

Decision following the hearing of a Private Plan Change request (PC56 – Lockerbie) to the Matamata-Piako District Plan under the Resource Management Act 1991

Proposal

To rezone approximately 78 hectares of land at 76 Taukoro Road and 182 Morrinsville-Tahuna Road, Morrinsville from Rural (with a Future Residential Policy Area (FRPA) overlay) to Residential and Medium Density Residential with a supporting Development Area Plan and Precinct.

This plan change is APPROVED. The reasons are set out below.

Plan Change No:	PC56
Hearing Panel:	David Hill (Chair) Cnr Donna Arnold Cnr Sue Whiting
Site address:	76 Taukoro Road, Morrinsville (east block) and 182 Morrinsville-Tahuna Road, Morrinsville (west block)
Legal description:	<ul style="list-style-type: none"> • Lot 7002 DP 54793 (east block) (36.6476 ha); • Lot 2 DP 7445 (west block) (40.5811 ha); and • Lot 6001 DP 549793 (0.9235 ha) – MPDC local purpose (stormwater) reserve.
Applicant:	Lockerbie Estate Limited & Lockerbie Estate No 3 Limited
PC Request lodged:	8 September 2021
PC Request accepted:	8 December 2021
Public notification:	20 January 2022
Submissions closed:	24 February 2022
Summary of submissions:	24 March 2022
Further submissions closed:	7 April 2022
Hearing commenced:	Monday 28 July 2022, 9.30 a.m.
Appearances / Attending:	<p><u>Applicant:</u> Lockerbie Estate Limited represented by¹: Kate Barry-Piceno (Counsel) G D Jones (Director) Kathryn Drew (Planning) Norm Hill (Cultural)</p> <p><u>Submitters:</u> Ministry of Education - Keith Frentz (Planning) Matamata-Piako District Council – Paula Rolfe (Planning) Benjamin and Justine Cameron – 132 Taukoro Road Bike Waikato – Richard Porter</p>

¹ Note: other expert witnesses who had filed evidence were excused by the Hearing Panel but were on stand-by.

	<u>Council:</u> Andrew Green (Counsel) Ally van Kuijk (District Planner) Marius Rademeyer (Planner and s42A reporting officer) Kelly Moulder, Hearings Co-ordinator
Commissioners' site visit	27 July 2022 and 10 August 2022
Hearing adjourned	28 July 2022
Hearing Closed:	10 August 2022

Introduction

1. This decision is made on behalf of the Matamata-Piako District Council ("**the Council**") by Independent Hearings Commissioners **David Hill (Chair)**, **Councillor Donna Arnold** and **Councillor Sue Whiting**, appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. The Commissioners have been given delegated authority by the Council to make a decision on submissions on proposed Private Plan Change 56 – Lockerbie ("**PC56**") to the operative Matamata-Piako District Plan ("**the MPDP**") after considering all the submissions, the section 32 evaluation, the reports prepared by the officers for the hearing, and evidence presented and representations made during and after the hearing of submissions.
3. PC 56 is a private plan change that has been prepared following the standard RMA Schedule 1 process (that is, the plan change is not the result of an alternative, 'streamlined' or 'collaborative' process as enabled under the RMA).
4. The private plan change request, under Part 2 of Schedule 1 RMA, was accepted by Council on 8 December 2021 and publicly notified on 20 January 2022, with the initial submission period closing on 24 February 2022 and further submissions closing on 7 April 2022.
5. A total of 36 submissions and 4 further submissions were made on the plan change. One late submission was received – and which the Panel agreed to accept as no one was deemed to be prejudiced by so doing.
6. The s.42A RMA hearing report was prepared by Mr Marius Rademeyer with technical reviews from:
 - Santha Agas – Three Waters;
 - Susanne Kampshof – Infrastructure Funding;
 - Alistair Black and Vinish Prakash - Transportation; and
 - Wayne Bredemeijer – Urban Design.
7. That report included as Appendix E a comprehensive submission assessment with recommendations and reasons. The Panel has reviewed those recommendations and reasons and, with the exceptions discussed later in this decision, accepts them.

Appendix E is, therefore, to be considered an integral part of this decision *except* as noted below.

SUMMARY OF PLAN CHANGE

8. The proposed plan change is described in the application² as follows:

The zoning approach and LDAP [Lockerbie Development Area Plan] has been designed to provide a variety of built form and housing choice, based on the site's characteristics, with flexibility in mind to accommodate a wide range of potential housing typologies demanded by the market, as informed by emerging trends within urban areas elsewhere in New Zealand. This includes single-dwelling sites, duplexes (two dwellings attached by a common party wall), and terraced dwellings and units (three or more dwellings within a residential building). The LDAP ... also signals key infrastructure requirements/connections and their triggers, what needs to be addressed in a Development Agreement, the location of future reserve networks and the supporting pedestrian network.

To facilitate such development, zones and precincts consistent with the NPS [the National Planning Standards] are proposed within the LDAP for the site as follows:

- *Residential Zone to the periphery of the plan change site. This is to ensure character compatibility of future development at the interface of the site with the existing urban character of Morrinsville, and similarly at the urban/rural divide that occurs across the District.*
- *A new Medium Density Residential Zone (MRZ) and associated performance standards to central areas of the site. This zone is intended to predominantly accommodate single dwellings and duplexes.*
- *A new Precinct (the Lockerbie Precinct) and associated performance standards overlying part of the MRZ. This precinct is intended to accommodate single dwellings, duplexes and terraced housing.*

The LDAP also provides for:

- *Large tracts of reserve space for amenity and stormwater purposes around watercourses S2 and S3;*
- *Alignment of the roading network adjacent to reserves, where applicable, to enable activation of those spaces;*
- *A neighbourhood reserve within the centre of the site, with a size of 2,500m²;*
- *Various pedestrian linkages between the reserves and to break up block lengths;*
- *A new transportation connection to Morrinsville-Tahuna Road (or Studholme Street) just north of the Rhoda Read Care facility;*
- *Two new transport connections to Taukoro Road;*
- *Two transport connections to the land to the east, to future proof the potential for this land to be rezoned for residential development; and*
- *A shared cycle/pedestrian network that connects to existing pedestrian networks and provides a circular arrangement within the site.*

9. The request noted that Council's Plan Change 47, operative September 2017, which responded to the perceived need for further residentially zoned land, placed a Future Residential Policy Area overlay over the rural zone subject land. The Hearing Panel (**the Panel**) was advised that the overlay was based on a broadly assessed yield of 600 dwelling units.

10. The anticipated yield from the PC56 area was noted as 1200 dwelling units – which is in line with the 2038 demand projection of 960 dwelling units calculated by Property

² BBO - Request for Plan Change 56, page 16

Economics in the *Morrinsville Residential Growth Assessment* prepared for the application (Appendix L).

11. The request also noted that a Medium Density Residential zone (referred to as the MRZ adopting the abbreviated nomenclature of the NPS) does not presently exist in the MPDP. The proposed provisions have therefore been crafted in concert with the existing residential infill provisions and the NPS' MRZ standards. They also include seven bespoke objectives and associated policies for the zone.
12. The proposed Lockerbie Precinct encourages further density intensification within the LDAP, enabling a number of the MRZ permitted activities and providing a more permissive consenting framework for duplex dwellings and terraced dwellings.
13. Residential performance standard changes reflecting the greater residential density proposed include height in relation to boundary, front yard setback, building coverage, and a number of urban design responses to addressing the street - such as garage width, glazing, fence heights and outlook space.
14. PC56 also includes bespoke changes to the residential zone rules within the LDAP to minimise the prospect for any reverse sensitivity effects with the adjacent rural zone. In particular, the proposed minimum residential lot size of 600m² is intended to buffer the increased density provided in the core of the LDAP.
15. In addition to the regional consents that would be required to realise the development potential enabled by PC56 – earthworks, stormwater management, water take etc – all forms of subdivision and housing typologies such as duplexes and terraced houses require consent under PC56 (typically as restricted discretionary activities in the Precinct).
16. Finally, PC56 includes the following figures:
 - Taukoro Road Cross-Section;
 - Morrinsville-Tahuna Cross-Section;
 - Pedestrian Network Plan;
 - Three Waters Plan;
 - Proposed Zoning; and
 - Lockerbie Development Area Plan.
17. In her evidence³, Ms Drew helpfully summarised the outcome that PC56 seeks as follows:
 - (a) *Rezone approximately 16.6 ha from Rural with the FRPA overlay to Residential around the periphery of the plan change site;*
 - (b) *Rezone approximately 61.5 ha from Rural with a FRPA overlay to MRZ within the central areas of the site;*

³ Drew, Statement of evidence, para 5.4.

- (c) *Create a new Precinct (the Lockerbie Precinct) and associated performance standards that overlays the part of the MRZ that enables a more intensive development outcome than the MRZ; and*
- (d) *Set aside sufficient reserve space for open space amenity and stormwater purposes.*

18. Ms Drew also noted that the LDAP would include (among other things):

- *The location, timing and function of the reserves and supporting pedestrian networks;*
- *The key infrastructure requirements and development triggers;*
- *The generally agreed roading cross-sections for Morrinsville-Tahuna and Taukoro Roads; and*
- *What needs to be covered in a Development Agreement.*

19. In his s42A hearing report, Mr Rademeyer agreed with Ms Drew's description.

CONTEXT

20. The PC56 land is immediately adjacent and to the north of the existing consented Lockerbie Estate, which is under active development – being some 40ha comprising 329 dwellings, a 163 unit retirement village, childcare centre, café and public reserves.
21. As illustrated in the Pedestrian Network Plan and LDAP, the two developments are intended to be closely connected (as explained more fully in Mr Hugo's Urban Design Assessment (Request - Appendix F) and form a relatively seamless and integrated urban landscape.

HEARING PROCESS

22. Prior to and following the hearing, the Panel visited the site and the local surroundings. We record our gratitude to Mr Bellamy for his assistance with the site visit.
23. The hearing proceeded by way of a mix of in-person and virtual appearances and was adjourned on the day for the purpose of receiving a final set of proposed plan provisions and a further site visit.
24. The hearing was closed on 10 August 2022 following receipt of the amended provisions (as agreed between Mr Rademeyer, Ms Rolfe and Ms Drew) and a follow-up site visit.

PROCEDURAL MATTERS

25. The Panel issued two Minutes giving directions on report, evidence and legal submissions exchange, appearances, and the order of presentations. A number of witnesses were excused as their expert issues were not in dispute – those matters covering infrastructure, cultural, landscape, ecology and economics.
26. On 22 July 2022 correspondence was received from Pavi Singh, solicitor for submitters Benjamin and Justine Cameron, noting that “ ... *the Camerons have now agreed to amend their submission to one of conditional support, based on the Applicant's amended proposed provisions, and on terms of a private deed and no complaints covenant.*”

27. Furthermore, Ms Singh noted that “... *it is our client’s intention to attend the hearing. However, they will not be making any comments or submissions regarding any of the matters pertaining to the attached side deed. It is our understanding that they may make comments regarding roading, width and speed limits on Taukoro Road.*”
28. We understood that to effectively circumscribe the scope of the Cameron’s original submission for the purpose of our consideration – but leaves the matter of appeal right scope subject to the conditions stated.

RELEVANT STATUTORY PROVISIONS CONSIDERED

29. The RMA sets out an extensive set of requirements for the formulation of plans and changes to them – and caselaw on the matter is well settled – based around the functions of territorial authorities under s.31, district plan matters under sections 72-76 (and s.74 in particular), and the requirements of s.32 RMA.
30. Ms Barry-Piceno covered those requirements and the associated caselaw fully in section 4 of her legal submissions. She also addressed the matter of scope at section 7.
31. Those matters were also summarised in section 4 of Ms Drew’s evidence and accepted by Mr Rademeyer.
32. We have nothing further to add to those identified provisions and accept them as being full and sufficient for the purpose.
33. We note that Clauses 10 and 29 of Schedule 1 requires that this decision must include the reasons for accepting or rejecting submissions. The decision must include a further evaluation of any proposed changes to the plan change arising from submissions; with that evaluation to be undertaken in accordance with section 32AA. Four further changes post-notification were sought.
34. With regard to Section 32AA, we note that Ms Drew undertook that evaluation in section 9 and Attachment 3 of her evidence and that Mr Rademeyer reviewed⁴ that evaluation and agreed with Ms Drew’s overall assessment that those further changes satisfied the s.32AA test.
35. The consent authority may either decline, approve, or approve the plan change with modifications.

RELEVANT STATUTORY PLAN PROVISIONS CONSIDERED

36. Section 9 of the request application, section 7 of Ms Drew’s evidence, and section 9 of the s42A report comprehensively identified and addressed the hierarchical suite of statute, policy, plan and regulation provisions. There was no dispute about those matters – noting that Mr Rademeyer also included and assessed PC56 against the Hauraki Gulf Marine Park Act 2000 as Morrinsville falls within the Gulf’s catchment, and Ms Rolfe sought that the National Planning Standards 2019 formatting etc be adopted.

⁴ S.42A report, Table 5, page 17.

37. As those respective provisions and their application were not contested, we adopt that narrative for our purpose and simply refer the reader to those referenced sections.
38. In summary, the relevant provisions are to be found under the following:
- Hauraki Gulf Marine Park Act 2000.
 - National Policy Statement on Urban Development 2020 (NPS-UD).
 - National Policy Statement for Freshwater Management 2020 (NPS-FM).
 - National Environmental Standards for Freshwater 2020 (NES – F).
 - Waikato Regional Policy Statement 2016 (WRPS).
 - Waikato Regional Plan 2007.
 - National Planning Standards 2019.
 - Matamata-Piako District Plan 2005 (updated 2020).
39. Other references that have been considered include:
- Ngāti Hauā Environmental Management Plan 2018.
 - Tai Tumu, Tai Pari, Tai Ao - Waikato-Tainui Environmental Plan 2013.
 - Whaia Te Mahere Taiao a Hauraki - Hauraki Iwi Environmental Plan 2004.
 - Waikato Regional Land Transport Strategy 2011-2041 (RLTS).
 - Matamata-Piako District Council Town Strategies 2013 – 2033.

AMENDMENTS SUBSEQUENTLY AGREED

40. As a consequence of further discussions following formal notification, Mr Rademeyer also recorded a number of “agreed” changes⁵:

- *Amendments to lock the key urban design principles, as shown on the “Lockerbie Pedestrian Network Plan” (Appendix F, Figure 3 within Rule 9.4.4), into the LDAP. The purpose of the amendments is to ensure that the mechanism is in place to enforce implementation of the identified key urban design principles at the time of development and subdivision.*
- *Amendments to the LDAP and the Lockerbie Pedestrian Network Plan by relocating the proposed stormwater reserve at the north-eastern plan change boundary, to adjoin Taukoro Road. The purpose of the amendments is to improve the rural/ residential interface through the provision of a more graduated transition between the Rural and Residential Zones.*
- *The introduction of new provisions to require compulsory installation of rainwater storage tanks for the supply of non-potable water for outdoor use at all residential units and a consequential change to the MPDC Development Manual (which is required to be complied with under the District Plan) to provide appropriate standards for rainwater storage tanks.*
- *New rules to provide for educational facilities under RDIS status.*
- *Amendments to the wording of a number of provisions for clarity and consistency with the Planning Standards. Of note, the changes include: – An increase in permitted building coverage from 50% to 55% and retention of 60% coverage for terraced housing but only when adjoining a reserve of more than 20m width. The purpose of the change is to align the coverage provisions with the definition of “coverage” under the Planning Standards*

⁵ S.42A report, Section 6.

(which includes building overhangs) and to provide for additional coverage for terraced housing where the amenity effects are offset by proximity to open space.

- *An amendment to the fencing rules to better manage effects where retaining walls are to be erected in combination with fences. The purpose of the change is to “lock in” an acceptable treatment for retaining walls and fences that are of a scale that can affect the amenity of neighbouring properties and the public realm.*

41. These changes were detailed at section 11 of Ms Drew’s evidence.

42. Mr Rademeyer also noted a number of other amendments sought in his s.42A report – and which Ms Drew, in her rebuttal evidence, accepted, as follows:

3.2 Section 6 of the s42A report identifies four additional changes to the plan provisions over and above those set out in Attachment 1 of my EIC. Those changes related to:

- (a) A change to the District Plan provisions for the Residential Zone whereby the fencing/retaining wall provisions of the MRZ would also apply to the Residential zone within the LDAP area. This change is provided for in Rule 3.1.9.*
- (b) Changing the development principles in Rule 6.3.13(i) to “Matter of Discretion” in Rule 6.3.13(v).*
- (c) Additional changes in the form of cross-referencing and rewording within a number of rules to improve clarity.(sic)*
- (d) Amending the activity status for educational facilities to being a restricted discretionary activity.*

43. Ms Drew also accepted the amendments sought by Ms Rolfe, as follows:

3.4 The evidence of Ms Rolfe, on behalf of MPDC, has recommended three further changes to those set out in paragraph 3.2 above. Those changes relate to:

- (a) Further amendments to rule numbering to align with the National Planning Standards framework.*
- (b) Removal of the note section under MRZ-R2(4) – Educational Facilities.*
- (c) Slight amendments to the wording of Rule 6.3.1.13(v).*

SUMMARY OF EVIDENCE

44. The Council planning officer’s s42A RMA report was circulated prior to the hearing and taken as read.

45. The applicant / requestor’s expert evidence was pre-circulated and taken as read. As the issues remaining at hearing were very confined the Panel excused most witnesses, simply requiring that they be on stand-by in the event that matters emerged that required an answer from the relevant expert.

46. For the record we note that evidence from the expert witnesses excused was filed from and on the following topics:

- Norm Hill (Cultural);
- Dean Morris (Engineering);
- Michael Hall (Traffic);
- Morné Hugo (Urban Design);
- Oliver May (Landscape);
- Richard Montgomery (Ecology); and

- Tim Heath (Economics).
47. Those topic areas and the issues addressed were, in the main, accepted or resolved through the proposed plan provisions or by signed undertakings (for example, through the infrastructure Private Development Agreement with Council). Having reviewed that material and the various review responses, we were satisfied that we need take those matters no further. The two outstanding matters, which we discuss below, related to the urban design and transportation provisions.
 48. Accordingly the Panel was only addressed by Mr Jones as applicant / requestor, Ms Drew on the overview planning issues, and Ms Barry-Piceno as counsel.
 49. Their submissions and evidence heard is summarised below.

GD Jones, Director of Lockerbie Estate Limited and Lockerbie Estate No. 3 Limited, provided background to the existing Lockerbie Estate development, the purchase of the subject land, and the consultation undertaken with key stakeholders and the wider community. He noted the Private Development Agreement signed with Council regarding funding of the capital cost for infrastructure related to PC56, and drew attention to the relative proximity of the proposed Lockerbie Junction Retail Precinct in the present development which would also service PC 56. Mr Jones also advised that 330 residential sections (plus the retirement village) had sold to date in the Lockerbie Estate demonstrating the clear demand and expected to deliver 100 residential sections a year over PC56's development cycle. Mr Jones emphasised his expectation that PC56 would provide for single storey houses in the earlier years of the plan change development with the market moving to two-storey housing in the medium to longer term.

Kathryn Drew, consultant planner with Bloxam Burnett & Olliver Ltd (BBO), provided an overview of the historical and procedural background to PC56; explained the rationale for the proposed provisions; and evaluated those against the statutory requirements. Ms Drew noted that she relied upon the technical reports and evidence produced for and submitted with the request. Ms Drew concluded that PC56 satisfies all of the requirements of the planning instruments; is consistent with the relevant provisions of the RMA, including its purpose and principles; and can be accepted and approved in the form requested.

Ms Drew provided supplementary rebuttal evidence accepting the changes recommended by Mr Rademeyer in his s.42A report and the changes proposed by Ms Rolfe in her evidence. She did not accept the additional urban design changes proposed by Mr Bredemeijer (which is discussed further below).

Kate Barry-Piceno, counsel for Lockerbie, provided comprehensive legal submissions outlining the general legal requirements of a plan change; summarised the environmental effects identified by the expert witnesses; noted the policy and strategic framework regarding residential land supply; discussed the law on plan change scope; and summarised the issues that she submitted the Panel needed to consider and determine. Ms Barry-Piceno concluded that PC56 would 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. She sought the Panel's confirmation of PC56 as now amended.

50. Representations were made and statements were tabled by the following submitters:

Paula Rolfe, consultant planner for Matamata-Piako District Council as submitter acknowledged that most submission matters had now been resolved but sought further technical amendments to better align the text with the National Planning Standards and reframe proposed performance principles as matters of discretion. As noted above, those amendments were accepted by Mr Rademeyer and Ms Drew.

Keith Frentz, consultant planner for the Ministry of Education, noted that because of the likely population demographic associated with 1200 dwelling units, additional educational facilities (particularly private facilities) may be required within the plan change area. He therefore sought a restricted discretionary activity status for such within the medium density residential parts of PC56 coupled with an amendment to objective MRZ-06 and a new policy MRZ-P8 supporting such facilities. Mr Frentz noted that while the s.42A report accepted the activity status change it did not accept the amended objective or new policy. He disagreed, concluding that the inclusion of a supporting policy framework would provide greater clarity and certainty for plan users as to how the plan provisions are to be applied. We discuss this matter further below.

Richard Porter, appeared for Bike Waikato, spoke to his submission which sought further transport improvements that encourage behaviour changes and connect people on bikes and pedestrians safely to their homes. Mr Porter acknowledged that design issues would follow at subdivision consent stage.

Ben and Justine Cameron, long term owner/occupiers of the farm property at 132 Taukoro Road, were, as discussed above, restricted to comments on traffic / transportation. In that regard they noted a suggestion that Taukoro Road be speed limited to 50km/h along its entire length, with which they disagreed (although accepting that the "Lockerbie" portion of that road might be restricted). They also expressed concern about the width, formation and safety of Taukoro Road given that it would subsequently combine residential traffic (including cyclists and pedestrians) with heavy rural vehicles such as tankers, tractors, harvesters and stock trucks. We discuss this matter further below

51. In summary reply, Ms Barry-Piceno noted the earlier correspondence with the Ministry of Education; drew attention to the fact that the proposed National Policy Statement for Highly Productive Land currently exempts land already signalled as future urban (and therefore negated the need to consider the class 2 soils on the subject land); noted the strong directives in the NPS on Urban Development; and submitted that no compelling resource management reasons were advanced that precluded the Panel approving PC56 as sought.

PRINCIPAL ISSUES IN CONTENTION

52. Having considered the submissions and further submissions received, the hearing report, the evidence presented at the hearing and subsequently, and the Council

officers' response to questions, the following principal issues in contention have been identified:

- Matters out of scope;
- Educational facility status;
- Urban design provisions; and
- Transport triggers.

FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION

Matters out of scope

53. As Ms Barry-Piceno submitted, only submissions that are “on” a plan change have relevance and can be considered. The reason for that is essentially twofold – (i) if they are not “on” then they probably have not undergone an appropriate s32 evaluation; and (ii) even if they have, they are likely to involve other affected persons who have not submitted “on” the plan change and therefore have no ability to enter the process and comment on those proposals. That breaches the principles of natural justice.
54. Examples of that are the submissions on current parking provision or water supply issues more generally in Morrinsville.
55. There is second class of submissions that, whilst arguably “on” a plan change, are in fact premature. Those are submission that will or may become relevant if the plan change is approved and resource consents are subsequently sought. Those relate to matters of detail and design. In the present instance submissions about roading layout and design affected by but beyond the confines of the plan change area – for instance along Taukoro Road - are an example. Those matters will be considered (if relevant) later in the process when subdivision and land use consents are sought. The MPDP has provisions covering those matters.
56. A final class of “out of scope” submissions are those that seek provisions that cannot be applied under the RMA because they are the subject of regulatory control under other statutes. Road speed limits are such an example. In the present instance there was discussion about limiting the current speed on Taukoro Road so that the two new proposed intersections can be negotiated safely. While that is clearly an important consideration, it is not one to be determined through the plan change – but of course the final design of those intersection will need to take into account whatever speed limit applies at the time the appropriate resource consents are sought.
57. The associated concerns of Mr Porter and Mr and Mrs Cameron will have their day, but not in the present consideration.

Educational Facility

58. Mr Frentz, planning consultant for the Ministry of Education, sought a restricted discretionary activity (RDIS) status for educational facilities rather than the discretionary activity (DIS) status initially proposed in the s.42A report or the non-complying activity (NC) status in the notified PC56 – with the addition of an amended objective and new

supporting policy. Mr Frentz contended that the latter were particularly important in the event that an application defaulted to a discretionary activity because it failed to comply with one or more RDIS performance standards so that it could derive some support from those tailored provisions.

59. Under PC56 the proposed definition of *educational facilities* – taken from the NPS – is:

For the Medium Density Residential Zone, means land or buildings used for teaching or training by child care services, schools, or tertiary education services, including any ancillary activities.

60. This is narrower than the operative MPDP definition of *education facilities*:

"Education facilities" means land and/or buildings used to provide regular instruction or training and includes pre-schools, schools, tertiary education institutions, works skills training centres, outdoor education centres and sports training establishments.

61. Furthermore, education facilities in the residential zone under the MPDP are a discretionary activity over the threshold of 10 pupils – and that is not proposed to be changed for the residential zone in the LDAP.

62. We note and accept Mr Frentz' point that with up to 1200 dwellings, PC56 will eventually contain a significant number of pre-school and school-aged pupils.

63. While Mr Frentz accepted that the Ministry would likely use its designation powers if minded to develop a facility, he noted that private providers had no such option. Regardless, he saw merit in the proposed amended objective and new policy because even under a notice of requirement process, regard to relevant planning provisions is required.

64. We record that both Mr Rademeyer and Ms Drew had accepted that argument and recommended a change from the notified non-complying activity status to a restricted discretionary activity status for the activity.

65. Ms Barry-Piceno⁶, while noting that her client was not opposed to that revised status, raised the matter of plan consistency with us. We agree that is an important and relevant matter.

Finding

66. The first point we note is that no change related to this matter is proposed to the activity status rules that apply to the land zoned residential within the LDAP. Educational facilities remain there as a discretionary activity for more than 10 pupils under MPDP rule 2.2.2.2 – and is permitted up to 10 pupils. Furthermore we note that educational facilities for more than 10 pupils are a discretionary activity in all zones across the MPDP (except in the Kaitaiki (Conservation) zone where they are a non-complying activity) including in Precinct 1 – Residential in the more recently introduced Settlement Zone.

67. What, then, is the logic for a reduced status on land that is being intentionally set aside for higher density use as medium density residential?

⁶ Barry-Piceno, Legal submissions, para. 8.5(c).

68. We note (and Ms Barry-Piceno also drew our attention to this in reply) that section 8.6 of the Request application cites an email from Alison Harold - Manager Education Waikato – dated 20 July 2021 that concludes:

...there is currently capacity in the wider network. We think that with amendments to the existing enrolment scheme for David Street school, the existing capacity can be utilised alongside roll growth classrooms and another primary school will not be required.

69. That opinion was neither retracted nor rebutted at the hearing – although the Ministry’s submission (no 23) of 18 February 2022 appears less categorical. We therefore consider ourselves entitled to conclude that a public educational facility is not required within the LDAP – and since there was neither evidence of interest in, nor need for, a private educational facility, we find no section 32 RMA justification for relaxing the general discretionary activity status of the MPDP. As now proposed the provision could not be said to be the most appropriate method for achieving the objectives of the MPDP in this new medium density residential zone – without, we acknowledge, adopting the modified objective and new policy proposed by Mr Frentz.
70. We also note that the matters of discretion combined under proposed rules 17.8(1) and (4) are so broad that the net effect is unlikely to provide any real benefit – which effectively contradicts the purpose of and requirement for a restricted discretion rule.
71. We therefore decline to approve the change in educational facilities activity status from that in the notified PC56 to a RDIS and see no compelling reason to incorporate the amended objective and new policy proposed. We do accept that a DIS activity status is more appropriate than a NC activity status and impose such.

Urban Design Provisions

72. In his urban design review for the s.42A Report, Mr Bredemeijer had recommended a number of additional provisions relating to street activation (glazing and entrances) in the Residential Zone parts of the LDAP, and requiring key local roads to be provided on specified reserve edges for connectivity and activation reasons.
73. Mr Hugo disagreed as to the need for those additional provisions and both Mr Rademeyer and Ms Drew opposed the further changes to the broader Residential Zone provisions.
74. Mr Hugo submitted⁷ that the activation provisions proposed were not necessary given the larger minimum lot size of 600m² now proposed for the residential zone in PC56.
75. Ms Drew⁸ noted that the current proposed LDAP demonstrated local road connectivity and that PC56 included rules (she cited Rule MRZ-R1(4)(i), PREC1-R1(4)(d) and Rule 6.3.3) making any development that does not comply with the LDAP a non-complying activity. Furthermore, she noted that Rule 6.3.13 includes a specific matter of discretion on point.

⁷ Hugo, Rebuttal evidence, para.12.

⁸ Drew, Rebuttal evidence, paras 3.9 – 3.10

Finding

76. We are persuaded that the larger minimum lot size of 600m² net site area for the Lockerbie Residential Zone (rather than the standard Residential Zone lot size of 450m²) makes those additional activation provisions unnecessary.
77. We are also satisfied that the provisions cited by Ms Drew will manage the local road / neighbourhood park/reserve relationship interface appropriately.

Transport Triggers

78. The Camerons had indicated concerns about the timing of intersection improvements arising from the development of PC56 – particularly at Taukoro Road / Morrinsville Tahuna Road, and the timing of intersections and urbanisation of Taukoro Road. While the detail of those matters will be the subject of final design conditions on subdivision and land use, PC56 incorporates transportation triggers signalling when those improvements must occur.
79. Table 1 at 9.5.9 of the proposed provisions includes trigger points for the transportation and pedestrian networks (among others). These are variously linked to increments of subdivision of between 500 and 700 lots. As noted, they have been agreed between the applicant and Council and, we understand, are derived from the ITA modelling undertaken by Mr Hall in consultation with Council's traffic consultants, Gray Matter. That work and those triggers were not contested by any other transportation expert – and we accept Mr Hall's assurance⁹ that the ITA is conservative. As such they were not in dispute.
80. Those triggers are stated in the Table as absolute thresholds – that is, a certain action must occur when the given number of lots is subdivided – and the key thresholds remain substantially as notified. Precisely how sensitive that relationship between subdivision number and upgrade required is, was not entirely clear from the evidence. If the tolerance is quite wide – i.e. conservative – then that may not be an issue.
81. However, the potential issue the Panel foresees is that there is no flexibility in the way in which those triggers are expressed in PC56. No flexibility either way. If the need for the upgrade occurs earlier because, for example, the actual number of traffic movements or vehicles on-site is greater than forecast or the number of lots is not reached until non-PC56 traffic volumes have increased appreciably through those corridors, then either a plan change would be required to amend those numbers, or the intersection upgrade would only occur later than required in practice, or Council may have to finance the upgrades independently. Triggers in a plan operate quite differently to triggers on a resource consent in the sense that a change of condition is relatively straightforward.
82. The problem for the Panel is that the wording to provide for that flexibility is out of scope because we have no direct submissions on the point, and it is doubtful that one could engage the procedural principles of s18A(b)(ii) RMA – *take all practicable steps to - ensure that ... plans - are worded in a way that is clear and concise* – to that end.

⁹ Hall, Statement of evidence, para 16.

83. As the Panel's hands are effectively tied on the matter, we take the perhaps unusual course of simply alerting Council to that potential issue.

STATUTORY REQUIREMENTS

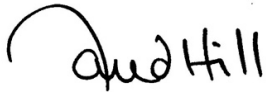
84. The Panel is satisfied that PC56 meets the required statutory tests and requirements.
85. PC 56 meets the s.5 purpose of the RMA by promoting the sustainable management of the land resource – which has been identified in the MPDP for intensified residential use.
86. No s.6 matters of national importance or s.8 Treaty of Waitangi principles are engaged.
87. With respect to s.7 other matters, to which particular regard is to be had, PC56 has done so, inasmuch as a plan change can, in terms of 7(b) – the efficient use and development of land; s.7(c) - the maintenance and enhancement of amenity values; and s.7(f) - maintenance and enhancement of the quality of the environment.
88. We note that the land is already subject to a Future Residential Policy Area overlay, reinforced by the NPS-UD, takes account of the NPS-FM in the reserve and stormwater management network proposed, adopts contemporary stormwater and water conservation principles (including rainwater storage tanks), indicatively provides good connectivity to the adjacent urban area, and is subject to an infrastructure Development Agreement with Council.
89. PC56 will assist Council in the discharge of its functions under s.31 RMA – particularly with respect to s.31(1)(aa) “... *to ensure that there is sufficient development capacity in respect of housing ... to meet the expected demands of the district.*”
90. A final checkpoint, established through the courts, is the question as to whether a proposed plan change is a better fit with the overall architecture of the Plan than the provisions it seeks to supplant or amend. We find that to be the case, noting that minimal changes are required in the body of the MPDP and bespoke provisions are included to ensure that the residential interface with the adjacent rural zone does not compromise the latter's essential amenity. While this is a new zone not previously included in the MPDP, it is broadly consistent with the medium density residential provisions that Government has introduced through the recent RMA amendment – albeit not actually required of Council, as a Tier 3 territorial authority, at this point.

DECISION

91. Pursuant to Schedule 1, clauses 10 and 29 of the Resource Management Act 1991, Proposed Plan Change 56 - Lockerbie to the operative Matamata-Piako District Plan 2005 is approved for the reasons set out in this decision.
92. Submissions on the plan change are accepted and rejected in accordance with this decision and generally as recommended by Mr Rademeyer in his s.42A hearing report Appendix E: Submission Assessment and Recommendations Tables.
93. The one exception, as discussed, is with respect to the Ministry of Education's submission points 23.1, 23.4 and 23.5. Mr Rademeyer had recommended accepting those related submission points but the Panel has determined to reject those submission

point for the reasons discussed above and revert the activity status for *educational facilities* to that used consistently across the MPDP for residential zones – being discretionary activity.

94. The summary reasons for the decision are that Private Plan Change 56 - Lockerbie:
- (a) gives effect to the higher order National Policy Statements;
 - (b) gives effect to the National Planning Standards;
 - (c) gives effect to the Waikato Regional Policy Statement;
 - (d) entrenches the Future Residential Policy Area overlay of the MPDP;
 - (e) will assist the Council in fulfilling its statutory functions under s.31 of the RMA;
 - (f) achieves the s.5 Purpose of the RMA by promoting the sustainable management of the land resource;
 - (g) is worded in a way that is clear and concise; and
 - (h) will assist with the effective implementation of the Matamata-Piako District Plan.



David Hill
Chairperson
and for Commissioners Donna Arnold and Sue Whiting

Date: 25 August 2022