit of all WT.

61. These objectives are intended to guide all development towards achieving the vision that WT are wishing to achieve. They are drafted to recognise the significance of the site while ensuring development is appropriate and achievable.

##### **4.2.1.1 Activities**

62. The rules provide an extensive list of activities that will be permitted. This is in line with enabling tangata whenua to utilise their land. This list was developed after considerable dialogue with WT as to the type of activities they are anticipating will occur while keeping in mind the vision they aim to achieve. There are Precincts within the SPZ and each activity will

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<sup>4</sup> <https://ojs.victoria.ac.nz/jnzs/article/view/3984/3551>

be undertaken in a precinct. This means that a number of activities can occur on the site, albeit in different precincts. In some instances, activities which would have been allowed under the normal district wide zones (ie retirement villages in Residential) are not seen as appropriate in the new provisions. Should activities wish to establish outside these precincts, the resource consent process will be triggered.

#### 4.2.1.2 Rules

63. A full set of rules has been drafted which reflect the standard rules from other zones. It should be noted that the use of the word “site” has been avoided where possible as the common usage of the word is not appropriate in this context. In this instance the entire SPZ can be classed as ‘the site’ whereas the majority of the rules are in reference to an activity that is taking place. This is particularly relevant in regards to the Residential precinct where a dwelling density informs the rules as opposed to development being directed to ‘sites’.

64. As noted in para 45, a conceptual design has been developed that will underpin development. This will be used by WT in conjunction with the district plan as their guiding principle document when planning for, and undertaking, any development within the site. I have not been provided this detailed concept plan, as I understand that this is confidential and has not been released by King Tuheitia. I have relied on information from both Ms Henderson and Mr Dawson as WT do not wish to have this conceptual design forming part of the district plan. In response to my enquiry as to whether the concept plan should be included in the WPDP, Ms Henderson responded as follows:

*Waikato-Tainui weren't comfortable with the conceptual design being in the District Plan – the main reason being that there are elements which relate to tribal tikanga which they didn't feel would translate well as rules within a district plan. For example there may be times where one type of design feature may work and other situations where it would not work (e.g. kaumatua housing may require different design solutions from other types of housing) and there was a sense that they didn't want a particular solution to be codified in a district plan. There are also elements of the conceptual design which are currently confidential so this meant we weren't able to rely upon the use of design guide in the District Plan.*

65. On reflection of Ms Henderson's comments, I do not consider it is necessary for the concept plan to be included as part of the PWDP provisions due to the inflexibility of the regulatory planning regime which may potentially restrict WT's ability to make amendments in line with their culture and aspirations to reflect changing needs of its members. Given the title classification of the land, it cannot be sold or leased. It will remain in the ownership of WT at all times. As custodians of the land for all tribal members, WT is best placed to develop the area in accordance with their vision, with as much flexibility as possible to respond to the changing needs of its members. This reflects matters in Part 2. Furthermore, the site is over 137ha and the closest land owners are mainly rural zoned properties on the southern side of Great South Road and to the southwest of the site. The provisions require usual setbacks from roads and adjoining properties. This will ensure there are no unacceptable adverse effects beyond the site.

66. In many cases the rules replicate rules from other zones, as per the plan format, and in other cases there are differences. For instance, building setbacks are applicable where a building is near an adjoining site or road boundary, however these building setbacks are not applicable when building within the site. In this instance, it will be up to the submitter to ensure these buildings meet building standards and there is a requirement to consider fire risk under the New Zealand Building Code CDocs<sup>5</sup>. Advice received from the Council Building Team is that

<sup>5</sup> <https://www.building.govt.nz/building-code-compliance/#code-c-content>

under the building code a general rule of thumb of 1m apart is acceptable, however this can be reduced to nothing given appropriate fire ratings and fire engineering.

67. I can confirm that the site is connected to Council infrastructure for wastewater and water reticulation. Storm water is onsite disposal with release to the river as described in paragraph 27. Apart from my comments, in paragraph 77(h) relating to three waters, I cannot advise whether adequate servicing will be available to accommodate future development on the site in accordance with the draft plan provisions. Ms Henderson's evidence is that full assessments have been undertaken and discussions have been had with Watercare, but this information has not been included in evidence due to confidentiality. I invite the submitter to provide these technical reports to the Hearings Panel on a confidential basis to ensure it has sufficient information to make a proper determination.

#### 4.2.1.3 Definitions

68. The provisions include a number of new definitions. While some of these could be considered repetitive of standard terms, they have been included to ensure that there can be no contradiction over a particular interpretation in regards to this site. As an example, the NPS definition for 'visitor accommodation'<sup>6</sup> means 'land and/or buildings used for accommodating visitors, subject to a tariff being paid, and includes any ancillary activities.' The definition for Visitor Accommodation (Hopuhopu), 'means land and/or buildings used for accommodating visitors, and includes any ancillary activities which may or may not include a tariff'. This means the visitor's accommodation is not reliant on the tariff as defined by the NPS, as the tariff may or may not be applicable in varying circumstances. Other definitions are specific to Hopuhopu such as a Crafting Workshop.

#### 4.2.1.4 Miscellaneous amendments

69. There are minor amendments to hazardous substances and Infrastructure chapters which are required to reflect the special purpose of the site and the activities that can occur. Of particular note, is a new rule that will require traffic generation above certain limits to be subject to a resource consent. This is to ensure that critical road intersections can be assessed for cumulative effects during development stage and the necessary upgrades planned.

#### 4.2.1.5 Maps

70. Maps provide the spatial extent of the proposed precincts. It is envisaged that the site will be made up of five precincts -

- Precinct 1 – Residential
- Precinct 2 – Education and Conference
- Precinct 3 – Business
- Precinct 4 – Open Space
- Precinct 5 – Mixed Use.

71. These precincts will be spatial overlays within the SPZ. As stated previously, these precincts will identify where activities can occur. Details on precinct sizes are as follows:

Overall site area 137.8640 ha

- a. PREC 1 – Residential Total area 15.4 ha (approx).

<sup>6</sup> <https://www.mfe.govt.nz/sites/default/files/media/RMA/national-planning-standards-november-2019.pdf>  
Section 14 page 65.

- a. Around half of the ODP residential zoned land will become part of the Mixed Use Precinct with an additional area of ODP zoned rural land becoming part of the residential precinct.
  - b. PREC2 Education and Conference Total area 28.8ha (approx).
    - a. The boundaries of this precinct primarily follow that of the ODP except for variance for topography.
  - c. PREC3 Business Total area 15.1ha (approx).
    - a. The ODP provided for around 23.7ha, part of which has now become the Mixed Use Precinct.
  - d. PREC4 Open Space Total area 69.54 ha (approx).
    - a. The ODP rural zone total is 79.37ha, made up of 2 areas - approx. 62.73 ha and approx. 16.63ha. Approximately 10ha of the ODP rural area becomes Residential Precinct which leaves the two areas being 63.37ha and 6.20ha respectively.
  - e. PREC5 Mixed Use. Total area 8.5ha (approx).
    - a. This precinct is made up of parts that were zoned residential and business in the ODP.
    - b. The total area of business and mixed use precincts is approximately 23.6ha, slightly smaller than the ODP business zone area.
72. Every care has been taken to ensure consistency with previous s42A reports in drafting Rules and Miscellaneous Amendments. It is acknowledged that there may be some amendments to the provisions contained in these appendices that will need to be undertaken at time of issuing decisions to ensure consistency in wording or, if necessary, rule standards.
73. As mentioned in Section 1.5 of this report, evidence provided by the submitter does not include the detailed reports of site investigations for a number of technical matters due to confidentiality. Instead, Ms Henderson has provided a summary of conclusions from the reports.
74. This leaves the panel and myself in a difficult position of being unable to assess fully any potential effects, or understand if technical reports are sound and robust. For this reason, my support for the proposed Special Purpose Zone – Hopuhopu can only be conditional upon the Panel being satisfied that it has all necessary information before it to make a decision. To do this, I believe it is necessary for the Panel to see the technical reports. As suggested earlier in this report, I therefore invite WT to provide them to the Panel on a confidential basis. Alternatively, the Panel will need to satisfy itself in some other way that it can rely on the summary of conclusions provided in Ms Henderson's evidence (perhaps through extensive questioning of Ms Henderson but this risks disclosing the very matters claimed by WT to be confidential in the first place).
75. In providing my comments at 77 (a – i) below, I advise that I have predominately relied on the information contained in the s32AA report and have provided a summary or restated this information given the limited information available to Council. Where I have knowledge of the issues discussed below in relation to this site, I have provided comments.
76. In preparing these provisions, the following matters as they exist for this site and are shown on the WPDP planning maps, were taken into account:

- a. Significant Natural Areas (SNA)
  - a) Two SNAs are located along the river bank and rules are included reflect the proposed district-wide rules for indigenous vegetation.
- b. Significant Amenity Landscape (SAL)
  - a) A SAL is identified along part of the riparian margin of the Waikato River and rules are included that reflect the district-wide rules for earthworks in these areas.
- c. Natural hazards (as identified in Stage 2)
  - a) Some areas adjacent to the river and gully have been identified as High Risk Flood Area and Flood Plain and rules are included that reflect the site location and control building setbacks. BBO have confirmed that the anticipated extent of flooding in a 1% AEP event has been taken into account in the plans for Hopuhopu and all development will be able to be accommodated outside of this extent.

77. In preparing these provisions, WT have taken the following matters into account based on the reports they have received. As mentioned, my knowledge is limited to the summary provided in Ms Henderson's report, except where I have direct knowledge of the matter.

- a. Contamination
  - a) A preliminary site investigation report has identified a range of HAIL activities that have been known, or likely to have been undertaken, within the site. It is likely that a consent will be required to manage this contamination under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 and Waikato Regional Plan.  
  
*Comment:* I am aware that this site has a long history of activities associated with defence purposes. There are a number of buildings on the site which in the past were used as ammunition storage making the likelihood of contamination in some areas high. This matter does not provide an impediment to the proposal.
- b. Geotechnical
  - a) Initial investigations identify that Liquefaction risk has been assessed as insignificant to mild for the residential area and mild to moderate for the business area and that suitable foundations will be required. Setbacks from the crest of slopes are recommended. The report has identified a building restriction line and building subject to building consent must be located upslope of this line unless further geotechnical investigation or assessment is undertaken. Areas of uncontrolled fill have been identified as not suitable for buildings and engineering designs will be required for these. It is expected that any issues identified in geotechnical report will be assessed during the building consent and any resource consent process. I note that if all buildings are permitted, and there is to be no subdivision, then this matter will fall entirely on the building consent process. I understand geotechnical reports could be requested to support the building consent, but this at Council's discretion.

- c. Ecology

- a) Initial assessment of the site has identified that the vegetation and exotic trees likely provide habitat for a number of indigenous birds as well as habitat for pekapeka (long tailed bats) and possibly mokomoko (lizards) such as copper skink. Without further investigation it is unknown whether long tailed bats are present. The assessment considers that mitigation offset through sympathetic urban design and best practice during construction are unlikely to result in adverse effects. It is likely that further survey work may be required in the event of consent applications. As no investigations have been undertaken in this regard, I am left uncertain whether the mitigation measures suggested will be sufficient.

d. Alligator Weed

- a) Alligator weed has been identified by Waikato Regional Council (WRC) and an area of the site has been identified as a restricted place. As the weed is not as prevalent as first anticipated it is expected that the restricted place notice will be lifted by WRC. Management of alligator weed will still be required in accordance with the Waikato Pest Management Plan 2014-2024. Advice note 2 in relation to earthworks provides details on management and WRC requirements.

e. Archaeological

- a) A soil auger survey on previously identified probable and possible borrow pits has confirmed the presence of Maaori –made soils. Recorded and unrecorded archaeological sites are subject to the Heritage NZ Pouhere Taonga Act. To be consistent with a WDC submission seeking an advisory note to this effect, the rules for general earthworks include advice note 1 which provides details of the requirements which must be followed when dealing with archaeological sites. These features will be mapped as an overlay on the site.

*Comment:* I am aware that for the 2004 ODP, WDC undertook archaeological studies of the district which highlighted the importance of the Taupiri-Ngaruawahia area to Maaori. Part of that study was in regards to the Maaori made soils and the area downstream of Horotiu was noted as an area of early Maaori occupation. The history of the site acknowledges that tangata whenua were on this site surmising that gardens would have been an integral part of any settlement in this area.

f. Designations

- a) There are 3 WDC designations on site. These are M33, M35 and M107 for Water Supply purposes.

*Comment:* I am aware that these designations have been in force for a number of years and have been rolled over without modification in an earlier hearing.

g. Traffic impacts

- a) An initial transportation assessment has been prepared by traffic engineers Bloxham Burnett and Oliver. The assessment has considered the existing network of roads, public transport and walking and cycling infrastructure and the potential effects of future developments at Hopuhopu. This assessment is based on a modelled scenario of the site being fully developed. The assessment concludes that with the proposed Hopuhopu rezoning, the effects on the adjoining road network are expected to be moderate but able to be

managed and mitigated to an acceptable level. The impact of the proposal on the capacity and efficiency of the surrounding road corridors is expected to be negligible with sufficient capacity to accommodate the anticipated traffic volumes.

- b) There are two accesses to the site, with the northern intersection at Great South Road/Old Taupiri Road expected to operate at acceptable levels of service and safety and no capacity or safety upgrades are likely to be required.
- c) The southern connection, Great South Road/Old Taupiri Road, is expected to deteriorate over time and capacity upgrades may be required. Other development planned in the vicinity will contribute to the capacity performance of this intersection.
- d) The traffic assessment considers that there should be the ability to consider cumulative traffic impacts at certain points in the Hopuhopu development. To cover this a rule has been drafted for Chapter 14 of the PWDP to ensure that traffic generation above certain limits will require further consideration by way of resource consent to assess cumulative effects. Given that Hopuhopu will not be the only new development accessing the area via this intersection, it is appropriate that traffic effects are fully assessed at all stages of development.
- e) The site is currently served by bus stops within the site for local and school buses and outside the site for regional bus route between Hamilton and Huntly/Te Kauwhata and Pukekohe.
- f) There is walking and cycling access in and around the site and the ability to extend access to Ngaruawahia in the south.
- g) Carparking requirements have been considered but it is noted that under Clause 3.38 of Part 3 of the NPSUD, WDC as a Tier 1 local authority, will need to remove the carparking requirements from the PDP. The wider effects of this new requirement will be addressed through another process regardless of any decisions on this hearing.

*Comment:* I approached Dr Davey for comment, who advised that Hopuhopu is already within a roading development contributions catchment and that there are some works planned for the area. However, I have not been provided any detail on what works are planned or any timeframes for these. Roothing does not appear to be an issue in regards to the s42A Framework report when considering servicing of growth cells.

*Beca review:* There has not been a review undertaken by Beca in regards to Traffic and transport as there was no information provided.

This being the case, the lack of information provided and the lack of ability to review assessments by Beca means I cannot with any certainty evaluate the effects on transport.

#### h. Three waters

- a) A high-level assessment of the existing and future water, wastewater and storm water infrastructure needed for redevelopment of the site has been undertaken by BBO. In recent years there has been upgrading of the potable water infrastructure in the area with new mains and connections installed by

WDC in Hopuhopu. WT have themselves installed a new main around the sports park.

- b) Wastewater: Based on the assessment of future demand, infrastructure on the site will need to be replaced. Current pumping stations have the ability to service the new development. BBO engineers have met with Watercare, who according to BBO, have not indicated any concerns with the capacity of the wastewater treatment plant to service the Hopuhopu development given the type of development proposed as proposals do not include wet industry.
- c) Water: Water infrastructure onsite was replaced in 2018. BBO reports that Watercare have indicated there is spare capacity in the water main that runs past the site and there are no issues with the bulk reservoir on site and that there is sufficient capacity in the trunk water supply pipes to supply the proposed development.
- d) Storm water: BBO advise that there are four catchments on site. As per paragraph 17 above:
  - Catchment 1 (historic military base) discharges directly to the Waikato River via pipes,
  - Catchment 2 (historic military base and endowed college) discharges into the existing wet pond, onsite, then has a controlled outlet into an unnamed stream,
  - Catchment 3 (residential Ashwell Crescent) is assumed to discharge via small pipes into the river although I understand pipes have not been surveyed
  - Catchment 4 (current farmland, future residential) sheet flows over grass into Waikato River.

*Comment:* Based on the s42A Framework Report, Appendix 5: Assessment of Growth Cell Servicing – Waters page 82, Hopuhopu Business Park has timing of 2030-2050 for Water Supply and Wastewater. In regards to Water Supply it is noted that Watercare will be required to place another watermain to support this and that Watercare is to undertake further investigations. Comments in regards to Wastewater are that Watercare is to undertake investigations. Based on these future investigations, it cannot be said that there is certainty regarding water and wastewater servicing for increased development on the site, particularly in the short term.

*Beca comment:* The report states that while there is a summary of the findings from the investigations in the submission, a review of the assumptions and calculations have not been completed as the technical report has not been provided. Based on the evidence the reviewer expects that the proposal to rezone the area will have a similar demand and capacity requirement for the three waters, if not slightly less than that of the Proposed District Plan. While they agree that the capacity of the reticulated network can be upgraded, the capacity of the treatment pond needs to be assessed further. Overall based on the assessment of the evidence provided the proposed rezoning of the site could be provided for.

#### i. Historic heritage

There are no historic heritage features on this site, or identified Maori Areas or Sites of Significance.



78. Submission 286.1: Waikato Tainui. [Further Submitter 1277.130]. As stated in paragraph 39, this submission has been dealt with in Hearing 4: Tangata Whenua. However it is acknowledged that due to the crossover of the two hearings that the following points of submission 286.1 may not have been included in the earlier hearing. WRC opposed in part this submission for the following:

- a) Alligator weed: When lodging the submission WRC were concerned about the alligator weed that was found on site. They have lodged evidence advising that they now support the submission as the alligator weed is located within the area of the site containing burrow pits which is excluded from development.
- b) Flood hazard: Stage 2 of the PDP covers the flood hazard and information in this regard was not available at time of notification of the PDP. WRC now advise their issues with flooding have been addressed with all development to be located outside the identified flood extent.

WRC evidence advises that their concerns have been addressed and now support this submission.

79. Further submissions: Two further submissions in support were received.

Pareoranga Te Kata (*FS1035.8, FS1035.9, FS1035.23*) supports the proposal in full and submits that Council needs to partner with Kaitiaki, mana whenua, or review strategies with Waikato Tainui to ensure preservation and restoration of the Waikato River.

Perry International Trading Group Limited (PITGL) (*FS1348.6*) supports the inclusion of Hopuhopu as a specific area. They consider that the adoption of special purpose zoning will facilitate a diversity of business opportunities and enable significant economic benefits for the Waikato District. PITGL consider that special purpose zoning will enable development to occur in an integrated, cohesive and sustainable manner at a scale that achieves sustainable economic and environmental outcomes.

The outcome sought by both these further submissions is consistent with the approach taken by WT to establish the special purpose zone.

#### **4.2.2 Section 42A Framework Report**

80. Council prepared a Section 42A Framework Report dated 19 January 2021 that included a 'Rezoning Assessment Framework' with the intent of gaining consistency between s42A authors for rezoning topics. The Rezoning Assessment Framework was based on a '3-lens' assessment of rezoning proposals against 1) PWDP provisions; 2) higher-order planning instruments; and 3) best practice planning guidance.

81. Concerns were subsequently raised about Lens-1 assessment and a pre-hearing meeting was subsequently held on 12 March 2021 resulting in a consensus that the 'Lens 1' assessment should not be applied as a gateway test or the first step in assessing rezoning proposals. A minute and direction was issued by the Panel on 15 March 2021 that advised s42A report authors that:

- (a) The Framework Report is a guide only, not an inflexible rule book;
- (b) Lens 1 is the incorrect legal test;
- (c) Lens 1 should not be applied as a gateway or threshold test;

(d) Lens 1 is not a standalone test and, as such, should not be seen as the first step in the assessment. Elements of Lens 1 may be of assistance to section 42A report authors in their section 32AA evaluations, if one is required.

#### 4.2.3 Rezoning Framework Assessment - Lens 2 and 3 analysis

82. Lens Two Analysis is to ensure an assessment is undertaken against the higher order documents and strategies in accordance with the statutory tests. I refer to paragraph 51 which provides my analysis of these documents. In my analysis I find that the proposal gives effect to the NPSUD and WRPS and has had regard to the other relevant documents. The proposal is consistent with those other documents.
83. The third lens recommended in the Framework Report is an assessment of whether the rezoning submission meets good practice planning approaches to zoning, drawing on guidance for rezoning by the Independent Hearing Panel for the Proposed Unitary Plan (now operative in part)<sup>7</sup>.
84. The guidance provides a number of matters that need to be considered for rezoning such as, but not limited to, the following on page 35 paragraph 161 of the Framework Report.

Point a. Economic costs and benefits are considered

Point d. Changes should take into account features of the site (where it is, what the land is used for and what is already there)

Point e. Zone boundaries need to be clearly defensible

Point i. "Generally,"no spot zoning" (i.e. a single site zoned on its own)

I comment as follows:

- Economic costs and benefits are considered

All the benefits that would be derived from the rezoning of this land cannot at this stage be quantified. However one benefit in the context of rezoning includes the possibility that rezoning might open up an area, thereby providing new or improved infrastructure, jobs and homes. Off set by this are the costs of infrastructure provision and maintenance. However, this is a unique site that has the ability to provide extensive economic benefits for WT despite the costs involved. Further comment is provided in the s32AA evaluation.

- Changes should take into account features of the site (where it is, what the land is used for and what is already there)

Under this analysis, sections 6 & 7 matters provide a starting point for this analysis and s6(e) 'the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.' has particular relevance. The relationship of WT with this land has been recognised throughout this report and is inherent in the provisions of the proposed zoning. Along with that the site has a unique land title of Te Wherowhero land. The site is flat, has access to infrastructure, and currently has the Endowment College, some residential housing along with a number of existing buildings which are providing for some of the day to day operational use of WT administration. Overall the site is well suited for the development of a Special Purposes Zone.

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<sup>7</sup> <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/history-unitary-plan/ihp-designations-reports-recommendations/Documents/ihp016017080081changestorubrezoningprecincts.pdf>

- Zone boundaries need to be clearly defensible

Under this guidance the zone boundaries need to be clearly defensible. Hopuhopu is a large site and is clearly defined on the south eastern boundary by the main trunk line and Great South Road, the northern boundary by the river and the south western boundary by a property boundary which borders the Council wastewater plant and privately owned land. The site is covered in one certificate of title, being Te Wherowhero title, and this can not be extended to include any surrounding land. This being the case the analysis under this point meets the guidance.

- Generally, "no spot zoning" (i.e. a single site zoned on its own)

Under the guidance, spot zoning is generally avoided, however the guidance does anticipate some spot zoning, where appropriate. In regards to this site, spot zoning can be found to be the most appropriate means of achieving the plan objectives for the following:

- a) The intent of the Special Purpose Zone is to provide a unique set of standards for the site which are not replicated anywhere else in the district plan
- b) The site is meeting the purpose of s6 (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.'
- c) The site is already established to a level where WT is carrying out every day activities including providing for residential housing
- d) The alternative of managing development of the site through the consenting process is not an effective and efficient way for WT to best utilise the site
- e) The spot zoning gives effect to the NPS for a special purpose zone.

Taking the above into account I consider that the site meets the requirements under the Lens 2 and 3 analysis of the s42A Framework Report.

## 5 Conclusion:

85. The WPDP zones the site known as Hopuhopu as a mixture of Residential, Business and Rural Zones. This proposed zoning does not adequately provide for the current or future development of Hopuhopu. This is the only site with Te Wherowhero title within the district and is home to the WT headquarters, parliament, Endowment College and existing residential, sporting and other built forms of development. It has been acknowledged in earlier hearings and by the Panel that the site is unique and lends itself to more specific provisions that are not achieved through the existing zones.
86. As stated in paragraph 49 above, the purpose of the Act is to promote the sustainable management of natural and physical resource in a way or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing while safeguarding the environment. The importance of sections 6 and 7 needs to be taken into account when considering how best to provide WT with provisions that best enable the sustainable management of their site.
87. Technical reports to support the proposal have not been provided by WT. This leaves the Panel with two options. First, accept the risk associated with the proposal. This requires the Panel to have a high degree of confidence in WT that they will undertake the development as presented in the evidence. However, the lack of technical reports may show that over time deficiencies will be found in the proposed provisions that have not been considered. The second option, which is my preferred option, is to invite WT to provide the technical reports to the Panel on a confidential basis and to exclude the public from the hearing during any questioning relating to the contents of those reports.

88. There is no doubt that this site is unique in respect of the type of development that is proposed. The site is owned by one entity – WT and all development will be undertaken by them. I do not question WT's intention to develop the site in a co-ordinated manner and ensure that the entire site achieves a high level of amenity in line with the vision put forward in evidence provided. It would not be in the interests of WT to develop the site in a manner inconsistent with either the standards or the concept plan. This would trigger a resource consent process which is what they have been hoping to avoid with the change to the Special Purpose Zone and the intended overlays. However, despite the good faith extended to WT in the absence of the reports, I am not able to provide unconditional support for the proposal as I do not have all necessary information before me. I do not consider the significance of the section 6 and 7 matters outweigh the need for all relevant information to be presented to the Panel.
89. Subject to the Panel being satisfied as to the content of the technical reports, I consider that the new zone provisions of objectives, policies and rules will ensure that development will be of the high standard and undertaken in a co-ordinated manner that will be efficient and effective in achieving the purpose of the RMA. The provisions enable WT to provide for their social, economic and cultural wellbeing and uphold their ties to their ancestral land through their ongoing guardianship of the land. The section 32AA evaluation has been prepared in reliance on the summary of technical information outlined in Ms Henderson's report. The s32AA evaluation is provided below and included in Appendix 3 of this report.
90. Subject to the Panel being satisfied that the technical reports support the rezoning, I recommend that the provisions as provided in evidence from WT for the creation of a Special Purpose Zone – Hopuhopu and shown in Appendices 2 are accepted. New provisions to include:
- a. Objectives and policies
  - b. Rules
  - c. Consequential amendments to Chapter 14 Infrastructure and energy
  - d. Consequential amendments to Chapter 10 Hazardous substances and contaminated land
  - e. Additions to Chapter 13 Definitions
  - f. Rezoning of the site to Special Purpose Zone Hopuhopu and identifying
    - i. PREC1 Hopuhopu Residential Precinct
    - ii. PREC2 Hopuhopu Education and Conference Precinct
    - iii. PREC3 Hopuhopu Business Precinct
    - iv. PREC4 Hopuhopu Open Space Precinct
    - v. PREC5 Hopuhopu Mixed Use Precinct
91. I consider that the submissions on this chapter should be accepted as set out in Appendix 1, for the reasons set out in Sections 4.2 above.
92. I recommend that provisions in Special Purpose Zone Hopuhopu be adopted as set out in **Appendix 2**, for the reasons set out in Sections 4.2 above.
93. **Appendix 3** contains s32AA analysis as supplied in evidence by Ms Henderson

94. **Appendix 4** contains details of Pre-Hearing Meetings.
95. **Appendix 5** contains Beca review on Three waters

## 5.1 Recommendations

96. For the reasons above, I recommend that the Hearings Panel, subject to them being satisfied as to the content of the technical reports:
- (a) **Accept** Waikato Tainui [286.17], Pareoranga Te Kata (*FS1035.23*), Perry International Trading Group Limited (PITGL) (*FS1348.6*) to the extent that the site identified as Hopuhopu at 333 Old Taupiri Road is amended to create the Special Purpose Zone – Hopuhopu.
  - (b) **Accept in Part** Waikato Tainui [286.2, 286.3], Te Kata (*FS1035.8, FS1035.9*) to the extent of retaining areas of the Residential Zone and Business Zone.
  - (c) **Accept in Part** Waikato Tainui [286.1], Waikato Regional Council (*FS1277.130*) in regards to Alligator Weed and Flood Hazards.

## 5.2 Recommended amendments

97. The following amendments to maps are recommended:
- Rezone the area as identified on the map In Appendix 2 as Special Purpose Zone-Hopu
- I. The following amendments to provisions are recommended:
- i. Inclusion of a new chapter titled – Special Purpose Zone – Hopuhopu which includes:
    - i. Objectives and policies
    - ii. Rules – Activities, Effects, Building, Subdivision
  - ii. Amendments to Chapter 14 Infrastructure and Energy
  - iii. Amendments to Chapter 10 Hazardous Substances and Contaminated Land
  - iv. Amendments to Chapter 13 Definitions

All amendments are shown in Appendix 2

## 5.3 Section 32AA evaluation

98. An analysis is required under s32AA for any changes that have been made to, or are proposed for, the proposal since the s32 evaluation report was prepared. Evidence supplied by Ms Henderson included a full s32AA analysis. I have reviewed this analysis and adopt it in its entirety, relying solely on the summary of the technical reports as set out in Ms Henderson's evidence. I summarise the evaluation as follows.

A number of new objectives are proposed to address WT aspirations as they relate to Hopuhopu and these have been grouped for summary.

### Objective Evaluation:

The Hopuhopu land is the location where the Deed of Settlement was signed and is of high importance to WT. It is one of only two sites that are held in Te Wherowhero title which reflects the significance of the site. The SPZ only applies to this site. The title of this site was created by the Waikato Raupatu Claims Settlement Act 1995 in recognition of the unique

nature of the site. This land is to be held by Custodian Trustees for the benefit of all WT and therefore the objectives aim to recognise the special nature of the site.

Objectives are worded to ensure that the redevelopment of Hopuhopu is undertaken in a way that reinforces the site as the WT tribal hub with particular regard to its administrative and educational functions. Development across the site is to reflect the river setting and enhance the environmental and cultural values of the river that are important to WT. Objectives aim to facilitate a range of activities that ensure that adverse effects can be avoided, remedied or mitigated while enabling WT to enhance their relationship with their rohe.

#### *Scale and Significance Evaluation*

The proposed rezoning relates to one site as described previously, which is a site of significance to WT. Earlier in this report I undertook an assessment in relation to the higher order documents and the proposal is in alignment with these documents. Ms Henderson's evidence, based on the technical reports not made available to me, is that the proposal is able to be serviced for traffic, wastewater, water and storm water infrastructure. The rezoning will provide more confidence to WT for future development whereas the notified WPDPP provisions have a level of uncertainty in the event that development requires resource consents.

#### *Overall policy and zoning approach Evaluation*

**Costs and Benefits:** The creation of the SPZ, along with specific policies, is considered to have the highest economic benefit for the site as opposed to the ODP and WPDPP provisions. The new zone and provisions reflect the existing and proposed uses of the site and will create employment opportunities in the initial development and for the future. The specific zone will allow for a variety of functions to be undertaken on the site. It is considered that the rezoning of the site will provide the highest environmental benefits. The social benefits are considered to be better provided for with the rezoning of the site and these meet the goals of the long term development approach that WT have for the site.

The rezoning of the site provides for a wide range of cultural activities that are not provided for under the ODP or the WPDPP and allows WT to develop the site in accordance with tikanga and cultural aspirations.

**Efficiency:** the recommended change of zone will be a more efficient way of developing the site as less resource consent processing is required than what would be expected under the ODP or the WPDPP options. This approach provides certainty for the WT as well as the wider community in the expected outcomes for the site and is clear as to what activities can occur and where.

**Effectiveness:** The proposed rezoning is effective in clearly identifying the existing and proposed uses of the site as opposed to the ODP and WPDPP which are both unclear in what activities can occur on the site. The proposed rezoning simplifies the regulatory process by permitting a specific range of activities for each zone.

**Risk of acting or not acting:** A significant risk of acting is that the technical reports to support the rezoning have not been provided to Council. Only a brief summary of the reports have been provided in WT's evidence.

The s32AA submitted by Ms Henderson has provided analysis in regards to each of the individual precincts. When reviewing the analysis for each precinct, it is clear that each section of this analysis is in line with the overall policy and zoning approach as evaluated by Ms Henderson and summarised above. I have therefore not provided this individual evaluation

for the precincts and respectfully request the Panel that the detailed s32AA provided by the submitter is adopted as shown in Appendix 3.

## 6 Appendix I: Table of submission points

Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
286.2	Waikato-Tainui		Retain areas of Hopuhopu in the Residential Zone being managed under the ordinary rules of that zone.	Accept in part	4.2 Paragraph 74
FS1035.8	Pareoranga Te Kata	Support		Accept in part	4.2 Paragraph 79
286.3	Waikato-Tainui		Retain areas of Hopuhopu in the Business Zone being managed under the ordinary rules of that zone.	Accept in part	4.2 Paragraph 74
FS1035.9	Pareoranga Te Kata	Support		Accept in part	4.2 Paragraph 79
286.17	Waikato-Tainui		To remove confusion and provide clarity around future uses, Waikato-Tainui consider that providing for a Hopuhopu Zone is appropriate. The variety of activities that currently occurs at Hopuhopu and, the future aspirations for the site demand greater clarity. Waikato-Tainui considers that sufficient time will be available pre-hearing, that a Hopuhopu Zone can be drafted and presented to commissioners. This should be developed as a partnership between Waikato District Council and Waikato-Tainui.	Accept	4.2 Paragraph 74
FS1035.23	Pareoranga Te Kata	Support		Accept	4.2 Paragraph 79
FS1348.6	Perry International Trading	Support		Accept	4.2 Paragraph 79



Submission number	Submitter	Support / oppose	Summary of submission	Recommendation	Section of this report where the submission point is addressed
	<i>Group Limited</i>				
286.1	Waikato-Tainui		To enable the land at Hopuhopu to be planned for, developed and used in accordance within the mandate of the Te Wherowhero title. This submission addresses a gap in the Proposed Plan. Hopuhopu will not get the benefit of the proposed new rules that confer additional permitted activities on Maaori freehold land, because Hopuhopu is in special Te Wherowhero title created under the Waikato Raupatu Claims Settlement Act 1995	Accept in Part	4.2 Paragraph 78
<i>FS1277.130</i>	<i>Waikato Regional Council</i>	<i>Oppose</i>	<i>Concerns over Alligator Weed and Flood Hazards</i>	<i>Accept in Part</i>	<i>4.2 Paragraph 78</i>

## 7 Appendix 2: Recommended amendments

New Chapter Special Purpose Zone-Hopuhopu to include:

1. Objectives and policies
2. Rules – Activities, Effects, Building, Subdivision
3. Consequential Amendments to Chapter 14 Infrastructure and Energy
4. Consequential Amendments to Chapter 13 Definitions
5. Consequential Amendments to Appendix 5 Hazardous Substances
6. Map showing proposed new zoning

Additional information:

7. Map showing Operative District Plan Zoning
8. Map showing Proposed District Plan Zoning

## 8 Appendix 3: s32AA Analysis

## 9 Appendix 4: Pre-Hearing Meetings

## 10 Appendix 5: Beca Review

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