

BEFORE THE HEARING PANEL

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

AND

IN THE MATTER of Taupō District Council - Proposed Plan Change 38:
Strategic Directions

**LEGAL SUBMISSIONS OF COUNSEL FOR PUKAWA D2 TRUST AND
PUKAWA D3 TRUST
15 August 2023**

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MAY IT PLEASE THE PANEL

Introduction

- 1 These submissions are made on behalf of Pukawa D2 Trust and Pukawa D3 Trust (**D2 and D3**) in regard to their submissions (#58 and #95) (**Submissions**) on Taupō District Council's (**Council**) Plan Change 38 – Strategic Directions (**PC38**).
- 2 D2's land is held by Gary Te Hiraka Konui and Tutewheriko Raymond Leevey as trustees of the Pukawa D2 Trust. The properties are held under record of title 111295 (Māori General Land) and WN38B/25 (General Land). The land is zoned New Residential Environment under the Operative Taupō District Plan.
- 3 D3's land is held by Margaret Annette Asher, Janet Raukawa Galbraith and Edward Te Tuirī Hakopa as Trustees of the Pukawa D3 Trust. The property is held under record of title 602330 and held as General Land. The land is zoned New Residential Environment under the Operative Taupō District Plan.
- 4 The Trusts are separate entities but are jointly represented in these hearings and have jointly engaged the expert witness that will give evidence on their behalf.

Scope of submissions

- 5 These submissions address:
 - (a) Chapter 2, Strategic Directions, Introductory section;
 - (b) Chapter 2, Section 2.1, Strategic Direction 1, "Tāngata Whenua"; and
 - (c) Chapter 2, Section 2.6, Strategic Direction 6 "Natural Environment Values".
- 6 The following submissions should be read alongside Ms Lewis' evidence dated 9 August 2023.

Executive Summary

- 7 It is currently not clear when the Strategic Directions should be considered or when they are to be given priority over objectives, policies and rules. Clear guidance within the Strategic Directions should be provided to assist plan users when there is a conflict between objectives and policies.
- 8 Environmental offsetting can be embedded into the Strategic Directions as it is provided for in the operative Taupō District Plan and National Policy Statement on Indigenous Biodiversity (**NPS-IB**).

Background to D2 and D3

- 9 The owners of the D2 and D3 land have planned residential development for their land over many decades. The Strategic Directions will affect all development within the district. The owners of D2 and D3 have a long history of seeking the right to develop their land within the provisions of the district plan.

Chapter 2, Strategic Directions, Introductory section

- 10 D2 and D3 sought to amend the Strategic Directions as the current drafting does not provide a clear legal status for the directions in relation to the district plan. D2 and D3 sought a hierarchy to the Strategic Directions, to assist planners when making assessments.
- 11 The s 42A author rejects the relief sought by D2 and D3 in relation to a hierarchy of directions.¹ The s 42A author also states that *“the provisions within Chapter 2 are to be applied on a case-by-case basis as appropriate. There will be some resource consents and potentially plan changes when it will not be appropriate or necessary to consider some of the strategic directions”*.²
- 12 D2 and D3 no longer seek a strict hierarchy for the Strategic Directions, but seek clear guidance within the plan on when the directions apply to the district as a whole. In other words, all plan changes and resource consents will need to consider these directions, as well as notices of

¹ Section 42A Report, prepared by Rowan Sapsford, dated 3 July 2023, at paragraph 37-39.

² Section 42A Report, prepared by Rowan Sapsford, dated 3 July 2023, at paragraph 39.

requirement for designations. The Strategic Directions notified document states that the Strategic Directions ‘reflect the intended outcomes to be achieved through the implementation of the District Plan’.³

- 13 Interpretation of the plan becomes difficult when Strategic Directions are being updated without the planning provisions within the operative district plan being reviewed in parallel. Strategic Directions are to be used when interpreting provisions of a district plan. In *Gladstone Family Trust v Dunedin City Council*, the Environment Court referred to *Blueskin Energy Limited v Dunedin City Council* and *Granger & ors v Dunedin City Council* where:⁴

the Environment Court observed the strategic directions are achieved through the subsequent detailed plan provisions. Further, the strategic directions were to be borne in mind when interpreting and applying the subsequent, detailed provisions of the plan and that they were not intended to be applied directly to applications for resource consent...

- 14 In *Gladstone*, a planner had provided the Environment Court with an assessment against the strategic directions for a non-complying activity.⁵ Judge Borthwick did “not consider that the relevant rules required a prior assessment ahead of the lower order objectives and policies. That is because the lower order objectives and policies are intended to implement the strategic directions.”⁶ Through assessment against the district plan, any resource consents will have considered the Strategic Directions through the lower order objectives and policies.⁷
- 15 In *Blueskin Energy Limited v Dunedin City Council* and *Granger & ors v Dunedin City Council*,⁸ the Environment Court made pertinent observations about the relationship between different provisions (being Strategic Directions and the district plan’s objectives and policies):⁹

We consider it best practice to start with an understanding of the whole of the planning context. The application of plan provisions discretely, and

³ Strategic Directions Notification document, Chapter 2 – Strategic Directions, page 2.

⁴ *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [21].

⁵ *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [22].

⁶ *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [22].

⁷ *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [22].

⁸ *Granger & ors v Dunedin City Council* [2018] NZEnvC 250 at [75].

⁹ *Blueskin Energy Limited v Dunedin City Council* [2017] NZEnvC 150 at [94]-[95].

out of context, carries the real risk that integrated management of natural and physical resources will not be achieved.

The purpose of an overview is to understand the relationship between the different provisions within the plans and whether these provisions align with and support each other in order to achieve the integrated management of natural and physical resources. In common with many District Plans, we found the supporting policies of Dunedin's District Plans present different but overlapping ways to achieve the objectives and, when read as an integrated whole, the objectives and policies inform and build upon and sometimes constrain each other.

- 16 From the case law it is clear that Strategic Directions inform the subsequent provisions in a district plan and guide users of the district plan on how the provisions are to be interpreted. Strategic Directions should always be considered when applying rules across all zones within a district. When there is a conflict between provisions that arise from a resource consent application or during a plan change process, the Strategic Directions shall take precedence over any conflicting provisions.
- 17 The current drafting in PC38 does not provide sufficient clarity to users of the plan on how plan provisions are to be interpreted when the provisions conflict with the Strategic Directions. We see that this is likely to occur when other provisions of the district plan have not been amended at the same time as the Strategic Directions. We submit that the wording of the Strategic Directions should be redrafted to provide greater clarity when interpreting and applying other provisions within the district plan.
- 18 The proposed wording set out in Ms Lewis' statement of evidence will assist users of the plan when required to make a decision on conflicting provisions, as it may be the case when the whole district plan has not been amended to reflect updated Strategic Directions.

Chapter 2, Section 2.1, Strategic Direction 1, Tāngata Whenua

- 19 D2 and D3 are generally supportive of the changes to the Tāngata Whenua Strategic Directions.

Chapter 2, Section 2.6, Strategic Direction 6, Natural Environment Values

- 20 D2 and D3 have sought changes to the Natural Environment Values chapter to provide for environmental offsetting (when appropriate).
- 21 Section 104(ab) of the Resource Management Act 1991 requires the consent authority to have regard to: *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity...*¹⁰ The operative Taupō District Plan also provides a policy that allows for the recognition of activities that results in a net environmental gain.¹¹ This is consistent with the NPS-IB as outlined in Ms Lewis' evidence. Given that the NPS-IB does not exclude the use of offsetting, the additional wording to this Strategic Direction strengthens the wording in the district plan to align with higher order documents.
- 22 Ms Lewis' evidence provides appropriate drafting to allow for the inclusion of offsetting within the Strategic Directions.

Conclusion

- 23 We submit that:
- (a) The Strategic Directions require additional wording to ensure that when there is a conflict within the district plan, the Strategic Directions take priority; and
 - (b) Environmental offsetting should be recognised in the Strategic Directions as it is provided for in the RMA, operative Taupō District Plan and the NPS-IB.

Dated 15 August 2023



C F Mugeridge

Counsel for Pukawa D2 Trust and Pukawa D3 Trust

¹⁰ Resource Management Act 1991, section 104(1)(ab).

¹¹ Taupo District Plan, Policy 3i.2.2ii.