

IN THE MATTER OF

The Resource Management Act 1991

And

The Whanganui District Plan

And

**Proposed Plan Change 46 (Otamatea West)
initiated pursuant to section 73 and Schedule
1 of the Act**

**HEARING REPORT & RECOMMENDATIONS OF THE
HEARING PANEL**

SUMMARY OF RECOMMENDATIONS

The Hearing Panel recommends that Whanganui District Council confirm Plan Change 46 (PC46) to the Whanganui District Plan, including the amendments to the publicly notified version of proposed Plan Change 46 detailed in Attachments 1, 1A, 1B and 1C to this Hearing Report. The Panel recommends that the submissions and further submissions be accepted in part or rejected for the reasons explained in this Hearing Report and as detailed in Attachment 2 to this Hearing Report.

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Attachments:

1	Hearing Panel's Recommended Amendments to the Publicly Notified PC46 Text	
1A	North West Structure Plan – District Plan Appendix 'L (A)' as Recommended by Hearing Panel	
1B	North West Structure Plan – District Plan Appendix 'L (B)' as Recommended by Hearing Panel	
1C	Changes to Zoning Shown on District Plan Maps as Recommended by Hearing Panel	
2	Hearing Panel's Recommendations on Submissions	
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1 The Purpose of Plan Change 46

- 1.1 The purpose of Plan Change 46 (*PC46*) is to re-zone some of the land in the Otamatea area of Whanganui District that is currently zoned *Rural Lifestyle* to *Residential*.
- 1.2 Whanganui District Council (*the Council*) estimated in 2016¹ that, based on historical averaged data, there is demand for approximately 67 to 75 dwellings per year in Whanganui. The Council has determined that it is reasonable to assume that the historical rate of demand will continue into the future. The Council estimates that Whanganui's population will increase by 3.87% by 2043 and that there will be demand for 3,000 new dwellings within the District between 2016 and 2065. The Council has undertaken analysis of land supply which indicates that there were, in 2017, potentially 2,333 sites available for residential development. However, the Council has also identified that there is a significant mismatch between the location of available residential-zoned land and the location where the market is seeking residential land. The Otamatea area of the District is one area where a shortfall of suitable residential-zoned land has been identified.
- 1.3 In 2015 the Council undertook a desk-top study of scenarios for distribution of future housing demand and modelling to understand the implications for stormwater and wastewater infrastructure systems. The 2015 desk-top study estimated that 455 additional dwellings would be required in the Otamatea area during the period 2016-2065. This estimate is predicated on a minimum density of residential development of one dwelling per 400m² of land.
- 1.4 Currently, the District Plan imposes a 1,000m² minimum allotment area requirement for subdivision within the *Residential Zone* that is overlain by the '*Otamatea Development Overlay*'. The overlay was introduced in 2014 by Plan Change 26 to the District Plan as a short-term development constraint, until the stormwater and wastewater infrastructure modelling described in paragraph 1.3 above could be completed. As a result of the infrastructure modelling, the Council is satisfied that the stormwater and wastewater infrastructure systems have sufficient capacity for additional residential development at higher (400m² and 800m² per dwelling) development density. Comparing the potential yield for the Otamatea area (455 dwellings) with the forecast city-wide demand (3,000 dwellings by 2065), it is apparent that development within the Otamatea area will make an important contribution to meeting demand for new dwellings over the 50-year planning period (approximately 15% of projected supply)².
- 1.5 In December 2016, the Council considered a scoping report that presented options for providing additional residential land development opportunities at Otamatea West. The Council resolved, at its December 2016 meeting, to commence a Plan change to re-zone some land at Otamatea West and to complete a structure planning exercise to inform and facilitate the Plan change. The Plan change was named '*Plan Change 46*'
- 1.6 The section 32 evaluation report that accompanied the publicly notified proposed PC46 states (Chapter 1.2.3, page 4) that the purpose of PC46 is '*achieve the requirements of the NPSUDC [the National Policy Statement on Urban Development Capacity] in regards to Otamatea which has a high demand for residential lots.*' The NPSUDC requires the Council to provide within the District Plan enough development capacity to ensure that demand can be met for the next thirty years. This development capacity

¹ *Plan Change 46 – Scoping Report* (Authored by Rachael Pull, Senior Planner, Whanganui District Council, August 2016, attached as Appendix 6 to the PC46 section 32 report)

² The 455 forecast dwellings excludes rural lifestyle dwellings in the same Otamatea area, which are accounted for separately in the Council's estimates.

must be commercially feasible for development and sufficient, recognising that not all feasible development opportunities will be taken up.

- 1.7 In Chapter 2.1 (page 6), the section 32 report also states that '*the purpose of PC46 is to re-zone some of the Rural Lifestyle land in Otamatea to Residential to provide for a higher density of development which would not have any adverse effect on the supply of the land for rural lifestyle development and provide for the additional residential demand in Otamatea.*'
- 1.8 In summary, the purpose of PC46 is to re-zone as *Residential* land at Otamatea West that is currently zoned *Rural Lifestyle*, to ensure there is sufficient zoned land available to meet future demand for residential development at Otamatea West. This will assist the Council meet the requirements of the NPSUDC, by contributing to the City-wide supply of zoned land for residential development.

2 Content of Plan Change 46

PC46 as Publicly Notified:

- 2.1 Plan Change 46 applies to approximately 58 hectares of land located approximately 4.5 kilometres northwest of Whanganui town centre. Some of this land is currently zoned *Rural Lifestyle* and some is zoned *Residential* under the District Plan. PC46 proposes to change the zoning of approximately 50 hectares of land from *Rural Lifestyle* to *Residential*. PC 46 also proposes to introduce an *Otamatea West Structure Plan* as an overlay atop the changed zoning.
- 2.2 PC46 proposes to remove the current *Otamatea Development Overlay* from the *Residential* land at Otamatea. Subdivision and development within the Structure Plan area will be required to be designed and staged to achieve integrated transportation and infrastructure service networks and open spaces as indicated in the Structure Plan.
- 2.3 PC46 also proposes to introduce an additional *Heritage Alert Overlay* for development of land that was formerly zoned *Rural Lifestyle* or *Residential* and which was not yet developed at residential density within the Structure Plan area. The *Heritage Alert Overlay* acknowledges the fact that the land is part of a wider area of ancestral land and that the land has cultural significance for tangata whenua. The purpose of this Overlay is to ensure that subdivision proposals identify known archaeological sites and incorporate measures to protect them. The Council also intended that the *Heritage Alert Overlay* would raise awareness for landowners and the community about the historic heritage of the wider Otamatea area.
- 2.4 The PC46 Structure Plan shows an indicative future roading layout, replacing the current indicative road shown on the District Plan maps Urban 3 and Urban 8.
- 2.5 PC46 also corrects some information, in Appendix K of the District Plan, describing recorded archaeological sites and inserts three additional recorded archaeological sites located within the Structure Plan area.

PC46 (R1) Proposing Amendments Discussed in the Section 42A Report:

- 2.6 The section 42A report proposed some amendments to the PC46 text and Structure Plan, as suggestions for addressing issues raised in submissions.

PC46 (R2) Draft for Discussion During Adjournment:

After considering the evidence to the hearing, and to assist the process of engagement during the adjournment described in Section 3 of this hearing report, Council advisers circulated further suggested amendments to PC46.

Post-Adjournment Proposed PC46 (R3):

- 2.7 Following the adjournment described in Section 3 below, and in response to questions we detailed in a memorandum dated 15 December 2012, the Council's advisers proposed further amendments to the wording of PC46 (*PC46 (R3)*). The amendments include deletion of the *Heritage Alert Overlay*. Our assessment in the following sections of this hearing report is based on PC46 (R3).

Supporting Technical Information

- 2.8 The section 32 report on PC46 is supported by a substantial body of technical investigation, including:
- (a) An October 2017 *Interim Cultural Values Report* (the 2017 ICVR);
 - (b) An *Integrated Transport Assessment* (commissioned by NZTA and prepared by Beca, October 2017 – the *Beca ITA*);
 - (c) *Otamatea West Structure Plan* (Opus Consultants, August 2017);
 - (d) *Archaeological Assessment for Otamatea West Structure Plan Area* (Archaeology North Ltd, August 2017);
 - (e) *Plan Change 46 – Scoping Report* (Whanganui District Council, 2015);
 - (f) *Residential Growth Study* (Whanganui District Council, 2015);
 - (g) *Otamatea Development and Infrastructure Report* (Opus Consultants Ltd, 2012);
 - (h) *Wanganui District Council District Plan Review: Phase 2 Residential Growth Discussion Paper* (Discussion Paper 2D, 2012);
 - (i) *Wanganui District Council District Plan Review: Phase 2 Residential Infill Capacity Assessment Report* (Discussion Paper 2C, 2012);
 - (j) *Tirimoana Place Structure Plan Future Residential Area* (Opus Consultants, 2011).
- 2.9 We were also referred, in evidence at the hearing, to a district-wide archaeological assessment (*Wanganui District Council Historic Place and Archaeological Site Identification Project*, February 2011) produced by Archaeology North Ltd.
- 2.10 In addition, the Council engaged in consultation with the landowners within the PC46 area and with its community. The details of this are recorded in Section 2.2 of the August 2017 section 32 report and we incorporate those here by reference to that document.

- 2.11 The Council approached the development of PC46 with appropriate care and attention to technical engineering matters and an awareness of historic heritage and archaeological values.

3 Procedural Details

Public Notification

- 3.1 PC46 was publicly notified on 9 September 2017. The submissions period closed on 6 October 2017 and 15 submissions were received by that date. One late submission was also received on 10 October 2017 (although the submission is dated 06/10/2017).

Summary of Submissions

- 3.2 A summary of submissions was publicly notified on 21 October 2017. Further submissions closed on 6 November 2017 and two further submissions were received by that date.

The Role of the Hearing Panel

- 3.3 We were appointed by the Council and tasked with hearing the submissions, providing directions on all procedural matters related to PC46, and making a recommendation to the Council whether to accept or reject submissions and on the content of PC46. Our recommendations to the Council in respect of the content of PC46 are contained in Attachments 1, 1A, 1B and 1C to this hearing report. Our recommendations to the Council about whether to accept or reject individual submissions are contained in Attachment 2 to this hearing report. Our reasons for those recommendations are contained in the following sections of this hearing report. This hearing report and the recommendations contained in Attachments 1 and 2 are the unanimously agreed consensus of the three members of the Hearing Panel. Ours is not a decision. The decision, on submissions and on the content of PC46, will be made by the Whanganui District Council once they have considered our recommendations.
- 3.4 The task we have, in recommending whether to confirm PC46 or confirm it in some modified form, is limited by the scope of matters raised in submissions. Any changes to the published version of PC46 can only be within the scope of the relief requested in submissions. This is important for PC46 because the process of the hearing provided an opportunity for people to suggest refinements and improvements to the content of the Plan change. Refinements and improvements can be made, but only if those are within the scope of relief requested in submissions.

Submissions Received

- 3.5 Submissions were received from:

First Round Submissions:		Did Other Submitters Support or Oppose This Submission:	Represented at the Hearing:
S01	Barry Hodson	Opposed by FS2	No (did not ask to be heard)
S02	Sharyn and Geoff Underwood	Opposed by FS2	No (tabled a written statement)
S03	Graham and Jane Lillington	Opposed by FS2	Yes (Graham Lillington)
S04	Geoffrey H Thompson	Supported by FS2	No
S05	Powerco Limited		Yes (by Graham Lillington) and tabled a written statement
S06	Robert B Chamberlain	Opposed by FS1 and FS2	No (did not wish to be heard)
S07	Keryn Amon		Yes (Keryn Amon)
S08	Bennett Family Trust (DWA Bennett)	Opposed by FS1 and FS2	Yes (Graeme Young)
S09	Stephen Turner	Opposed by FS2	No
S10	Graeme W Young	Opposed by FS1 and FS2	Yes (Graeme Young)
S11	Te Rūnanga o Tūpoho		Yes (John Maihi)
S12	Michael R O'Sullivan	Supported by FS2	No (did not wish to be heard)
S13	Te Kaahui o Rauru		Yes (Raukura Waitai & Nicola Patrick)
S14	The Whanganui Land Settlement Negotiation Trust		Yes (Tracey Waitokia)
S15	NZ Transport Agency	Supported by FS2	Yes (Letitcia Jarrett & Caron Greenhough)
S16	(late submission) Steven Archer and Bernard Reuters		No

Late Submission

- 3.6 Ms Brenda O'Shaughnessy is a Principal Planner employed by WSP Opus International Consultants who prepared the section 42A report on submissions to PC46 and presented evidence on behalf of the Council to the hearing. Ms O'Shaughnessy recommended that we should strike out the late submission (S16 by Steven Archer and Bernard Reuters). Her reasons were that the submission's request that all references to minimum lot sizes within the Otamatea West Structure Plan be removed goes further than the publicly notified scope of PC46. Neither Mr Archer nor Mr Reuters attended the hearing and we received no statement from them addressing the matter of striking out submission S16.
- 3.7 Whilst it may be open to us to strike out submission S16, we are mindful that to do so would set in motion a procedural path that is a potential distraction from the central issues under PC46.
- 3.8 According to Ms O'Shaughnessy, submission S16 was received on 10 October 2017. That is, two working days after the closing date for submissions (the closing date of 6 October 2017 was a Friday). We note that the submission is dated '06/10/2017'. We do not know what happened to the submission between that date and the day it was received by the Council. However, we do not consider any person could reasonably be disadvantaged by this short period of lateness. We also note that a full summary of submission S16 was included in the publicly notified summary of submissions. The existence of submission S16 was made known in the publicly notified summary of submissions and no person lodged a further submission supporting or opposing it. We have received and considered submission S16 alongside the other submissions. It is

relevant to note that we received no evidence from this submitter in support of the request to remove the minimum lot size (or from any other submitter for that matter).

- 3.9 We agree with Ms O'Shaughnessy that the requested relief extends beyond the scope of PC46, because PC46 was advanced on the basis of having minimum allotment sizes. The effect of removing the minimum allotment size would be to significantly increase the potential total number of dwellings, the demand for infrastructure connections and traffic movements within the PC46 area in a manner that has not been considered by the Council or canvassed in any evidence presented to us. Our conclusion is that the Council has no robust evidential basis for allowing the relief requested by the submission. Our recommendation is to address the submission directly, responding to its content, rather than by striking it out.
- 3.10 Accordingly, pursuant to section 37 (1) of the Act and the authority delegated to us, we have extended the closing date for submissions to 10 October 2017 to allow submission S16 by Steven Archer and Bernard Reuters to be received as valid. Our substantive recommendation, that submission S16 be rejected, is recorded in Attachment 2 to this hearing report.

The Hearing

- 3.11 The hearing was held in the Whanganui District Council Chamber, 101 Guyton Street Whanganui, commencing on Monday 11 December 2017 at 10.00am. The Panel made a site visit to the Otamatea West area on the morning of 11 December 2017, prior to the commencement of the hearing.
- 3.12 The persons listed in Attachment 3 to this hearing report attended and presented evidence to the hearing. The hearing was adjourned at the end of the afternoon of 11 December 2017, once all submitters had presented evidence in support of their submissions. The hearing reconvened the following day to allow Ms O'Shaughnessy to present a partial statement in reply to the evidence of submitters and in response to questions we had put to her during the hearing.

The Adjournment and Further Information Generated

- 3.13 At the conclusion of Ms O'Shaughnessy's statement, the Panel adjourned for deliberations before re-convening to further adjourn the hearing to allow Council officers and submitters to address some residual questions the Panel had in relation to values of significance to tangata whenua. The Panel issued a memorandum dated 15 December 2017 (reproduced in Attachment 4 to this hearing report) which details those questions and the time frame for responding to the Panel.
- 3.14 In accordance with our memorandum, Council officers and submitters held two facilitated meetings. By agreement at those meetings, the Council commissioned work to finalise the *Interim Cultural Values Report*. To assist submitters, Council advisers also circulated an amended version of PC46 (*PC46(R2)*) in which they attempted to address some of the matters of concern raised in the submissions and at the hearing by representatives of Te Kaahui o Rauru, Te Rūnanga o Tūpoho and the Whanganui Land Settlement Negotiation Trust.
- 3.15 Our memorandum invited responses from the Council and submitters to ten questions. In response, we received:

- (a) The preliminary response of Council advisers to the questions in the memorandum (supplied to the Panel by email dated 26 April 2018);
- (b) *Otamatea Plan Change Cultural Values Report* dated 12 April 2018 (the 2018 CVR), prepared by Whanganui me Ngaa Rauru Kiitahi on behalf of Whanganui Iwi, Te Kaahui o Rauru and Te Rūnanga o Tūpoho;
- (c) Amended PC46 documentation (PC46 (R3)) prepared by the Council's advisers after considering the 2018 CVR;
- (d) A table prepared by the Council's advisers that summarises how they consider PC46 (R3) responds to the 2018 CVR;
- (e) A version of the above table extended to include the response of Whanganui me Ngaa Rauru Kiitahi to the above document, emailed to the Council under cover of a letter dated 7 June 2018; and
- (f) A version of this Whanganui me Ngaa Rauru Kiitahi response annotated with further comments from Jill Sheehy on behalf of Te Rūnanga o Tūpoho, which was forwarded in an email to the Council dated 17 June 2018.

3.16 All of the above listed feedback was forwarded to the Panel and circulated to all submitters on 21 June 2018. Ms O'Shaughnessy confirmed by email following the circulation of the above material, that Council advisers had concluded their reply (through the further material circulated) and did not seek a further opportunity to address the Panel in reply. The Panel closed the hearing on 3 August 2018.

4 Description of the Otamatea West Area

Location

- 4.1 The Council defines the wider Otamatea area as the land extending from Otamatea Reserve to the intersection of State Highway 3 and Rapanui Road shown in Figure 1 overleaf:
- 4.2 For the purpose of forecasting future land development demand and infrastructure servicing requirements, the Council has conceptually divided the wider Otamatea area into three sub-areas: the existing built-up *Residential* zoned area ('Otamatea Infill'), land zoned *Rural Lifestyle* to the northeast of SH3³ ('Otamatea East') and land zoned *Residential* and *Rural Lifestyle* to the southwest of SH3 ('Otamatea West').

Tangata Whenua – the People of the Land

- 4.3 Section 2 of the 2017 ICVR tells us that the *iwi taketake* (the original people) of the Otamatea area were called the Ngaa Aruhe. The name refers to the fernroot that was once the staple diet of these early ancestors. The 2017 ICVR explains that, according

³ State Highway 3 is also called Great North Road.

to tribal elders, these ancestors came from the land. That is, they were here before those who arrived by waka:

'Elders say that when Kupe came on Matahourua that it was Ngaa Aruhe who passed down the record of this event.

To give further context to the era of Ngaa Aruhe we recall the following. Turi, captain of the Aotea waka is thought by academics to have arrived in the mid 14th century A.D. Rauru, the eponymous ancestor of Ngaa Rauru Kiihahi, predates Turi by four generations. Rauru's mother was Rongoueroa, a descendant of Ruatipu Rua from whence is derived the old name of the Whanganui River, i.e. Te Wainui-aa-Rua. Rauru married into the ancient people of this coast called Te Kaahi Rere, who were renowned for their ability to levitate at will, hence the name.'

- 4.4 According to the 2017 ICVR, the Ngaa Aruhe tribal estate extends from the Whanganui River mouth, Castlecliff, Kaierau, Westmere, Brunswick, up the Whanganui River watershed to the Matemateaonga range, down to the mouth of the Paatea River and back along the coast to the Whanganui River mouth. The name 'Otamatea' is understood to relate to the visit of Tamatea Pookaiwhenua to the Whanganui River. However, the 2017 ICVR clarifies that 'Otamatea' is not a name on the landscape spoken of by Ngaa Rauru elders⁴. The traditional names on the landscape are *Kaierau* (also known today as St Johns Hill), *Toronui*, *Roto Mokoia* and *Rapanui*. The area known as 'Otamatea West' is located within the areas having these names. The prefix 'O' generally implies ownership, inferring ownership of the land by Tamatea which the 2017 ICVR states is clearly incorrect. It appears that the area was named 'Otamatea' in 1958 by special resolution of the then Waitotara County Council⁵. The 2017 ICVR makes it clear (page 16) that 'Otamatea' is not considered by Hapū to be an appropriate name and recommends the Council seek advice from the relevant Hapū about a more suitable name.
- 4.5 Descendants of Ngaa Aruhe would camp seasonally in the lower reaches of the Whanganui River (including within the area now called 'Otamatea') to trade, fish, and gather other resources. Seasonal kaainga were found on both sides of the Whanganui River. Today the surviving kaainga are at Puutiki and Te Ao Hou in Aramoho. The presence of numerous archaeological sites in the area reflects this history of settlement. The District Plan maps and Appendix K identify some of these archaeological sites.
- 4.6 We note that Ngaa Rauru Kiihahi representatives use the spelling convention of double letters (e.g. 'aa' and 'uu') instead of macrons but that representatives of Ngā Hapū o Whanganui use macrons. For convenience, we have adopted the convention of using macrons throughout this hearing report (and in the amendments we propose to PC46 (R3)), except where referring to text sourced from Ngaa Rauru Kiihahi evidence.

Land Confiscation and Settlement

- 4.7 Land within the Whanganui iwi and Ngaa Rauru Kiihahi tribal estate was confiscated by the settler government in 1848⁶ and the land has been progressively settled and urbanised since then. Apart from public road vested in the Council, all of the land within the PC46 area is held in freehold title by numerous land owners. There is a mix of larger

⁴ *Interim Cultural Values Report: Otamatea Structure Plan Change* (17 October 2017) section 3

⁵ *Interim Cultural Values Report: Otamatea Structure Plan Change* (17 October 2017) page 16

⁶ *Interim Cultural Values Report: Otamatea Structure Plan Change* (17 October 2017) page 9

landholdings (still farmed), smaller lifestyle blocks, and residential sections (along Tirimoana Place and SH3).

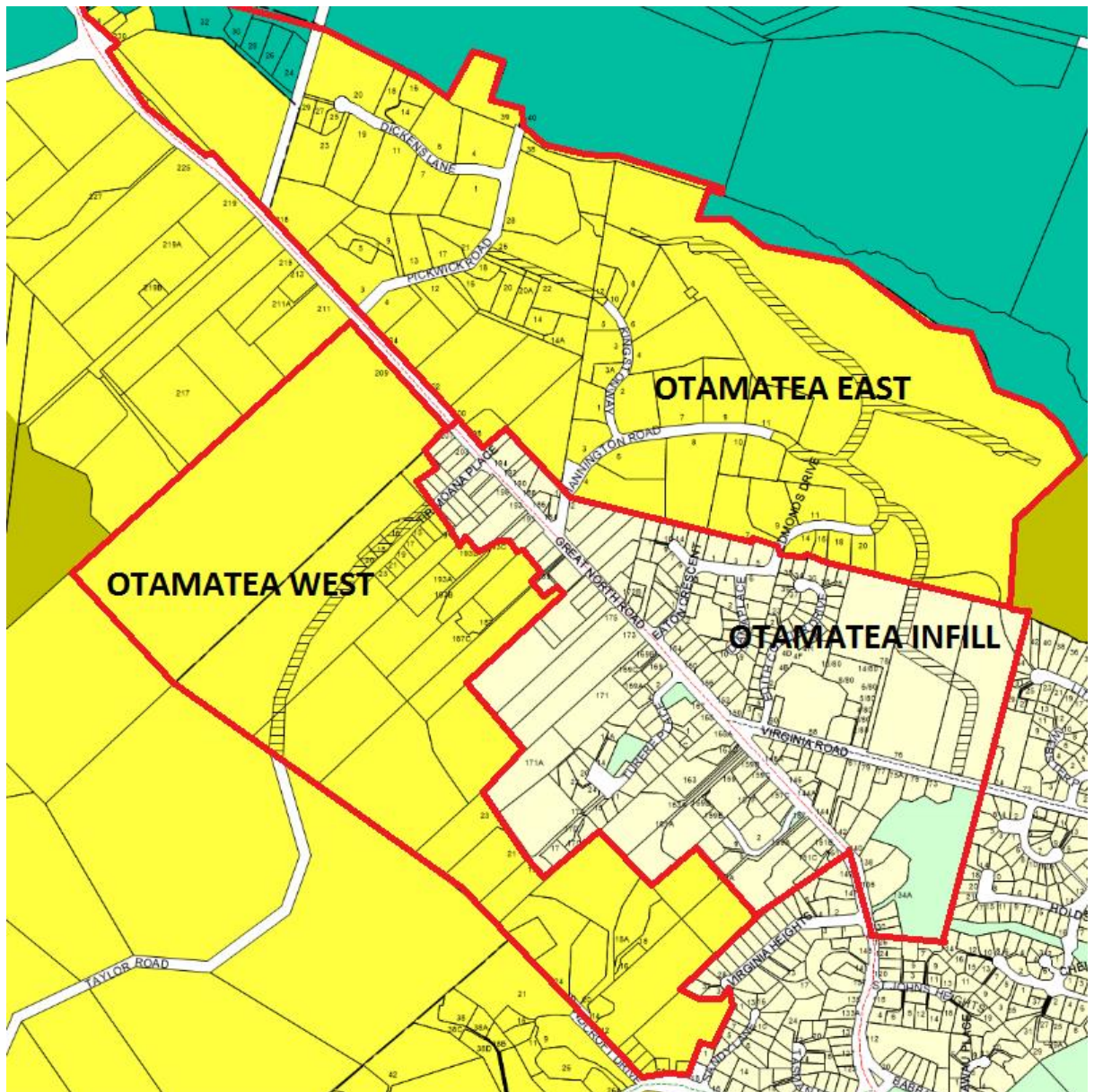


Figure 1: The Wider 'Otamatea' Area⁷

- 4.8 Residential and rural lifestyle development in the Otamatea area occurs from a series of cul-de-sacs and private driveways extending from SH3.
- 4.9 Ms O'Shaughnessy stated in oral evidence to the hearing that the Council has received a number of applications for subdivision consents for residential-density development in the Otamatea West area. Ms O'Shaughnessy and the Council are concerned that continued ad-hoc subdivision and land development of this kind will result in poorly integrated and, potentially, inefficient transport and infrastructure services networks in

⁷ Figure 1 from the August 2016 WDC *Plan Change 46 Scoping Report*

this area. Ms O'Shaughnessy also told us in evidence that there is considerable development pressure currently in the Otamatea West area.

Operative District Plan Zoning

- 4.10 Land in the Otamatea West area has the zoning shown in Figure 1. The land shown pale yellow is zoned *Residential* and is subject to the *Otamatea Development Overlay*. The land shown bright yellow is zoned *Rural Lifestyle*.
- 4.11 The Council estimates that there is potential demand, within the *Rural Lifestyle* Zone, for approximately 195 dwellings by 2065. The supply of potential dwelling sites is estimated at approximately 447 over that period. On that basis, the Council is satisfied that changing the zoning of some *Rural Lifestyle* zoned land to *Residential* will not have any adverse effect on the supply of land for lifestyle development⁸.
- 4.12 Within the area of PC46, there is one cul-de-sac extending southwest from SH3 (Tirimoana Place). The District Plan maps show an indicative future road extending from the end of Tirimoana Place, in a broad southwest curve, connecting with Taylor Road which then connects with Tayforth Road, approximately one kilometre to the southwest of Tirimoana Place.
- 4.13 The District Plan does not record any natural hazards affecting the Otamatea West land.

5 Matters Raised in Submissions

- 5.1 In addition to the submissions that supported PC46 (S07, S10 and S12), submitters raised the following concerns about PC46:
- (a) PC46 does not sufficiently recognise the cultural significance of this area to tangata whenua and the current *Rural Lifestyle* zoning should be retained to protect the values of importance to tangata whenua (S13, S14);
 - (b) The submission by Te Kaahui o Rauru (S13) requested that consideration should be given to alternative names for the PC46 area;
 - (c) PC46 did not clarify what specific protection measures would be implemented to protect cultural values and heritage sites, so there is no guarantee that values of importance to tangata whenua would be protected;
 - (d) Tangata whenua are concerned that development within the PC46 area could result in disturbance of wāhi tapu such as urupā, as occurred at a nearby Rapanui Road site in 2008-2009;
 - (e) Some landowners oppose the roading layout shown in the PC46 Structure Plan and oppose future roads occupying their land as proposed in the Structure Plan (S01, S02, S03, S04, S09);
 - (f) PC46 does not sufficiently provide for transport connectivity and the proposed Structure Plan road layout should be amended to better provide for connectivity (amendments were requested to policies 4.3.9 and 4.3.10 to emphasise the

⁸ 2016 WDC Scoping Report (Section 1.1)

importance of a safe and resilient transport network, including the state highway connection (S15));

- (g) Some submitters consider that PC46 does not sufficiently address future need for residential development and requested that PC46 be expanded to include additional land, outside the PC46 area, for residential development (S06, S08, S10);
- (h) One submission (S16) requests that the minimum lot size be removed from PC46 and, for the reasons earlier discussed, we find that this request is beyond the scope of PC46 and is not supported by any evidence; and
- (i) The submission by Te Kaahui o Rauru requested that Ngaa Rauru Kiitahi and Tamareheroto be identified explicitly as affected parties in relation to activities within the PC46 area.

5.2 Although the submission by Te Rūnanga o Tūpoho (S11) supported PC46 *in theory*, Mr John Maihi, representing Te Rūnanga at the hearing, clarified that Te Rūnanga did not support PC46 as publicly notified and considered that further work was required to properly recognise and provide for the interests of tangata whenua.

5.3 The concerns raised in the Powerco submission (S05) were resolved in further discussion with the Council. Powerco forwarded a written statement, confirming to the hearing that amendments proposed by Council officers to the wording of the PC46 Structure Plan requirements fully address Powerco's concerns. We note that the amended Powerco wording is incorporated into PC46 (R3).

5.4 At and following the hearing, the three submitters representing Iwi and Hapū engaged with the Council on a collective basis. Their evidence to the hearing was, helpfully, presented as a joint statement on behalf of:

- (a) The Whanganui Land Settlement Negotiation Trust; and
- (b) Te Kaahui o Rauru; and
- (c) Te Rūnanga o Tūpoho.

5.5 The joint statement refers to this joint initiative as the 'Collective Iwi'. We have adopted the name 'Collective Iwi' in places, for convenience, in this hearing report but we recognise that each iwi entity retains its own individual submission to PC46 and represents its own Iwi and Hapū.

6 Statutory Considerations

6.1 The section 32 report which accompanied the publicly notified PC46 sets out the requirements of the Act relating to Plan changes. Section 73 of the Act provides for councils to initiate plan changes and the process is set out in Schedule 1 of the Act. Section 31 of the Act details the functions of territorial authorities, for the purpose of

giving effect to the Act. The Act's purpose is defined in section 5. The wording of these sections of the Act is replicated in Chapter 1.2 of the section 32 report.

- 6.2 Section 32 of the Act requires an evaluation report, published at the same time that a Plan change is publicly notified, comprising:
- An examination of the extent to which the objectives of the proposed Plan change are the most appropriate way to achieve the purpose of the Act; and
 - An examination of whether the provisions (the policies and rules) of the proposed Plan change are the most appropriate way to achieve the objectives by:
 - i. Identifying other reasonably practicable options for achieving the objectives; and
 - ii. Assessing the efficiency and effectiveness of the provisions (the policies and rules) in achieving the objectives; and
 - iii. Summarising the reasons for deciding on the proposed provisions.
- 6.3 Section 32 also requires that an assessment of efficiency and effectiveness must identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions and, if practicable, must quantify the benefits and costs.
- 6.4 For the purposes of section 32, 'objectives' means the stated objectives of the Plan change (where these are stated) or the purpose of the Plan change (where no objectives are stated). The publicly notified PC46 did not propose any new Plan objectives. For the purposes of the section 32 evaluation then, the objective of PC46 was the purpose (described earlier) of achieving the requirements of the NPSUDC in Otamatea and re-zoning some *Rural Lifestyle* zoned land in Otamatea to *Residential* to provide for additional residential demand, without adversely affecting the supply of land for rural lifestyle development.
- 6.5 The section 32 report records that options were considered in respect of two broad matters: the *Otamatea Development Overlay* and rezoning additional land at Otamatea West to *Residential*. Under those two broad headings, two options were considered in relation to the *Otamatea Development Overlay* (retain it or remove it) and three options were considered for the zoning (status quo, re-zone the entire PC46 study area *Residential* or re-zone most of the area *Residential* and adopt a structure plan). The third option was the one adopted.

Section 32AA Further Evaluation

- 6.6 Section 32AA of the Act requires a further evaluation where changes are made to a Plan change since the original section 32 report. The evaluation is required to focus only on the changes made and must be undertaken in accordance with the requirements of sections 32 (1) to 32 (4). The evaluation is required to be undertaken at a level of detail that corresponds to the scale and significance of the changes made and must be *either* published in an evaluation report made available for inspection at the same time the

decision is notified or referred to in the decision-making record in sufficient detail to demonstrate that a further evaluation was undertaken.

- 6.7 Our recommendations in the following sections propose changes to the content of PC46, to respond to issues raised by submitters. We discuss in the following sections the reasons why we consider the amended objectives are a better way to meet the purpose of the Act than the publicly notified PC46 and the amended version recommended by Council advisers (PC46 (R3)). We also discuss why our recommended provisions are a better way to meet the objectives than PC46 as notified or versions (R1), (R2) and (R3). We also include, in Attachment 5 a draft section 32AA evaluation report.

Part 2

- 6.8 In addition to defining the sustainable management purpose of the Act, Part 2 sets out the matters that must be recognised and provided for, or given particular regard, or taken into account. Of those, the following are applicable to PC46:

- 6.9 **Section 6:** *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

.....

(e) *the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*

(f) *the protection of historic heritage from inappropriate subdivision, use, and development.*

- 6.10 In this hearing report, we refer variously to ‘mana whenua’, ‘tangata whenua’ and ‘Iwi and Hapū, as the ‘Māori’ of this district (‘rohe’) referred to in section 6 (e).

- 6.11 **Section 7:** *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to:*

(a) *kaitiakitanga:*

(aa) *the ethic of stewardship:*

(b) *the efficient use and development of natural and physical resources”*

(c) *the maintenance and enhancement of amenity values*

(f) *maintenance and enhancement of the quality of the environment.*

- 6.12 **Section 8:** *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

6.13 We discuss the particular issues arising for these Part 2 matters in the following sections of this hearing report.

7 Principal Issues in Contention

7.1 The principal issues that were in contention at the hearing were:

- (a) Whether PC46 recognises *and* provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga as required by the Act;
- (b) The focus on archaeology and whether a cultural impact assessment is necessary before PC46 can proceed, in order to actively protect cultural heritage, wāhi tapu, taonga and associated cultural values (and, if so, whether that can include advice from a person expert in tikanga māori);
- (c) The adequacy of the objectives, policies and methods to protect recorded and as-yet-unidentified ancestral sites, and whether an accidental archaeological discovery protocol should be included;
- (d) The adequacy of recognition of ancestral history and use of the name 'Otamatea';
- (e) How far PC46 can go in *restoring* the relationship of tangata whenua with ancestral land in the PC46 area;
- (f) The adequacy of the Council's engagement with tangata whenua in the development of PC46;
- (g) Whether the proposed roading layout provides an appropriately safe, convenient and resilient transport network and connections between the PC46 land, SH3 and other parts of Whanganui;
- (h) Whether PC46 can be expanded to enable the development of additional land not currently included in the PC46 Structure Plan.

7.2 Before addressing each of these matters in turn, we examine exactly how PC46 would enable change in the environment.

8 How PC46 Would Change the Environment

8.1 The current Plan zoning and rules permit development of the land within the PC46 area. For the land currently zoned *Residential*, the District Plan enables development with a density of one dwelling per 1,000m² (within the *Otamatea Development Overlay*). For the land zoned *Rural Lifestyle*, Plan Policy 3.3.8 states that the Zone's purpose is to achieve a mix of rural and residential activities, large self-serviced allotments and to maintain overall low density character. Rule 3.6.1 permits:

- a. Residential activities;
- b. Rural activities;
- c. Community activities;
- d. Reserves and open space;

- e. Network utilities;
 - f. Relocated buildings;
 - g. Temporary military training activities.
- 8.2 Rule 3.7.1 (a) sets the permitted activity residential development density at a minimum of 5,000m² per dwelling. Rule 3.6.2 (a) provides for the establishment of single dwellings on sites having less than 5,000m² area as a restricted discretionary activity. Rule 3.6.2 (c) provides for more than one dwelling on a site. For these applications, Council restricts its discretion to:
- i. *The ability of the development to be serviced by either off-peak pumping or on-site means with regard to effluent and stormwater disposal; and*
 - ii. *Impact on the character of the surrounding area, ability of the development to achieve quality urban design outcomes.*
- 8.3 What the restricted discretionary activity rule means is that the listed matters are the only matters that can be considered. Section 104C of the Act states that:
- 'When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which —*
- (a) a discretion is restricted in national environmental standards or other regulations:*
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.'*
- 8.4 Part 2 of the Act would be relevant only to the extent that any of the Part 2 matters are made 'live' by the restricted matters. In other words, there is apparently little scope currently for considering the impact of subdivision and development, either as a permitted activity or restricted discretionary activity, on cultural values or archaeological sites or on the relationship of tangata whenua with their ancestral lands. This point was made by Ms O'Shaughnessy in her oral evidence to the hearing. The current Plan provisions enable extensive built development and subdivision of land within the PC46 area.
- 8.5 The PC46 Structure Plan recommended by the August 2017 Opus *Otamatea West Structure Plan Report* is reproduced in Figure 2 overleaf.
- 8.6 PC46 (R3) reduces the area of *Rural Lifestyle Zone* to the yellow area in the southern corner of Figure 2. In that area, the proposed rules would retain the minimum 5,000m² minimum allotment area and site area per dwelling. PC46 (R3) changes the zoning of the balance of land currently zoned *Rural Lifestyle* to *Residential* and, in that area (the land shown pink in Figure 2), adopts a minimum 800m² allotment area and net site area per dwelling. For the balance of the *Residential* zoned land (the land shown green in Figure 2), PC46 (R3) sets a minimum 400m² minimum allotment area and minimum site area per dwelling.
- 8.7 PC46 (R3) also introduces restricted discretionary matters addressing infrastructure servicing and requires development to adopt the roading layout shown in the Structure Plan. The Structure Plan also proposes pedestrian walkways connecting the proposed roads. The Structure Plan identifies three relatively large areas that are to be set aside as stormwater detention areas (shown blue on Figure 2 and not available for residential development) as well as an area of 'planting reserve' in the northernmost corner of Figure 2 (also not available for built development).

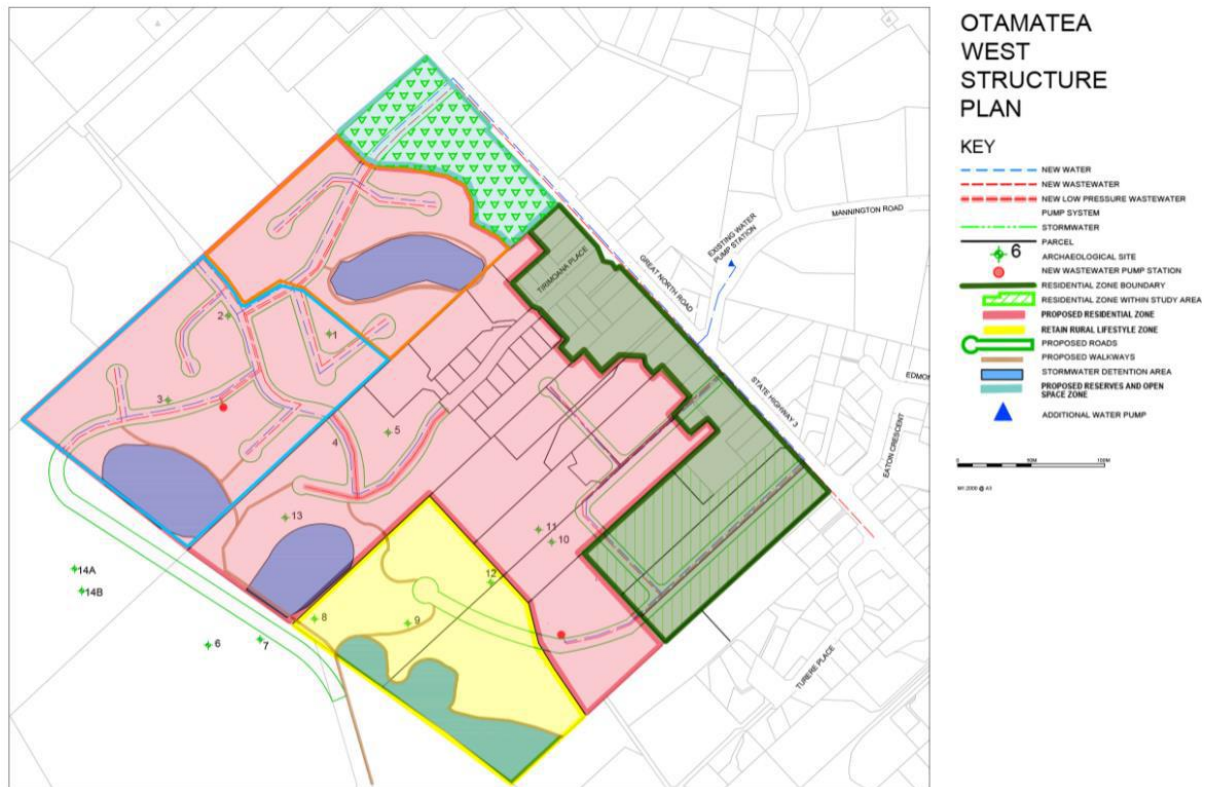


Figure 2: 'Otamatea West Structure Plan' as Recommended by Opus (2017)

8.8 The *Heritage Alert Overlay* originally proposed in the publicly notified PC46 has been deleted from PC46 (R3). Instead, PC46 (R3) includes explanatory text, objectives, policies and restricted discretionary matters that seek to acknowledge the ancestral history of the area, recognise and provide for the relationship of mana whenua with ancestral lands, and protect historic and cultural heritage values. Council advisers have endeavoured, in the amendments presented in PC46 (R3), to address the matters of concern expressed by submitters about the lack of recognition and provision for the relationship of mana whenua with ancestral land and sites of significance.

8.9 In summary, the key changes PC46 (R3) introduces are:

- increased development density would be enabled over most of the PC46 area;
- new policy considerations are included to address the relationship of mana whenua with the land, cultural values, and historic and cultural heritage;
- a more detailed roading pattern will frame future development; and
- infrastructure requirements are more explicit than currently.

9 The Relationship of Māori and Their Culture and Traditions with Their Ancestral Lands, Water, Sites, Wāhi Tapu and Other Taonga

- 9.1 The central issue, expressed in the submissions of Te Kaahui o Rauru and the Whanganui Land Settlement Negotiation Trust and by representatives of the Collective Iwi in their evidence to the hearing and in the 2018 CVR, is a concern that PC46 will further alienate tangata whenua from one of the last remaining largely undeveloped areas of ancestral land which holds significant values for them.
- 9.2 There is no dispute that the land subject to PC46 is ancestral land of significance to the descendants of Ngaa Aruhe, nor that the land contains sites of significance (wāhi tapu), including potentially urupā (burial sites). These facts are acknowledged by the Council in the section 32 documentation, in the wording of PC46 and amended versions (R1), (R2) and (R3), and in Ms O'Shaughnessy's evidence to the hearing.
- 9.3 The 2017 ICVR, the 2018 CVR and the feedback received from Whanganui me Ngaa Rauru Kiitahi dated 7 June 2018 present a clear picture of the values held by mana whenua for the land, water, wāhi tapu, sites and other taonga within the PC46 area. These are described in the 2017 ICVR under 10 headings:
- *Mai uta ki tai, mai te rangi ki te whenua, ko ngaa mea katoa he tapu: 'from inland to the coast, from the sky to the land, everything within is sacred' (acknowledging the sanctity with which the world is viewed);*
 - *Mouri (or 'life-force'): acknowledging that the life-force of the land and the people are interdependent and that mouri is susceptible to human intervention;*
 - *Hauoratanga (or 'holistic wellbeing'): acknowledging that the physical, spiritual, cultural, historic, intrinsic and extrinsic wellbeing of the land and the people are interdependent;*
 - *Whakapapa: recognising the genealogy linking the people of today to the original inhabitants;*
 - *Mana Whenua: the hapuu of both Whanganui and Ngaa Rauru Kiitahi hold (and contest) rights to mana whenua on behalf of the people who whakapapa to the land and the tupuna buried within;*
 - *Taonga: the land, resources and associated history are considered to be taonga to be treasured and protected under Article 2 of Te Tiriti of Waitangi;*
 - *Kaitiakitanga: the inherited right and responsibility of hapuu and iwi to actively protect and enhance the resources of the tribal estate for current and future generations, including by protecting waahi tapu, waahi tuupuna (those known and unknown);*
 - *Waahi Tapu: the protection of sacred places;*
 - *Waahi Tuupuna: ancestral places and the spiritual connection they provide between the ancestral imprints on the land and their descendants;*

- *Wairuatanga: the spiritual values that connect tangata whenua with their ancestors and ancestral lands.*

- 9.4 The 2017 ICVR states (in Sections 4 and 5) that the cultural values associated with this area revolve around:
- (a) The need to preserve and protect ancestral heritage (and the risk of increased likelihood of heritage loss through exposure of or destruction of wāhi tapu in the course of development earthworks);
 - (b) The desire of Iwi to re-connect with ancestral lands wrongfully taken in the 1848 land confiscation.
- 9.5 The 2017 ICVR makes clear the preference of tangata whenua that wāhi tūpuna (ancestral lands) should be reserved for the use of the descendants of the original people, including by the re-creation of papakāinga.
- 9.6 In answer to our questions at the hearing, we were reassured by the representatives of the Collective Iwi that the settlement of their claims to the Waitangi Tribunal will have no direct impact for any land within the PC46 area. All of the land within the PC46 area is privately owned (by multiple owners). None of it is evidently Māori land subject to Te Ture Whenua Act 1993 and none of the land is claimed as settlement asset to rectify past wrongs.
- 9.7 The desire by mana whenua to ‘re-connect’ with their ancestral lands is clearly stated in the 2017 ICVR, and included as requested relief by reference to that in paragraph 4.4 of submission S14. According to the evidence, the provision of opportunities for mana whenua to spiritually re-connect with their ancestral lands is an important aspect of recognising and providing for the relationship of mana whenua with their ancestral lands. The evidence is also clear that, as currently worded, PC46 (R3) does not adequately address this.
- 9.8 Under the heading *5.1 Increased Likelihood of Heritage Loss* (on page 13 of the ICVR) the statement is made that: *‘Hapuu have a number of barriers in our ability to connect with this ancestral land, none more obvious than the fact that it is in private ownership. If multiple dwellings are permitted this would distance our people even further from our ancestral heritage, the disconnect would be magnified.’*
- 9.9 In the same report, the statement is made on page 17 that Te Kaahui o Rauru *‘is concerned that the re-zoning to residential will be more permissive of residential development than the current zoning classification. In addition to the implicit direction that this is a suitable area for general residential development, it is also because the change in zoning will have a higher density of housing in the same area than the current zoning. This increased development has the potential to accelerate further dissociation from this area.’*
- 9.10 These two statements lie at the heart of the opposition of the submissions by Te Kaahui o Rauru and Whanganui Land Settlement Negotiation Trust⁹. The disassociation that is caused by the land being in private ownership is not a matter that this Panel or PC46 can resolve. The reality is that the land is privately owned. The evidence does not persuade us that the prospect of additional private owners is, of itself, a reason to reject PC46. The fact that people have lived on this land ancestrally was not put forward, by

⁹ The submission by Te Rūnanga o Tūpoho is not listed here because it originally supported PC46 and did not state opposition to PC46.

the Collective Iwi, as a reason to prevent further settlement. The issue is how the District Plan framework should preserve and protect the wāhi tapu, wāhi tūpuna and other sites and the associated values within this area that give expression to the relationship Hapū and Iwi have with this ancestral land.

- 9.11 The 2017 ICVR acknowledges that the land is held in private ownership and that it can be developed currently. The statements in the ICVR do not acknowledge the reality that the Council faces, explained by Ms O'Shaughnessy in evidence, that there is pressure to develop this privately-owned land to a higher density by way of applications for consent for subdivision and that the Council may struggle to decline these under the current District Plan framework. Neither do the statements acknowledge that elements of PC46 will better assist Hapū and Iwi to maintain their relationship with this ancestral land than will the operative Plan provisions.
- 9.12 We are not persuaded that rejecting PC46 is a better way of achieving the purpose of the Act or that the current Plan provisions will provide an effective restraint on development or prevent further increase in development density in the way the submitters hope. That is the essence of the evaluation we are required to make under section 32 of the Act: whether the objectives and provisions of PC46 are the most appropriate way to achieve the purpose of the Act, informed by the relevant matters from sections 6, 7 and 8 of the Act, as compared with available alternatives (e.g. outright rejection of PC46 or some amended set of provisions).
- 9.13 Our conclusion is that, as currently worded, PC46 (R3) does not fully recognise or provide for the relationship mana whenua have with their ancestral lands, water, sites, wāhi tapu, and other taonga. In our view, the objectives and provisions proposed by Council advisers need further amendment to properly give effect to the section 6 (e) requirements of recognising and providing for this relationship. We propose the following amendments to Objectives 9.2.9 and 9.2.10:

Cultural Heritage – Otamatea North West Structure Plan Area

9.2.9 Recognise and provide for the relationship of mana whenua with their ancestral lands within the North at Otamatea West Structure Plan Area, including by:

- a. preserving and protecting ancestral heritage, including recorded and discovered wāhi tapu and wāhi tūpuna sites and any discovered wāhi tapu, and the associated cultural, spiritual and historical values of these sites, and which revolve around:
 - b. providing opportunities for improved connection of mana whenua with their ancestral lands, water, sites, wāhi tapu and other taonga, including through the provision, location and purpose of public reserves and the naming of streets and public open spaces created within the Structure Plan Area.
- a. the need for mana whenua to preserve and protect ancestral heritage;
 - b. the interconnectedness of the wellbeing of the land and its people; and
 - c. the desire of mana whenua to reconnect with ancestral lands.

9.2.10 Recognise and provide for the protection of Protect recorded and discovered wāhi tapu and wāhi tūpuna sites, and any discovered wāhi tapu at Otamatea within the North West Structure Plan Area from activities (including earthworks, road building and the construction of buildings) that have the potential to adversely affect the

cultural, spiritual and historic heritage values of those wāhi tapu and wāhi tūpuna sites. subdivision, modification and development that would adversely affect the qualities and features which contribute to the historic heritage values of these sites.

9.14 We also discuss in the following sections other refinements that we consider should be made to the PC46 (R3) provisions to better recognise and provide for the relationship of mana whenua with their ancestral lands, sites, water, wāhi tapu and other taonga.

10 The Focus on Archaeological Sites and the Role of Cultural Impact Assessment

10.1 It was apparent from the wording of PC46 as publicly notified, that the focus of objectives and provisions for the protection of historic heritage was on recorded archaeological sites. The evidence on behalf of the Collective Iwi to the hearing explained clearly that this focus is too narrow and does not fully capture the spectrum of cultural and spiritual values associated with the ancestral heritage of this area. Quite simply, not all ancestral heritage will be currently identified as a recorded archaeological site.

10.2 Representatives of the Collective Iwi recounted, with genuine and heart-felt hurt, the exposure of an ancient burial site (urupā) at a Rapanui Road site some years previously by earthworks to create house foundations¹⁰. All parties to the hearing agreed that the Rapanui Road incident had not been handled well and is an example that neither Iwi nor the Council wish to see repeated. The incident has, understandably, put Iwi and Hapū on notice to resist the risk of this recurring. The evidence is that it is highly likely that there will be other similar, unrecorded, ancestral heritage sites throughout the PC46 Structure Plan area. The Archaeological Assessment supporting PC46¹¹ states that tangata whenua were not consulted during the assessment and that the assessment is 'not intended to represent cultural significance'. The report states that this would require a separate assessment. The two cultural values reports commissioned by the Council provide an overview of cultural values and significance but not at a level of detail that identifies particular features or sites of significance within the overall area. The Archaeological Assessment also states¹² that:

'With the presence of 15 recorded archaeological sites within the study area and the high potential for further archaeological remains to be buried under drift sand there is a significant risk that archaeological sites will be encountered in the study area during development activities. Most archaeological evidence by its very nature is buried and not visible. The presence of recorded archaeological sites in an area is the strongest indicator that further sites are likely to be present. The raised drier areas located on sand dunes and other higher sloping areas are probably the localities with the greatest risk of further archaeological remains being present.'

Further sites can be expected to be identified by the presence of shell middens, fire fractured rocks and cooking fires. Such middens and the associated remains are likely to be related to the presence of small pre-European settlements within the study area, or may be related to temporary use while seasonal resources were harvested from

¹⁰ Discussed in the report 'Investigations at Lots 7 and 8 DP359097, 183 Rapanui Road, Wanganui by Kevin L Jones (Archaeologist), April 2009, tabled in evidence to the hearing.

¹¹ Archaeological Assessment for Otamatea West Structure Plan Area Whanganui (Archaeology North, August 2017) page 22

¹² Chapter 8 'Risk Assessment'

nearby bush, streams, swamps and small lagoons. These sites may occur on or in dunes over the entire study area in similar contexts to those sites already recorded.

It will be necessary to confirm that the sites identified as probable pits and terraces are actually archaeological in nature. This is likely to require archaeological testing and/or excavations and this can only be done under an archaeological Authority from HNZPT.'

- 10.3 The report also states, in its conclusion, that *'tangata whenua should be consulted about the future management and possible development of the areas where pre-European archaeological sites are located'*. Also, that *'the study area has a high risk for the presence of further pre-European archaeological remains'* and that these sites are likely to have *significant archaeological values*.
- 10.4 Council's advisers have attempted since the hearing, in the amended text of PC46 (R3), to address two matters: provision for a cultural impact assessment and protection of as-yet-identified sites as well as recorded archaeological sites. We acknowledge the care they have devoted to this. PC46 (R3) proposes that:
- (a) A cultural impact assessment may be required by the Council in processing applications for subdivision or development that involve land disturbance within the PC46 Structure Plan area; and
 - (b) Land disturbance on any part of a site containing a recorded wāhi tūpuna site (but not recorded wāhi tapu sites) requires consent as a restricted discretionary activity (proposed Rule 9.10.2.1); and
 - (c) Land disturbance on any part of a site where a wāhi tapu has been discovered, but not yet recorded in Plan Appendix K, requires consent as a restricted discretionary activity (proposed Rule 9.10.2.2); and
 - (d) The restricted discretionary matters include considerations of whether mana whenua have granted written approval and whether a cultural impact assessment has been undertaken; and
 - (e) Proposed Policy 9.3.22 requires that, in the event of accidental discovery of wāhi tapu or wāhi tūpuna, an archaeological discovery protocol must be implemented (specified in advice note 9.11.2); and
 - (f) Where wāhi tapu are accidentally discovered, they will be afforded the same level of protection as recorded wāhi tūpuna sites (but there is no equivalent for accidentally discovered wāhi tūpuna sites); and
 - (g) Proposed policy 9.3.25 is that 'where practicable', wāhi tūpuna are to be preserved in the first instance. Where preservation is not practicably achievable, adverse effects are to be mitigated.
- 10.5 The Collective Iwi were emphatic, in their joint statement to the hearing (at paragraph 5.17), that they *'do not want our waahi tapu lost beneath residential development or our*

water impacted. Further destruction and loss of access to visit these places will only add to the cultural disconnect that the Collective Iwi are currently facing’.

- 10.6 The 2018 CVR reiterates the view of the Collective Iwi¹³ presented in evidence to the hearing that no decision on PC46 should be made until a high level and broad cultural impact assessment of the full impacts of PC46 has been considered. In this respect, the Collective Iwi distinguish what they mean by 'cultural impact assessment, from the 2017 ICVR and 2018 CVR, which are broad statements of value and relationship. The CVRs are not the same as a comprehensive assessment of impact. The approach proposed by PC46 (R3), whereby a cultural impact assessment *may* be required on a case-by-case basis, is not considered by the Collective Iwi to properly address their concerns.
- 10.7 The evidence is that there are likely to be as-yet-unidentified sites of cultural significance within the PC46 area. The lesson from the Rapanui Road experience is that, by the time a residential section is subdivided and sold, the options for protecting culturally significant sites are limited. The issue is one of *identifying* and *managing* the risk. Whilst the whole area is acknowledged to be wāhi tūpuna, there was no suggestion in evidence that the entire area is wāhi tapu in a way that makes it unavailable for development. That is, provided a genuine effort is made to identify the presence of culturally significant sites, including wāhi tapu and urupā, and to protect those.
- 10.8 As currently proposed, PC46 (R3) proposes to identify and manage the risk by providing the Council discretion on a case-by-case basis whether individual subdivision and land disturbance proposals might need a 'cultural impact assessment'. Our view is that this would result in a piecemeal approach and would fail to properly manage the risks identified in evidence.
- 10.9 What appears to us to be missing from the proposed policy and rule framework is certainty about whether wāhi tapu or wāhi tūpuna sites are present in any particular case. That is: certainty for the Collective Iwi, the Council and for land developers. The sites recorded in Appendix K of the District Plan are acknowledged to not capture all potential sites of significance to mana whenua. These sites may include wāhi tapu (including burial sites) as well as specific sites or features within the landscape that provide evidence of ancestral settlement (wāhi tūpuna sites, including middens and the remains of cooking ovens and food storage pits). We agree with the Collective Iwi that, in the absence of some comprehensive assessment of the presence of culturally important sites, future land development presents potential risks for as-yet-unidentified ancestral heritage.
- 10.10A comprehensive assessment cannot meaningfully be made progressively on a site-by-site basis (particularly at the development density possible under PC46 (R3)) because of the potential for 'knock-on' impacts for the position of site boundaries and roads. The only sensible approach, in our view, is to undertake an assessment of all land within the Structure Plan area. In our view also, it is unreasonable to expect a single landowner to undertake such an assessment on behalf of other landowners and the Council.
- 10.11 It is apparent from the evidence that many of the larger individual parcels of land within the Structure Plan area do contain a recorded archaeological site. Therefore, it is highly likely that applications for subdivision consent and land disturbance involving these sites would trigger a cultural impact assessment anyway under the PC46 (R3) rules. The Archaeological Assessment clarifies that the risk of disturbance or damage to ancestral archaeological sites exists also on land that is not identified in Appendix K. Our

¹³ In a note on page 2 of the document

conclusion is that a cautious approach should be adopted to development of all of the undeveloped land within the Structure Plan area, with one exception. That is the few small residential sections (nominally, those having 1,000m² or less site area, as provided for by the current *Otamatea Development Overlay*) where subdivision earthworks to form building sites have already disturbed and altered the land.

10.12A comprehensive assessment should:

- (a) confirm the location of any identifiable wāhi tapu or wāhi tūpuna sites (of the kind described earlier that provide evidence of prior settlement by tūpuna) within the Structure Plan area; and
- (b) if there are any wāhi tapu or wāhi tūpuna sites present, identify what impact this could have for the roading layout or form of future subdivision and development; and
- (c) recommend the design changes or other mitigation measures that could be undertaken to preserve or otherwise protect the cultural, spiritual and historic heritage values of the identified sites; and
- (d) identify opportunities for strengthening the cultural connection between mana whenua and any identified sites, including by the setting aside of public reserve land or provision of access to identified areas or the design of any feature.

10.13 It follows, then, that this assessment should be undertaken by someone appropriately qualified to identify wāhi tapu or wāhi tūpuna sites and that the assessment would best be informed by someone with cultural expertise. That could be an archaeologist who is recognised by mana whenua as having appropriate expertise in cultural matters. It could equally be informed by a kaumatua with recognised customary knowledge, able to identify such sites. The assessment we envisage could build on the factual historical description of ancestral heritage provided in the 2017 ICVR (and would not need to repeat it). We will not call this a 'cultural impact assessment' because it has a narrower focus than what might usually be considered a 'cultural impact assessment'.

10.14 This assessment would then inform subdivision and development design. Much as the investigations into infrastructure capacity and transportation network have done. It is open to the Council, for example, to commission such an assessment itself to provide an information base that landowners could use to inform their development designs.

10.15 In our view, the roading layout shown on the Structure Plan should remain indicative until such assessment has been undertaken across the entire Structure Plan area, lest the identification of significant sites should necessitate adjustment of the route of any road.

10.16 We do not propose to specify in our amended provisions exactly how such an overall assessment is to be commissioned. Suffice it to say that the cost and resources required to undertake it could be seen as an unavoidable public good cost associated with providing for growth in urban Whanganui.

10.17 We recommend several amendments to the proposed policies in Chapter 9.3 and the rules in Chapters 9.10 and 13.4, to require the comprehensive assessment we describe above. In summary, those recommended amendments:

- (a) Provide for subdivision as a restricted discretionary activity only where the application is accompanied by either:
 - i. a statement by a person suitably qualified in archaeological or cultural assessment that the proposal will not damage or destroy any identifiable wāhi tapu or wāhi tūpuna site within the land proposed to be subdivided; or
 - ii. an assessment of the type we describe in paragraph 10.12 above for the entire Structure Plan area; or
 - iii. an assessment of the type we describe in paragraph 10.12 above for the application site together with an assessment of any consequential implications for the alignment of connecting roads on adjoining land;
- (b) Require consent as a discretionary activity where subdivision applications fail to include the information described in (a) above;
- (c) Provide for land disturbance as a permitted activity only where a person suitably qualified in archaeological or cultural assessment certifies in writing that the proposal will not damage or destroy any identifiable wāhi tapu or wāhi tūpuna site; and
- (d) Otherwise, require consent for land disturbance as a restricted discretionary activity and require an assessment of the type we describe in paragraph 10.12 above.
- (e) Require applications for restricted discretionary activity consent for land disturbance to be accompanied by an assessment of the type described in paragraph 10.12; and
- (f) Require a full discretionary activity consent where a land disturbance application is not accompanied by an assessment described in paragraph 10.12.

10.18 We are satisfied that the amendments we propose are within the scope of submissions (including 4.4 (a), (b) and (d) of submission S14 and its reference to and adoption of recommendations 1, 2 and 4 of the 2017 ICVR).

11 Protection of Wāhi Tapu and Wāhi Tūpuna and the Need for an Accidental Archaeological Discovery Protocol

Protection of Unidentified as well as Recorded Sites

- 11.1 Section 4.6 of the 2017 ICVR states that *‘the land, resources and associated history, intrinsic and extrinsic are considered taonga. They are treasured and fall under the protection of Article 2 of Te Tiriti o Waitangi’*. As already noted, Submission S14 by the Whanganui Land Settlement Negotiation Trust directly references the ICVR and requests (at paragraph 4.4) that its recommendation be incorporated into PC46. Paragraph 4.4 (d) explicitly requests that the Council, with tangata whenua, proactively pursue the protection of cultural heritage values in the area of PC46.
- 11.2 The 2018 CVR reiterates the cultural significance of the area for mana whenua and states the high expectation of Iwi and Hapū, based on the cultural significance of the land and oral history and finding of sites nearby, that other significant sites including archaeological sites could be uncovered within the PC46 area. The 2018 CVR states that Iwi and Hapū seek to co-develop a wāhi tapu and wāhi tūpuna protocol, as a required element of PC46. The 2018 CVR clarifies that there is likely to be a hierarchy of significance of sites which warrant a range of responses. The 2018 CVR also states that Iwi and Hapū recognise the potential for such remains to reveal themselves by natural processes and that these may, at times, be initiated or assisted by earthworks.
- 11.3 The Council’s response to the 2018 CVR agrees that such a protocol could potentially add clarity to the interpretation of effects and ultimately assist implementation.
- 11.4 We discussed earlier in this hearing report, our conclusion that there is a need for an overall assessment (not a piecemeal case-by-case assessment) to ascertain the location of significant cultural sites so as to protect these in subsequent subdivision design. We are satisfied that these identified sites can be protected in a culturally appropriate manner following that assessment. But what Iwi and Hapū are also concerned about are the instances that may occur of other unidentified sites being revealed, either by natural processes or by land disturbance.
- 11.5 We accept that there may be situations where, in spite of undertaking an overall prior assessment, some additional sites of cultural significance may be unearthed in the course of land development. Our view is that having an accidental discovery protocol built into PC46 is reasonably necessary to address this eventuality, in addition to the PC46-wide assessment we described earlier. We would envisage that this protocol would be imposed as a standard condition of consent for subdivision and land disturbance consents.
- 11.6 The amendments proposed by Council advisers (PC46 (R3)) include an accidental discovery protocol as an advisory note (Chapter 9.11 Advisory Note 2).
- 11.7 The wording proposed as Advisory Note 9.11 (2) is very similar to the kind of protocols included routinely in District Plans and consent conditions throughout New Zealand and is already a performance standard within this District Plan (in 9.10.1 b). Our view is that it should be more than an Advisory Note and should be specified as a condition for restricted discretionary activity land disturbance proposals and a restricted discretionary matter for subdivision (9.10.2.1, 9.10.2.2 and 13.4.2.b). A reference to the existing rule 9.10.1 (b) in the restricted discretionary matters for the land disturbance and subdivision rules 9.10.2 and 13.4.2 seems to be all that is required (although we note that the

numbering will become 9.11 because of the insertion of new rules for the Structure Plan area in 9.10).

Definitions

- 11.8 Council's advisers have proposed new definitions for 'wāhi tapu' and 'wāhi tūpuna'. The proposed provisions create, in our view, unnecessary complexity in the rules distinguishing between wāhi tapu and wāhi tūpuna. We appreciate that Appendix K, as currently proposed, only identifies 'wāhi tūpuna'. We suggest that the policies and rules should refer equivalently to wāhi tapu and wāhi tūpuna that are recorded in Appendix K. In future, additional wāhi tapu sites may well be added to Appendix K.
- 11.9 Also, the definition of 'wāhi tūpuna' should, in our view, include the clarification provided in the 2017 ICVR that these places provide the spiritual connection between the ancestral imprints on the land and their descendants¹⁴. In our view, this explains and underscores the reason they are so important. The Heritage New Zealand Pouhere Taonga Act 2014 includes a definition of 'wāhi tūpuna'. We propose to include the substance of that definition, which captures the concept described in the ICVR that the entire PC46 area has wāhi tūpuna value. We also propose a new definition for 'wāhi tūpuna site' to distinguish the identifiable sites and features within the landscape that provide the evidence of prior settlement by tūpuna from the broader concept of 'wāhi tūpuna' value across the wider area. In the rules that we propose, the comprehensive assessment is to focus on identifiable wāhi tapu and wāhi tūpuna sites.
- 11.10 We note that, in the proposed definition of 'wāhi tapu', the word 'interment' has been incorrectly transposed as 'internment'. That has a very different and unhelpful meaning and should be corrected. The amendments necessary to the definitions to address these matters are:

Wāhi Tapu: means a place sacred to Māori tangata whenua in the traditional, spiritual, religious, ritual or mythological sense. Examples of wāhi tapu include places of ceremonial ritual, interment, cremation, birth places, altars, battle grounds or places where blood was spilt.

Wāhi Tūpuna: means a place important to tangata for its ancestral significance and associated cultural and traditional values and includes tangata whenua ancestral places used for purposes including settlement, seasonal and permanent, cultivation and hunting sites as well as healing sites. Wāhi Tūpuna are important because they provide a spiritual connection between the ancestral imprints on the land and their descendants.

Wāhi Tūpuna Site: for the purposes of the Plan Rules, means identified archaeological sites containing evidence of Māori settlement, including middens, oven stones, food storage pits, terraces, borrow holes, and the wāhi tūpuna those archaeological items recorded as 'wāhi tūpuna' in Appendix K.

¹⁴ From Section 4.9 *Interim Cultural Values Report*

12 Recognition of Ancestral History and the Name 'Otamatea'

- 12.1 Council's advisors have faithfully included in their suggested amendments to Chapter 9 of the District Plan (which addresses Historic Heritage) the information from the 2017 ICVR describing the ancestral history of this area. Under the heading '*Cultural Heritage – Otamatea West Structure Plan Area*', the text faithfully records what the 2017 ICVR says about ancestry. However, the discussion misses the underlying point about ancestral identity: that 'Otamatea' is not an appropriate name for this area. The prefix 'O' implies ownership (of the area) by Tamatea which is factually incorrect and does not properly reflect the true relationship of mana whenua with this area.
- 12.2 Submission S13 explicitly requests that alternative names be considered for the PC46 area. Some might ask: 'What's in a name?'. It is plain from the evidence that place names are central to relationship with land and with ancestral history. Persisting with the name 'Otamatea', suggests this is an accepted name for the PC46 area. Plainly, it is not. Persisting with it will not recognise or provide for the relationship of mana whenua with their ancestral lands and deletion of the name is within the scope of requested relief. It is open to the Council and landowners, in discussion with Hapū and Iwi, to ascribe more locally appropriate names to roads and places within the Structure Plan area as and when development proceeds. There is an opportunity for tangata whenua to restore connection, through identity. There is also an opportunity to show respect to ancestral identity.
- 12.3 Our suggestion, based on the evidence we heard, is that the title 'Otamatea West' should be deleted from all parts of PC46 (R3). If a label is required for administrative purposes, to identify the geographic extent of the PC46 Structure Plan, something more generic will suffice. We suggest 'North West Structure Plan'. Our suggestion relates only to the PC46 area and not to the wider 'Otamatea' area which is beyond the scope PC46.
- 12.4 We propose the further changes to Chapter 9 shown in the strike-out text and inserted (underlined) text below:

~~Heritage Alert Overlay – Cultural Heritage - Otamatea North West Structure~~
~~Plan Area~~

The area identified in the District Plan as the Otamatea North West Structure Plan Area, is known to be part of a wider area of ancestral land which has significant cultural value and significance for the Iwi of Whanganui iwi and Ngaa Rauru Kiihahi.

.....

The information has been determined primarily through customary knowledge, sourced from oral tradition and documented evidence in the form of Māori Land Court records, museum artefacts, old maps and public information gained from Waitangi Tribunal claims and recorded in the *Interim Cultural Values Report: Otamatea Structure Plan (17 October 2017)* prepared by Raukura Waitai and Te Kaahui o Rauru which supports *Te Whanaungatanga o Whanganui me Ngaa Rauru Kiihahi - Otamatea Plan Change Cultural Values Report (12 April 2018)* prepared by Whanganui me Ngaa Rauru Kiihahi. Although the area was named 'Otamatea' in 1958 and has been known locally by that name since then, this name is not one that Whanganui iwi or Ngaa Rauru Kiihahi associate with this area.

Introduction of this section to the Plan acknowledges the ancestry of this area where pre-European human activities would have been likely. The intention purpose of the Heritage Alert Overlay cultural heritage related objectives, policies and methods applying to the North Otamatea West Structure Plan area is to specifically recognise and provide for the relationship of mana whenua with the ancestral lands, water, sites, wāhi tapu and other taonga of this ancestral area and provide for the protection of cultural heritage. ...

- 12.5 We have identified, in Attachment 1, where the expression 'Otamatea West' should also be deleted from all other parts of PC46 (R3).

13 How Far Can PC46 Go in Restoring the Relationship of Māori with their Ancestral Land?

- 13.1 Section 6 (e) of the Act obliges the Council, in exercising its delegated functions and powers, to *recognise and provide* for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The obligation stops short of requiring *restoration* of relationship. We have suggested amendments in the preceding sections that we consider will strengthen the recognition of, and better provide for, the relationship of the Collective Iwi with their ancestral lands and associated features and values.

- 13.2 The 2018 CVR includes a number of suggested ways in which Hapū and Iwi might achieve 're-connection'. The Council's advisers responded, point-by-point, to these suggestions in their table circulated on 21 June 2018 explaining how PC46 (R3) accommodates the suggestions or, if not, why it doesn't. We agree with most of the explanations given by the Council's advisers in that table, with the exception of the matters addressed in the preceding sections of this hearing report that we consider can be improved on. We comment below on other suggestions made in the 2018 CVR.

As a preface to the following comments, we reiterate the important point that the scope the Council has to make decisions is defined by the relief requested in the submissions themselves. In the case of submission S14, this includes the content of the 2017 ICVR which is explicitly referenced in the submission.

Ways of 'Re-Connecting' Suggested in the 2018 CVR:

(a) 3.2.1.1: Mitigating the impact of land confiscation by setting aside reserve lands as development contributions:

We agree with the Council advisers that the Council has no jurisdiction to adjudicate past land confiscation wrongs. But that wasn't really the point that the Collective Iwi were making. Their point was that the impact of confiscation exists and the decisions the Council makes about PC46 should not facilitate further alienation. Also, that where opportunities exist to overcome the historic impacts of confiscation, these should be incorporated into the District Plan resource management framework. We have suggested amendments that we consider are reasonably necessary to properly recognise and provide for the relationship of Hapū and Iwi with their ancestral lands and associated sites and values.

Specific reference is made, in Section 3.2.1.1 of the 2018 CVR, to the setting aside of reserves specifically for mana whenua. No case was made in any

evidence presented to us that the Council could reasonably or lawfully require the setting aside of reserves specifically for mana whenua. Our view is that this is not a matter for the Council's Resource Management Act jurisdiction, but is a matter for resolution under the established Treaty claim process. Also, we understand that the imposition of development contributions is done by the Council pursuant to the Local Government Act, and not under the Resource Management Act, and therefore is beyond the scope of PC46 anyway.

(b) 3.2.1.1: Encouraging the use of local people to build and source materials, including training opportunities as part of the focus for the development of the site subsequent to the plan change:

No evidence was presented to the hearing in support of the imposition of any requirements that would direct or limit the materials that can be used or the people who can be involved in building within the PC46 area. Our view is that such an initiative has no place in a District Plan. No submission explicitly requested such a measure and we do not consider the request is within the Council's Resource Management Act jurisdiction in any event.

(c) 3.3.1: Management of water and discharges:

We agree with the officers that the regional council has separate jurisdiction over the management of water abstraction, water diversion, activities in the beds of streams and discharges to land and to water and the monitoring of these activities. These matters are beyond the Whanganui District Council's jurisdiction.

We acknowledge that one of the consequences of allowing PC46 is that there will be more houses on the land, with more wastewater systems. One of the suggestions made in the 2018 CVR is that all human effluent should be required to discharge to land. PC46 is not itself proposing any new discharge of human effluent to water. PC46 intends that houses will be, either, self-serviced for wastewater (in the *Rural Lifestyle Zone* this generally means discharge to land) or connected to the reticulated municipal wastewater network (in the *Residential Zone*). The Council has discharge permits for the treatment system it uses for the wastewater collected from its reticulated urban area. The question of how municipal wastewater from the whole of Whanganui's urban area is managed is a city-wide question and not one for the PC46 subset of the city. Also, no submission requested this relief and no evidence to the hearing addressed the need for this requirement.

Another suggestion made is that resource consent applicants be required to seek only the amount of water actually required and that all water takes be metered. We can't disagree with the sentiment, but the District Council does not have any jurisdiction over future applications for water abstraction. It may well be that a District Plan could include policies or even rules requiring water demand management and water conservation. However, no submission requested this relief and no evidence to the hearing addressed these matters. We do not consider the Council is able to make the change suggested.

(d) 3.3.1: Reflecting the impact of climate change:

Although no submission explicitly requested any specific relief in relation to climate change, the evidence presented at the hearing on behalf of the Collective Iwi discussed the importance of addressing climate change in the management

of water (including streams and stormwater drainage). The Act anticipates that a District Plan may include provisions that address the effects of climate change. We propose amendments to the infrastructure requirements for the North West Structure Plan (only¹⁵) to address climate change as follows:

Development Plan and Structure Plans

13.3.35 Require all subdivision and development in the Springvale Indicative Future Development Area (SIDP) and the Otamatea North West Structure Plan Area (OWSPA)¹⁶ to proceed generally in accordance with the provisions of the relevant Development Plan or Structure Plan to ensure that:

- a. Stormwater is managed comprehensively and not in an ad-hoc manner including, within the North West Structure Plan area only, consideration of the impacts of climate change.
- b. The transport network is consistent with the Wanganui Urban Transport Strategy 2011, and the indicative roading layout.
- c. Encourages connectivity of services and land uses with public open space.
- d. Quality urban design outcomes are achieved.
- e. Infrastructure is developed in a logical sequence, and generally designed and located as shown on the relevant Plan.

....

13.3.39 Reserve areas within the Otamatea North West Structure Plan area (Appendix L)¹⁷ shall achieve one or more of the following:

- protect historic heritage or ecological corridors; or
- facilitate stormwater management, including consideration of the impacts of climate change; or

(e) 3.3.1: Re-vegetating all disturbed areas with locally sourced indigenous plants:

It is not unusual for District Plans to include specifications for re-vegetation using locally sourced indigenous plants. No submission explicitly requested this relief and no evidence to the hearing expanded on why this requirement would be necessary. However, we note that the Council's advisers have recommended restricted discretionary activity matters for land disturbance and that these include considerations of the extent to which individual elements of cultural heritage value are affected. We consider that it would be reasonable to expand these discretionary matters to refer also to mitigation measures to address potential effects, including rehabilitation planting and the type of plant species used. This potentially responds more fully to the requested relief of recognising and providing for cultural values¹⁸. We have included some suggested wording

¹⁵ Because our jurisdiction is limited to the PC46 area.

¹⁶ Clause 16 First Schedule RMA –minor correction

¹⁷ Sub 5 Powerco Ltd

¹⁸ For example in 4.4 (a) of submission S14.

in the restricted discretionary matters listed in Rules 9.10.2 (for land disturbance) and 13.4.2 (for subdivision).

(f) 3.4.1: Reserving to mana whenua discretion over the naming of streets and areas within the PC46 Structure Plan:

We accept that the decision about naming of streets and public open space vested in the Council rests with the Council. However, we consider that it is entirely appropriate for the District Plan to encourage the use of a particular theme or character within subdivision design. The inclusion of policy encouragement for the adoption of names for streets and open spaces that associate directly with the ancestral history of this area would respond constructively, in our view, to the requested relief¹⁹ that some alternative to the name 'Otamatea' should be used. We propose some amendments to Proposed Policy 9.3.21 to address this as follows:

Cultural Heritage – Otamatea North West Structure Plan Area

9.3.21 When considering applications for subdivision consent at Otamatea North West (refer to Appendix L), Council will promote recognition of the relationship of mana whenua with their ancestral land by encouraging developers to appropriately incorporate local culture and traditions into the urban landscape by demonstrating consideration of:

- i. specific design, landscape treatment or naming of public open spaces, roads or facilities to reflect references to tūpuna, events or other cultural themes; and/or
- ii. cultural values and traditions in the design of stormwater management facilities; including avoiding the mixing of water from different catchments; and/or
- iii. names for roads, neighbourhoods, water bodies and open spaces within the subdivision which derive from or have direct association with the ancestral heritage of the locality; and/or
- iv.

(g) 3.5.1: Affordable housing and addressing social inequity:

This section of the 2018 CVR questioned whether PC46 would address housing affordability, which is stated to be an issue of concern to Iwi and Hapū. No specific requests or proposals are outlined there. Although we expect it may be possible for a District Plan to prescribe a minimum number of dwellings in any subdivision having certain affordability characteristics, we have no specifics to work with. No submission requested any explicit policy or rule change relief and no evidence to the hearing addressed this matter.

Section 3.5.1 of the 2018 CVR also requests that Iwi and Hapū have a 'first right of refusal' to buy houses that will be developed subsequent to adoption of the PC46 provisions. To accede to this request would be to override the rights of the private landowners within the Structure Plan area and we are surprised that the authors of the Report even suggested this. No submission explicitly

¹⁹ Made in submission S14 (4.4 (a)) by reference to the *Interim Cultural Values Report* page 18

requested this relief. No evidence addressed the need for or benefits of this intervention. We do not consider the Council has any jurisdiction to grant the request.

(h) 3.5.1: Incorporating cultural values into design, the role of Iwi and Hapū in authorising designs, the use of tangata whenua designs, and the request to assign a budget for incorporating cultural elements.

The discussion in the 2018 CVR refers us to a web site but does not provide any specific suggestions as to how these ideas might be translated into PC46. Whilst it is not unusual for District Plan provisions to require use of certain colour palettes or to impose restrictions of the design and appearance of buildings (for example, to achieve urban design outcomes), we have no specifics to work with. No submission explicitly requested this relief and no evidence to the hearing addressed the need for it or the benefits that would be derived. We do not consider the Council has any reasonable basis, or scope, to make any changes to the PC46 provisions in this respect.

(i) 3.6.1.4: Encouraging consents related to the subdivision to be sought at the same time:

While there is little explanation in 3.6.1.4 of the 2018 CVR, we have discussed earlier in this hearing report the risks to cultural sites associated with earthworks and land disturbance. The Council advisers' view is that it is up to applicants to choose how they seek approvals. Having said that, they also propose discretionary matters for subdivision applications that include considerations of whether land disturbance will affect any 'elements of cultural heritage'. In our view, this almost addresses the point. However, we consider a minor refinement would more fully respond to the point. We propose to include discretion over the extent of land disturbance associated with land subdivision so that the extent of land disturbance will be considered as part of any subdivision consent as follows (and in terms of scope, this falls within the relief requested by submission S14):

13.4.2.....Council restricts its discretion to:

- i. The ability of a proposal to meet the relevant subdivision and infrastructure performance standards, and rules.
- ii. The ability of the proposal to meet the relevant general urban design criteria, subdivision general and infrastructure assessment and performance criteria.
- iii. Consequences for the implementation of the Otamatea North West Structure Plan (Appendix L²⁰).
- iv. Within the North West Structure Plan area:
 - a. The extent to which any individual elements of cultural heritage value are affected²¹; and
 - b. Whether written approval has been obtained from mana whenua representatives.

²⁰ Sub 5 Powerco Ltd

²¹ Subs 11, 13 and 14 from Te Rūnanga o Tūpoho Te Kaahui o Rauru, Whanganui Land Settlement Negotiation Trust

- c. The extent of land disturbance required to implement the subdivision, including land disturbance associated with the construction of roads, pedestrian paths, stormwater detention areas, infrastructure services and site contouring.
- d. Measures to recognise and provide for the relationship of mana whenua and their culture and traditions with their ancestral lands, water, wāhi tūpuna, and other taonga.
- e. Whether a cultural impact assessment has been prepared in liaison with mana whenua for the specific development proposed, has been included with the application and any recommendations of that assessment.
- f. Mitigation measures, including measures identified in the any cultural impact assessment prepared under 13.4.2 (b), to avoid, remedy or mitigate any identified adverse effects of the activity on the cultural values, associated with any identified wāhi tapu or wāhi tūpuna site.
- g. The location and extent of any exclusion areas, buffers or setbacks; and
- h. Mitigation measures, including rehabilitation planting and the plant species used in rehabilitation planting; and
- i. The imposition of an accidental archaeological discovery protocol, as specified in Performance Standard 9.10.1 (b).

(j) **4.2: The request that decision-makers should have clear skills in tikanga Māori and be nominated by Iwi and Hapū:**

The delegation to officers and the appointment of decision-making commissioners or composition of decision-making panels requires a case-by-case exercise of a statutory power under the Act that falls outside the scope of PC46. Also, no submission explicitly requested this relief and no evidence to the hearing addressed the matter.

14 The Process and Engagement

14.1 The joint statement of evidence on behalf of the Collective Iwi to the hearing states that there had been inconsistent and inadequate engagement with the Collective Iwi about PC46²². The 2018 CVR states (in 3.1.1) that *'the process of engagement on this plan change has been very challenging for the Iwi/Hapū. It has devalued, alienated and further disconnected the whanau from their rangatiratanga, mana whenua and mana wai.'* The absence of agreement, and outright disagreement, in the table capturing the commentary of Council advisers and responses from Whanganui me Ngaa Rauru Kiiitahi dated June 2018 indicates a lack of shared understanding of some issues associated with this Plan change.

14.2 The occurrence of and the quality of engagement are relevant matters because section 8 of the Act requires all persons exercising functions and powers under the Act to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). These principles are not defined in the Act but have been established from case law from

²² Joint statement on behalf of the Collective Iwi, paragraph 5.18

various New Zealand courts. There are three principles that have particular relevance for PC46:

- the principle of active protection of the rights and interests of tangata whenua;
- the principle of partnership; and
- the principle of acting with the utmost good faith (this being a fundamental characteristic of partnership).

14.3 Our hope, in adjourning the hearing and in asking the questions we asked in our 15 December 2017 memorandum, was that this would provide an opportunity for good faith dialogue between the Council and the Collective Iwi about what active protection would look like in the PC46 provisions. We are confident that the respective parties have approached the task constructively and genuinely. However, we also observe that it has been a difficult conversation and that there does not yet seem to be a shared understanding of some important issues.

14.4 We are satisfied that the process has delivered to us the information necessary for us to complete our deliberations and formulate our recommendations to the Council. The responses we received have been most helpful and we acknowledge the patient assistance of Council officers and submitters in that process. We trust that the positive experiences and lessons learnt from PC46 will assist to strengthen the continued relationship between the Council and the Collective Iwi. Active protection can only be achieved where there is a shared understanding of values and issues.

15 Road Network and Road Connections

15.1 The Structure Plan adopted at the time PC46 was publicly notified²³ showed a network of roads, connecting at four intersections with SH3, shown in Figure 3 below.

Road 1: is a proposed new road extending west from SH3, at the northern corner of the PC46 area, providing connection to internal connecting roads:

- one culminating in a cul-de-sac in the approximate centre of the structure plan;
- one providing connection through to a future link road to Taylor Road; and
- one extending to the north to provide for future road connection clear of SH3 (in the event that land is further subdivided).

Road 2: is an extension of the existing Tirimoana Place, joining a connector from Road 1 and culminating in the same cul-de-sac from Road 1; and

Road 3: is a proposed new road extending west from SH3, between numbers 185 and 187 Great North Road, with a cul-de-sac extending north from this to provide access to numbers 193A to 193D Great North Road; and

²³ Although Ms O'Shaughnessy clarified in evidence to the hearing that Appendix L (the Structure Plan) wasn't included in the public notice.

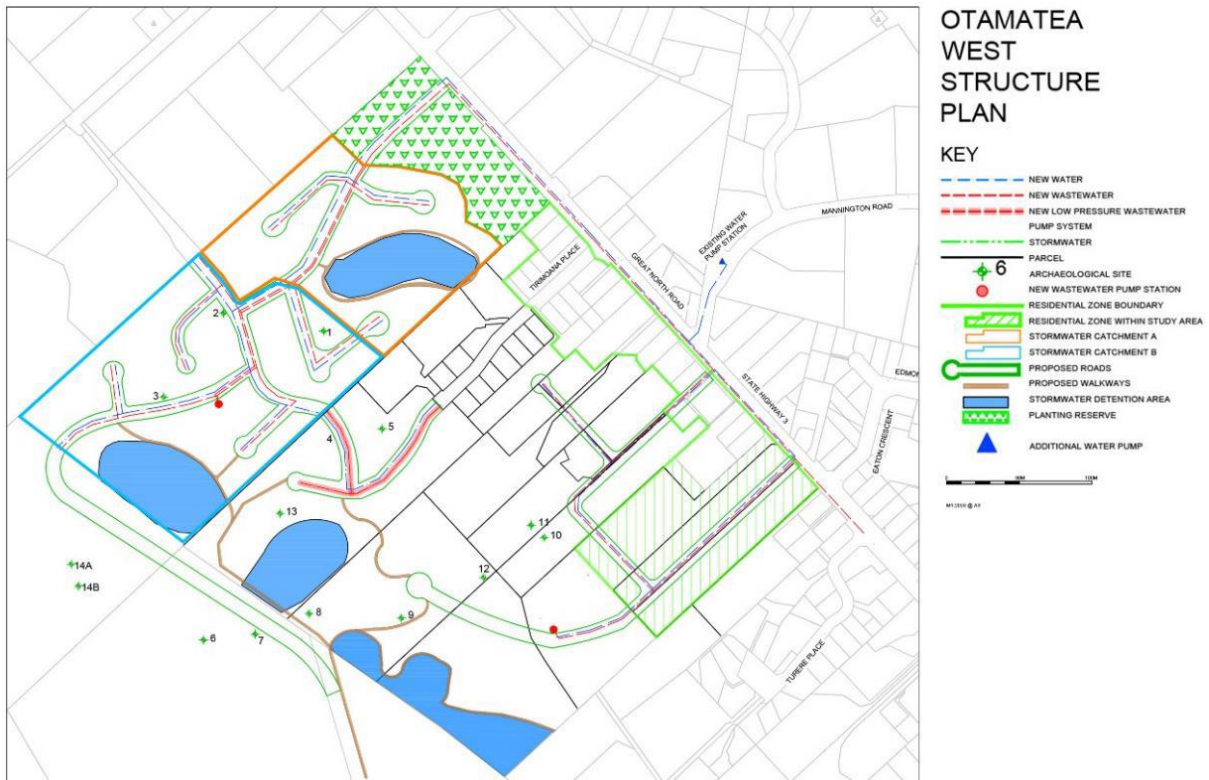


Figure 3: Road Layout Proposed by 'Otamatea West Structure Plan' (Source: Figure 12 Opus 2017)

Road 4: is a proposed new road extending west from SH3 at the southern end of the Structure Plan area, culminating in a cul-de-sac but also having a connector road extending northward, midway along proposed Road 4, linking with proposed Road 3.

15.2 Submission S15, by the New Zealand Transport Agency (NZTA), noted that PC46 did not include an integrated transport assessment to inform the layout of internal roads and had not assessed the capacity of the existing Tirimoana Place and proposed road intersections with SH3. NZTA's submission stated that PC46 needed to include a threshold specifying when the existing Tirimoana Place intersection would be upgraded to accommodate traffic growth associated with development. The submission also noted that the proposed internal road layout could benefit from greater connectivity. In particular, the submission suggests that there should be more connecting roads, rather than cul-de-sacs. The submission also recommended additional text in the policies of PC46 to emphasise the importance of a safe and resilient network and to explicitly consider the impact of development on existing or proposed SH3 intersections. We note that Council's advisers included in their amended version of PC46 (R2) amendments which directly respond to the requests set out in the submission.

15.3 NZTA lodged a further submission, in support of its first-round submission, which included an integrated transport assessment (ITA) prepared by Beca. The further submission states that local road connections should be prioritised ahead of connections with SH3, thus minimising the impact of development on SH3. The Beca ITA report estimates that PC46 could yield a maximum of 340 allotments²⁴ and that these could generate up to 270 vehicle trips in peak hours, in and out of the PC46 area. The Beca ITA included an assessment of the operation of the 'worst' intersection, in terms of traffic

²⁴ Beca *Integrated Transport Assessment* October 2017 page 20

volumes only. The report concluded that, in isolation, the intersection would perform at level of service 'A' or 'B'.

- 15.4 Submissions were received from the owners of numbers 173, 175 and 181 Great North Road (Graham and Jane Lillington, GC and SE Underwood and Barry Hodson respectively), opposing the proposed new Road 4. Mr Hodson's submission states that there is an unoccupied strip of land within his property that he understood had been reserved for a future road, and on which he has not been permitted to construct any buildings. Yet the proposed new road adopts a different alignment and would affect other land on which there are buildings. Mr Hodson's submission states that he is contemplating developing his land, including building an access road from SH3 via the unoccupied strip of land. Mr Hodson's submission also states that the proposed new road would affect a prime future building site on his land.
- 15.5 The submission by Mr and Mrs Underwood states their understanding that the strip of land along the northern boundary of their property (number 175 Great North Road, adjoining Mr Hodson's) has always been designated as access to the rear of Mr Hodson's property and that they support development of that. The submission states adamant opposition to any road along the southern boundary²⁵ of their property where it would pass through a studio and games room and slice a piece off their new garage.
- 15.6 The submission by Graham and Jane Lillington strongly objects to the proposed plan indicating a possible future road along and within the boundary of their property at 173 Great North Road.
- 15.7 Submission S04 by Geoffrey Thompson (S04) opposes the location of the connector road extending north from proposed Road 3, which would pass through the front of his property at 193A Great North Road. The submission states that the ground is unsuitable to support a new road and the existing road (shared driveway) is adequate. There are five rear allotments sharing a driveway access from SH3 between number 191 and 193 Great North Road. These allotments are large allotments and the northernmost extent of the proposed future road is intended to provide access clear of SH3, in the event that this land is more closely subdivided in future.
- 15.8 Submission S09 by Stephen Turner opposes a road alongside his property at number 187B Great North Road.
- 15.9 Submissions S01, S02, S03 and S09 were opposed by the further submission of the NZTA.
- 15.10 The section 42A report included some recommended changes to the road layout shown on the structure plan to attempt to address some of the issues raised:
- (a) Deletion of proposed Road 3 between numbers 185 and 187 Great North Road and replacing that with a relocated Road 4 and reliance on a connection from Road 4 to the area between Tirimoana Place and Road 4 (i.e. a total of three intersections with SH3, not four);
 - (b) Relocation of proposed Road 4 to the strip of land between numbers 175 and 177/181 Great North Road;

²⁵ As we read the plans, this may actually be the northwestern boundary of this property.

- (c) Realignment of the cul-de-sac extension from Road 3 north of the dwellings on numbers 193A and 193C Great North Road; and
- (d) Addition of two cul-de-sacs extending to the south from proposed Road 4 to the boundary of number 173 Great North Road.

15.11 Mr Lillington presented evidence at the hearing, emphasising his opposition to the proposed road layout. Mr Lillington also spoke at the hearing on behalf of Mr and Mrs Underwood, who were unable to attend the hearing, and emphasised their concerns about the impact of the proposed road layout on their property when they themselves have no intention to further subdivide their land. We also received a copy of an email from Mr and Mrs Underwood stating that they have no intention of selling their land. Their collective point was that the proposed roads will not be necessary because they have no desire or intention to subdivide their properties.

15.12 NZTA were represented at the hearing by Letitia Jarrett and Caron Greenhough who emphasised the importance of prioritising internal road connections to minimise the need for high volume road intersections with SH3. They also noted that the location of proposed Road 1 is within a 100 kph speed zone and that this creates an undesirable situation for an intersection there. In answer to our questions, Ms Jarrett and Ms Greenough agreed that it should be feasible to design an intersection for Road 1 that meets the usual sight distance and safety standards.

15.13 Mr Shane Stanfield is employed by WSP Opus Consultants as Civil Design Work Group Manager and he presented evidence to the hearing on behalf of the Council, addressing the submissions concerned with road layout. Mr Stanfield explained in evidence that the PC46 structure plan is essentially divided into two indicative road systems which are connected by a network of proposed walkways. Mr Stanfield described the key considerations for the roading layout as:

- Ensuring integration with the external roading network whilst limiting the number of intersections with SH3;
- Improving the potential for a road link to a longstanding paper road extension of Taylor Road to the west of the structure plan area;
- Preservation of a road link through from the northernmost part of the structure plan (the Bristol property), to allow for future development without reliance on access from SH3;
- Achieving quality urban form and a fully connected network within the constraints created by topography.

15.14 Mr Stanfield stated that the Council and NZTA wish to discourage further access driveway intersections along this stretch of Great North Road, which has a posted speed limit of 70 kph. Mr Stanfield clarified that the operative District Plan rules require a new road for the creation of seven or more allotments. He estimated that the land area of numbers 173 and 175 Great North Road has the potential for more than seven allotments (at the PC46 density) and confirmed that individual driveway or new road connections from SH3 to serve those would not be supported by the Council Infrastructure Team or NZTA. Mr Stanfield supports the deletion of proposed Road 3 and the amended location of proposed Road 4, between numbers 175 and 177 Great North Road. Mr Stanfield also supported the proposed cul-de-sacs extending south from proposed Road 3. Mr Stanfield agreed with retaining the indicative connecting road

as far as numbers 193A to 193D, as a means of minimising demand for future connections with SH3 (but with realignment to avoid the dwellings there).

- 15.15 Mr Stanfield observed that each of the three intersections with SH3 has constraints that have to be worked through to achieve a satisfactory level of intersection safety, but he was confident this could be achieved. He clarified that all three intersections have potential to achieve the recommended site distance requirements, which is an important part of any intersection upgrade. Mr Stanfield did not share NZTA's concern that three intersections with SH3 would be too many. It was his evidence that, from a network operating viewpoint, three road intersections would be beneficial because this would minimise the potential for congestion at any of the intersections. Mr Stanfield's opinion was that spreading the vehicle movements via three intersections will also help to improve intersection safety by decreasing the number of users at each. Ms Greenhough commented that there is no evidence of congestion being created by the level of development proposed under PC46. In answer to our questions, Ms Greenhough agreed with Mr Stanfield that it would be possible to design SH3 intersections that meet usual safety requirements and that, in any event, NZTA has the sole power to authorise new and upgraded intersections with SH3.
- 15.16 The roading layout shown in the PC46 structure plan is an exercise in planning for the future. It seeks to achieve a coherent and well-connected system of roads and walking pathways by signalling these as indicative roads on the District Plan maps. This outcome would be much more difficult to achieve through piecemeal consideration of individual applications for subdivision consent, particularly in this area where there are multiple landowners. The initiative by the Council of attempting to plan well-connected future neighbourhoods in this way should, in our view, be applauded.
- 15.17 Having said that, we are not persuaded that the proposed cul-de-sacs extending south from (amended) Road 3 are beneficial, relative to the impact these have on the property at number 175 Great North Road. Council's advisers have recommended, in PC46 (R3), that these two cul-de-sacs be deleted, and we endorse that recommendation.
- 15.18 We accept Mr Stanfield's evidence that the proposed connector road north from proposed Road 3 should be extended as far as the rear properties numbered 193A to 193D Great North Road and we agree it should be realigned further from the dwellings on 193A and 193C.
- 15.19 Our conclusion is also that the three proposed roads are appropriate, including the relocation of the southernmost road to pass between numbers 175 and 177 Great North Road. We are reassured by the agreed evidence on behalf of NZTA and the Council that it will be possible to design safe intersections for the two new roads and for the future upgrading of Tirimoana Place when development generates sufficient traffic to warrant that.
- 15.20 The only amendments to PC46 that we recommend, in response to the submissions, are the following which mirror those proposed in PC46 (R3) and the accompanying amended Structure Plan:

- (a) the inclusion of the additional text in policies 4.3.9 and 4.3.10;
- (b) deletion of proposed Road 3 from between 185 and 187 Great North Road;

- (c) relocation of proposed Road 4 to follow the narrow strip of land between numbers 175 and 177 Great North Road;
- (d) renaming of the relocated southernmost road as 'Road 3';
- (e) deletion of the two cul-de-sacs extending south from proposed Road 3; and
- (f) realignment of the cul-de-sac extending from proposed Road 3 further from the dwellings on numbers 193A and 193C Great North Road.

16 Requests to Expand the PC46 Area

16.1 Three submissions requested that PC46 be extended to include additional land:

- Submission S06 (Robert Chamberlain) requested that PC46 be extended to the right-hand side of Sandcroft Drive as far as the city boundary;
- Submission S08 (Bennett Family Trust and DWA Bennett) requested the extension of PC46 to the southwest to reach properties on the eastern side of Sandcroft Drive and, as a further PC46B extension, to Tayforth Road;
- Submission S10 (Graeme Young) requested an extension to the proposed re-zoned area to include land adjacent to Sandcroft Drive.

16.2 All of the areas referred to in these submissions are large areas of land.

16.3 Ms O'Shaughnessy's advice, in the section 42A report²⁶, is that submissions S06, S08 and S10 are beyond the scope of PC46 as publicly notified. Ms O'Shaughnessy explained that the options for defining the boundary of the *Residential Zone* extension at Otamatea were canvassed in the Scoping Report presented to the Council in December 2016. These options did not include the additional land referred to in these three submissions. Ms O'Shaughnessy's view is that no opportunity has been provided for people potentially affected by the rezoning of that additional land to consider or make submissions on these rezoning proposals. That raises an issue of potential procedural unfairness if the Council were to grant the requested relief.

16.4 NZTA and Powerco, in their further submissions opposing these submissions, also noted that there has not been an opportunity to consider the implications that rezoning would have for infrastructure networks. We share those concerns. There was no evidence presented to the Hearing examining the transport or infrastructure network implications of the requested rezoning extensions and we agree that they are not within the scope of PC46. It is of course open to the Council to respond to these requests separately from PC46. We have no recommendation to make in that regard.

²⁶ More particularly, in the *Submission Summary and Recommendations* contained in Appendix 3 to the s. 42A report.

17 Conclusion and Recommendations

- 17.1 The residual issues to be resolved for PC46, arising from submissions, relate to how PC46 responds to the cultural values associated with ancestral land and the roading layout shown in the PC46 Structure Plan.
- 17.2 Most of the matters the Council has to determine, in respect of submissions on PC46, are to do with how the Council can recognise and provide for the relationship of Iwi and Hapū and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. That there is a special and strongly-felt relationship was not disputed by any party to the hearing. In this case, the relationship and values are held by people who, through circumstance of history, no longer own the land. That does not diminish the ancestral values associated with the land nor the obligation on a consent authority under section 6 (e) of the Act to *recognise and provide* for the relationship. We have suggested amendments to the text of PC46 that attempt to both recognise and provide for that relationship.
- 17.3 We endorse the amendments proposed by Council's advisers relating to road layout (shown in Attachments 1A, 1B and 1C to this hearing report). We also endorse many of the amendments proposed by Council's advisers to address the cultural concerns. We have made further amendments to those, contained in Attachment 1 to this hearing report. In summary, the recommended amendments:
- (a) Delete the *Heritage Alert Overlay* and replace that with objectives, policies and rules that seek to identify and protect cultural heritage and more explicitly recognise and provide for the relationship of tangata whenua with their ancestral lands and associated values;
 - (b) Include more detailed explanation of the cultural significance of this area, the cultural values present and the nature of the relationship of tangata whenua with ancestral lands;
 - (c) Change the name of the PC46 Structure Plan from 'Otamatea West' to 'North West Structure Plan';
 - (d) Include new definitions for 'wāhi tapu', 'wāhi tūpuna' and 'wāhi tūpuna site';
 - (e) Include additional text to the infrastructure policies to address the issues raised by Powerco and NZTA;
 - (f) Require a comprehensive assessment to identify whether there are wāhi tapu and wāhi tūpuna sites within the PC46 Structure Plan area, in addition to those already recorded in Appendix K of the District Plan. The assessment is also to identify the implications these sites may have on the form of development and road layout. This assessment is to be done before subdivision and development proceeds, to ensure any sites present are able to be protected;
 - (g) Include the discretion to impose a requirement for accidental archaeological discovery protocol on subdivision and impose a protocol as a condition of land disturbance consents.

17.4 The Panel recommends that the Council:

- (a) Considers and confirms this hearing report and publishes it together with the Council's decisions on submissions to PC46; and
- (b) Considers and confirms the amendments to PC46 proposed in Attachments 1, 1A, 1B and 1C to this hearing report; and
- (c) Accepts in part or rejects the submissions to PC46 as detailed in Attachment 2 to this hearing report; and
- (d) Adopts a section 32AA evaluation report based on the draft contained in Attachment 5 to this hearing report for publication with the finalised version of PC46.



Signed by Commissioner Christine Foster (Panel Chair)

on behalf of the Hearing Panel (Commissioner Rau Kirikiri, Councillor Alan Taylor and Commissioner Christine Foster)

30 August 2018

PLAN CHANGE 46 – ATTACHMENT 1

HEARING PANEL'S RECOMMENDED AMENDMENTS TO THE PUBLICLY NOTIFIED PC46 TEXT

PLAN CHANGE 46 – ATTACHMENT 1A
NORTH WEST STRUCTURE PLAN – DISTRICT PLAN APPENDIX 'L (A)'
AS RECOMMENDED BY HEARING PANEL

PLAN CHANGE 46 – ATTACHMENT 1B
NORTH WEST STRUCTURE PLAN – DISTRICT PLAN APPENDIX ‘L (B)’
AS RECOMMENDED BY HEARING PANEL

PLAN CHANGE 46 - ATTACHMENT 1C
CHANGES TO ZONING SHOWN ON DISTRICT PLAN MAPS
AS RECOMMENDED BY HEARING PANEL

PLAN CHANGE 46 – ATTACHMENT 2
HEARING PANEL’S RECOMMENDATIONS ON SUBMISSIONS

PLAN CHANGE 46 – ATTACHMENT 3

LIST OF PEOPLE WHO PRESENTED EVIDENCE TO THE PC46 HEARING

PLAN CHANGE 46 – ATTACHMENT 4
HEARING PANEL'S 15.12.17 MEMORANDUM

PLAN CHANGE 46 – ATTACHMENT 5
HEARING PANEL'S DRAFT S. 32AA EVALUATION REPORT IN SUPPORT OF RECOMMENDED
AMENDMENTS TO PC46