

BEFORE MATAMATA PIAKO DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991 (the **Act**)

A N D

IN THE MATTER

Proposed Private Plan Change 56 to the Matamata Piako District Plan by Lockerbie Estate Limited and Lockerbie Estate No.3 Limited to rezone approximately 78 hectares of land at 76 Taukoro Road, 182 Morrinsville-Tahuna Road and Lockerbie Street from a Rural Zone (with a Future Residential Policy Area Overlay) to a Residential and Medium Residential Zone with supporting Development Area Plan.

LEGAL SUBMISSIONS ON BEHALF OF APPLICANT LOCKERBIE ESTATE AND LOCKERBIE NO 3 LIMITED

Dated 26 July 2022

MAY IT PLEASE THE COMMISSIONER HEARINGS PANEL:

1. Introduction

- 1.1 The Private Plan Change request ("PC 56") is on behalf of the Applicant Lockerbie Estate No.3 Limited and Lockerbie Estate Ltd ("Lockerbie"). Lockerbie seeks both medium density and standard suburban residential zoning to enable residential housing over the plan change site.
- 1.2 PC 56 seeks to provide urban rezoning of an identified growth cell in Morrinsville from Rural, with a (Future Residential Policy Area ("FRPA") overlay to Residential and Medium Density Residential Zone ("MRZ"). The Lockerbie Development Area Plan ("LDAP") will be put into the Matamata Piako District Plan ("MPDP") to spatially define the site and specify key requirements for its future development.
- 1.3 It is submitted that the split residential zone is the most appropriate proposed zoning alternative to the other alternatives considered by Ms Drew as part of Lockerbie Section 32 Analysis (para 9.6 Drew EIC). The mix of medium density and standard residential zoning is supported by the Section 32 evaluation included with the application, the further Section 32AA analysis undertaken as result of further changes since notification and based on the planning merits and extensive technical evidence presented by both the Applicant and Council witnesses.
- 1.4 The key issues for this plan change are identified as:
- (a) Whether PC 56 achieves the purpose of the Resource Management Act 1991 ("Act") as contained in Part 2. This includes:
 - (i) whether PC 56 is the appropriate manner to integrate with and achieve the provisions of the MPDP, in particular the FRPA overlay identified for this land as the locational direction for Council's planned urban expansion of Morrinsville; and
 - (ii) what is the suitability of the site for rezoning including the consideration of any fundamental physical impediments or township constraints that may affect the zoning (such as servicing, transport and supporting community facilities)?
 - (b) Subject to satisfaction of the questions above, are there any effects that the proposed planning framework is not able to probably consider at resource consent stage and should be considered now as matters of activity status, control or discretion.
- 1.5 The key objectives of the PC 56 are described at para 3.2 of Ms. Drew's planning evidence as:

- (a) rezoning of the site to provide for residential development as a logical expansion of the Lockerbie Estate development.
- (b) to provide for a range of housing choices/typologies and where possible enable an increase of density over that being already delivered in Lockerbie Estate.
- (c) to reduce consenting requirements through the resulting zone and rule framework.
- (d) to provide for water, wastewater, stormwater and transport network infrastructure to be provided in a timely manner and based on development triggers.
- (e) to provide for a range of quality open spaces for active and passive recreation and social interaction, and also enhance public access to existing watercourses.

2. Witnesses

2.1 Lockerbie have provided evidence briefs from the following expert witnesses, most of them who will no longer be appearing¹, but they are all available should questions arise during the hearing or if there are matters need to be addressed:

- (a) GD Jones (Applicant);
- (b) Kathryn Drew (Planning);
- (c) Norm Hill (Cultural);
- (d) Dean Morris (Engineering);
- (e) Michael Hall (Traffic);
- (f) Morné Hugo (Urban Design);
- (g) Oliver May (Landscape);
- (h) Richard Montgomery (Ecology); and
- (i) Tim Heath (Economics).

2.2 Based on Minute no 2, it is understood the Commissioners have pre-read all the reports and evidence and undertaken a site visit. The Applicant is to provide a summary only today, and will be available for questions from the Panel.

3. Outline of submissions

3.1 These submissions are structured as follows:

¹ Minute no 2 of Commissioner panel 26 07 22

- (a) General legal requirements of a Plan Change.
- (b) Environmental effects.
- (c) Policy and Strategic framework regarding residential land supply.
- (d) Plan Change Scope and relevant law.
- (e) Summary of issues for determination and concluding comments.

4. Legal requirements of the Plan Change

- 4.1 Clause 29(1) of Schedule 1, Part 1 of Schedule 1 of the RMA (which also applies to Council-initiated or adopted plan changes) applies with all necessary modifications, meaning there is a degree of commonality between both. This includes provisions for the making of submissions, decisions, and appeals. Other provisions of the RMA, including Sections 31, 32, 74 and 75, and Part 2 of the RMA, apply to changes to a District Plan, regardless of whether a plan change is a Council-initiated or a Private Plan change request.
- 4.2 The plan change request contains all the necessary information and assessments required by Clause 22 of Schedule 1 of the RMA. The purpose and reasons for the plan change request have been outlined in the Planning Report, the supporting technical reporting and the experts' evidence presented for this hearing by both the Applicant and the Council.

Section 31

- 4.3 Under Section 31(1) of the RMA, Council as a territorial authority has several relevant functions for the purpose of giving effect to the RMA in its District, including:
- (a) 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; and
 - (b) Establishment, implementation, and review of objectives, policies and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.
- 4.4 The Council is therefore required to consider the plan change request in accordance with its function of achieving integrated management of land use. The use and development of the land for the purposes outlined in PC 56 is within the scope of the Council's functions under s31.

Section 32

- 4.5 Under Clause 22(1) of Schedule 1 of the RMA, a Private Plan change request must “*contain an evaluation report prepared in accordance with s32 for the proposed plan change.*”
- 4.6 In *Port Otago Ltd v Otago Regional Council*² at paragraphs 48-55 the Environment Court considered in detail whether the conventional approach to Section 32 analysis remained correct following substantive amendment to Section 32 and 32AA in 2013. The Court concluded that those amendments did not change the fundamentals required, but that “[t]hey simply mean that the analysis of economic growth and employment prospects should be given in more detail (and wherever possible expressly rather than implicitly)”.
- 4.7 It follows that the economic considerations of the proposed mix in residential zoning, in comparison to the option of retention of rural zoning of the site are an important element of the Section 32/32AA assessment, but they are not the only element. The assessment should consider all the matters relevant to the purpose of the Act.
- 4.8 Section 32 of the RMA requires the evaluation report under clause 22 above to examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA under subsection (1)(a), and whether the provisions in the proposal (i.e. objectives, policies, rules and other methods) are the most appropriate way of achieving the objectives of the plan change under subsection (1)(b). Within this, an evaluation must take into account the benefits and costs of policies, rules or other methods.
- 4.9 An evaluation under s32(1) must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the proposal (as required by s32(1)(c)).
- 4.10 The evaluation must also consider the efficiency and effectiveness of a proposal, taking into consideration benefits and costs, and the risk of acting or not acting.
- 4.11 A detailed Section 32 analysis has been undertaken for the PC 56 request and included with the plan change application. A further Section 32AA evaluation has been undertaken by Council planner in the Section 42A report and by Ms. Drew, required due to amendments made to the PC 56 provisions since the Section 32 evaluations in the application documents. These amendments have included changes to the plan provisions proposed to manage potential

² [2018] NZEnvC 183

effects (in particular in regard to reverse sensitivity issues with adjacent rural land uses, as well as to manage amenity effects in regard to the proposed medium density zone).

4.12 In Kerr Trust v Whangarei DC³ the Court noted:

"... there is no onus of justification or burden of proof on a referrer to establish that a provision is correct or otherwise; instead, the proceedings are in the nature of an enquiry to ascertain the extent to which land use controls are necessary, whether the controls are the most appropriate approach, and to ensure that the controls achieve the objectives and policies of the plan."

Section 74 and 75

4.13 The legal process for Councils preparation of its plan is set out in Section 74 and 75 of the Act. A summary of the general requirements for a plan change process is set out in Colonial Vineyards Ltd v Marlborough DC [2014] NZEnvC 55 at [17].

4.14 A District Plan (change) should be designed to *accord with* [s 74(1)] RMA - and assist the territorial authority to *carry out* – its functions [s 31] so as to achieve the purpose of the Act [s 72 and 74(1)RMA].

4.15 The District Plan (change) must also be prepared in accordance with any regulation [s 74(1)RMA] (there are none at present) and any direction given by the Minister for the Environment [s 74(1)RMA].

4.16 When preparing its District Plan (change) the territorial authority must give effect to [s 75(3)RMA] any national policy statement or New Zealand Coastal Policy Statement.

4.17 When preparing its District Plan (change) the territorial authority shall:

- (a) *have regard to* any proposed regional policy statement [s 74(2)(a)(i)]; and
- (b) *give effect to* any operative regional policy statement [s 75(3)(c)].

4.18 In relation to regional plans:

³ Kerr Trust v Whangarei DC Decision A060/2004 at page 7

- (a) The District Plan (change) must *not be inconsistent* with an operative regional plan for any matter specified in Section 30(1) or a water conservation order [s 75(4)]; and
- (b) *must have regard to* any proposed regional plan on any matter of regional significance etc [s 74(2)(a)(ii)].

4.19 When preparing its District Plan (change) the territorial authority must also:

- (a) *have regard to* any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations [s 74(2)(b)] to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities [s 74(2)(c)];
- (b) *take into account* any relevant planning document recognised by an iwi authority [s 74(2A)]; and
- (c) not have regard to trade competition [s 74(3)] or the effects of trade competition.

4.20 The formal requirement that a District Plan (change) must [s 75(1)] also state its objectives, policies and the rules (if any) and may [s 75(2)] state other matters.

Objectives [the Section 32 test for objectives]

4.21 Each proposed objective in a District Plan (change) is *to be evaluated* by the extent to which it is the most appropriate way to achieve the purpose of the Act [ss 74(1) and 32(3)(a)].

Policies and methods (including rules) [the Section 32 test for policies and rules]

4.22 The policies are to *implement* the objectives, and the rules (if any) are to *implement* the policies [Section 75(1)(b) and (c), see also Section 76(a)].

4.23 Each proposed policy or method (including each rule) is to be examined, having *regard to its efficiency and effectiveness*, as to whether it is the most appropriate method for achieving the objectives of the District Plan [Section 32(3)(b)] *taking into account*:

- (a) the benefits and costs of the proposed policies and methods (including rules); and
- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods [Section 32(4)]; and
- (c) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances [Section 32(3A)].

Rules

- 4.24 In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment [Section 76(3)].
- 4.25 Rules have the force of regulations [Section 76(2)].
- 4.26 Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive [Section 76(2A)] than those under the Building Act 2004.
- 4.27 There are special provisions for rules about contaminated land [Section 76(5)].

Other statutes

- 4.28 Territorial authorities may be required to comply with other statutes.

5. Environmental effects

- 5.1 "*Environment*" is defined in Section 2 of the RMA although the meaning of the word needs to be understood with reference to case law. The environment "*as it exists*" can be considered the starting point for an assessment of what constitutes the "*environment*". However, in *Queenstown Lakes District Council v Hawthorn Estate Ltd*,⁴ the Court of Appeal found the word "*environment*" has a wider meaning, holding that "*when considering the actual and potential effects on the environment of allowing an activity, it is permissible, and will often be desirable or even necessary, for the consent authority to consider the future state of the environment, on which such effects will occur.*"
- 5.2 The Act remains an effects-based, forward-looking statute. Its overall purpose has not changed since enacted in 1991. Section 5(1) of RMA states as the purpose of the Act "*to promote the sustainable management of natural and physical resources*".
- 5.3 A summary of these effects is:

- (a) The area comprises farming land with rural zoning. The land had a FRPA overlay included

⁴ [2006] NZRMA 424 *Hawthorn*, at 57

in the MPDP through PC 47, in 2017, which provided clear policy of the Council's intention that this land would be urbanised, with timing based on market driven demand. The area sits on the edge of the township, between urban and rural land uses and zone boundaries. The strategic spatial direction of growth of the Morrinsville township and conversion of this farmland to urban uses has already been evaluated through the Schedule 1 PC 47 process in 2017.

- (b) The evidence filed in support of the Plan Change and the Section 42A report confirm that the proposed residential zoning is the most appropriate of the two zones, and that retention of a rural zone is not the most economic or practicable alternative given its location, and demand for further residential land in this locality as described in the economic evidence of Mr. Heath⁵;
- (c) Any potential effects on the environment can be appropriately avoided, remedied, or mitigated through the proposed provisions, and the zoning will more appropriately recognise the site as residential. PC 56 will provide plan provisions to enhance outcomes for the site, secure the necessary surrounding infrastructure, and protect the wider rural area by reverse sensitivity provisions (setbacks and buffers) and avoidance of further ad-hoc consents sought to meet residential demand.
- (d) The performance standards set out the infrastructure requirements to service the land, provide an attractive and efficient layout for future development.
- (e) PPC56 will enable public viewing and potential future access to parks and along streams once their protection/enhancement has been completed (and after they are vested in the Council) and will maintain appropriate amenity outcomes with buffers along the two rural boundary interfaces.
- (f) The risks from natural hazards and financial risks associated with responsibility for infrastructure have been addressed through the engineering and infrastructure reporting and evidence, which has confirmed that the site is suitable for the land development outcomes that are anticipated.
- (g) The plan change provides for additional plan provisions to not only manage and avoid environment effects but enhance the existing site characteristics and local environment.
- (h) PC56 will allow for development of around 1200 dwellings, which provides both the short- and medium-term demand for housing and for a range of housing choices, both in type and location. The introduction of a MRZ (and the Lockerbie Precinct) and the supporting performance standards provides additional typology choices for the residential market which are not currently provided for in Morrinsville.
- (i) Any potential adverse effects of the rezoning can be adequately avoided, remedied or mitigated and are considered to be no more than minor.
- (j) The performance standards and LDAP set out the infrastructure requirements to service the land, provides an attractive and efficient layout of future development, enables public access to and along streams and their protection/enhancement, will maintain appropriate amenity outcomes and the rural interface.
- (k) The risks from natural hazards have been addressed through the geotechnical,

⁵ Heath evidence para 29

contamination and infrastructure reporting and have confirmed that the site is suitable for the resulting residential development outcomes anticipated.

- 5.4 As set out in the evidence of Norm Hill, the applicant has consulted and worked collaboratively with Ngāti Hauā Iwi Trust to address cultural values and interests in this region and related to PC 56. Mr Hill states at para 3.1 of his evidence in regard to their rohe and role as Kaitiakitanga

“The proximity of Lockerbie development to these significant waterways and the ability to avoid, remedy or mitigate adverse effects on the relationship of mana whenua with the receiving waterbodies is a significant issue. Ngāti Hauā is satisfied with the management of earthworks and sedimentation, stormwater discharge effects as set out in the technical reporting supporting the PPC. In relation to stormwater run-off created because of the development, and the impact that this will have on the waterbodies within the future subdivision Ngāti Hauā supports the stormwater strategy (as has been derived from the Maven Associates Infrastructure Report) which sets out the high-level, best practice approach to stormwater management within the wider Lockerbie development site.

More specifically, NHIT is supportive of the Plan Change Area proposed discharge via a piped network into wetland or storage devices. Wetland offers a sustainable system so treatment and provides for enhancement of indigenous habitat enhancement. Preliminary modelling indicates that there is insufficient water capacity in the existing network to service the Plan Change Area from existing Council infrastructure. Therefore, MPDC have proposed to consent a new ground water take and install a new Water Treatment Plant in the Lockerbie Stage 3 area. This Water Treatment Plant will be supplied by an existing bore located in Cobham Drive. The inclusion of the water treatment plant under the Lockerbie Stage 3 works to ensure that potable water and firefighting supply for the proposed development can be provided.”

- 5.5 It is submitted that the Panel can be confident based on the extent of Council and the applicant’s consultants’ efforts in their analysis and reporting undertaken prior to this hearing, that any potential environmental effects related to the proposed development enabled by PC 56 will be mitigated or avoided.

6. Planning Framework

- 6.1 I have not covered the planning framework in these submissions, as this have already been comprehensively covered in the planning evidence of Ms. Drew, the Section 42A report writer, and further planning evidence of Ms. Rolfe for MPDC.
- 6.2 I have set out below the national planning policy context and support for additional housing supply, in particular medium density housing for supply of more affordable and efficient forms of urban development. This sets in context why enabling this form of housing is needed in the MPDP, to enable and support development of a range of housing types, which is a policy change

away from traditional larger lot residential housing, characteristic of Morrinsville’s existing township.

National Policy Statement on Urban Development (NPSUD) 2020

6.3 The NPSUD replaced the National Policy Statement – Urban Development Capacity (“NPSUDC”), which was promulgated to ensure that district/city councils would adequately plan for urban growth. As the Environment Court has said, the purpose of the NPSUDC was: *“...to open doors for and encourage development of land for business and housing, not to close them.”*

6.4 The NPSUDC did not, however, contain directive provisions relating to plan responsiveness and agility. In addressing why, the NPSUD was needed, the Ministry for the Environment (“MfE”) website states:

“Some urban areas in New Zealand are growing quickly. To support productive and well-functioning cities, it is important that there are adequate opportunities for land to be developed to meet community, business, and housing needs.”

6.5 In September 2017, the Government established the Urban Growth Agenda (UGA). The NPS-UD contributes to the Government’s Urban Growth Agenda, which is described by the Ministry for the Environment as a programme that aims to remove barriers to the supply of land and infrastructure. The NPS-UD contributes to the Urban Growth Agenda by addressing constraints in the planning system to ensure our system enables growth and supports well-functioning urban environments. As discussed by Mr. Heath, Morrinsville’s projected population is set to grow, but it has been exceeding even high growth expectations for the past 7 years⁶.

6.6 Policy 1(c) requires well-functioning urban environments to have, amongst other things, *“...good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport...”*.

6.7 NPS-UD 2020 contains a broad suite of objectives and policies that encompass high level goals and explicit instructions to Councils as to how to accomplish those goals based on a three-tiered approach. The NPS-UD defines and promotes “well-functioning environments” with the following objectives and policies being particularly relevant to this site:

- (a) Objective 1: *“New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future”*.

⁶Appendix L to Plan change application, Property Economics population growth report, section 6.1, also discussed in Heath EIC.

- (b) Objective 3: *“Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*
- (i) the area is in or near a centre zone or other area with many employment opportunities.*
 - (ii) the area is well-serviced by existing or planned public transport.*
 - (iii) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.”*

6.8 This plan change will release residential land development potential to address current demand and is consequently consistent with the NPSUD’s general directives for the MPDC. The Section 42A report writers and evidence of Lockerbie expert witnesses confirm infrastructure planning is in place for roading and wastewater (Council approval to connect for reticulation); stormwater and water capacity matters are able to be addressed with water supply provisions to require household dwellings to include minimum 5000m³ watertanks, and water capacity improvements have been agreed on with both Council and Iwi. PC 56 consequently represents both ‘plan-enabled’ (i.e., zoned) and infrastructure-ready land referred to in the NPS-UD, based on the expert evidence.

7. Relevant law on scope

7.1 The scope of an appeal is bounded by the submission at one end and the notified plan at the other. This principle is summarised by Judge Kirkpatrick in *Federated Farmers & Ors v Otorohanga District Council*:⁷

“A careful reading of the text of the relevant clauses in Schedule1 shows how the submission and appeal process in relation to a proposed plan is confined in scope. Submissions must be on the proposed plan and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought. The publicly notified summary of submission enables others who may be affected by the amendments sought in submissions to participate either by opposing or supporting those amendments, but further submissions cannot introduce additional matters. The Council’s decisions must be in relation to the provisions and matters raised in submissions, and any appeal from a decision of Council must be in respect of identified provisions or matters.”

7.2 The extent to which the jurisdiction of the Environment Court is delineated by the relief sought in the submissions then limits any subsequent appeal. This topic has been the subject of

⁷ [2014] NZEnvC 070 at [11].

discussion in numerous higher authorities. The test as to whether a provision or matter has been referred to in a submission was set out by the Full Court of the High Court in Countdown Properties (Northlands) Limited v Dunedin City Council⁸.

- 7.3 The local authority must consider whether any amendment made to the plan change as notified goes beyond what is reasonably and fairly raised in submissions on the plan change or review. It will usually be a question of degree to be judged by the terms of the proposed change and of the content of the submissions.
- 7.4 The leading authority on whether a submission is “on” a variation or plan change is the High Court decision in Clearwater Resort Ltd v Christchurch City Council. It set out a two-limb test:
- (a) Whether the submission addresses the changes to the pre-existing status quo advanced by the proposed plan change; and
 - (b) Whether there is a real risk that people affected by the plan change (if modified in response to the submission), would be denied an effective opportunity to participate in the plan change process.
- 7.5 A submission can only fairly be “on” a proposed plan if it meets both these limbs. The *Clearwater* test has been adopted in several High Court decisions, including by Kos J in Palmerston North City Council v Motor Machinists. He described the first limb in the *Clearwater* test as the dominant consideration, namely whether the submission addresses the proposed plan change itself. This was said to involve two aspects: the degree of alteration to the status quo proposed by the notified plan change; and whether the submission addressed that alteration.
- 7.6 The High Court noted the second limb in Clearwater concerns procedural fairness. PC 56 attracted many submissions, both supporting PC 56 be granted to seeking it be declined. Many others seeking amendments to address concerns they had about capacity for the township to cope with additional demands from population increase such as to parking, water supply, roading, educational facilities, services and retail.
- 7.7 The High Court in Motor Machinists set out two further tests for determining whether a submission can be reasonably said to fall within the ambit of the plan change (being the first limb of *Clearwater*):
- (a) If a submission raises matters that should have been addressed in the Section 32 evaluation and report, then it is unlikely to be within the ambit of the plan change.
 - (b) If the submission seeks a new management regime in a District Plan for a particular resource, it must be in response to a plan change that alters the management regime.

⁸ [1994] NZRMA 145 (FC)

7.8 The second test is most relevant in considering those submissions, if any, that seek to add a management regime for district wide matters that have not been notified in the PPC. Turning to the first test posed by Motor Machinists, the Environment Court in Bluehaven Management Limited v Western Bay of Plenty District Council considered the inquiry into matters raised in the Section 32 report. The Court did not regard the inclusion or exclusion of matters in the Section 32 report as determinative as to whether the submission is reasonably within the plan change. It stated:

“[39] Our understanding of the assessment to be made under the first limb of the test is that it is an inquiry as to what matters should have been included in the s32 evaluation report and whether the issue raised in the submission addresses one of those matters. The inquiry cannot simply be whether the s32 evaluation report did or did not address the issue raised in the submission. Such an approach would enable a planning authority to ignore a relevant matter and thus avoid the fundamentals of an appropriately thorough analysis of the effects of a proposal within robust, notified and informed public participation.”⁹

7.9 The High Court in Albany North Landowners also departed from the Motor Machinists Section 32 test but in the context of a full District Plan review, as that dictum was specifically directed to full plan changes. Whata J stated:

“...I respectfully doubt that Kós J contemplated that his comments about s32 applied to preclude departure from the outcomes favoured by the s32 report in the context of a full district plan review. Indeed, Kós J’s observations were clearly context specific, that is relating to a plan change and the extent to which a submission might extend the reach of a plan change in an unanticipated way. A s32 evaluation in that context assumes greater significance because it helps define the intended extent of the change from the status quo.”

7.10 This contrasted a Section 32 report in the context of a limited and discreet District Plan change, in comparison to a District Plan full review indicating differing relevant considerations in whether a submission is reasonably and fairly raised by the submission.

7.11 The case law on scope dealing with discrete plan changes is different to that of a full District Plan review or a (substantive) partial review when it comes to scope. Plan changes or variations are usually directed at defined geographical areas or specific issues to be resolved. By contrast, a plan review by its nature involves a broader approach to the question of scope. This difference was acknowledged by the High Court in the Albany North Landowners decision when Whata J stated:

⁹ *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191, Smith J and Kirkpatrick J (sitting together).

“[129] Returning to the present case, the Auckland Unitary Plan planning process is far removed from the relatively discrete variations or plan changes under examination in Clearwater; Option 5 and Motor Machinists. The notified PAUP encompassed the entire Auckland region... and purported to set the frame for resource management of the region for the next 30 years. Presumptively, every aspect of the status quo in planning terms was addressed by the PAUP...The scope for a coherent submission being “on” the PAUP in the sense used [in Clearwater] was therefore very wide.”

- 7.12 The difference in scope considerations between a plan change and a replacement plan are important where submissions have focussed on using this Plan change to seek strategic issues or policies that relate to the district. Even if such submissions are held to be within scope, if adopted solely for this discreet area, they will result in unjustified (in terms of Section 32 analysis) and inefficient policy anomalies and inconsistencies within the District Plan as a whole, which needs to be a coherent, integrated planning document.
- 7.13 While most of the changes sought in submissions on PC 56 are within scope, some matters covered in submissions relate to District wide issues, or Local Government Act matters, and are therefore are out of scope. If these issues are not specifically related to PC 56 and related change to plan provisions of the MPDP, they should be held to be beyond scope to consider as part of PC 56 (for example submissions related to rates or infrastructure costs, should be through LGA annual plan decisions, or District wide policy to be left for future full District Plan review).

8. Summary of Submission issues

- 8.1 The Applicant and its consultants have engaged extensively with Council officers throughout this Schedule 1 process. This has led to a number of amendments to the plan provisions and LDAP. Ms. Drew has included the latest set of amended plan provisions in her rebuttal evidence, which is as a result of expert evidence filed as part of the Section 42A report (including Mr. Bredemeijer’s urban design evidence) and by submitters planning evidence of Ms. Rolfe (MPDC) and Mr. Frentz (Ministry of Education).
- 8.2 There have been positive outcomes from submissions, in response to concerns raised. Amendments to the proposed plan changes through the Schedule 1 process has meant there has been several amendments, where those changes relate to effects arising from the plan change and fall within scope based on the above legal principles on limitations of scope.
- 8.3 Bike Waikato submission seeking for more cycle paths and connectivity to encourage active mode use over private motor vehicle use. This is a community group passionate about their community, and this is to be commended. However, the cycleways and linkages to the existing and planning cycle network will be formed by Lockerbie and MPDC at subdivision stage or relate to District wide policy changes. Mr. Hall sets out at para 58 of his evidence that the current road reserves have been designed to align with the standards within the Matamata-Piako

Development Manual and that shared paths are proposed on Morrinsville-Tahuna Road as well as within the Plan Change area. Off-road paths are also provided through the open space areas within the site which improve connectivity for pedestrians and cyclists, at time providing more direct and convenient routes when compared to private vehicles.

- 8.4 Reverse sensitivity effects have been addressed through a range of plan provisions with increased lot sizes and setbacks. Although outside of the Plan Change provisions, specific terms of a side agreement with the Camerons as adjacent farm owners, has established binding commitments for fencing and for no complaints covenants to be registered against future residential sections. The Camerons have now provided confirmation of conditional support for the PC 56, based on the proposed plan provision included in the evidence of Ms. Drew.
- 8.5 The Applicant's witnesses have attempted in good faith to address relevant RMA issues, including in the evidence filed so that the Committee is assisted in understanding the plan change. As set out in Ms. Drew's rebuttal evidence there is only two remaining points of disagreement in the various expert's evidence:

- (a) Urban design-the Council consultant Mr. Bredemeijer recommends the Lockerbie Plan change include rules proposed for the medium density zone to also apply in its suburban residential zone. In relation to fencing and retaining walls standards, this change was recommended in the s42A report, and has been accepted as noted in paragraph 3.3 of Ms. Drew's rebuttal¹⁰. The other changes sought were considered as not appropriate or necessary and this is set out in the rebuttal evidence of Mr. Hugo. Ms Drew summarises at para 3.7 of her rebuttal:

"For the reasons set out in the evidence of Mr Hugo, no further changes have been made to the plan provisions that would apply the interface/street activation standards to the Residential zone in the LDAP. It is both Mr Hugo's and my opinion that they are not warranted or necessarily, particularly when having regard to the increased lot sizes (i.e., 600m²) that are required for lots within the LDAP. I also note that Mr Rademeyer in the s42A report has not recommended the changes either."

- (c) The submitter Ministry of Education filed planning evidence by Mr. Frentz. Their submission seeks for educational facilities to be classified as a restricted discretionary activity rather than full discretionary. It is recommended in the Section 42A report this submission be accepted, and Lockerbie as Applicant has accepted this as appropriate. It is however noted that this will, if accepted, lead to a planning inconsistency in plan provisions where educational facilities are a full discretionary activity in the rest of the District Plan residential zone. As such, land in the MDR will provide an easier plan rule framework for day-cares and educational facilities, than

¹⁰ and now included in Rule 3.1.9 of the plan provisions

in the rest of the District Plan, with no clear logic as to why that should be the case. This is likely to need to be addressed in the next full District plan review.

- (d) Mr Frentz evidence seeks an additional objective and policy, again specific to the land within the LDAP zoned MRZ, to enable *public* education facilities. It is noted that the Ministry has not indicated to either MPDC or the Applicant of any size or area of land within its plan change that it seeks for a school. Further, Lockerbie advises it does not wish to sell any of its land to the Ministry of Education for a school. The spatial planning including infrastructure and development costs have been prepared based on a residential yield that will be significantly affected if a school was placed within the PC 56 footprint, which would displace residential housing it is sought to be zoned for.
- (e) In my submission if the Ministry of Education seeks land within the PC 56 footprint, it would need to use its designation powers as a Requiring Authority under the Act. It is submitted that it is not appropriate on a private plan change for the Ministry to seek for objectives, policies and rules related to enabling a potential new public school when the Private Plan change applicant as the sole private landowner has not been approached by the Ministry of Education in regard to purchase of land within the Plan Change area, nor has any intention of selling the land to the Ministry of Education. Enabling a future school through a resource consent process (as a willing seller) therefore has no planning rationale. The applicant is comfortable with the rule change to RDA as related to 'educational facilities' as defined under the District Plan, as this will enable day-cares for greater than 4 children, which may be needed based on demand in this locality. It does not support any further objectives and policies, and suggest these additional provisions are best left to be considered as part of a Section 32A evaluation for the whole District Plan at its next review.

9. Closing Comments

- 9.1 It is submitted that there are minimal areas of differences in expert evidence for the Commissioners to weigh up, and they are minor. The appropriateness of the two residential zones as sought is supported by all expert witnesses, with some remaining issues limited to only a couple of PC 56 plan provisions.
- 9.2 The Commissioners will need to weigh up the expert urban design and planning evidence of the Council and the Applicant, to inform their decision as to whether the additional matters identified by Mr. Frentz and Mr. Bredemeijer's are justified for the Plan change area alone, distinct from future medium residential zones that may be applicable to the rest of the district.
- 9.3 The evidence of the Applicant and Council is robust and provides considerable evidentiary support to rely on regarding assessment of effects from the Plan change. The plan provisions have sought consistency with National Planning Standards ("NPS"), so will easily achieve coherent integration with future reviews and Plan updates to align with the NPS.
- 9.4 The public process of a plan changes provides for members of the public to have their say, and to comment through submissions and a public hearing. This is the opportunity for public

comments and evidence. There has been a limited number of fully opposing submissions to this plan change seeking it be declined outright. Most of the submissions in opposition have had the issues raised addressed, to the point of not appearing or the Applicant being prepared to amend the plan provisions to provide the relief sought.

- 9.5 Most of the remaining submissions are from entities that are using PC 56 to raise issues regarding policy related to the medium density residential zoning and urbanisation as a whole. These can be characterised mainly as amenity related matters and demands on roading and other existing infrastructure (schools, retail and community services). These matters have been addressed through evidence presented as part of this hearing.
- 9.6 The PC 56 provisions propose significant buffering mitigation between the expansion of urbanisation from the PC 56 to the surrounding rural boundary and adjacent farming properties.
- 9.7 After notification of the Plan change and even following evidence filed by the submitters prior to the hearing, Lockerbie has made several further amendments to the provisions to incorporate suggestions. Matters such as cycleways, landscaping, fencing and urban design provisions in regard to PC 56, for the medium density residential zone in particular, have been amended. These have now all been incorporated and are included in the 'Final Version' of provisions.¹¹
- 9.8 Camerons submission raised concerns about the impact of PC 56 on the farming operation of their adjoining farm and reverse sensitivity effects on surrounding rural activities in general. A range of mitigation measures to avoid reverse sensitivity effects have been incorporated to the provisions as well as a separate side agreement with the Camerons to cover these issues through a civil agreement.
- 9.9 In summary:
- (a) The rezoning of land sought through the PC 56 provisions are in the opinion of Ms. Drew and the Council reporting planner to be the most appropriate outcome for the site and will best achieve the broad policy objectives of the NPS-UD 2020 and the purpose of the Act.
 - (b) The zoning and provisions now proposed align with national planning documents and good planning practice, and are efficient and effective; and

¹¹ Rebuttal evidence of Kathryn Drew, para 3.2 and applicants final amended provisions, included to her RE, as Annexure A


(c) The mix of medium density and suburban residential zone will meet short- and medium-term demand for residential land in the Matamata-Piako area and will discourage ad-hoc out of zone uses to be applied for on other rural zoned land.

9.10 The Applicant seeks plan provisions that address the benefits and amenity the Lockerbie area will provide to the Community and is advancing this plan change that will support a range of different housing typologies to provide affordable housing within the Morrinsville urban area and changes to the urban area which will happen over time, whilst addressing infrastructure, cultural and environmental issues.

9.11 This Plan change will enable housing needs based on effects from Morrinsville's pace of population growth and change and will satisfy existing and future residential demand efficiently and effectively, whilst providing additional opportunities and benefits to the existing community.

9.12 Lockerbie request that the Hearing Panel confirm the plan change zoning in the manner proposed in Ms. Drew's evidence, and as modified through amendments to the provisions set out in the additional rebuttal evidence provided by Ms. Drew in response to other submitter evidence.

Signature:



Kate Barry-Piceno Legal Counsel for Lockerbie Estate Ltd and Lockerbie Estate No.3 Ltd

Dated: 26 July 2022