

IN THE MATTER of the Resource Management Act 1991

AND application to the Far North District Council

BY Inlet Estate Limited

**FOR Private Plan Change 22 to the Far North District Plan relating to
Lot 1 DP 404507 and Lot 1 DP 181291 (17 and 17A, Kerikeri Inlet
Road, Kerikeri to rezone land from Rural Living to Residential**

DECISION REPORT:

**WITH RECOMMENDATIONS TO THE FAR NORTH DISTRICT COUNCIL ON THE
PROPOSED PLAN CHANGE AND THE SUBMISSIONS**

1.0 INTRODUCTION AND SUMMARY OF RECOMMENDATIONS AND DECISION

This decision report identifies the recommendations and decision that the appointed Hearings Commissioner ("**the Commissioner**") has made on behalf of the Far North District Council ("**the Council**") in relation to the request for a change ("**the plan change**") to the Far North District Plan ("**the District Plan**") in accordance with the Resource Management Act 1991 ("**the RMA**").

This report provides an account of the process leading through to the recommendation to the Council on the plan change; the recommendations to the Council on decisions on the submissions to the plan change and the modifications to the plan change.

My recommendation is that Proposed Plan Change 22 be approved, with some modifications, and that the submissions be accepted, accepted in part, or rejected in line with that recommendation.

2.0 BACKGROUND

Inlet Estate Limited ("**the applicant**") lodged a private plan change request with the Council to rezone land at 17 and 17A Kerikeri Inlet Road, Kerikeri from the Rural Living zone to the Residential zone. Mr Scott in his s42A Report at Section 1.2 described the site and surrounding area and as a result of my visit to the sites and surrounding area I generally concur with his description. He stated:

"The two parcels of land ("site") subject to PPC 22 are located at 17 and 17A Inlet Road, Kerikeri.

The properties are located on the north western side of Kerikeri Inlet Road, approximately 150m north east of the intersection of Cobham Road, Kerikeri Inlet Road and Shepherd Road.



Figure 1: Locality Plan - 17 and 17A Kerikeri Inlet Road

Running generally along the northern boundary of the site is the Wairoa Stream which has dense vegetation along either side of its riparian margins containing a mix of native and exotic trees and plants of varying maturity. On the site's western boundary are small rural lifestyle holdings (86 Cobham Road, 7, 11, and 15 Kerikeri Inlet Road) each containing a single dwelling. The site also adjoins 66 Cobham Road, which has recently been rezoned, subdivided and developed by way of a combined private plan change and resource consent (Plan Change 2) from Rural Living to Residential and is currently being comprehensively developed as Orchard Estate. The margins of this stream adjoining the site have been vested with the Council (as with the adjoining site comprising Orchard Estate) and it is understood that a 10m wide esplanade reserve was taken by the Council as part of that previous change and development proposal.

To the southeast the land has a marked horticultural and rural character but also includes the Kerikeri Wastewater Treatment Plant (20 Kerikeri Inlet Road). This area includes the usual components of rural production including horticultural plantations, tall shelter belts production/packing sheds and associated dwellings. Rural lifestyle activities also co-exist with rural/horticulture production activity in this locality. Overall, the mix of rural production and lifestyle activities retains an overall sense of ruralness and character.

The Kerikeri town centre is located to the west of the site and accessed via Kerikeri Inlet Road and Cobham Road and is approximately 1.3km away or 15 minutes' walk."

The report addressing details of the plan change and the submissions and further submissions was prepared for the Council by an independent planning consultant, Robert Scott, in accordance with Section 42A of the RMA. That report is hereinafter referred to as **"the planning report"**. That comprehensive planning report includes all the relevant statutory considerations. The recommendation in the report is that the plan change be approved, with some additional provisions relating to building setbacks from the boundaries, associated landscape planting and access/egress to the sites.

3.0 THE APPLICATION

3.1 Private Plan Change

The plan change seeks to change the existing Rural Living zoning of the sites to the Residential zone of the District Plan with some minor changes sought to the objectives, policies or rules of the Residential zone as they would apply to the sites.

The permitted subdivision density is greater under the Residential zone than for the current Rural Living zone. The Residential zone provides for a minimum site size of 3,000sqm for unsewered sites or 600sqm for sewerred sites as opposed to the Rural Living zone which has a minimum site size of 4,000sqm. The land would not be considered (at this stage) to be sewerred in terms of the District Plan because it is not provided with an onsite wastewater treatment and disposal system. The result of the plan change would then be to allow for more intensive development of the land if and when it was deemed to be sewerred.

The environmental outcomes expected in the existing Rural Living Zone and the objectives and policies for the zone were set out in section 1.3 of the planning report and the objectives and policies for the Residential zone were set out in section 1.4 and have been taken into account when making my decision and recommendations.

3.2 Preparation of Application

The application was prepared by consultants Williams & King and included a number of specialist reports and other information provided as part of responses to Section 92 RMA further information request from the Council.

4.0 APPOINTMENT

The Council appointed me (William Smith) as Independent Hearings Commissioner to hear the application and to make a recommendation on the plan change and recommendations on the decisions to the submissions to the plan change. I am experienced in that role and familiar with the Northland region. I was also one of the Independent Hearings Commissioner who considered the subdivision and development at 66 Cobham Road, otherwise known as "Orchard Estate" (adjacent to the sites) which was subject to a Private Plan Change (PPC 2) and which is currently nearing completion.

Prior to the hearing I had the opportunity to consider the details of the plan change and the submissions (including the further submissions received to submissions on the plan change) and, the Council's planning report. I had also read the pre-circulated expert evidence from the applicant's experts'. I visited the sites and locality the day before the hearing.

5.0 THIS DECISIONS REPORT

In this decisions report I provide commentary on the matters I am to have regard to in terms of the RMA in assessing the plan change. I record the views I have reached on each matter

as the basis for my recommendations relating to the plan change from the information provided and the evidence presented at the hearing.

6.0 THE HEARING

The hearing was initially set for Thursday 2 August and Friday 3 August 2018 at the Kerikeri Sports Complex in Kerikeri but as it transpired the hearing took place on Thursday 2 August between 9am and approximately 2.30pm. Appearances were from:

6.1 Applicant

Alan Webb, Legal Counsel
Natalie Watson, Planning Consultant
Michael Winch, Traffic Engineer
John Papesch, Engineer Consultant
Simon Cocker, Landscape Architect
Keith Day and Tricia Scott, agents for the applicant (did not speak)
Rewi Bugo, Inlet Estate (did not speak)

6.2 Submitters and others in attendance

John Law
Ian Cambourn
Carol and Tim Rudolph
Peter Ibbotson representing Mark Feldman
Jane Johnston, representing Kerikeri Ratepayers Association and Paihia & District Residents & Ratepayers Association.
Julie Clearwater, Kerikeri Ratepayers Association (did not speak)
Maiki Marks, Chair, Paihia Ratepayers Association (did not speak)
G Adams and Karan Hawtin (did not speak)

6.3 Council Officers

Robert Scott, Consultant and Reporting Planner
Jan Woodhouse, Consultant Landscape Architect
Greg Wilson, Manager District Planning
Andrew McPhee, Senior Policy Planner
Ben Perry, Engineering Consultant, Vision Consulting
Makarena Dalton, Policy Planner and Alice Hosted, Policy Planner, Observers
Jeanette Bosman, RMA Support Officer

Following the submitters' evidence and the response from Council Officers' and Consultants, Mr Webb requested time for the applicant to provide the right of reply in writing. I agreed to

this request and the applicant's representatives were given until 4pm on Thursday 9 August 2018 to provide the Council with the written right of reply. I also directed that once the reply was received the Council staff were to forward the reply (for information only) to the parties that had attended the hearing. Once I had considered the right of reply and decided that I had received enough information/evidence to enable me to make a decision and recommendations on the Plan Change to the Council I closed the hearing at 10am on Monday 13 August 2018.

I have not provided a summary of the legal submission or evidence presented at the hearing as the submission and evidence presented are on Council's files and forms part of the record of the hearing. However, the discussion below on the issues raised in the submission and evidence, and the matters I needed to have regard to, covers the main points that were taken into account and those that contributed to the recommendations I have made on the plan change and the submissions.

Most submitters spoke to their original submissions (which I had read). However, Mr Ibbotson on behalf of Mr Feldman tabled and read a statement regarding his opposition to the plan change which focused on the issue of traffic and parking congestion (as he sees it) within Kerikeri. He referred to a number of policies and objectives which he considered the plan change, if approved, would be in violation of. I have re-read and considered this statement while making my decision and recommendations.

Also, Ms Johnston on behalf of the Kerikeri Ratepayers Association and Paihia & District Residents and Ratepayers Association tabled and spoke to number of documents and also referred to a number of documents that had been forwarded to Council via e-mail. I advised Council staff that all of the documents that Ms Johnston was referring to must be provided (if not already done so) to Mr Webb (counsel on behalf of the applicant) and myself so that I could read them and take them into account when making my decision and recommendations. The documents were provided to me on Friday 6 August 2018, have been read by me and taken into account (where relevant) when making my decision and recommendations. The documents are on council file and form part of the record of the hearing and I have given a brief description of them below:

- Map 5 showing planned council projects within CBD area, KK/W SP (indicative only).
- Notes re capacity for PPC 22 with paragraphs highlighted.
- Letter 11 October 2016 from FNDC to KKRK re LGOIMA Request RFS3782784.
- Kerikeri Wastewater Capacity Questions – How many connections are there likely to be ?
- Note to Council from Alec Cox regarding LTP errors.
- Open letter to Mayor and others dated 25/7/2018 re Proposed Kerikeri South Eastern Bypass.
- Latest news (from FNDC website) latest dated 21/11/2016.
- Letter to property owner(s) re Agreement for Public & Private Drainage Works.
- Letter dated 19/9/2016 from KK Ratepayers Group to Mayor and Acting CEO.
- Slide 6 from presentation of KKW Structure plan on 20/8/2009.
- Attachment 1 to submission from Kerikeri Ratepayers and cut and pasted items.
- FNDC Development Contributions Policy – not requiring contributions years 2015 to 2018.
- Questions and answers in regards to KK wastewater project.

In addition Ms Johnston provided a written statement of her evidence as to the relevance of each document that she had tabled. Again I have taken this into account (where relevant) when making my decision and recommendations.

As I have said above the Applicant's right of reply was received on 9 August 2018 and a general summary is shown below. Included with the right of reply was a letter from Messrs Winch and Papesch of Haigh Workman Limited dated 3 August 2018 providing some reply evidence in relation to the addition of the four properties at 7, 11 and 15 Kerikeri Inlet Road and 86 Cobham Road being added to the Plan Change and being rezoned Residential and a copy of the Environment Court Decision No. (2017) NZEnvC 187 dated 10 November 2017.

The conclusion in the Haigh Workman Limited letter after considering the subdivision potential of the four properties, a brief traffic assessment, geotechnical, stormwater, water supply and wastewater issues was that:

"We conclude that there are no engineering impediments to the four properties being rezoned Residential. However, there are engineering issues that would need to be addressed at the time of subdivision".

In relation to the Environment Court decision Mr Webb's opinion was that " given the proposal to extend the area of PC22 arose directly out of a submission from the public, there is scope to decide that such a change can be allowed".

I have read the Environment Court decision and have taken it into account when making my decision and recommendations. I note for the record that all four property owners submitted on PC22 for their property to be rezoned Residential.

Mr Webb's synopsis reply focused on a number of "topics" being:

- Number of lots in PC22 – being 48 lots (45 for IEL and 3 on the Orr property).
- Home Occupations (scale of activity and traffic).
- Area of benefit (AoB).
- Studies relied on.
- Inclusion of additional 4 lots and IEL view that it has no objection in principle to 4 lots being added to PC22 but only so long as there is no delay for IEL and that there are some issues with the 4 lots around infrastructure, traffic and landscape.

7.0 SUBMISSIONS

7.1 Plan Change

37 submissions were received. 19 submissions supported the Request as notified, 7 submissions supported or opposed the Request in part (subject to changes requested) 9 submissions opposed the Request as notified and 2 submissions were neutral. 4 further submissions were received.

A copy of the submissions and further submissions were included in the planning report and a table summarising the relief sought and the matters raised were annexed to the report as Attachment 3a. In general the submissions raised the following matters/issues:

Submissions in support included the demand for residential development, efficient use of land/site suitability, provision of infrastructure is appropriate, traffic effects (access, safety, speed and generation, landscape and rural interface, rezoning is consistent with the structure plan.

Submissions in opposition included rural character effects, residential density, creation of an “island effect”, provision of infrastructure necessary for residential development is not appropriate, reverse sensitivity, cultural/maori, include adjacent sites in plan change, flawed assessments/figures, traffic safety effects (access, safety speed and generation).

7.2 Late Submission

One submission was received by the Council two days after the closing date for submissions. It was from Fredrick Walter Terry and Mr Scott recommended that the late submission be accepted because it did not raise any new issues and no parties would be disadvantaged as a result of the submission being accepted. Neither the applicant, council or submitters opposed acceptance of the submission.

Sections 37 and 37A RMA provide for the waiver or extension of time limits and set out the matters that must be taken into account when considering such waivers. From my perusal of the submission I formed the view that there was no advantage or disadvantage to the interests of the applicant, the council or to other submitters from accepting the late submission.

Pursuant to Section 37 of the Resource Management Act, I hereby extend the time period for the receipt of submissions in order to accept as valid the submission from Fredrick Walter Terry because:

- The submission was not unduly late (only two working days late).
- The interests of no persons are in my opinion directly affected by the extension. The submission includes matters that were also raised in other submissions, the submitter does not wish to be heard and no parties expressed any views one way or the other on the matter of accepting the late submission.
- No unreasonable delays have been created by my acceptance of the submission.
- I am of the view that no person will be disadvantaged or prejudiced in this late submission.

8.0 STATUTORY CONTEXT

8.1 Plan Change

The planning report at sections 3.1 and 3.3 included a summary of the matters which are to be considered with respect to private plan changes. This assessment was not challenged by

any other expert but I do note that Ms Johnston did raise the matter of the section 32 evaluation not being adequate. Both Ms Watson and Mr Scott considered that the section 32 evaluation was adequate and covered all the statutory requirements. In addition, Mr Webb submitted that a very careful and full s32 analysis had been provided and that his opinion was that the statutory obligation had been sufficiently discharged.

Section 74 of the RMA sets out the matters to be considered by a territorial authority in preparing or changing its district plan. These matters include doing so in accordance with its functions under Section 31, the provisions of Part 2 and its duty under Section 32. Further, also having regard to other documents, including regional planning documents, management plans and iwi management plans, to the extent that their content has a bearing on resource management issues of the district.

Section 75 of the RMA, in addressing the contents of district plans, requires that a district plan must give effect to any regional policy statement and must not be inconsistent with a regional plan.

Section 31 addresses the functions of territorial authorities under the RMA and includes:

- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district;*
- (b) the control of any actual or potential effects of the use, development, or protection of land,...*

Section 32 and 32AA RMA provides for the consideration of alternatives, benefits, and costs and requires that an evaluation must be carried out and that an evaluation must examine:

- (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
- (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

For the purposes of this examination, an evaluation must take into account the benefits and costs of policies, rules, or other methods. A further evaluation is also required by the local authority before making a decision on the plan change.

Part 2 of the RMA, being the purpose and principles of the statute, is the overarching part of the RMA. Regard is to be given to all matters within it.

Clause 29 of the First Schedule states that after considering a plan change a local authority may decline, approve or approve with modifications that plan change and shall give reasons for its decision. Clause 10 of the First Schedule states a local authority must give a decision on the provisions and matters raised in the submissions and must include the reasons for accepting or rejecting any submissions. In doing so a local authority may address the submissions by grouping them according to the provisions of the plan change to which they relate or the matters to which they relate and, may include matters relating to any consequential alterations necessary to the plan change arising from the submissions. A local authority is not required to give a decision that addresses each submission individually. For the purposes of this report I have grouped the submissions.

Also, any Plan Change must be assessed in terms of Part 2 of the RMA (Purpose and Principles), including:

- (a) Determining whether the Plan Change achieves the sustainable management of natural and physical resources within the purpose of the RMA (s5);
- (b) Recognise and provide for matters of national importance under the RMA (s6);
- (c) Having regard to 'other matters' listed at s7 of the RMA;
- (d) Taking into account the principles of the Treaty of Waitangi (s8).

Mr Scott also outlined in his report that, the Supreme Court decision in *Environmental Defence Society Inc v New Zealand King Salmon Co Limited* is considered relevant to the application of Part 2 when considering plan changes. He stated that when determining a plan change, the Supreme Court held there was no need to have general recourse to Part 2 in giving effect to a higher order statutory document which was itself developed in accordance with Part 2 of the Act.

9.0 EFFECTS CONSIDERATIONS

9.1 Site Suitability

As part of the application the Requester had provided a comprehensive planning report to support the Private Plan Change and included reports and components from various experts which included the following:

1. Planning assessment and section 32 RMA assessment
2. Landscape and visual effects assessment
3. Infrastructure engineering assessment
4. Geotechnical engineering assessment
5. Stormwater engineering assessment
6. Traffic engineering assessment
7. Contamination assessment and remediation report
8. Archaeological assessment
9. Residential zoned land latent capacity study

These reports had been reviewed by Council staff, consultants and experts in various disciplines and they were in general agreement with the findings within the reports.

I did not receive any expert evidence to refute the findings of the applicant's or the council's experts.

No concerns were raised regarding the general suitability (geotechnical etc) of the land for development. The engineering report by Haigh Workman Ltd was peer reviewed by Vision Consulting on behalf of the Council and as a result it was stated by Mr Scott in his report that:

"I agree with this conclusion and consider that expected earthworks would be of nature that is expected for a residential development and that its effects can be adequately managed through

the adoption of established best practice and ensured through the subdivision and development consent process. Accordingly, any adverse geotechnical or site works effects will be avoided remedied or mitigated."

Overall, I consider that sufficient information has been provided which demonstrates that the sites are suitable for the intended purpose.

9.2 Earthworks and Vegetation Removal

The application and planning report stated that as the site is relatively flat (I observed this during my visit to the sites) no significant bulk/site preparation earthworks or retaining works would be required for the proposed residential development other than stripping and shaping to create access, internal roads and subdivision infrastructure. The planning report also referred to the estimate of site preparation earthworks being 4000m² in area and 3000m³ in volume and this would trigger the requirement for resource consent at subdivision stage but that earthworks for individual residential sites would likely meet the permitted standard in the district plan.

In regards to any possible contamination of the site I was also told that the site had been subject to a Detailed Site Investigation by the Requester involving 165 samples taken and analysed across the property. Four areas were found to contain arsenic in the surface soil exceeding levels in the National Environmental Standard for residential land use. The report recommended remediation of the contaminated areas and the remediation action plan accords with the NES.

When I undertook my visit to the sites it was clear to see that most of the previous vegetation had been removed except for a number of large palm trees as you enter the property. Some new shrubs had been planted around the perimeter of the sites.

Providing the remediation of the site and the remediation action plan are followed through I am satisfied that any adverse contamination effects can be avoided, remedied or mitigated.

Overall, I am satisfied with the evidence given in relation to the potential adverse effects of earthworks on the site, the removal of vegetation (most of which had been completed), and the usual arrangements for sediment control and other measures that can be put in place during future subdivision or development of the sites.

9.3 Infrastructure

The provision of infrastructure, primarily wastewater disposal, stormwater management and water supply are fundamental to the consideration of the plan change. Some initial comments on infrastructure are shown below and expanded further on within this report under each heading.

The intention is to connect to the Council's Kerikeri Wastewater Treatment Plant once a planned upgrade and expansion had occurred and the Requester had submitted a letter dated 10 July 2017 from Mott Macdonald Limited on behalf of the Council confirming that as the detailed design process had progressed that additional properties were identified and agreed to be included in the new network and that the land as part of the plan change had been allocated 45 properties (connections). However, if the public network system was not

available the Requester had the option of installing on-site systems designed specifically for the sites at time of subdivision.

The evidence from both the Requester's and Council's experts was that the wastewater treatment and disposal could be via the Council's public network system but that if for any reasons that was not possible that on site treatment could be carried out on the sites with effects that are no more than minor.

Ms Johnston disputed that connection could be made as the public network system did not have the capacity to allow further connections. She also questioned how the Council could advise the Requester that they could connect when the sites were outside the Area of Benefit, there was no council policy to allow connection and that the figures being used were flawed.

Water supply to the sites was to be provided via the council's reticulated water supply subject to approval at the time of subdivision and if this was not possible it is proposed to provide 25,000 litre water tanks for each residential property and two 25,000 litre water tanks for firefighting purposes. The engineering experts were in agreement with the arrangements for future water supply and although Mr Scott did consider the uncertainty regarding water supply to be less than ideal he stated that the adverse water supply effects of the proposed plan change could, in his view, be avoided, remedied or mitigated.

9.4 Stormwater

Stormwater will be dealt with by a range of 'green engineering' principles being adopted to achieve hydraulic neutrality (ie no increase in pre-development peak flows) involving a primary system of rain gardens, swale drains, cesspit inlets, piped stormwater reticulation network and rock lined outfalls and a secondary system of swale drains and roads lower than surrounding houses and overland flows paths through drainage/access paths to Wairoa Stream.

The Request was supported by a separate stormwater assessment prepared by Haigh Workman and this was reviewed for the Council by Vision Consulting and focused on the stormwater management approach adopted and concluded that the report had been prepared in accordance with standards for the Far North District Plan, the Regional Policy Statement for Northland, Regional Water and Soil Plan for Northland and the proposed Regional Plan for Northland, and considered to be appropriate. On this basis Vision Consulting concluded that there were no identified adverse stormwater effects from a future residential zoning that cannot be avoided, remedied or mitigated.

No expert evidence was given to refute these findings and the issue of stormwater was not raised by any submitter at the hearing. The evidence on the disposal of stormwater was that stormwater management could be arranged with no resultant adverse effects on the environment in relation to downstream impacts or effects on local ecology and water quality. These conclusions were subject to the proposed measures to control stormwater being implemented as designed.

I am satisfied that adequate provision for stormwater disposal can be provided for the sites and that the current District Plan has sufficient provisions to require conditions to be imposed at the time of subdivision or development of the sites which require appropriate stormwater

disposal systems to be implemented. Based on the evidence before me I am satisfied that there was sufficient stormwater infrastructure available for the future development of the sites and could be satisfactorily arranged with no adverse effects of more than a minor nature on the environment.

9.5 Wastewater

The subject of the provision of wastewater to the sites was included in a number of submissions and Ms Johnston spoke to the submissions from the Kerikeri Ratepayers Association and the Paihia & Districts Residents and Ratepayers Association and tabled a number of documents at the hearing regarding the opposition to the Plan Change and opposition to the sites being provided with wastewater services. Some of the concerns were the sites being outside the area of benefit (AoB), there was no Council policy to allow sites outside the AoB to connect to the wastewater system and the numbers/projections being used for future demand were flawed.

Neither of the sites is currently serviced by a reticulated wastewater system and both sites fall outside of the AoB for planned additional wastewater reticulation when the Kerikeri Wastewater plant is upgraded. I was told that while the AoB does not form part of the district plan, it is used by the Council as a strategic planning guide for the planned expansion of reticulated wastewater services. The AoB includes most land already zoned for residential (and other urban zones) development plus other land identified for future urban expansion as indicated in the Kerikeri Structure Plan. The purpose of the AoB is to identify which properties are rated for the provision of wastewater services and must be granted permission to connect to these services, that the Council is not obliged to allow any sites outside the AoB to connect but has the discretion to allow sites outside to connect.

Mr Webb in his reply referred to the non-statutory nature of the AoB document and stated that the decision to allow connection was at council's discretion subject to the necessary resolution being passed.

Mr Scott stated that his understanding was that the AoB mapping does prohibit sites from being considered for connection to reticulated wastewater services. However, attached to the s42A Report was a letter received by the Requester from Council's engineering consultant (Mott MacDonald) where they had confirmed, on behalf of the Council (my underlining), that provision had been made in the design of the proposed expansion of the existing wastewater treatment plant for an extra 45 lots (allocated for the sites) in addition to those sites within the identified AoB. This letter also referred to two other sites outside of the AoB being offered connections.

Discussions between the Requesters experts and Council officers had revealed a preference for a small diameter pressurised sewer (rising main) or gravity sewer and pump station to service any future upgraded sewer system and the assessment included indicative designs for this. I was also advised that until reticulated upgraded wastewater connection is available, the Requester proposes to restrict any residential development to a minimum lot size of 3,000m² to enable suitable on-site wastewater treatment and disposal. The assessment provided basic calculation and designs for an on-site treatment and disposal system and it was confirmed at the hearing that on-site treatment and disposal could be provided if needed.

The submission from Council's Infrastructure and Asset Management Department (IAM), also referred to the sites being outside the AoB and confirmed the additional capacity for 45 lots shown in the Mott MacDonald assessment. The submission also noted that the density or number of sites created may need to be constrained until such time as wastewater infrastructure is upgraded, that infrastructure would need to be upgraded at the developer's own cost, that should the plan change be approved it is expected that specific design details will be provided at the time of subdivision.

The wastewater assessment carried out on behalf of the Requester had been reviewed by Vision Consulting on behalf of the Council and it supported the conclusions reached.

On the basis of the expert evidence before him, Mr Scott's opinion was that any adverse wastewater effects can be managed by on site wastewater systems prior to the planned upgrade of the Kerikeri wastewater system and through connection to reticulated services following the planned upgrade and that any adverse effects will therefore be avoided, remedied or mitigated.

Although Ms Johnston tabled and raised a number of issues regarding the provision of wastewater, the AoB, council policy, flawed figures and lack of capacity allowed for there was no expert evidence to refute the Requester's or the Council's expert evidence that a suitable wastewater system (whether it be on site or connected to the public reticulated network) could be made available for the sites. If connection is not available constraints may need to be imposed on any subdivision or development but this does preclude the plan change being approved.

I am satisfied from the evidence before me that, if necessary, the sites can rely on on-site wastewater treatment and disposal until connection can be made to the new public wastewater system and any adverse effects can be avoided, remedied or mitigated.

9.6 Traffic and Roading

The application included a report on the transportation effects of the Request and stated that the total number of estimated traffic movements for the residential development is expected to be between 320 to 480 vehicle movements per day (vpd) based on 48 residential lots and that the traffic could be readily accommodated on Kerikeri Inlet Road and the local network. It also stated that a rule was required to provide a single vehicle access to the site and also recommended at least 115 metre visibility in each direction and concluded that this could be achieved at multiple points along the frontage of the sites.

In the planning report it was recommended that the 115 metre visibility requirement form part of the rule and Mr Scott proposed the following amendment:

15.1.6C.1.1 PRIVATE ACCESSWAY IN ALL ZONES

(e) Vehicle access shall not be permitted:

- (vi) Onto Kerikeri Inlet Road from Lot 1 DP 404507 or Lot 1 DP 181291 (and any sites created as result of a subdivision of these lots), except from a single vehicle crossing or intersection with at least 115m visibility in each direction.*

The transportation assessment also included an analysis of a single intersection/access into the sites and concluded that this would operate safely with an adequate level of service due

to good sight lines in both directions along the frontage of the sites and also provided guidance on the likely formation of internal roads, the applicable Council standards that would apply to a residential subdivision and any future development.

The assessment had been reviewed by Traffic Design Group (“**TDG**”) and in general, the TDG review concluded that the traffic assessment report addressed the key elements around site trip generation and the impact the additional trips will have on the immediate road network. The review also noted that there was no assessment of road safety on the surrounding network but acknowledged that this could be required as part of any subdivision and development assessment. The TDG report also referred to the current 80km/hr speed limit that applies along the frontage of the sites but reduces to 50km/hr further north along Kerikeri Inlet Road and suggested that a review of this posted speed limit be undertaken if the plan change is granted. Mr Scott rightly referred to speed limits being matters that are managed under the Local Government Act 2002 as opposed to a plan change process, and that Council could review speed limits from time to time and as such, it is a matter that the Council can turn its attention to should the Request be approved.

Taking on board the assessment and evidence and opinion of Mr Scott I have included at the end of this decision and recommendations report a recommendation (outside of this plan change process) that the Council review the speed limit on Kerikeri Inlet Road outside of the sites at the appropriate time.

In regards to the future entrance to the sites which had been shown on an ‘indicative’ scheme plan of the sites Mr and Mrs Rudolph spoke in opposition to the entranceway being immediately adjacent to their property at number 15 Kerikeri Inlet Road and said that it would not be safe, would cause traffic issues for them and their neighbours and that they would like the entrance moved away from their property if the Request is approved. In answer to a question they said that they would like any entranceway to be at least 25 metres from their property and more central to the frontage of the sites.

During questioning it was confirmed that the existing district plan provisions would require the new entranceway to be 30 metres from the entrance to 15 Kerikeri Inlet Road, that the new entrance could be moved even further towards the middle of the sites and still achieve the 115 metre visibility in either direction.

The actual subdivision or development of the land is on hold pending the outcome of this plan change request and any subdivision or development of the land and future resource consents will be an appropriate time to give closer consideration to traffic and roading details and to impose conditions as appropriate. It is however clear from the evidence before me, which has not been refuted by any expert evidence, that as part of my consideration of the plan change that these details can be satisfactorily arranged. As such, I do not consider that the issues of traffic and roading raise any concerns for my current consideration of the plan change request.

However, I have carefully considered the request from Mr and Mrs Rudolph that the entranceway not be immediately adjacent to their property at 15 Kerikeri Inlet Road, taken into account that it could be moved at least 30 metres or towards the middle of the sites and still comply with the 115 metre visibility in either direction and have recommended a change to rule 15.1.6C.1.1.

Overall, my view is that the transportation aspects of the Request are acceptable and the evidence before me confirms this. Accordingly, any adverse transportation effects will be avoided, remedied or mitigated.

9.7 Ecological

The planning report from Mr Scott referred to the fact that no ecological report had been provided and stated that the major part of the sites (until recent times when fruit trees and shelter belts were removed) had been used for productive horticulture and they had no ecological values. From my site visit I observed that the sites contain a number of palms and newly planted shrubs, with the shrubs mainly adjacent to the Wairoa Stream and other boundaries of the sites.

Mr Scott's view was that the adjoining esplanade reserve has some ecological values as habitat for terrestrial bird and insect species as well as providing riparian habitat for freshwater fish and invertebrates. However, he rightly pointed out that this land is not within the subject sites and it is an expectation for esplanade and riparian areas to adjoin residentially zoned areas.

Mr Scott's opinion was that while no ecological assessment had been undertaken by the Requester, there were no significant identified ecological values on the sites. No other evidence on the ecological value of the sites was given and it is my view that the Request will not have any significant adverse effects on existing ecological values

Overall, I consider the effects of the proposed development in respect of ecological impacts will be no more than minor.

9.8 Water Supply

As I have said earlier the assessment by Haigh Workman engineering proposes to connect the sites to the Kerikeri reticulated potable water supply subject to approval at the time of subdivision and development and that firefighting supply would also be provided from reticulated water supply. This will be subject to upgrades to the mains in Kerikeri Inlet Road. Also, that if connection to the public reticulated water supply systems was not forthcoming, the report proposes to provide 25,000 litre water tanks for each residential site with two 25,000 litre tanks located on communal land for firefighting purposes.

This matter was raised in the submission by the Council's Infrastructure and Asset Management Department (Submission 28) where it is acknowledged that there are issues with water supply to the township. In particular, it is stated in the submission:

"The Kerikeri water treatment plant has seen a steady annual increase in water demand. Assuming future growth is similar to past growth, the existing treatment plant is projected to reach capacity by the mid 2030's. Therefore, a new treatment plant and water source for the growing Kerikeri/Waipapa area is not planned until 2030 – 2035. By allowing the connection of the PPC site to the network, Council will be reducing the capacity available to service future infill development and growth in the Urban Environment. Expanding the service area will bring forward the need for a new water treatment plant and associated infrastructure earlier than planned."

The submitter also raised concerns that there are issues with capacity, pressure, and the provision of sufficient flows for firefighting purposes which may limit the ability for residential lots to be connected without upgrades to the water supply infrastructure, that it had not been demonstrated that upgrade will be sufficient to service residential development without further analysis and modelling to determine size and extent of any upgrade. The submitter set out a number of matters that needed to be addressed prior to any connection with the reticulated water supply which could be addressed at the subdivision and development stage.

The concerns raised by Council were also reflected in the Vision Consulting review where it was stated:

“The Haigh Workman reports provide insufficient information to determine if the Kerikeri Town Water Supply will be adequate to supply sufficient water supply, particularly for the case of fire fighting. Thus it is not possible to assess the impact or extent of future upgrades to the reticulation scheme, if it is required. It is noted that should the mains be extended to the site, additional fire hydrants are likely to be required both along Kerikeri Inlet Road and within a proposed development.”

The Vision Consulting review also supported the alternative method of providing onsite water supply from 25,000 litre tanks and concluded that this alternative was appropriate.

Although the issue of water supply was raised by some submitters no expert evidence was provided in writing or at the hearing to refute the evidence before me.

Reticulated water supply is an expectation of urban development and it is preferred to ensure that residential zoned land can be serviced with reticulated water supply. While water supply reticulation is possible, it has not been determined if it is feasible until such time as an upgrade to the water supply network occurs. The proposed alternative of onsite water supply may limit both potential lot size or the total number of lots and could create a situation where water tanks become redundant.

I consider that any adverse water supply effects of the proposed plan change can be avoided, remedied or mitigated and that the existing District Plan contains enough controls to ensure that at the time of subdivision or development of the sites that conditions can be imposed that ensure that water supply and the quality of the water supply can be provided and any effects mitigated so that those effects are no more than minor.

9.9 Rural Character, Landscape and Amenity

The impacts of the future development of the land that could result from the approval of the plan change were the subject of comments in the application, further comments from Simon Cocker and in expert evidence from Mr Cocker at the hearing. The Council also commissioned a peer review of the information by Jan Woodhouse Landscape Architecture and both Mr Cocker and Ms Woodhouse provided expert evidence at the hearing.

There would clearly be a visual impact from the development of the sites because of the very nature and form of urban development but the nature and location of the sites, and the manner in which the sites are to be subject to specific zoning provisions does serve to mitigate such impacts to a satisfactory degree. Relevant considerations are that:

- The land is included in the Kerikeri-Waipapa Structure Plan for future urban development with the plan indicating that when rezoning land for residential use a new zone is likely to be applied with rules that encourage: “*landscaping and building setbacks for development to maintain and enhance residential amenity*”.
- Additional rules to those provided in the normal residential zoning of the District Plan are to be required to ensure that the landscaping, planting and setbacks from boundaries will be implemented.
- It is intended that the residential development landscaping will be staged to simultaneously progress with the site works and as I observed from my visit to the sites some landscaping and fencing has already taken place.

I find agreement with much of the analysis provided by Mr Cocker and Ms Woodhouse, both in terms of landscape and visual effects and also with the evidence tabled by Mr Cocker during the hearing and verbal evidence given by both at the hearing. I find that with appropriate landscape treatment of the Kerikeri Inlet Road frontage and the boundaries of the sites that future development within the sites can be provided with an appropriate level of screening and in relation to landscape and visual values the effects will not be more than minor.

Some minor amendments to the specific rule proposed regarding the planting on the front boundary was suggested by Mr Cocker and Ms Woodhouse to maintain the rural character at the interface with Kerikeri Inlet Road and I have accepted the recommended wording shown on page 21 for rule 7.6.5.1.10 Visual Amenity.

Amenity values are defined in the RMA in the following manner:

“...means those natural and physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”

The existing sites have a semi-rural character and as previously stated have been used as an orchard in the past and have been cleared of any orchard crops. The sites are on the verge of the Kerikeri Township, there is existing residential and industrial development near the sites. The effects on amenity were covered by Mr Cocker, Ms Woodhouse, Ms Watson in evidence and by Mr Scott in his report and I find agreement with the analysis of Mr Scott and note from my visit to the sites and visit to the surrounding area that the amenity values of the general area have, and are still changing, and will continue to change.

The section of the Wairoa Stream adjacent to the property is a reasonably attractive one that has the potential to be used by the public as part of a much wider walkway system and is in the process of having work (walking tracks upgraded, weeds removed and native planting established) undertaken.

As part of my visit to the sites and visit to the surrounding area I had the benefit and opportunity of walking along the walkway that is being developed adjacent to the sites and observed the work and planting that has or is being carried out. I am of the view that approval of the plan change will not affect the adjacent reserve and that the proposed landscaped planting on the plan change sites will only help enhance the planting that is already underway on the reserve.

Overall, my view is that the sites can be developed, subject to conditions and restrictions in such a way that ensures that the effects on amenity values and the level of amenity enjoyed by neighbouring properties will not be more than minor. Based on the evidence before me I am satisfied that, subject to the amendments to the rules proposed, that any adverse effects on rural character, landscape and amenity will be avoided, remedied or mitigated.

9.10 Cultural

A submission was received from the Otahuaio Burial Ground Trust which stated that the burial grounds are within the “receiving waters” of the proposal. The submission raised concerns regarding contaminants from wastewater and stormwater during high rainfall events. No one appeared in person to support the submission and I consider that the matters have been adequately addressed in the Request and evidence before me with regard to the management of stormwater or wastewater effects.

The Request stated that there were no recorded heritage or cultural sites on the subject land and this is not disputed. I was advised that the Requester had also consulted directly with Te Runanga O Ngati Rehia who advised that they generally supported the Request.

I find that any cultural effects arising from the development will be no more than minor.

9.11 Productive Soils

From the evidence before me and as a result of my visit to the sites it was apparent that the land has been used for orchard activities but that it was no longer maintained as a working orchard, - the fruit trees and shelter belts had been removed. The rezoning of the land will result in the loss of its soils for productive purposes from the sites. However, this needs to be addressed in a strategic manner when balancing the growth requirements of Kerikeri with other needs of the district. The land has been identified in the Kerikeri-Waipapa Structure Plan for future urban purposes, it is adjacent to existing urban development and is located close to infrastructure services.

I find that the effects of the rezoning in respect of productive soils to be no more than minor.

9.12 Reverse Sensitivity Effects

Both of the sites are zoned Rural Living and technically a rural zone within a rural setting. In his report Mr Scott said:

“In that context, rural production activities, being a form of agriculture industry, are not always compatible with residential amenity values and this can result in people, sensitive to the effects of rural production, seeking to limit the otherwise lawful or permitted rural activities within a rural zone. This is known as a reverse sensitivity effect. Of particular relevance within this context is the continued operation of horticultural activities (a permitted activity) and associated use of chemical sprays, in the vicinity and on adjoining sites. The planning assessment states that there a number of mitigating factors against reverse sensitivity effects occurring and these include:

- 1. The land adjoining to the north west is Orchard Estate and that land is zoned and developed for residential activity;*

2. *The land adjoining to the south west (86 Cobham Road and 7, 11 and 15 Kerikeri Inlet Road) is zoned Rural Living but the lots are small in size and not being used for rural production activity;*
3. *The plan change includes a 10m setback to land in the Rural Production zone on the southern side of Kerikeri Inlet Road; and*
4. *There is a specific rule for the keeping of animals (Rule 8.7.5.1.10) requiring a separation distance of 50m which excludes most adjoining sites.*

The site at 31 Kerikeri Inlet Road is larger than adjoining sites (over 2 ha in area) and has been used for commercial horticulture. However, the area within the site that has been used in the past for horticulture is located toward the eastern side of the property with the western side (adjoining the PC22 land) being used for the rural dwelling and associated amenity areas and curtilage. In addition, the proposed screen planting to this side boundary in addition to the planting to the Kerikeri Inlet Road frontage will, in my view, further mitigate any reverse sensitivity effect"

Having considered the above factors, having read and heard the expert evidence, visited the site and, in addition, recommending that the properties at 7, 11 and 15 Kerikeri Inlet Road and 86 Cobham Road be rezoned Residential I am of the view that the risk of adverse reverse sensitivity effects is very low and can be avoided, remedied or mitigated.

9.13 Include Other Sites Within The Plan Change

A number of submitters from adjoining sites sought that their properties at 7, 11 and 15 Kerikeri Inlet Road and 86 Cobham Road be included within the plan change and rezoned Residential from the current Rural Living zone primarily based on the fact that they will effectively be "boxed-in" by the adjoining residential zone to the North and the proposed residential zoning to the east. The submitters refer to this as an "Island" effect being created whereby they are a small enclave of Rural Living land separated from other Rural Living zoned land. The submitters in their written submission did also oppose the plan change but at the hearing the submitters who attended did not raise the issue of the Request being opposed but that they wanted their land rezoned as part of the process. Mr Law and Ms Johnston were both of the view that the sites should be rezoned if the Request is to be approved.

Both Ms Watson and Mr Scott considered the submitters concerns to be valid and that the resulting "island" of Rural Living zoned land would be dislocated from the remainder of the zone in the locality given that land to the south is in the Rural Production zone and land either side will be zoned Residential.

Mr Scott noted in his report that three of the four Rural Living sites had been established well below the minimum lot size of 4,000m² and demonstrate a character that is more consistent with the residential zone including paved footpaths, connection to reticulated water supply and ability to connect to reticulated wastewater once expansion of the existing wastewater treatment plant allows. For these reasons, he considered that the sites would be better zoned Residential to achieve a more cohesive and legible residential enclave at the corner of Cobham Road and Kerikeri Inlet Road.

Mr Scott also referred to the fact that the Requester had been asked to consider the inclusion of these sites in the plan change as part of a further information request and I note from the evidence from Ms Watson that the Requester's agent had delivered letters to the owners of the sites in August/September 2017 inviting them to be involved in the plan change process. In his

submission Mr Webb said that the applicant would have been happy to include the other lots within the plan change application if there had been meaningful engagement at the time the application was being prepared. In this regard he stated that one additional lot belonging to Mr Orr had been included.

In his report Mr Scott's view was that the request to rezone the land could still be within the scope of the consent authority to include these sites as they have been sought as specific relief by submitters. He also stated that the Council was currently going through a review of district plan and the zoning of the sites would fall within the ambit of that review, that as the review is already underway and the previous analysis that concludes that the effect on the rural character of the plan change on the sites is not significant, it was his view that any consideration and rezoning of the sites to Residential zone could be undertaken as part of that process.

During questioning from me Mr Webb, Ms Watson and Mr Scott all considered that the rezoning of the sites could be within scope of the plan change and the option of recommending that the sites be rezoned now was available to me. Also, as a result of questioning the engineering experts confirmed that they did not see any reason why the land would not be suitable for rezoning from an engineering perspective.

During questioning Ms Woodhouse said that if the properties were to be added to PC22 that landscaping at the front of the properties should be required and referred to the landscaping that is presently on each of the four properties.

In his right of reply Mr Webb considered that there was scope for me to decide to make a change to allow the inclusion of the four lots and that Inlet Estate Limited had no objection in principle to the four extra lots being added provided there are no delays or IEL is not otherwise prejudiced by such inclusion.

Mr Webb also referred to the further report from Haigh Workman Limited dated 3 August 2018 where it was confirmed that there would be no infrastructure impediments to adding the four lots. The Haigh Workman Limited letter covered the following topics: subdivision potential, traffic assessment, geotechnical, stormwater, water supply and wastewater and as I have said above the conclusion was that there was no engineering impediments to the four properties being rezoned Residential and that engineering issues would need to be addressed at the time of subdivision.

In regards to landscape issues surrounding the four lots Mr Webb's right of reply referred to the requirements that were intended to be imposed on the Requester and said that he considered that the same 3 metre wide planting strip is necessary. However, given the location of the existing structures on the lots (which I observed during my visit to the surrounding area) that the 10 metre setback requirement may not be practical and that an automatic 6 to 10 metre setback be imposed for existing structures and a 10 metre setback for new structures.

Having considered and reviewed all of the evidence (specifically the expert evidence from Mr Cocker and Ms Woodhouse) and submissions, visited the sites and surrounding area I am of the view that the four properties should be added but that the suggested setback and landscape requirements to be imposed on the Inlet Estate sites should be imposed on the

four properties subject to minor amendments to take account of the existing structures on the four properties.

Having considered all of the submissions and evidence, visited the sites as part of my site visit and visit to the surrounding area my recommendation to the Council is that the four sites at 7, 11 and 15 Kerikeri Inlet Road and 86 Cobham Road be included with Plan Change 22 and be rezoned from Rural Living to Residential.

9.14 Effects Conclusion

Taken into account all the evidence and submissions before me it is my view, that the Request has addressed all relevant effects on the environment to the extent that, subject to the requested changes to the district plan rules (and requested further amendments) suggested by the relevant experts to me, any adverse effects, resulting from the change of zoning from Rural Living to Residential zone and the resulting urban scale residential subdivision and development, would be avoided, remedied or mitigated.

10.0 STATUTORY CONSIDERATIONS

10.1 The District Plan

The Section 74 RMA matters to be considered by a territorial authority when changing its district plan do not specifically require regard to the given to the District Plan. However, I would expect any proposed plan change to be reasonably consistent with the provisions included in an operative district plan in a case such as this where the change is to a zone already in the District Plan.

The plan change seeks to change the zoning from Rural Living to Residential. The Rural Living zone is described in the District Plan as an area of transition between town and country with that transition being expressed in terms mainly of residential intensity and lot sizes. The District Plan states:

“As an area of transition, parts of the Rural Living Zone may from time to time be proposed for rezoning to urban purposes. An intermediate step towards urban zoning can be taken through the preparation of a structure plan, such as that proposed for Kerikeri. The structure plan would need to be formalized by way of a Plan Change before an urban zoning could be applied. While Council will be alert to the need for, and may initiate, a structure plan developers and landowners may also prepare and submit structure plans.”

The current plan change, whilst not advancing a structure plan, is not therefore unexpected given this and other related statements in the District Plan.

10.2 District Plan Objectives and Policies

In assessing whether the plan change is consistent or otherwise with the District Plan it is relevant to consider it against the objectives and policies in similar fashion to the planners (Ms Watson and Mr Scott) who provided evidence in relation to it and their evidence was not refuted by any other expert. Those objectives and policies relate to:

- Significant resource management issues (Chapter 1)
- Urban environment (Chapter 7)
- Rural environment (Chapter 8)
- Recreation and conservation (Chapter 9)
- Natural and physical resources, including landscape and natural features, indigenous flora and fauna, soils and minerals, natural hazards, heritage (Chapter 12)
- Subdivision (Chapter 13)
- Transportation (Chapter 15).

I note that the plan change is consistent with identifying land for urban development that is able to be serviced at some time in the future and which is connected to existing urban development and communities with a view to ensuring that a substantial part of the district will remain available for rural activities including horticulture. The urban environment provisions seek to enable urban activities to establish in areas where their potential effects will not adversely affect the character and amenity of those areas and with considerations for roading and infrastructure. In this case, the sites are located adjacent to established residential land and the adverse effects with regard to infrastructure have been assessed as being no more than minor. Some modifications to the Residential zone provisions are made in relation to the sites, as part of the approval of the plan change, that provide for any effects on character and amenity values to similarly be reduced to be minor. The Residential zoning proposed is otherwise appropriate and it is similarly appropriate to move away from the Rural Living zone which envisages a lesser density of development in that zone, whilst recognizing that parts may from time to time be rezoned for urban purposes.

Other measures to be included as part of the plan change take account of its location alongside the Wairoa Stream and the public view to the site from Kerikeri Inlet Road. Whilst it is recognized the plan change will result in the loss of soils for production purposes from the subject sites, it is, in the context of the whole range of resource management issues in the District Plan, a better outcome to rezone land that is adjacent to existing urban development in order to minimize impacts upon rural productive land uses. Further, this area is identified for such development in terms of the Kerikeri-Waipapa Structure Plan. The sites are suitable for development from an engineering perspective and can deliver the anticipated outcomes for residential subdivision and development.

Overall I find the plan change to be consistent with the objectives and policies and other provisions of the District Plan.

10.3 District Plan Format

The plan change can readily be accommodated within the format of the existing District Plan. It does not propose a major change to the objectives and policies of the District Plan and, in including some modified provisions in relation to boundary setbacks, associated landscape planting and access to the sites, it improves the “standard” Residential zone rules which would otherwise apply to the land. In this manner the plan change does not conflict with the format or approach adopted in the District Plan.

10.4 Kerikeri-Waipapa Structure Plan (“Structure Plan”)

I recognise and accept the non-statutory nature of the Structure Plan and limited regard that should be given to such non-statutory documents that have not been subject to the scrutiny of public notification in Schedule 1 of the RMA. Structure plans can, at best, offer some guidance regarding the direction in which a community and its Council may be moving in terms of its planning.

There had been consultation and general acceptance of the Structure Plan. However, I note that it was adopted by Council in 2007. The Structure Plan was referred to in submissions and evidence. The Structure Plan does provide a reasonable indication as to what the community’s aspirations are for Kerikeri although it, or parts of it, have not been carried through into the District Plan. The plan change seeks to carry the Structure Plan provisions for the subject land through into the District Plan.

The applicant gains some support for the proposed plan change by way of the Structure Plan as it includes the sites as being within an “Urban (Medium Intensity) Residential” policy area (UR), and in particular in the UR3 “sub-area” which lies to the east of the Kerikeri township. This sub-area is one of six such future residential areas in the Structure Plan. Other features of relevance are a “Riparian and Stream Management” notation along both sides of the adjacent Wairoa Stream and the Rural Living and Rural Production zoned land to the east of Kerikeri Inlet Road having a “Rural Lifestyle” policy area notation.

I note that the Structure Plan (section 3.2.17) and the UR policy area is generally clustered around the commercial and employment nodes of Kerikeri and Waipapa. Four outcomes are identified as:

- To provide for urban development with development patterns or around 10 to 12 dwellings per hectare or lot sizes ranging from 600sqm to 1000sqm;
- To establish connectivity between residential developments to encourage walking non-vehicle transport modes;
- To maintain and enhance the environmental quality of the sensitive waterways these areas adjoin; and
- To provide living choices within these urban areas.

The Structure Plan then deals with implementation and refers to the possibility of a new zone but consideration should also being given to the existing Residential zone of the District Plan. The UR3 area is further identified (Table 3.14) as having a “high priority” for rezoning. This current request to change the zoning of the land can therefore be considered to be consistent with the Structure Plan. It is noted too that the UR3 is subject to a “trigger” which is wastewater infrastructure provision. The issue of reticulated infrastructure provision is directly relevant to this proposal and the Requester has demonstrated that anticipated development (up to 45 lots had been allocated connection to the system) can be accommodated in the planned future wastewater supply for the area. The site has an existing esplanade reserve adjoining the Wairoa Stream and this is being further developed for walking access and riparian protection and enhancement is being carried out. Adequate connectivity to Kerikeri Inlet Road has been demonstrated through the traffic assessment and Council review and the existing footpath can be utilized.

The applicant can therefore justifiably gain some support from the Structure Plan although I acknowledge this is a non-statutory document.

Representatives/experts for the applicant were of the view that all of the related matters had been taken into account in the planning and associated work carried out with the plan change and the possible number of residential sites which would be finalised at subdivision stage.

However, the Residential zone provisions are recognised as appropriate for the future development of this land albeit, as raised in the Council's reporting exercise and accepted by the applicant, needing to have some modifications to the plan provisions associated with landscape planting, particularly in relation to the Kerikeri Inlet Road frontage and access/egress to the sites.

Overall, it is my view that the Request is consistent with the Kerikeri-Waipapa Structure Plan. The land lies within an area identified for future residential growth which is in proximity to the town centre; provision is made for appropriate infrastructure (particularly wastewater treatment and disposal and water supply); and, it would not appear to prejudice the continuing or future development of other areas in Kerikeri.

I was told at the hearing that the Council is in the process of reviewing the entire District Plan and I support this strategic approach to the sequencing of development which is both sensible and practicable, and should better relate to the provision of infrastructure. However, in this case, the applicant has advanced a private plan change that has had due regard to all relevant considerations. I have to deal with what is before me and my role is not to regulate the uptake of such land. Indeed, an effects based consideration of the plan change as required by the RMA demonstrates that the plan change is acceptable in RMA terms.

10.5 Northland Regional Policy Statement ("RPS")

In relation to Section 75 RMA, regard is to be given to the operative RPS and the regional plans administered by the NRC. Pursuant to section 75 of the RMA, a district plan must give effect to a regional policy statement. In accordance with section 75(4)(b) a district plan must not be inconsistent with a regional plan for any matter specified in section 30(1). It is therefore mandatory for any plan change request to be assessed against the Regional Policy Statement to ensure that the change of zoning (and the development it enables) will not give rise to inconsistencies with the regional policy statement.

The relevant provisions of the RPS regarding urban growth and development are contained in the "Regional Form" provisions. The planning assessment carried out by the Requester identified the relevant provisions and Mr Scott agreed that the assessment had identified the relevant provisions and he had set them out in his planning report at Section 7.1.

From my consideration of these provisions, and the information and evidence that was put before me at the hearing (noting that I did not receive any expert evidence to refute the evidence of Ms Watson and Mr Scott), I am of the view that the plan change is not inconsistent with any of the regional planning documents. The plan change does not seek to alter (in a significant way) any objectives, policies or rules of the District Plan, but rather to adopt the existing provisions for the Residential zone with some minor modifications as they apply to the sites.

From my consideration of the information and evidence before me, the plan change is not inconsistent with the regional planning situation.

10.6 Other Management Plans and Acts

There were no relevant management plans under any other Acts.

10.7 Section 31 RMA

The Section 31 RMA functions include requiring the control of any actual or potential effects of the use, development, or protection of land. The range of actual or potential effects arising from the plan change had been addressed in the plan change documentation and in the Council's planning report. The potential adverse effects have been highlighted by submitters in opposition to the plan change and those are discussed above. I am satisfied that all actual and potential adverse effects associated with the plan change have been taken into account in preparing the plan change provisions and some modifications have been made to the plan change provisions to specifically address the setbacks from boundaries, associated landscape planting concerns and access/egress to the sites that were expressed by submitters and the reporting planner. I have adopted those modifications which are incorporated into the approved plan change and which in my view improve it.

10.8 Section 32 and Section 32AA RMA

The plan change documentation includes a Section 32 RMA evaluation, which addresses the relevant matters. It is supported by the further information provided in response to the Section 92 RMA request and by the evidence presented at the hearing. I consider that evaluation satisfies this section of the RMA. It includes a consideration of alternative methods and relative benefits and costs and shows that the plan change is the best option for planning for the sites rather than the current rural use or a special zoning or seeking a resource consent. The plan change, as proposed, adopts the Residential zone provisions with some minor amendments to the provisions as they affect the sites. Any evaluation in terms of Section 32 is ongoing and must be undertaken to confirm the appropriateness of the plan change.

The section 32 evaluation carried out by the requester undertook a comparison in regards to economic value, environmental effects and social/cultural impacts and wellbeing and the conclusion was:

"Overall, the existing provisions of the District Plan (with minor proposed changes) are considered to be an effective way of achieving a residential development on the subject site. The PPC is considered to be the most efficient method of achieving the stated objective, as it provides certainty to the landowner, provides anticipated benefits in terms of economic and employment opportunities, and a strategically viable option for enabling urban growth in the Far North District in accordance with the Kerikeri – Waipapa Structure Plan. Furthermore, the strategies provided by the objectives and policies of the Residential Zone will continue to be met as a result of the inclusion of Lot 1 DP 404507 and Lot 1 DP 181291 within the Residential Zone."

Having reviewed this analysis Mr Scott was of the opinion that the consideration of alternatives had been sufficiently robust and he generally agreed with the conclusion that

the approach adopted is the best way to achieve the purpose of the RMA. He considered that while there will be some loss of productive land and associated rural character and amenity values these will be outweighed by a net environmental benefit in terms of riparian protection, protection and integration of the rural interface (via setback and landscaping controls specific to the site) and a new residential area located near and adjoining existing residential development and within close proximity to the Kerikeri town centre.

In terms of economic alternatives, the loss of economic value in commercial horticulture is adequately offset by the resulting economic value associated with subdivision and development as well as the economic benefit of providing additional housing within the Kerikeri township and he also agreed that there would be an associated social benefit in terms of access and use to local community resources including parks, schools and other community services.

In terms of impact of “not acting” in the context of a section 32 evaluation, Mr Scott’s view was that this would have a neutral impact because the land could continue to be used for horticultural purposes (although from my visit to the sites the horticultural activity had been removed) or be developed for 8-10 rural lifestyle sites. In his view, not acting would also result in marginally less demand on the future wastewater system and potentially allow other residential sites, not within the AoB to be serviced.

Overall, Mr Scott was generally satisfied that the Requester had provided an acceptable section 32 evaluation and that the proposed change in zoning with site specific provisions would satisfy section 32 of the RMA.

Having read all of the documentation, considered the evidence from Ms Watson and Mr Scott and the other experts and having heard submissions I am of the view that the proposed plan change with modifications will satisfy section 32 of the Resource Management Act.

Section 32AA requires an additional evaluation for any changes that have been made to, or are proposed for the proposal since the evaluation report for the proposal was completed. As part of the planning report Mr Scott had recommended to me some changes to the front yard landscaping and vehicle access provisions to address concerns raised by the Council landscape expert and better implement the recommendations of the Requester’s traffic expert. His opinion was that the changes sought were in accordance with the stated purpose of the provisions in the initial section 32 evaluation and in that regard a further evaluation under section 32AA was not required.

I am also required to include in my recommendation report a further evaluation of any changes to the proposed private plan change and in accordance with s32AA. This evaluation is only for the changes (if any) that I recommend be made and is undertaken at a level of detail that corresponds to the scale and significance of any changes. The entire hearing process and my evaluation and consideration of all of the evidence has constituted a review for the purpose of section 32AA.

10.9 Part 2 RMA

In his planning report Mr Scott referred to The Supreme Court decision in *Environmental Defence Society Inc v New Zealand King Salmon Co Limited* which he considered is relevant to the application of Part 2 when considering plan changes. When determining a

plan change, the Supreme Court held there was no need to have general recourse to Part 2 in giving effect to a higher order statutory document which was itself developed in accordance with Part 2 of the Act.

In his view, the Request was consistent with the RPS and the District Plan, both of which have been prepared in accordance with Part 2 of the RMA. On that basis a further assessment under Part 2 was not considered necessary.

Notwithstanding this, the Request did include an assessment under Part 2 of the RMA and this assessment concluded that the Request was consistent with Part 2 and Mr Scott agreed with this conclusion.

However, just to be clear I have considered Part 2 and the information provided to me and I find that the plan change is in accordance with the sustainable management purpose of the RMA (Section 5). It will enable people and the community to provide for their social wellbeing and for their health and safety while sustaining the potential of the natural and physical resources on the sites to meet the reasonably foreseeable needs for future generations; will serve to safeguard the life-supporting capacity of the water and ecosystems relating to the sites that are important; and, will avoid, remedy, or mitigate any adverse effects of the proposed activity in accordance with the Residential zoning on the environment.

The Section 6 matters of national importance require me to recognise and provide for the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. Further, to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers.

The Section 7 other matters I am to have particular regard to, and which are of relevance, relate to the efficient use and development of natural and physical resources; the maintenance and enhancement of amenity values and the quality of the environment; the intrinsic values of ecosystems; and, any finite characteristics of natural and physical resources. I find the plan change is consistent with these principles. The plan change provides for the land resource to be efficiently used and the provisions include controls that will see any potential adverse effects suitably avoided, remedied or mitigated.

I did not receive any information relating to concerns by tangata whenua in relation to Section 6, 7 and 8 matters.

In all the circumstances I find the plan change to be consistent with the purpose and principles of the RMA.

11.0 CONCLUSIONS ON THE PLAN CHANGE

I have given consideration to all the RMA provisions in relation to the proposed plan change, along with all the information presented by the applicant, the submitters and the reporting planner and other experts. I find that the plan change is able to be approved in accordance with the commentary above in this decisions report.

12.0 THE COMMISSIONER'S RECOMMENDATIONS ON THE PLAN CHANGE

Having had regard to the provisions of the Resource Management Act 1991 and in particular to Section 74, Section 75, Section 31, Section 32 and Section 32AA; and

Having considered the actual and potential effects on the environment of the proposed plan change and the avoiding, remedying and mitigating of those effects; and

Having heard from the applicant, submitters and council on the proposed plan change and its provisions, and having considered the submissions, the further submissions, the evidence in support of those submissions and further submissions, and the Section 42A RMA report at the hearing of the proposed plan change and submissions; and

Acting under a delegation from the Far North District Council to hear and recommend to it decisions on the proposed plan change and the submissions and further submissions; and

For the reasons set out in the text of this decisions report, as above and as below, my recommendations are as follows:

- 1. Pursuant to Section 37 of the Resource Management Act**, I hereby extend the time period for the receipt of submissions in order to accept as valid the submission from Fredrick Walter Terry because:
 - The submission was not unduly late (only two working days late).
 - The interests of no persons are in my opinion directly affected by the extension. The submission includes matters that were also raised in other submissions, the submitter does not wish to be heard and no parties expressed any views one way or the other on the matter of accepting the late submission.
 - No unreasonable delays have been created by my acceptance of the submission.
 - I am of the view that no person will be disadvantaged or prejudiced in this late submission.
- 2. That pursuant to Clauses 29 and 10 of Schedule 1 of the Resource Management Act 1991,**
 - a. The Proposed Plan Change 22 to the Far North District Plan is approved with modifications; and**
 - b. Those submissions and further submissions which support the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and**
 - c. Those submissions and further submissions which seek further changes to the Proposed Plan Change are accepted to the extent that the Plan Change is approved with modifications; and**
 - d. Except to the extent provided above, all other submissions and further submissions are rejected.**

13.0 THE COMMISSIONER'S RECOMMENDATIONS ON THE INDIVIDUAL SUBMISSIONS TO THE PLAN CHANGE

The decisions in respect of each submission and the further submissions, are set out below along with the consequential modifications to the text of the District Plan as a result of the plan change being approved.

That, the following submissions and Further submissions be accepted in part:

PC22-01, PC22-02, PC22-03, PC22-04, PC22-05, PC22-06, PC22-07, PC22-08, PC22-09, PC22-11, PC22-13, PC22-14, PC22-15, PC22-16, PC22-17, PC22-19, PC22-21, PC22-22, PC22-24, PC22-25, PC22-26, PC22-27, PC22- 28, PC22-29, PC22-30, PC22-31, PC22-32, PC22-33, PC22-36, PC22-37

PC22-FS01,

That the following submissions be rejected:

PC22-10, PC22-12, PC22-18, PC22-20, PC22-23, PC22- 34, PC22-35

PC22-FS02, PC22-FS03, PC22-FS04

ATTACHMENT

Attachment 1 The plan change, with modifications resulting from this decision, and the consequential modifications to the text of the District Plan as a result of the plan change being approved with the modifications.

3. Recommendation to Council Outside of the Statutory Process for PPC22

That at the appropriate time the Council undertake a review of the speed limit on Kerikeri Inlet Road (in particularly outside the sites that form the PPC22 Inlet Estate site) to determine if the speed limit of 80 km/h is still appropriate.

Independent Hearings Commissioner, William (Bill) Smith

Date 13 September 2018