

AUCKLAND COUNCIL



DECISION ON SUBMISSIONS TO PRIVATE PLAN CHANGE 36 TO THE AUCKLAND COUNCIL DISTRICT PLAN (FRANKLIN SECTION)

1) INTRODUCTION

1.1 SUBJECT OF HEARING

A public hearing of submissions and further submissions to Private Plan Change 36 was held in the Council Chamber, Pukekohe Service Centre, 82 Manukau Road, Pukekohe, on Wednesday 1 May 2013 commencing at 9.30am, Thursday 2 May 2013, commencing at 9.00am and reconvened in the Totara Room, West Annex, Level 2, 31-33 Manukau Station Road, Manukau on 8 July 2013 commencing at 1:00pm.

1.2 DELEGATION OF DECISION MAKING POWERS

This decision is made on behalf of the Auckland Council (AC) by Independent Commissioners Harry Bhana, Basil Morrison, and Murray Kay, appointed and acting under delegated authority pursuant to sections 34 & 34A of the Resource Management Act 1991 (RMA).

1.3 PERSONS PRESENT

COMMISSIONERS:

Harry Bhana	Chairperson	
Basil Morrison	Independent Commissioner	
Murray Kay	Independent Commissioner	

COUNCIL OFFICERS:

Vance Hodgson, Hodgson Planning Consultants	Reporting Planner	
Lisa Miers	Reporting Planner	

Chris Fourie	Landscape Architect	Present at Hearing on 1 May and 2 May only
David Russell	Development Engineer	
Lachlan Beban, Aurecon	Transport Engineer	Present at Hearing on 1 May and 2 May only
Yasenko Kpro	Stormwater engineer	
Wendy Stephenson	Democracy Advisor - Hearings	

REPRESENTATIVES: APPLICANT – ATLAS CONCRETE LIMITED

Keith Berman	Counsel	
Ian Carlisle	Transportation planning	
Kevin Wyborn	Infrastructure engineer	
Rob Pryor	Landscape Architect	Present at Hearing on 1 May and 2 May only
Kerren Bennett	Ecologist	Present at Hearing on 1 May and 2 May only
Graham Collie	Atlas Concrete Limited	
Adair Brimelow	Chartered Professional Engineer	Present at Hearing on 8 July 2013 only

SUBMITTERS IN ATTENDANCE

Name of Submitter	Witness or Representative
Ngati Tamaoho Trust	Lucille Rutherford
Counties Power	Christine Coste – Consultant Planner
BP Oil New Zealand Ltd	John Male - Hydrologist James Winchester - Counsel
Balle Group of Companies and Masters and Sons Ltd	Sir William Birch

1.4 PURPOSE OF THE PLAN CHANGE

Private Plan Change 36 (PPC 36) will modify the Auckland Council District Plan (Franklin Section) (District Plan) by rezoning 3.5529 ha of land located at 2038 Great South Road Bombay from General Rural to "Motorway and Rural Services Special Zone". PPC 36 was publicly notified on 18 September 2012 with a closing date for submissions of 16 October 2012. The summary of submissions was publicly notified on 15 November 2012. The period for further submissions closed on 29 November 2012.

A total of 12 submissions and two further submissions were received.

1.5 SUMMARY OF THE PROVISIONS OF PPC 36

The 3.5529 ha area to be rezoned by PPC 36 is roughly triangular in shape and bounded by State Highway 1, Mill Road and Great South Road and located to the south-east of the motorway interchange at Bombay. The land is mainly undeveloped at present except for a rural service workshop and a vacant building. Both of the existing buildings are located toward the Mill Road frontage of the site and have an associated sealed area with vehicle crossings giving access from Mill Road and from Great South Road. The area to the south of the existing buildings and associated vehicle areas is overgrown, principally with weed species. A small stream traverses the site from west to east entering from a culvert outlet approximately midway along the frontage of Great South Road and exiting through a culvert under the motorway. The land is a relatively flat, sloping gently from the northern and southern extremities towards the stream which is located to the south of the centre of the site.

The purpose of PPC 36 is to rezone the site to enable it to be developed for motorway related activities including a service station, cafe and restaurant facilities and for a range of rural service activities. The plan change provides for a concept plan, which is intended to ensure integrated development of the activities on the site.

1.6 REPRESENTATIONS AT HEARING

The details of the proceedings of the hearing, including the identification of those present, the procedural rulings and the evidence presented, are set out in this decision.

The reports by the Council's Consultant Planner and Council officers were circulated to the applicant, the submitters and the Commissioners prior to the hearing on the 1 May 2013. The officers' reports were taken as read.

We do not propose to set out the details of the officers' reports in this decision, as these are a matter of record and available to all parties to the combined hearing.

This decision contains the findings of the Commissioners' deliberations on PPC 36 and has been considered and determined in accordance with Schedule 1 of the Resource Management Act 1991 (RMA).

1.7 COMMISSIONERS' SITE VISIT

The Commissioners visited and inspected the site and surrounding area on the 26 April 2013.

1.8 REQUEST FOR FURTHER INFORMATION AND RE-CONVENED HEARING

At the conclusion of the hearing on the 2nd May 2013 the Commissioners advised that they would be seeking further information from the officers and from the applicant and would issue a minute detailing the information sought and the process to be followed for its assessment and circulation. A copy of the Minute dated 6 May 2013 is appended at Attachment 1. Following receipt of the requested information the parties were advised that the hearing would be re-convened on 8 July 2013 to hear information on the additional information. A further Minute was issued on 6 July 2013 setting out the process to be followed at the re-convened hearing and requesting exchange of technical aspects of evidence prior to the commencement of the re-convened hearing. A copy of the second minute is also appended in Attachment 1

2) DECISION

The Commissioners have determined

1. To approve (subject to a number of amendments), Private Plan Change 36 to the Auckland Council District Plan (Franklin Section) pursuant to Clause 29(4) of the First Schedule to the Resource Management Act 1991 ("the Act");
2. That those submissions supporting, or partly supporting, Private Plan Change 36 be accepted, or accepted in part and those submissions opposing, or partly opposing Private Plan Change 36 be rejected. The response in respect of each submission or point of submission and the reasons for these decisions are set out in more detail in Section 5 below.

3) SUBMISSIONS RECEIVED TO PPC 36

3.1 SUBMISSIONS IN OPPOSITION TO THE PLAN CHANGE

The following table summarises the submissions and further submissions received to the Private Plan Change.

Submitter	Support/ oppose	No.	Further Submission
Karl W. T. Flavell Te Ara Rangatu o te iwi o Ngati Te Ata Waiohua	O	1	-
Teo and Vicki Wijdeven	O	2	
Tracey Anderson T M Clarke-Latham, Hec Brak and T Griffiths (Family Trust)	O	3	
Tony Whittaker Waikato District Council	S/O	4	
Balle Group of Companies	S/O	5	
Master and Sons Limited	S/O	6	

Tristan Gielan New Zealand Transport Agency	O	7	Chevron New Zealand BP Oil New Zealand Limited
Richard Jenkins BP Oil New Zealand Limited	O	8	Chevron New Zealand
Lucille Rutherford Ngati Tamaoho Trust	O	9	
Malcolm Maclean Trustees of the Bramsa Family Trust	O	10	Chevron New Zealand
Christine Coste Counties Power	O	11	
Sukhi Singh	O	12	

These submissions are considered further in Section 7 below together with consideration of the evidence and submissions presented at the hearing.

4) SUMMARY OF SUBMISSIONS AND EVIDENCE PRESENTED AT THE HEARING ON 1 MAY & 2 MAY 2013

4.1 SUBMISSIONS AND EVIDENCE OF APPLICANT

4.1.1 Submissions of Keith Berman, Counsel for Atlas Concrete

Mr Berman presented legal submissions confirming details of the application. He pointed out that three of the submitters: BP Oil New Zealand Ltd; the trustees of the Bramsa Family Trust; and, Chevron New Zealand Ltd were in effect trade competition submitters and made submissions regarding the way those submissions should be weighed.

He referred to cultural issues and the applicant's request to Ngati Te Ata Waiohua to provide a copy of any Iwi Management Plan. He said no response to that request had been received.

He opposed the s42A Report recommendation that "Industry" be listed as a non-complying activity, on the basis that such a provision would lead to semantic confusion. The submission was based on the practical difficulty of differentiating between "Rural Industry" and "Industry". He considered that discretionary activity status provided sufficient control.

He referred to the Council planner's recommendation that the location of the stream should be shown on the Concept Plan. He said the applicant rejected that suggestion and no longer proposed a 10 m setback from the stream edge. (It later emerged that the applicant had made a separate application to the Council for consent to pipe the stream.)

Mr Berman referred to issues regarding stormwater submitting that it was inappropriate to provide more detailed information on the method of stormwater disposal as that it was a matter more appropriately assessed as part of a resource consent application.

Counsel referred to the submission by Counties Power and advised that the applicant did not accept the recommendation that the transmission lines across the site should be shown on the concept plan.

4.1.2 Evidence of Robert Pryor - Landscape Architect

Mr Pryor gave evidence on the landscape and visual effects assessment, which he had carried out for the Plan Change, noting his conclusion that the development enabled by PPC 36 could be visually accommodated within the landscape without adversely affecting the character, and aesthetic value and integrity of the rural environment. He considered that overall the visual and landscape effects would be no more than minor. He referred to the peer review carried out by Ms Chris Fourie and her recommendation that the stream location and associated riparian planting be included within the plan change. He said he agreed with that recommendation.

4.1.3 Evidence of Kevin Wyborn - Chartered Professional Engineer

Mr Wyborn gave evidence regarding the ability of the site to accommodate disposal of stormwater and wastewater. He referred to the concerns identified in the s42A Report regarding parameters for assessing stormwater flows and volumes and gave his opinion that regardless of whether these parameters were changed as suggested by submitters, the stormwater management concepts submitted with the application would still be valid. He confirmed his opinion that any proposed development enabled by the plan change could be adequately serviced in terms of stormwater and wastewater and that the effects on the environment as a result would be less than minor.

4.1.4 Evidence of Ian Stuart Carlisle - Chartered Professional Engineer

Mr Carlisle gave evidence regarding the traffic issues relating to the plan change focusing particularly on:

- the ability of the local road environment to accommodate the additional traffic safely and efficiently;
- the ability to provide access to, and egress from, the site;
- an overview of consultation with Auckland Transport and New Zealand Transport Agency;
- consideration of traffic matters raised by submitters; and,
- traffic matters discussed in the s42A Report.

He provided a summary of the Integrated Transportation Assessment (ITA) provided with the application and reported on the further discussions that had been held with Auckland Transport and NZTA following their receipt of the ITA. He described the additional traffic modelling carried out following those discussions. He advised that based on the modelled effects on the road network, the District Plan mechanisms, and, the design approvals described, he had concluded that traffic generated by activities on the site enabled by the Plan Change were able to be managed effectively, particularly in terms of the operation of the adjacent road network.

4.1.5 Evidence of David Haines - Consultant Planner

Mr Haines gave evidence covering the following matters:

- site description;
- background;
- strategic considerations;
- PC 36 background and structure;

- statutory considerations;
- matters raised in the s42A Report.

In regard to cultural issues Mr Haines advised that his company had written to nine iwi and had been advised that Ngati Te Ata represented by Karl Flavell and the Ngati Tamaoho Trust represented by Lucie Rutherford were recorded as primary iwi contact persons. He recorded the extent of interaction with iwi and said there was no basis for the iwi request that a cultural impact assessment be prepared.

He disagreed with the recommendation by the reporting planner that "Industry" be identified as a non-complying activity on the basis that a discretionary activity status gave the Council unfettered jurisdiction to decline a future resource consent application for any inappropriate industrial activities. He said it was simplistic to refer to Industry as an "Urban" activity and referred to a number of rural industries as examples of "industries" that were typically located in rural areas. He said that the identification of "Industry" as a non-complying activity would lead to ambiguity and confusion for the consistent administration of the plan because of the overlap between those industrial activities that were otherwise permitted, under the definition of "Rural Industry". He referred to the submissions by Balle Group and Master and Sons which sought to exclude certain industrial activities from the PPC 36 site and noted that under the Rural zoning sawmills, dairy factories, meat and poultry processing were all controlled activities and that saleyards were restricted discretionary activities. He pointed out that these were the provisions that applied to the site under its existing zoning.

Mr Haines disputed the Council officers assessment that additional information was required in respect of the method of disposal of stormwater. He considered that those were matters that were more appropriately addressed through resource consent application processes.

In regard to the submission by Counties Power he disagreed with the proposal that the power transmission lines across the site should be recorded within the concept plan because the information was already recorded on the certificate of title by way of easement and there was no need to also show it on the concept plan.

Mr Haines concluded that all potential adverse effects arising from the rezoning could be avoided, remedied or mitigated through the adoption of proposed amendments which he provided with his evidence.

4.2 EVIDENCE AND SUBMISSIONS BY SUBMITTERS

4.2.1 Evidence of Lucie Rutherford

Ms Rutherford stated that water (referring to the stream that bisects the site) is a taonga. While the stream is not an outstanding feature she said that it was culturally important particularly because it was part of the headwater. She was critical of the applicant's failure to properly engage in consultation. She said there had been email contact but that she had been unable to "pin down" someone to discuss the proposal on site. She said the area had been occupied by iwi for hundreds of years and they were greatly concerned about the possible pollution of natural water from inadequately managed wastewater and stormwater disposal. She said the iwi would support the Council planner's recommendation that industry should be a non-complying activity.

4.2.2 Evidence of Christine Coste - Consultant Planner on behalf of Counties Power

Ms Coste explained the reasons for the submissions by Counties Power. She explained the importance of the sub-transmission lines which traversed the site. She noted that the applicant accepted Counties Power's submissions that the height limit for network utility structures should be set at 25 m and that network utilities should be excluded from the new rules in Part 43. She accordingly addressed the two recommendations, which were in dispute. This concerned whether the transmission lines should be shown on the concept plan and whether other elements of the concept plan such as the proposed mitigation planting should be amended to reflect the setback requirements associated with the lines. She referred to the Hazards from Trees Regulations and the potential for mitigation planting to result in a breach of those regulations with associated unnecessary costs and uncertainty. She referred to other instances where sub-transmission lines had been mapped in concept plans in the district plan. She said that mapping the lines on the concept plan would promote the integrated management of the effects of the activities provided for in the new planning framework for the land. She said it would also ensure that in the future, potential multiple legal owners and/or leaseholders were aware of the need to accommodate the requirements of the sub-transmission lines when development or redevelopment works were proposed.

4.2.3 Legal Submissions by James Winchester on behalf of BP Oil New Zealand Ltd

Mr Winchester presented submissions in support of the submission in opposition by BP Oil New Zealand Ltd. He said that his client was satisfied by the additional traffic analysis provided by Atlas Concrete Ltd but remain concerned about the suitability of the site for the uses enabled by PPC 36 and the inadequacy of analysis and suitable provisions to address water issues. He pointed out that the BP site was downstream and made use of local water resources for its water supply and wastewater management. He considered those concerns had been recognised and validated by the expert assessment provided by the Council's stormwater team and outlined in the s42A Report. He said the evidence of Mr Male provided the basis for his submission that there was considerable doubt whether the stormwater issues and risks posed by the site could ever be effectively managed particularly because of the flawed assessment carried out on behalf of Atlas. He said that the analysis provided by Atlas was flawed and that issue was of such significance to the proper assessment of the plan change request that PPC 36 should be refused.

Mr Winchester referred to the Council's statutory functions under Section 31(1)(b)(i) which required the control of actual or potential effects of the use, development or protection of land for the purpose of avoiding or mitigating natural hazards. He further submitted that because of the inadequate analysis of the capability to accommodate stormwater discharge from the site, the requirements of section 32 could not be achieved.

Mr Winchester submitted that there was a genuine issue as to whether the site was suitable for rezoning and could accommodate its intended uses particularly whether there was sufficient space on the site for suitable on-site effluent disposal fields and stormwater detention. He said that the plan change request was ill considered and fatally flawed to the extent that the Commissioners could have no confidence that it would meet the tests of section 32 and should therefore be declined.

4.2.4 Evidence by John Male, Hydrologist, on behalf of BP Oil New Zealand Ltd

Mr Male said he agreed with the submission by BP regarding the inadequate or inappropriate assessment of site stormwater management. He said he believed the flow estimates for the site were incorrect and underestimated the magnitude of mitigation required. He considered the applicant's engineer had used the wrong parameters to determine the mitigation required to deliver hydraulic neutrality. He was critical of the failure to consider and assess stormwater management on a catchment wide basis and as a result the applicant's engineer had not fully evaluated risks or effects that required mitigation, remediation or avoidance. He said that the stormwater management risks, based on the information provided, could have significant effects and included flooding associated with upper catchment flows across the site and potential back water effects from the motorway culvert had not been evaluated. He said that the risks included flooding of roads, dam break impacts from upstream ponds, or ponds created on the site, scour around the motorway culvert, scour and elevated water levels along the BP site, reduced stream assimilative capacity, creating performance and compliance risks for the BP site. He said there was doubt as to whether there was enough space on site to provide adequate stormwater management facilities. He endorsed the Council recommendation that the plan change be declined because of the concerns regarding stormwater management.

Mr Male said that while a detailed design for stormwater was not expected, good practice required a concept plan to be prepared to provide assurance that appropriate stormwater management measures would be effective and are feasible.

4.2.5 Evidence by Sir William Birch on behalf of Masters & Sons and the Balle Group of Companies

Sir William noted that the submissions by Masters and Sons Ltd had resulted in recommendations in the s42A Report that Rule 43.8 should be strengthened by extending the assessment criteria for controlled activities to encompass consideration of the surrounding environment and the achievement of the intention of the "gateway concept". He questioned whether that was sufficient.

He noted that Rule 43.3 of PPC 36 provided for "Rural Industry and services" and "Rural Services" as discretionary activities. He pointed out that the definition of those uses in Part 50 of the District Plan included activities such as saleyards, sawmills, meat and poultry processing, dairy factories etc. He considered that the Commissioners should review the industries included in those two definitions and delete those that were incompatible with the gateway concept. He referred to the risk of contamination of produce in his client's pack house opposite the site through odour effects.

In response to questions Sir William agreed with the applicant's submission that the activities which his clients sought to exclude were currently defined as discretionary activities on his clients land and on the PPC 36 site. However he considered that if the applicant wished to take advantage of a plan change to introduce additional motorway related uses not currently provided for on the subject site then there was justification for excluding uses currently provided for, where they posed a potential risk to adjacent activities.

4.3 REPORTS BY COUNCIL OFFICERS

4.3.1 The Council Report under Section 42A of the RMA

The s42A Report was prepared by Vance Hodgson, Consultant Planner, assisted by Council Planner, Lisa Miers. Technical support was provided by the following Council officers and consultants:

- landscape and visual effects - Chris Fourie, Landscape Architect;
- traffic effects - Steve Dudley, Aurecon New Zealand Ltd;
- stormwater management -Yasenko Kpro, Principal Engineer Council Stormwater and David Russell Auckland Council Development Engineer;
- review of economic submissions - Derek Foy, Market Economics Ltd.

The report recommended a number of changes to the provisions of PPC 36 and concluded that while there may be some merit in the form of development proposed for the site by the plan change the reporting planner had been unable to develop recommendations due to insufficient information relating to:

- Cultural issues; and,
- Stormwater management concerns.

The concern regarding cultural issues arose because there was a lack of clarity concerning the effects of the proposal on Maori values, preventing the report writer from completing an assessment under sections 6e, 6f, 7a, and 8 of the RMA.

The stormwater management concerns arose because Mr Kpro, in his report on the Plan Change expressed the view that the information provided did not adequately address the potential adverse effects of stormwater from development of the site. In particular, it did not identify constraints and opportunities that were important to determine appropriate stormwater management and to ensure sufficient space would be maintained to provide for any necessary on-site devices including water supply and wastewater.

4.3.2 Response from officers and consultants after the applicant and submitters had presented their evidence and submissions.

Mr Hodgson stated that he was uncertain whether there was a need for further assessment of Maori values by way of a Cultural Impact Assessment. He agreed there were no typical triggers, such as an archaeological evidence, or other evidence that the site itself was of particular cultural importance but remained in some doubt as to whether the relevant provisions of the RMA had been properly considered.

He did not agree with Mr Haines that the identification of "Industry" as a non-complying activity would create confusion with the identified term "Rural Industry". He said that the wider range of industrial activities encompassed in the defined term of "Industry" were not consistent with Regional Policy and should be subjected to the section 104D gateway.

Mr Hodgson considered that the Counties Power submission for inclusion of the sub-transmission lines on the concept plan should be accepted. He made suggestions in regard to proposed changes to plan provisions suggested by Mr Haines.

Ms Fourie was concerned that Mr Pryor's assessment had not paid sufficient attention to the importance of the stream that transects the site. She considered

that this natural feature of the site should be given a greater role in determining the structure of the development.

Mr Russell discussed the origins of the stream and described the existing flooding pointing out that if the stream was piped as the applicant had proposed there would be major difficulties in coping with overland flows.

(At this point Mr Berman advised that the applicant had withdrawn a separate resource consent application to pipe the stream.)

Mr Russell was of the view that past records of flooding should have provided some of the base information for determining whether and how stormwater management from the proposed development could be provided.

Mr Kpro remained concerned that the applicant had not demonstrated that stormwater and wastewater could be adequately disposed of if the site was developed under the provisions of PPC 36.

4.4 APPLICANTS REPLY

Mr Berman referred first to Maori cultural issues. He said there was no probative evidence given that significant Maori values would be adversely affected. He referred to a decision of the High Court as a basis for his submission that the applicant did not have to prove that the negative i.e. that there were no values affected.

He complained that BP had not cooperated with the applicant regarding the nature of evidence to be brought to the hearing and that in particular Mr Male did not discuss stormwater matters with the applicant's engineer.

He referred to the Auckland Regional Plan: Air Land and Water (ARP: ALW) noting that BP had not explained why the issues that it raised could not be dealt with under those provisions. He said there was no suggestion that stormwater rules were insufficient or inadequate to deal with control of stormwater disposal. He said it was not necessary for the plan change to be a self-contained document and even under the existing zoning the same problems could arise.

He said that the activities that concerned Sir William Birch were enabled on that submitter's property and it was inconsistent to suggest they were inappropriate on the applicant site.

He expressed the view that the Council engineering staff were satisfied that stormwater and wastewater matters could be addressed at a later stage.

5) SUMMARY OF SUBMISSIONS AND EVIDENCE REGARDING FURTHER INFORMATION PROVIDED IN REPOSENSE TO COMMISSIONERS MINUTE (PRESENTED AT RE-CONVENED HEARING ON 8 JULY 2013)

5.1.1 Further Information Provided in Response to Minute

The applicant provided further information regarding stormwater and wastewater disposal by way of a report from Mr Wyborn, addressed to the applicant's planning consultants, Haines Planning, dated 22nd May 2013. The report provided an assessment of stormwater management and wastewater disposal for a possible development scenario illustrated on attached drawings and consisting of motorway services on the northern part of the site and rural services on the

southern part of the site. Various detailed calculations were provided leading to a conclusion by Mr Wyborn that based on the concept development layout and assumptions made in terms of wastewater disposal and stormwater management the required facilities could be accommodated on the land available to meet the requirements of the Auckland Regional Council Technical Publication Standards. He also reported that based on the run-off from the upstream catchment some flooding of the site and adjacent roads would occur due to the limitation of the culverts under the motorway and Great South Road if the existing online pond upstream of Great South Road was removed and that would happen whether the site was developed or not.

5.1.2 Submissions by Mr Berman.

Mr Berman submitted that the additional information provided by Mr Wyborn demonstrated that issues related to stormwater to and wastewater could be appropriately addressed at resource consent application stage and that the Council's stormwater engineering advisers now accepted that these matters could be adequately controlled under the provisions of the Auckland Regional Plan: Air Land Water. He emphasised that the applicant proposed a setback of 10 m from the stream boundaries notwithstanding that a 15 m setback had been shown on the stormwater/wastewater disposal plan.

5.1.3 Evidence by Mr Adair Brimelow, Engineer

Mr Brimelow presented a statement of evidence setting out further information regarding the basis used for calculating potential stormwater flows through the site and from the development that would be potentially enabled by PPC 36. He was satisfied that adequate space was available on the site to provide for those stormwater flows and provided an amended drawing to indicate how additional space could be provided for temporary detention of stormwater if that was required.

5.2 EVIDENCE AND SUBMISSIONS FOR BP OIL NEW ZEALAND LTD REGARDING FURTHER INFORMATION PROVIDED AND COUNCIL OFFICERS PEER REVIEW.

5.2.1 Submission by James Winchester Counsel for BP Oil New Zealand Ltd

Mr Winchester recorded that his client continued to have legitimate concerns about whether the site was suitable for its intended use and concerns about the lack of suitable proposed plan provisions to address disposal of stormwater and wastewater. He reminded the Commissioners of the potential effects on his client's use of local water resources for water supply and wastewater management. He identified a number of changes that he considered should be made to the rules in the event that PPC 36 was approved.

5.2.2 Evidence by Arthur John Rowland Male, Hydrologist

Mr Male stated that he did not accept the validity of the parameters that the applicant's engineer had used to assess flooding extents and pointed out that the risk for BP arose from the potential release of contaminants downstream and flood event which would affect the operation of BP's assets and compliance with its consents. He provided various criticisms of the approach taken by Mr Brimelow including risks associated with the proposed ponds for stormwater and

wastewater treatment and suggested a number of changes that should be made to the rules to ensure that stormwater and wastewater disposal was properly addressed when any future development took place on the site.

5.3 RESPONSE BY COUNCIL OFFICERS

5.3.1 Mr Russell

Mr Russell agreed with Mr Maie that any failure in that the stormwater and wastewater disposal on the applicant site could create operational and compliance issues for BP in terms of its wastewater consent. He said that the ARP: ALW required a 20 m deep esplanade reserve on each side of the stream. He agreed that the methodology proposed by Mr Brimelow raised issues but considered that overall he was now satisfied that those remaining issues could be resolved through the provisions of the ARP:ALW when consent for development under the provisions of the plan change was sought.

5.3.2 Mr Kpro

Mr Kpro was very critical of Mr Brimelow's methodology but confirmed that in his view there was now sufficient information to satisfy him that the stormwater and wastewater disposal from the site could be satisfactorily addressed when consent for development was sought.

5.4 REPLY BY MR BERMAN

Mr Berman said that he was comfortable with the discussion and that the ARP:ALW would satisfactorily resolve any remaining issues regarding stormwater and wastewater. He did not indicate any concern regarding the 20 m setback from the stream and agreed that the stream would provide the most appropriate boundary between area A and area B on the concept plan.

6) ASSESSMENT OF SUBMISSIONS

6.1 PROCESS OF ASSESSMENT BY COMMISSIONERS

The s42A Report set out a process of grouping the submissions under topic headings. We accept that this is the most useful and efficient way of dealing with the various matters raised in the submissions and have adopted the same tabulations of submissions by topic from the report. Where there was specific matters of relevance adduced in evidence at the hearing this is referenced in the assessment for each group of submissions.

There were 12 original submitters to PPC 36 and 2 further submitters. A list of all submitters and further submitters is set out below.

6.2 DECISIONS ASSESSED ON GROUPING OF SUBMISSIONS UNDER TOPIC HEADINGS

6.2.1 Structure

The consideration of submissions follows the structure set out in s42A report as follows:

- Submission summary table (relief requested)
- Relevant further submissions (in support or opposition)
- Detail of submitters request and their reasons.
- Commissioners assessment of request
- Commissioners Decision as to the outcome of those submissions
- Commissioners determination of any amendments to the provisions of PPC 36. (A complete set of all of the amendments made by this decision are set out in the documents in Attachment 2).

6.2.2 Decisions on Submissions

The decisions on submissions (or submission points) in each of the groups are either:

- Accepted; or,
- Accepted in part; or,
- Rejected.

6.2.3 Overview of submissions

The submissions cover the following areas:

- Cultural issues
- Rural Character, Land Use and Development Standards
- The Development Concept Plan process
- Water Supply and Disposal Issues
- Traffic Effects
- Network Utilities

7) CONSIDERATION OF SUBMISSIONS

7.1 SUBMISSIONS REGARDING CULTURAL ISSUES

The following table summarises the submissions and further submissions received regarding Cultural Issues.

Submitter	S/O	No.	Summary of Decision Requested	Further Sub
Karl W. T. Flavell	O	1.1	Oppose the Plan Change as extra work is required to assess iwi and cultural issues, concerns and recommendations.	-
Te Ara Rangatu o te Iwi o Ngati Te Ata Waiohau	O	1.2	Seek detail around the disposal and revocation of public reserves and what this means for iwi trying to settle their Treaty of Waitangi claims.	-

	O	1.3	Oppose the Plan Change on the basis that the statutory obligations and responsibilities under Sections 6(e), 6(f), 7(a), 8, 66, 74 and the Fourth Schedule of the Resource Management Act 1991 have not been adhered to.	-
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7.1.1 Discussion

Submission 1.1 from Ngati Te Ata Waiohua requests that PPC36 be rejected on the grounds that:

The area is traditionally known as Pukekura and is a culturally significant area.

Extra work is required that must involve an assessment of iwi and cultural issues, concerns and recommendations as part of the overall Resource Management Act 1991 decision making process.

A cultural assessment has not been undertaken and that Ngati Te Ata Waiohua has the capacity and expertise to undertake such an assessment.

The submission identifies five key outcomes that a Cultural Impact Assessment would deliver:

- *Identify the effects of this proposed activity on Ngati Te Ata Waiohua's cultural associations with the site and surrounding environment.*
- *Identify and assist identification and formulation of methods to avoid, remedy or mitigate adverse effects on Ngati Te Ata Waiohua's cultural values and associations.*
- *Suggest what conditions of consent could be applied if consent is granted.*
- *Provide Ngati Te Ata Waiohua with comprehensive information about and improved understanding of the proposed activity.*
- *Assist both the applicant and the consent authority in decision making under the RMA.*

Submission 1.2 from Ngati Te Ata Waiohua raises an issue regarding the disposal and revocation of public reserves relative to Waitangi Treaty Claims. **Submission 1.3 from Ngati Te Ata Waiohua** declares that Council and the Local Board have not met statutory obligations and responsibilities in regards to Maori interests under the Resource Management Act 1991.

7.1.2 Commissioners Assessment

The Commissioners appreciate the assistance given in regard to cultural matters by Ms Rutherford. We understand the iwi frustration with the nature and extent of "consultation" that the applicant provided. We were concerned that the evidence disclosed that the failure of consultation could not be attributed to a lack of interest or response from iwi. We record that if a resolution of iwi issues had not been available to us we would have declined the application on the basis that we

were unable to determine whether the matters to which we must recognise and have regard to, under Sections 6(e), 7(a) and 8 had been properly considered.

We note Mr Berman's submission that an applicant does not have to establish that there are negative effects in regard to these matters. However we are of the view that an applicant is obliged to carry out a reasonable level of consultation to ensure that an adequate enquiry is made as to whether there are any matters arising under those provisions of the RMA that should be addressed. We are not satisfied that the applicant properly addressed its responsibilities in this regard.

However we understand from Ms Rutherford that the primary concern relates to the protection of the stream. In this regard we have adopted the 20 m setback from the stream bank which Mr Russell and Mr Kpro recommended, together with the requirement for riparian planting within that setback. We anticipate that this level of protection, which will be further maintained through the provisions of the ARP: ALW, when development enabled by PPC 36 is undertaken will largely meet the concerns expressed by iwi and our responsibilities to give appropriate consideration to the sections of the RMA referred to above.

We note the advice set out in the s42A Report that no reserve land is involved and accordingly submission 1.2 is not a matter of relevance to this decision and must accordingly be disallowed.

7.1.3 Commissioners Decision

That **submission 1.1 and 1.3** be allowed in part through the amended provisions requiring the provision of a 20 m riparian planted margin on each side of the stream that traverses the site.

That **submission 1.2** be rejected on the grounds that it is not of relevance to this plan change.

7.1.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 1

Amend the Concept Plan to illustrate the location of the stream and associated riparian planting within the 20m stream setback.

Amendment 2

Amend Rule 43.6.5 Amenity Planting as follows:

- (i) All planting shall be provided in accordance with the Concept Plan (Figure 1). The landscape planting required by the Concept Plan shall be undertaken prior to the first activity within the zone opening for business.
- (ii) ***The landscape planting is to be carried out in accordance with a planting plan, which is to be prepared by a suitably qualified and experienced person. The planting plan shall detail the planting mix, densities, coverage, plant heights and landscape amenity and stream protection, to be achieved and shall have appropriate regard to the height limitations referred to in (iv) below. The planting plan shall be submitted to the Council for approval prior to the commencement of planting.***

(iii) Where any area of planting has been required to be established, it shall...

Amendment 3

Amend the Concept Plan to remove the planting list. Add a key that illustrates the amenity planting and riparian planting areas. Add an annotation to the amenity planting and riparian planting areas that states that these areas are established and maintained in accordance with the 43.6.5 (ii-iv).

7.2 SUBMISSIONS REGARDING RURAL CHARACTER, LAND USE AND DEVELOPMENT STANDARDS

The following table summarises the submissions and further submissions received regarding Rural Character, Land Use and Development Standards.

Submitter Name	Support Oppose	No	Summary of Decision Requested	Further Sub
Teo and Vicki Wijdeven	O	2.1	a. If Atlas Concrete erects a plant to manufacture concrete and concrete products the submitters are concerned that this will affect the rural outlook. b. The submitters consider that this is not a heavy industry area for this type of operation.	-
	O	2.3	The submitters are concerned that a 24 hour site may be in operation.	-
	O	2.4	The submitters raise concerns regarding equipment to be used in the process of manufacturing concrete products and potential dust and noise effects.	-
	O	2.6	The submitters raise concerns regarding the size of signage.	-
	O	2.7	The submitters raise concerns regarding lighting effects from a 24 hour operation.	-
	O	2.8	The submitters raise concerns regarding the management of rubbish in the surrounding area.	-
Tracey Anderson T M Clarke-Latham, Hec Brak and T Griffiths (Family Trust)	O	3.1	Oppose the Plan Change and seek that if the Plan Change is approved heavy industry is excluded and activities such as retail or food outlets are provided.	-
Tony Whittaker Waikato District Council	S/O	4.2	a. WDC requests that Rule 43.3(iv) regarding non notification of restricted discretionary activities be removed. b. Suggest changes are required to ensure that buildings for permitted activities are a permitted rather than controlled activity. c. Suggest changes are required to ensure the outcomes sought in PC30 are reflected in PPC36. d. Raise concerns with regards to comments in the Section 32 analysis on matters of soil quality and site description.	-
Balle Group of Companies	S/O	5.1	Support the change of zone from Rural to Motorway and Rural Service Special Zone with the exception that some of the activities included in proposed Rule 43.3 under the definitions of Rural Industry and Services and Rural Services are considered inappropriate for the gateway concept.	-
Master and Sons Limited	S/O	6.1	Support the change of zone from Rural to Motorway and Rural Service Special Zone with the exception that some of the activities included in proposed Rule 43.3 under the definitions of Rural Industry and Services and Rural Services are considered inappropriate for the gateway concept. Also raise	-

			concerns with any activity that could contaminate the submitter's onion export operation.		
Lucille Rutherford Ngati Tamaoho Trust	O	9.1	Ngati Tamaoho wish to see the provisions regarding setback from a watercourse changed from 10m to 20m and the works permitted within the stream setback reduced. The submitter considers that there has not been sufficient criteria regarding the stream through the property or setbacks from the stream.	--	
Sukhi Singh	O	12.1	a. The submitter requests an amendment to the plan change to acknowledge the importance of the rural context within which the plan change area is located. b. Introduce new objective, policy and rules (including assessment criteria) framework to ensure a development outcome which: - Responds to the rural context of this location. - Maintains the rural amenity values of this location, while having regard to the operational requirements of the business environment. c. That an independent peer review of the Landscape Assessment Report be undertaken, including assessing: - The role of the subject site given its location at the "entry" into the Bombay Hills area. - Review the planting plan to ensure that it produces an outcome which produces a high level of amenity, and significantly contributes towards the rural character of this area.	-	
	O		12.2	The submitter seeks the introduction of a new rule stating that the Amenity Planting Area as shown in the Concept Plan shall not be occupied by structures, including signage.	-
	O		12.3	The submitter requests a review of the lighting provisions to ensure that the design of lighting does not have an adverse effect on visual amenity from the surrounding rural environment.	-
	O		12.4	The submitter requests that the sign provisions be amended to ensure that the signage within the plan change area does not adversely affect the rural amenity of the surrounding area.	-
	O		12.5	The submitter requests and amendment to the Concept Plan to illustrate the location of the stream and the location of the associated riparian planting.	-

7.2.1 Discussion

Industrial Activities

Of concern for submitters, is the range of land use activities the rezoning would support. Of particular concern for **Teo and Vicki Wijdeven (Submission 2)** and **Tracey Anderson (Submission 3)**, are the effects from activities associated with the manufacture of concrete and concrete products.

Concerns regarding potential effects from the changing land use on the area's rural character are also expressed by **Sukhi Singh (Submission 12)** while **Balle Group of Companies (Submission 5)** and **Masters and Sons Limited (Submission 6)** express support for the Private Plan Change with the exclusion

of activities they consider inappropriate for a site that displays 'gateway' characteristics.

The Gateway Function

The submission of **Balle Group of Companies (Submission 5)** and **Masters and Sons Limited (Submission 6)** is that some activities are inappropriate for the gateway concept, particularly sale yards, sawmills, meat and poultry processing and dairy factories, with concern also raised regarding potential contamination (including odour) on stored onions.

Protecting Rural Character and Amenity

Sukhi Singh (Submission 12) and **Teo and Vicki Wijdeven (Submission 2)** seek other additional measures to support achievement of quality development, protection of people and the surrounding environment from significant adverse effects and support the gateway concept.

Teo and Vicki Wijdeven (Submission 2.3), raised concerns that the site may be operational 24 hours of the day.

Teo and Vicki Wijdeven (Submission 2.8), also express concerns about rubbish management.

Discretionary (RA) Activities and the Status of Activities and Property Detail

The **Waikato District Council (Submission 4.2)** raise concerns in regards to Rule 43.3(iv) that specifies that an application for a Discretionary (RA) activity will be considered without public notification or the need to obtain the written approval of, or service of notice on, affected persons. Particularly the submitter considers that this would exclude Waikato District Council from the resource consent process where an application could have adverse distribution effects on Waikato's existing centres of Tuakau and Pokeno.

The **Waikato District Council (Submission 4.2)** considers the requirement for buildings to require resource consent as a Controlled activity to be an anomaly that does not convey absolute certainty for applicants. The submitter also considers that the higher activity status bar set for activities on this site that would otherwise be permitted (e.g. Packhouses or Rural Industry and Services and Rural Services) in the Rural Zone to be inappropriate.

The submitter notes a number of minor changes to that could be considered to the section 32 analysis.

Stream Setback

Ngati Tamaoho Trust (Submission 9.1) request the provisions regarding the setback from a watercourse changed from 10 metres to 20 metres, potential works within the stream setback be reduced, and state that there is insufficient criteria regarding the stream or setbacks. **Sukhi Singh (Submission 12.5)** requests the stream location and associated planting be illustrated on the Concept Plan.

7.2.2 Commissioners Assessment

The Commissioners note that **Submissions 2.1** and **2.4** by **Teo and Vicki Wijdeven** and **Submission 3.1** by **Tracey Anderson** opposing heavy industry including the manufacturing of concrete and concrete products were apparently related to earlier proposals by the applicant, which directly referenced enabling the development of a concrete batching plant on the site. However while there is no direct reference to such a facility the provisions as proposed do not exclude heavy industry of that kind and industry with similar effects. PPC36 provides for

"Industry" as a discretionary activity. We observe that Mr Hodgson, the reporting planner, was opposed to the inclusion of "Industry" as a discretionary activity in the zone on the basis that it could attract industries, which in terms of regional policies are more appropriately located in an urban area. Mr Hodgson recommended that "Industry" should be classified as a non-complying activity. Mr Berman, and his planning witness, Mr Haines, were of the view that the inclusion of "Rural Industry" as a discretionary activity and "Industry" as a non-complying activity would lead to problems of interpretation and semantic arguments about whether any particular activity fitted either classification.

We are of the view that Mr Hodgson is correct. The provisions of the plan change are required to be consistent with the Regional Policy Statement and the non-complying activity classification would achieve that consistency. While there is some validity in the arguments expressed by the applicant we note that the Rural Zone provisions of this District Plan already apply this distinction between "Rural Industry" and "Industry" with the latter not being provided for under any classification and accordingly by default a non-complying activity.

In regard to the submissions by the **Balle Group of Companies (Submission 5)** and the submissions by **Masters and Sons Ltd (Submission 6)** we observe that the amendments to the concept plan to locate the stream (and its required 20 m setbacks) as the natural boundary between Area A and Area B on the Concept Plan will result in Area B having a much smaller area. We further observe that both the stormwater and traffic effects analysis accompanying the plan change were based on the assumption that the northern part of the site would be used for motorway service oriented activities and that rural service activities would be located on the southern part of the site. That was also the basis on which the additional information on stormwater and wastewater disposal was prepared. We note that this separation of activities is partially reflected in the applicant's proposal in so far as obvious motorway service activities are stipulated as being confined to Area A in the concept plan, however there is no such restriction on the rural service and rural industry activities which could therefore locate in either Area A or Area B. We consider that limiting these activities to Area B would at least partially allow the submissions by Balle Group & Masters and Sons by limiting the extent of activities that could have a potential adverse effect on the pack house on the opposite side of the road. This amendment would also result in the plan change provisions more accurately reflecting the expert analysis that supported it and would further ensure that the gateway type activities were located in the part of the site that reflected that function.

In regard to the submissions by **Sukhi Singh (Submission 12)** and **Teo and Vicki Wijdeven (Submission 2)** we agree with the amendments proposed by the reporting planner in regard to amenity planting and the control of signage in that area and to acknowledge the rural context of the surrounding area. The submission regarding 24-hour operation is a valid consideration, however we are satisfied that the existing noise standards and lighting controls will ensure reasonable control over potential adverse effects on the amenities of surrounding properties. Litter control is also relevant consideration when considering activities such as service stations and fast food. We have decided that it is appropriate to add a further criterion for controlled activities requiring consideration of provision for litter receptacles in appropriate locations adjacent to the parking areas and facilities that sell convenience goods.

In regard to the submission by the **Waikato District Council (Submission 4.2)** we agree with the reporting planner that the concerns raised are adequately dealt with by the provisions of PPC 36.

We accept the submission by **Ngati Tamaoho Trust (Submission 9.1)** and have set out above an appropriate amendment to PPC 36 to provide for a 20 m setback from the stream and for appropriate riparian planting. We believe that this will also be consistent with the submission by **Sukhi Singh (Submission 12.5)**.

7.2.3 Commissioners Decision

That **Submissions 2.1 and 2.4 by Teo and Vicki Wijdeven and Submission 3.1 by Tracey Anderson** opposing heavy industry including the manufacturing of concrete and concrete products are **accepted** and PPC36 is amended by listing "Industry" as a non-complying activity.

That **Submission 2.3 by Teo and Vicki Wijdeven** opposing the plan change on the grounds that a 24 hour site may be in operation and **Submission 2.7 by Teo and Vicki Wijdeven and Submission 12.3 by Sukhi Singh** regarding concerns with lighting effects be **rejected** as sufficient controls are established in the performance standards including 43.6.11 Noise and 43.6.14 Light Spill and Glare to manage the effects of activities through different time thresholds.

That **Submission 2.6 by Teo and Vicki Wijdeven** opposing the plan change on the grounds of signage size and **Submissions 12.2 and 12.4 by Sukhi Singh** requesting signage be excluded from the Amenity Planting Area in the Concept Plan and that signage provisions be amended to not adversely affect visual amenity from the surrounding rural environment be **accepted**.

That **Submission 2.8 by Teo and Vicki Wijdeven** opposing the plan change on the grounds of concerns regarding rubbish management be **accepted** and a criterion be added to the assessment criteria to ensure that sufficient as a receptacles are provided in appropriate locations in parking areas and adjacent to shops selling convenience goods.

The **Submission 4.2 by Waikato District Council** suggesting anomalies in the activity status arrangement for land use under PPC36 be **rejected in part** to the extent that the proposed activity status proposed for land use activities in PPC36 be retained.

That **Submission 4.2 by Waikato District Council** identifying better descriptors of the site for the Section 32 analysis be **accepted in part** to the extent that the site description be further developed in the hearing panel decision on PPC36.

That **Submission 5.1 by the Balle Group of Companies and Submission 6.1 by Masters and Sons Limited** seeking a review of the definitions of Rural Industry and Services and Rural Services be **rejected in part** to the extent that the proposed activity definitions and activity status proposed for land use activities in PPC36 be retained.

That **Submission 5.1 by the Balle Group of Companies and Submission 6.1 by Masters and Sons Limited** seeking a review of the definitions of Rural Industry and Services and Rural Services be **accepted in part** to the extent that additional assessment criteria is added, related to appropriate layout and design of the mix of activities with consideration of the features and characteristics of the site, its immediate and wider rural environment, along with high design standards for the landscape and built elements.

That **Submission 12.5 by Sukhi Singh** be **accepted** and that **Submission 9.1 by Ngati Tamaoho Trust** be **accepted in part** to the extent of the amendments set out in **Amendment 1 and Amendment 2** above.

That **Submission 12.1 by Sukhi Singh** be **accepted in part** to the extent that an independent peer review of the Landscape Assessment Report has been carried out and its recommendations considered.

That **Submission 12.1 by Sukhi Singh** be **rejected in part** to the extent that no new objective or policies are required to ensure development responds to acknowledge the rural context within which the plan change area is located.

7.2.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 3

Amend Rule 43.5 Non Complying Activities

(iii) The activities listed below are non-complying activities in the Motorway and Rural Service Special Zone:

INDUSTRY

Amendment 4

Add new 15.4.2.3 Non-complying Activity as follows:

Any sign located in the Amenity Planting Area set out in the Motorway and Rural Service Special Zone Figure 1: Concept Plan.

Amendment 5

Add to Rule 43.8 (Matters for Control and Assessment Criteria)

8. Provisions to minimise the spread of litter from convenience food sold from facilities on the site.

Amendment 6

Add to Rule 43.8 Matters for Control and Assessment Criteria

13. The provision of adequate litter receptacles in areas such as car parks and adjacent to the exit and entry points to stores selling convenience foods.

Amendment 7

Show the centreline of the stream as the dividing line between Area A and B on the Concept Plan.

Amendment 8

Amend Rule 43.1 by adding the limitation on the listed activities as set out below:

Coolstore **(in Area B of the Concept Plan only)**

On-Site Primary Produce Manufacturing **(in Area B of the Concept Plan only)**

Packhouse (in Area B of the Concept Plan only)

Amendment 9

Amend Rule 43.3 by adding the limitation on the listed activities as set out below:

Rural Industry and Services (in Area B of the Concept Plan only)

Rural Services (in Area B of the Concept Plan only)

Amendment 10

Amend Rule 43.8 Controlled Activities: Matters for Control and Assessment Criteria as follows:

Control is reserved to, and conditions can be imposed on, the following matters:

7. Building placement within the site.

Assessment Criteria

1. The extent to which buildings relate to each other and the features and characteristics of the site and locality, its immediate and wider rural environment including the site's location at the entry into Bombay and its role in responding to the 'gateway concept', along with achieving high design standards for the built elements.

7.3 SUBMISSIONS REGARDING WATER SUPPLY AND DISPOSAL ISSUES

The following table summarises the submissions and further submissions received regarding Water Supply and Disposal Issues.

Submitter Name	Support Oppose	No	Summary of Decision Requested	Further Sub
Teo and Vicki Wijdeven	O	2.2	The submitters query as to what aqua fill will their water supply come from? As their only source of water is from a shallow bore on land which is less than 200m from the site.	-
	O	2.5	The submitters raise concerns regarding runoff water affecting Bombay.	-
Richard Jenkins BP Oil New Zealand Limited	O	8.2	The submitter considers that the stormwater management report is deficient as the assessment of stormwater peak flows and discharge volumes has not been correctly undertaken, there is no quantitative assessment of the different options available for onsite stormwater treatment prior to discharge and the proposed performance standard 43.6.10 may be insufficient to mitigate adverse effects associated with stormwater runoff from the site.	-

	O	8.3	The submitter considers that onsite wastewater treatment and land disposal is unlikely to be adequate for the type of development proposed and the wastewater management report is deficient.	-
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7.3.1 Discussion

Water Supply

Submission 2.2 from **Teo and Vicki Wijdeven** questions the source of groundwater for the property and identifies that a shallow bore serving their property is located less than 200 metres from the PPC36 site.

Wastewater & Stormwater Disposal

BP Oil New Zealand Limited addressed the issues raised in **Submission 8.2 and 8.3** further in the evidence presented at the hearing and this was summarised above.

Submission 2.5 from **Teo and Vicki Wijdeven** also raised concerns around the lack of clarity in regards to the method of stormwater management and consider the information submitted with the application deficient.

7.3.2 Commissioners Assessment

We accept the advice of Auckland Council's Senior Development Engineer, Doug Mitchell, that the applicant would need to make a resource consent application under the Auckland Council Regional Plan for Air Land and Water (ARP: ALW) in order to take and use groundwater. His advice that the process would consider any effects from taking groundwater on the resource and other users of that resource, would, in our view, provide adequate protection for other users of groundwater in the surrounding area. Accordingly, we **reject Submission 2.2** from **Teo and Vicki Wijdeven**.

In regard to the issues that were raised in **submission 2.5** from **Teo and Vicki Wijdeven** and in **submissions 8.2 and 8.3** from **BP Oil New Zealand Limited**, we are satisfied on the basis of the further information provided by the applicant and the review of that information by Mr Male, Mr Russell, and Mr Kpro, that the subject site is able to satisfactorily provide for the disposal of wastewater and stormwater from activities enabled on the site. These submissions are allowed in part through the requirement for the concept plan to be amended to detail stream retention and the protection of a 20 m vegetated riparian margin as set out in **Amendment 1** and **Amendment 2** above.

The **submissions 8.2 and 8.3** by **BP Oil New Zealand Ltd** are further allowed in part through the incorporation of some of the amended provisions recommended in the second statement of evidence by Mr Male.

7.3.3 Commissioners Decision

That **Submission 2.2** from **Teo and Vicki Wijdeven** opposing the plan change in respect of potential water supply issues is **rejected**.

That **Submission 8.3** by **BP Oil New Zealand Limited** opposing the plan change on the grounds that onsite wastewater treatment and land disposal is unlikely to be adequate for the type of development proposed and the wastewater management report is deficient is **rejected**.

That **Submission 2.5** from **Teo and Vicki Wijdeven** and **Submission 8.3** from **BP Oil New Zealand Limited** opposing the plan change on the grounds that insufficient information has been provided to clarify the ability of the site to address stormwater management issues **accepted in part** to the extent of the amended provisions for stream retention and protection of a 20 m riparian margin as set out in **Amendment 1** and **Amendment 2** above and the addition to PPC 36 of further amended provisions in respect of stormwater management as set out below.

7.3.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 11

Amend Rule 43.6.10 Stormwater Management - Volume Control as follows:

43.6.10 STORMWATER MANAGEMENT ~~-VOLUME CONTROL~~

- (i) All activities shall have a stormwater management system that is deemed to be effective and appropriate by Council. The landowner shall be responsible for the ongoing maintenance of any private on-site stormwater system were provided. Where the activity involves an alteration or addition to an existing activity, the applicant must show that the standard of stormwater management provided is effective and appropriate. An effective and appropriate stormwater management system shall be achieved by providing ~~for either A or B as follows:~~ **on-site stormwater management such that hydrologic and hydraulic neutrality is achieved for storm events up to and including 1% AEP event. On-site stormwater management measures shall be designed and located such that any overtopping or failure of the measures would not result in the discharge of contaminants into natural waterways (including, for example, as a result of stormwater infiltrating on-site wastewater treatment and disposal areas). For example:**
- A. An on site **seepage stormwater** system to contain a 5% AEP 10 minutes storm event without overflowing, which is able to collect stormwater from the site equivalent to that generated by actual and proposed impervious services, plus 10% of that (maximum of 100% of the site). The **stormwater seepage** system must empty within 24 hour time period.
- B. An alternative method of stormwater management of the site/s, which achieves a standard of stormwater management equal to or better than that achieved by compliance with A above, such that adverse effects of stormwater are avoided, remedied or mitigated. The stormwater management system shall be maintained to achieve the standard of management provided for under **A. these provisions.**

Amendment 12

Amendments to Rule 43.9 Discretionary (RA) Activities

Delete the first paragraph of the rule as follows:

~~Except as provided for by Section 94(c)(2) of the Act, the following restricted discretionary activities will be considered without public notification or the need to obtain the written approval of or serve notice on affected persons~~

Amend the provisions relating to stormwater management as follows:

Stormwater Management – ~~Volume Control~~

The Council's authority to decline consent or to grant consent and to impose conditions on the consent is restricted to the following matters:

1. ~~Stormwater volume~~ **Hydrologic and hydraulic neutrality:**
2. Discharges to natural water; and,
3. Effects on neighbouring properties including the State Highway, **and properties adjoining the Ngakaroa Stream downstream of the Motorway and Rural Service's Special Zone**

7.4 SUBMISSIONS REGARDING ECONOMIC ISSUES

The following table summarises the submissions and further submissions received regarding Economic Issues.

Submitter	Support Oppose	No	Summary of Decision Requested	Further Sub
Waikato District Council	S/O	4.1	WDC seeks that Pokeno be referenced throughout Part 21.6 in PPC36 (in addition to the references already made to the existing centres of Pukekohe, Tuakau and Waiuku).	-
Sukhi Singh	S/O	12.6	The submitter requests an economic analysis to assess the demand for commercial land to justify the rezoning of this site and whether the proposed mix of commercial activities and their activity status are appropriate, recognising: - The surrounding rural context. - Existing 'motorway servicing' uses in this locality.	-

7.4.1 Discussion

Waikato District Council (Submission 4.1) references the need to protect Tuakau and Pokeno from adverse distribution effects from development at the

plan change site. A change is sought to reference Pokeno in Part 21.6 of PPC36. **Submission 12.6** from **Sukhi Singh** requests an economic analysis be carried out to assess the demand for commercial land and whether the activity mix and proposed activity status are appropriate for the site.

7.4.2 Commissioners Assessment

We are satisfied that, to the extent an amendment to the plan change is justified, Submission 4.1 by Waikato District Council is accepted, and that Pokeno is to be referenced throughout Part 21.6 in PPC36 in addition to the references already made to the existing centres of Pukekohe, Tuakau and Waiuku.

We do not accept that part of **Submission 12.6** by **Sukhi Singh** which seeks an economic analysis of the demand for commercial land and the proposed mix of activities. These concerns were adequately assessed in the report of Mr Derek Foy of Market Economic's Ltd (page 178 of the agenda). We accept the expert advice that consideration of such matters under the provisions of the RMA is limited to the consideration of any adverse effects on the environment that might be created. For example, if development on the site were to result in the creation of commercial floorspace, which resulted in significant adverse effects on nearby town centres and their ability to continue to act as community focal points. We agree with Mr Foy that the provisions currently proposed provide a level of protection consistent with the principles of the RMA and in particular avoid any consideration of matters relating to trade competition which is prohibited under Section 74(3) of the RMA. Accordingly **submission 12.6** by **Sukhi Singh** is **rejected in part**.

On the other hand, we accept that part of **Submission 12.6** by **Sukhi Singh**, which seeks to ensure that the activity status in the proposed mix of curb commercial activities is appropriate. To that end we propose amendments to remove ambiguity in the provisions and to provide additional controls to reduce potential conflicts between various commercial and retail activities. Accordingly **Submission 12.6** by **Sukhi Singh** is **accepted in part**.

7.4.3 Commissioners Decision

That **Submission 4.1** by **Waikato District Council** is **accepted**, and that Pokeno is referenced throughout Part 21.6 in PPC36, in addition to the references already made to the existing centres of Pukekohe, Tuakau and Waiuku.

That **Submission 12.6** by **Sukhi Singh** is **rejected in part** to the extent that an economic analysis of the demand for commercial land and the proposed mix of activities is declined.

That **Submission 12.6** by **Sukhi Singh** be **accepted in part** to the extent that amendments are made to remove ambiguity in the provisions managing cafes and restaurants.

7.4.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 13

Amend Part 21.6 as follows:

Reasons and Explanation for Objective, Policies and Methods:

The desirability of establishing motorway and rural service activities at this strategic location must be managed to ensure that activities do not give rise to adverse effects on the environment, particularly in regards to distribution effects on the existing centres of Pukekohe, Tuakau, **Pokeno** and Waiuku...

Amendment 14

Amend Rule 43.4 Discretionary Activities as follows:

CAFÉ and RESTAURANT activities **cumulatively** in excess of 1,500m² GFA (**in area A of the Concept Plan only**); and

Amendment 14

Amend Rule 43.9 Discretionary (RA) Activities as follows:

CAFÉ/RESTAURANT on the same site and connected to ONSITE PRIMARY PRODUCE MANUFACTURING and Retail activities ancillary to ON-SITE PRIMARY PRODUCE MANUFACTURING, RURAL INDUSTRIES AND SERVICES and RURAL SERVICES but not exceeding 100m² gross floor area.

The Council's authority to grant or decline consent and to impose conditions on the consent is restricted to the following matters:

1. Those matters over which control is reserved in Rule 43.8;
2. Parking and manoeuvring space provision;
3. Hours of operation;
4. Traffic generation; ***and***
5. Noise and odour, ***and***
- 6. Methods for avoiding or mitigating conflict (including reverse sensitivity) between cafes/restaurants and other activities.**

When considering an application the Council will have regard to the following criteria:

1. The criteria set out under Rule 43.8;
2. Whether adequate on-site carparking can be provided;
3. If parking at the rates specified in rule 43.6.4 cannot be provided, whether parking demand occurs at a different time from another activity located within the zone;
4. The extent to which the hours of operation reflect the sensitivity, character and amenity of the surrounding environment and those residing in it;
5. Whether traffic generation from the activity will affect the safe and efficient operation of the roading network including the State Highway; and
6. The extent to which the activity avoids, remedies or mitigates adverse noise and odour.

7. The extent to which methods are proposed to avoid or mitigate conflict (including reverse sensitivity) between cafes/restaurants and other activities including but not limited to:

Activity orientation and the position of outdoor dining areas.

Visual screening or physical separation.

Acoustic controls.

7.5 SUBMISSIONS REGARDING TRAFFIC EFFECTS

The following table summarises the submissions and further submissions received regarding Traffic Effects.

Submitter Name	Support Oppose	No	Summary of Decision Requested	Further Sub
Tristan Gielan	O	7.1	NZTA considers that the Integrated Transport Assessment does not adequately address the anticipated transport effects.	Chevron New Zealand
New Zealand Transport Agency	O	7.2	a. NZTA request that the Mill road access is left in and left out only. b. NZTA request that there is only one access to the site from Great South Road.	BP Oil New Zealand Limited
Richard Jenkins	O	8.1	The submitter considers the transport assessment is not robust due to concerns regarding outdated traffic data, traffic generation predictions, traffic movement assumptions, vehicle access location and parking effects. In the absence of further clarification on the issues identified in the submission, the submitter cannot be satisfied that the Plan Change will not result in adverse traffic effects on Mill Road and the State Highway 1 Mill Road interchange.	Chevron New Zealand
Malcolm Maclean	O	10.1	a. The submitter seeks clarification and the removal of the uncertainty of meaning in and between the terms 'vehicle access' and 'access' as variously used in the proposal; and b. To remove the activity classification inconsistency between proposed Rule 43.3(v) (first bullet point) and Rule 43.4(iv) (second bullet point) and consistently provide (as apparently intended in the proposal) that vehicle access from public roads other than as specified in the concept plan is subject to full discretionary assessment under the Resource Management Act 1991.	Chevron New Zealand

7.5.1 Discussion

As described in the plan change documentation, the site sits on the Bombay State Highway interchange bounded by Great Road, Mill Road and the Southern Motorway (State Highway 1). Great South Road is a Ltd Access Road under the control of the New Zealand Transport Authority (NZTA) while Mill Road is under the control of Auckland Transport.

The submissions recorded in the table above raise various issues in regard to the adequacy of the assessment of anticipated traffic effects and provisions for their mitigation.

7.5.2 Commissioners Assessment

Having heard the evidence and viewed the documentation we are satisfied that these traffic issues have been satisfactorily assessed through the evidence provided by the applicant and through expert peer review that was carried out by Mr Steve Dudley of Aurecon NZ Ltd. Mr Dudley concluded that with the exception of the minor amendments, the Integrated Traffic Assessment (ITA) provided by the applicant represented an adequate assessment of the potential effects of the activities enabled by the plan change. We observe that NZTA has advised the Council, by letter dated 24 April 2013, that subject to some amendments to the provisions of rule 43.6.3 and the concept plan in relation to the design of the driveways providing access to the site from Great South Road and Mill Road detailed consideration of traffic matters can be further considered when an application is made under the Government Rounding Powers Act 1989.. We observe that Chevron formally withdrew their submission by letter dated 13/4/2013 from Joanne Sunde of Barker & Associates Ltd.

Submission 7.2 of NZTA and the further submission by BP Oil New Zealand Ltd in support of that the submission is accepted in part by the incorporation of appropriate changes to rule 43.6.3 as set out below.

The remaining submitters and further submitter did not present any traffic evidence in support of their submissions and for that reason those submissions are rejected.

7.5.3 Commissioners Decision

That Submission 7.1 by New Zealand Transport Agency, and Further Submission 2 from BP Oil New Zealand Ltd is rejected.

That Submission 7.2 by New Zealand Transport Agency, and Further Submission 2 from BP Oil New Zealand Ltd is accepted in part to the extent that the an explicit reference is added in Rule 43.6.3 to require vehicle access to only be from those locations and in the manner specified on the Concept Plan.

That Submission 7.2 by New Zealand Transport Agency, and Further Submission 2 from BP Oil New Zealand Ltd is rejected in part to the extent that the proposed two vehicle entrance arrangement to Great South Road be retained.

That Submission 8.1 by BP Oil NZ Ltd be rejected.

That Submission 10.1 by Bramsa Family Trust be rejected.

7.5.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 15

Amend Rule 43.6.3 in the manner set out below

43.6.3 Driveways

(i) Vehicle access shall only be from those locations identified **and in the manner specified** on the Concept Plan (Figure 1.) **with driveway designs requiring approval of the relevant road controlling authority.**

7.6 SUBMISSIONS REGARDING NETWORK UTILITIES

The following table summarises the submissions and further submissions received regarding Network Utilities.

Submitter	Support Oppose	No	Summary of Decision Requested	Further Sub
Christine Coste	O	11.1	The submitter seeks the deletion of proposed height limits for network utilities and the retention of the existing 25m limit.	-
Counties Power	O	11.2	<p>a. The submitter requests a new Policy 7 to provide for the continued operation of the electricity sub-transmission lines which are located on the site.</p> <p>b. The submitter requires that the location of electricity sub-transmission lines be identified on the Concept Plan.</p> <p>c. Add consequential amendment to 'Reasons and Explanation' and 'Anticipated Results'.</p>	-
	O	11.3	<p>a. The submitter seeks the addition of a note to the beginning of new Part 43 "Network utilities are subject to the provisions in 15.1 NETWORK AND OTHER UTILITIES AND ESSENTIAL SERVICES and not the following." Alternatively add to Part 15.1 "NETWORK AND OTHER UTILITIES within the Motorway and Rural Service Special Zone and not subject to Part 43 of the Plan"</p> <p>b. Reject activity rules and performance standards, particularly Rules 43.2 Buildings as Controlled Activities 43.6.1 Height and 43.6.2 Yards unless network utilities exempt.</p> <p>c. Reject Rule 43.7 Subdivision where this would impact on activity status of network utilities on site.</p> <p>d. Unless network utilities are exempt from the Part 43 rules, amend Rules 43.8 and 43.9 to provide for the assessment of infringing network utilities.</p>	-
	O	11.4	<p>a. The submitter seeks an amendment to Figure 1 Concept Plan: Remove any access or planting which is not achievable due to the limiting factors of the easement clause 6 and 7.</p> <p>b. Show and locate the sub-transmission lines (and easement areas) as an existing physical resource on the land.</p>	-

			c. Consequential amendments to give effect to the above.	
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7.6.1 Discussion

The submission from **Counties Power (Submission 11)** states a deficiency in the Section 32 assessment and lack of consultation with the network utility operator in the formulation of the plan change. The submission identifies the extent of the submitter's interest over the land (being two overhead electricity lines protected via easements that cross the land) and suggests proposed changes to PPC36 to recognise and protect the electricity line infrastructure.

Submission 11.1 from **Counties Power** identifies that the current Rural Zoning provides for 25m height limit for network utilities across the site. PPC36 proposes a 13.5m height limit for network utilities and 7.5m for all buildings.

Submission 11.2 from **Counties Power** requests a new policy to provide for the continued operation of electricity lines, which are located on the site and amendments to identify the location of electricity sub-transmission lines on the Concept Plan. Counties Power also requests that Method 3, which currently requires the preparation of a Concept Plan that defines vehicle crossings and the extent of landscaping, be amended to also require the location of electricity substation lines to be shown on the plan. Consequential amendments to the 'Reasons and Explanation' and 'Anticipated Results' sections are also suggested.

Submission 11.3 from **Counties Power** seeks a number of changes to clarify that network utilities are not subject to the provisions set out in new Part 43 and that the provisions of Part 15.1 Network and Other Utilities and Essential Services are those applicable to the Counties Power interests. The submitter suggests an explicit statement in Part 43 or Part 15 to this effect or alternative amendments to the performance standards and assessment criteria in Part 43 to exempt network utilities.

Submission 11.3 from **Counties Power** also requests that the Amenity Planting requirements set out in Rule 43.6.5 which requires planting to be carried out in accordance with the Concept Plan be deleted where it may breach the clearances required for electricity infrastructure.

Submission 11.4 from **Counties Power** requests amendments to the Concept Plan to:

- Remove access or planting which is not achievable due to limitations in the easement (planting or building within Safety Clearance Zone).
- Illustrate the location of the sub-transmission lines and easements areas as an existing physical resource.

7.6.2 Commissioners Assessment

The evidence we received from the applicant and from Ms Coste on behalf of Counties Power, satisfied us that there was general agreement in regard to **Submission 11.1** relating to the height limits for network utilities over the site, and in regard to that part of **Submission 11.3** relating to the requirement that planting needed to comply with the Electricity (Hazards from Trees) Regulations 2003 and the specifications set out in the Easement in favour of Counties Power created by transfer over the subject site. The applicant also accepted the changes to activity rules, performance standards, and subdivision provisions,

recommended by Counties Power in submission 11.3. However the applicant through its planning witness Mr Haines opposed submission 11.2a., 11.2 b. 11.2 c., and 11.4.

In answer to questions from the Commissioners, Mr Haines expressed the view that the applicant was opposed to the recognition and identification of the sub-transmission lines across the site because the approach would be inconsistent with the rest of the District Plan, which did not identify such infrastructure on its planning maps and also because Counties Power already had sufficient protection through the easement registered across the titles.

Ms Coste pointed out that the submission was directed at identifying the relevant lines on the Concept Plan and that similar provision had been made for concept plans used to guide and integrate land-use development in other parts of the Franklin area. She considered that recording the existence of this regionally significant infrastructure on the concept plan, together with the other provisions that were sought in the submission by Counties Power, would ensure that future landowners and developers would be aware at an early stage of the existence of the sub-transmission lines and the various provisions that were in place to ensure their protection.

The reporting planner also agreed that the amendment sought by the submissions from Counties Power, would be appropriate and would recognise the electricity line infrastructure crossing the site as an established physical resource and provide further identification of the limitations imposed by the existence of this infrastructure.

We accept the evidence of Ms Coste and the advice of the reporting planner and have determined that we should accept all of the amendments proposed in the submissions by Counties Power.

7.6.3 Commissioners Decision

That **Submission 11.1 by Counties Power be accepted** and that a 25m height limit for network utilities across the PPC36 site be applied.

That **Submission 11.2 by Counties Power be accepted** with changes made to provide for the continued operation of electricity lines which are located on the site.

That **Submission 11.3 by Counties Power be accepted** with changes made to clarify that network utilities are not subject to the provisions set out in new Part 43.

That **Submission 11.4 by Counties Power be accepted** with changes to be made to the Concept Plan to address planting within the Safety Clearance Zone and to show the location of the sub-transmission lines and easement areas.

7.6.4 Commissioners Determination of Amendments to the Provisions of PPC 36

Amendment 16

Amend the table in Rule 15.1.2.2(V) as follows:

Zone	Average cross-sectional	Average cross-sectional
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	dimension of structure less than 1000mm	dimension of structure 1000mm or more
Motorway Service, Motorway and Rural Service	13.5	7.5
<u>Motorway and Rural Services Special Zone</u>	<u>25</u>	<u>25</u>

Amendment 17

Amend Part 21.6 *Policies* by adding a new Policy 7 as follows:

- 7. By providing for the continued operation of the electricity sub-transmission lines, which are located on this land.**

Amend Part 21.6 *Methods of Implementation of Policies* as follows:

3. A Concept Plan to define the location of vehicle crossings, **and** extent of landscaping **and location of the electricity sub-transmission lines.**

Amend Part 21.6 *Reasons and Explanation for Objectives, Policies and Methods* as follows:

The desirability of establishing motorway and rural service activities at this strategic location must be managed to ensure that activities do not give rise to adverse effects on the environment, particularly in regards to distribution effects on the existing centres of Pukekohe, Tuakau, Pokeno and Waiuku, traffic generation, infrastructural services, **network utilities** and amenity. A Special Zone with a Concept Plan, performance standards and assessment criteria is considered the most appropriate way to ensure that future development avoids, remedies and mitigates actual and potential adverse effects.

Amend Part 21.6 *Anticipated Results* by adding the following bullet point:

- **Subdivision and development that will not compromise existing electricity sub-transmission infrastructure.**

Amendment 18

Amend Rule 15.1.2 by adding after:

NETWORK AND OTHER UTILITIES within the Pokeno Structure Plan Area are not subject to Part 27 a (except Rule 20 7A .2 .2), Part 20 9B and Part 20 9C of the Plan.

The following clause

NETWORK AND OTHER UTILITIES within the Motorway and Rural Services Special Zone are not subject to Part 43 of the Plan.

Amendment 19

Amend Rule 43.6.5 *Amenity Planting* by adding new (iv) as follows:

(iv) All planting shall comply with the Electricity (Hazards from Trees) Regulations 2003 and those specifications set out in Easement in favour of Countries Power Limited created by Transfer D456686.1.

Amendment 20

Amend the Concept Plan as follows:

- *Identify the planting areas subject to limitations in the easement (planting or building within Safety Clearance Zone), to recognize the height limitations for vegetation in these areas.*
- *Show and locate the sub-transmission lines and easements areas as an existing physical resource.*

8) STATUTORY AND PLANNING POLICY FRAMEWORK

8.1 SECTIONS 31, 32, 55, 72,73, 74 AND 75 OF THE RESOURCE MANAGEMENT ACT 1991

The over-arching purpose and principles of the Resource Management Act 1991 are contained in Part 2 (Sections 5, 6, 7 and 8), while Sections 31, 32, 55, 72, 73, 74, 75 and 76 contain specific provisions relating to the preparation of district plans.

In relation to the Council's functions under s31, and the purpose of District Plans under Section 72 we consider that PPC 36, as amended in accordance with this decision, will achieve a balance between efficient use of the land, and maintenance and enhancement of the general amenity values and the character of the area. For these reasons we consider that it will enable the achievement of integrated management of natural and physical resources under Section 31 and will assist the Council to carry out its functions in order to achieve the purpose of this Act.

Section 32 requires the Council to consider the alternative costs and benefits before making a decision on submissions. The Council is required to make an evaluation under Section 32 when considering any decision to approve a plan change.

A Section 32 report and statutory analysis prepared by the applicant was included with the documentation available to submitters and included as Document 2 of Volume 2 of the hearing agenda. The analysis was reviewed in the s42A report and Mr Hodgson the author of the s42A report, considered that subject to issues regarding stormwater management and cultural heritage the plan change was appropriate and consistent with the provisions of the Act.

We have reviewed the s32 report and analysis including among other things the further evidence that we have received regarding cultural heritage and stormwater management. We have determined that subject to the amendments which we have made to that document (reflecting the decisions made on submissions) the Panel is satisfied that PPC 36 meets the relevant requirements

of section 32 and adopt the applicant's s32 assessment subject to our assessments, determinations and the amendments to the plan change that we have made and/or adopted.

We do not consider that there are any National Policy Statements that we are required to consider in regard to this plan change.

We are satisfied that the proposed modification is consistent with the Regional Policy Statement because the activities proposed and the provisions to be applied would ensure sustainable and integrated management of natural and physical resources of this area and does not breach the major strategic policies of the ARPS concerned with the maintenance of Metropolitan Urban Limits. Accordingly we are satisfied that it accords with s 75(3).

We are satisfied that the provisions of PPC 36 will ensure that development enabled by the plan change can be carried out in general accordance with the objectives and policies of the Auckland Regional Plans relating to air land and water, and sediment control.

We find the plan change will generally meet the strategic objectives of the Auckland Regional Land Transport Strategy by providing for demand for services to motorists using the major motorway network in a manner that will be convenient and efficient and which can be controlled so as to appropriately manage any potential adverse effects on the efficiency of the regional transport network.

Accordingly we are satisfied that PPC 36 is in accordance with sections 74(2) and 75(4).

8.2 EVALUATION UNDER PART 2 OF THE RMA

Section 5 of the RMA requires that we consider whether the provisions proposed will enable sustainable management of the natural and physical resources of this area while enabling people and the community to provide for their overall wellbeing. We are satisfied that the approval of PPC 36 would be consistent with Section 5 of the Act, because it will promote the sustainable management of the natural and physical resources of this area of land and will enable people and communities (particularly travellers on the motorway network) to provide for their social, economic and cultural well-being and for their health and safety. Overall we consider the cumulative safeguards of Section 5(2)(a) to (c) have been met and the proposed modification thereby meets the purpose of the RMA.

We do not consider that there are any matters of national importance of relevance apart from the potential Maori cultural issues raised by submitters. We have carefully considered that matter and our now satisfied that these issues have been appropriately recognised and provided for in the provisions that will apply to the development of the subject land.

Similarly, we believe that the principles of kaitiakitanga and the requirement for recognition of Treaty matters have been addressed, in so far as they can be in this case, through acceptance the iwi identification of the importance of the protection of the stream and requiring the provision of adequate riparian margins to protect it. We find that the provisions of PPC 36 will adequately provide for the maintenance and enhancement of amenity values and the quality of the environment.

Overall we are satisfied that on balance the provisions of PPC 36 as amended by this decision will be in accordance with the principles and purpose of the RMA.

9) DECISION

This report has considered PPC 36 and the submissions and further submission received on it.

Pursuant to Clause 29(4) of the First Schedule to the Act we have determined that, subject to the amendments set out above in this decision, the Auckland Council District Plan (Franklin Section) 2000 shall be amended in the manner proposed in Private Plan 36 Motorway and Rural Service Special Zone, and that the submissions made to this plan change be dealt with in accordance with the detailed assessment and decisions recorded in Section 7 of this decision.

Harry Bhana



Date: 12 September 2013

Chairman of the Hearing Panel on behalf of Harry Bhana, Basil Morrison and Murray Kay

MINUTES ISSUED BY COMMISSONERS

In the matter of: The Resource Management Act 1991

And: A request for a Private Plan Change at 2038 Great Self Road Bombay (Private Plan Change 36) pursuant to s73(2) of the Act

Applicant: Atlas Concrete Ltd

MINUTE OF THE HEARING COMMISSIONERS

The hearing of this private plan change request took place on 1 and 2 May 2013 at the Pukekohe Service Centre of the Auckland Council.

The s42A Report had raised concerns regarding the information that had been provided in relation to the methods for the management of stormwater in a manner that appropriately avoided, remedied or mitigated any adverse effects that discharge from and through the developed site could create.

The applicant's position leading up to the hearing and in the evidence at the hearing was that the method of managing stormwater was a matter that could and should be dealt with at resource consent stage under the provisions of the Auckland Council Regional Plan: Air Land & Water rather than as a matter that required further site specific evaluation as part of the plan change determination.

The position adopted by the reporting planner was that the Commissioners needed to be satisfied that there was a reasonable prospect that any future development in accordance with the zoning was able to provide for appropriate stormwater management. For the s42A Report, a peer review of the applicant's assessment of stormwater issues, was carried out by Mr Krpo, a Council stormwater engineer and at the hearing he affirmed his view that there was insufficient information provided to satisfy him that stormwater discharges could be appropriately managed on this particular site.

Mr Krpo's opinion as to the adequacy of information was supported by Mr Male, an experienced hydrological engineer who gave evidence on behalf of BP Oil New Zealand Ltd. Mr Male pointed to various deficiencies in the applicant's information that assessed the suitability of the site having regard to stormwater matters. Mr Winchester, representing BP Oil New Zealand Ltd submitted that we should not provide the applicant with the opportunity to overcome any deficiency in the information provided because that would result in unfairness to BP. We assume that he was concerned about the possibility that BP might be called on to respond to rebuttal evidence at short notice.

Mr Russell, a Council Development Engineer, addressed the Commissioners after hearing the evidence from the applicant and the submitters. He supported Mr Krpo and Mr Male's views regarding the inadequacy of information about whether the activities to be enabled by the Plan Change could be accommodated on the site while at the same time making provision for appropriate methods of stormwater management and accommodating disposal of wastewater.

In his closing Mr Berman, Counsel for the applicant, referred to the various expert views on the adequacy of information and invited us to request further information if we agreed that further information/assessments were needed rather than using that alleged inadequacy as a basis for refusal of consent.

We adjourned the hearing to consider the issues raised during the hearing including the stormwater and wastewater issues discussed above.

Having considered the evidence regarding stormwater matters, (and Mr Russell's advice about the extent of site likely to be required for wastewater treatment), the Commissioners concluded that there was insufficient information to satisfy us that the methods and rules in PPC 36 would enable the efficient and effective achievement of the objectives for the proposed zone. The Commissioners agreed that refusal to approve the plan change application on the basis of inadequate information could likely result in the applicant resubmitting the application with the required information attached. All of the parties involved including the Council would then have to repeat the evaluation processes and if necessary lodge fresh submissions reports and peer reviews. We concluded that it would be more efficient of everyone's resources if we accepted Mr Berman's offer to provide additional information. That decision was made on the basis that it would also enable us to obtain further information to assist our decision making in regard to other submissions that were made and in regard to our evaluation of the Plan Change under s32.

Request A. Further information required in regard to stormwater and wastewater management

We accordingly request the applicant to provide further information in regard to the necessary measures for the management of stormwater and wastewater from a reasonable range of the activities proposed to be enabled on the site in accordance with the objectives and policies. To avoid doubts as to the credibility of the scale and extent of the activities for which stormwater management methods are to be demonstrated we wish to have at least one scenario which contains the following components:

1. In area A on the concept plan:
 - a. a service station of a similar scale to the BP outlet on the western side of SH1; and,
 - b. at least one major fast food restaurant of a similar scale to that existing on the western side of SH1;
 - c. a truck refuelling facility (truckstop).
2. In area B on the concept plan, a rural service activity of a credible size and scale.
3. The delineation of the areas of the site required to provide for stormwater management including that emanating from the catchment upstream of the site.
4. The delineation of the areas of the site required to provide for wastewater treatment.

Sufficient description of the methods, technical assessments/calculations and other relevant reference material, to justify each scenario that is presented.

Request B. Further information required in relation to district plan matters

We request the Council planning staff, or the reporting planner, to provide the Commissioners with a copy of all of the relevant information regarding the existing motorway services zoning (on the western side of SH1) including district plan information and any available file information on the nature of activities that have established in that zone. That information is to be provided to the hearing administrator by 4pm on 4 June 2013.

Schedule for provision of information and responses

The applicant is to provide the information set out in Request A, to the hearing administrator by no later than 4pm on 22 May 2013. On receipt of the information the hearing administrator is to forward it to the Council's reporting planner who will arrange to have the information peer reviewed. The peer review is to be completed and forwarded to the hearings administrator by 4 pm on 7 June 2013. The hearings administrator will circulate the information and the peer review to all parties together with the information provided in response to Request B. The parties will have an opportunity to comment on that material by way of written submissions to be lodged with the hearings administrator by a date nominated by the administrator which is to be no later than 10 working days from the date that the parties receive the material.

The hearing will remain adjourned and parties will be advised of any further hearing dates at the conclusion of the process set out above.

H F Bhana



6 May 2013

Chairman on behalf of Commissioners, Basil Morrison, Murray Kay and Harry Bhana

In the matter of: The Resource Management Act 1991

And: A request for a Private Plan Change at 2038 Great Self Road Bombay (Private Plan Change 36) pursuant to s73(2) of the Act

Applicant: Atlas Concrete Ltd

SECOND MINUTE OF THE HEARING COMMISSIONERS

The hearings administrator has received email correspondence from Mr Berman on behalf of the applicant and from Mr Winchester on behalf of BP Oil New Zealand Ltd. The correspondence raises concerns as to the procedure to be adopted at the reconvened hearing. The purpose of reconvening the hearing is to enable submissions and evidence to be produced in relation to the additional information which we requested particularly that relating to stormwater and wastewater disposal. It is our intention that all parties who wished to comment on these matters, (but not on any other matters), will be given the opportunity to present submissions and evidence in that regard.

Mr Berman has requested that the basis/methodology that underlies the expert opinion of Mr Male about the inadequacy of the stormwater/wastewater calculations by Mr Wyborn should be made available to Mr Wyborn prior to the hearing so that there will be sufficient time to properly test the evidence. We are of the view that if this is done, that will be helpful in assisting us to make the best judgement as to how we deal with the opposing expert evidence. We accordingly direct that the basis or methodology on which Mr Male relies, in reaching his opinion that the proposed provision for wastewater and stormwater disposal by the applicant is an adequate, is provided to Mr Wyborn without delay.

H F Bhana



6 July 2013

Chairman on behalf of Commissioners, Basil Morrison, Murray Kay and Harry Bhana

