BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

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

AND

IN THE MATTER of Proposed Plan Change 92 to the Western Bay of Plenty District Plan First Review - Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters (PC 92)

STATEMENT OF EVIDENCE IN REPLY OF TONY ROBERT CLOW ON BEHALF OF WESTERN BAY OF PLENTY DISTRICT COUNCIL (PLANNING)

SECTION 14A – ŌMOKOROA AND TE PUKE MEDIUM DENSITY RESIDENTIAL – PART 2 – DEFINITIONS, ACTIVITY LISTS AND ACTIVITY PERFORMANCE STANDARDS

SECTION 11 – FINANCIAL CONTRIBUTIONS

ECOLOGICAL AND LANDSCAPE FEATURES

SECTION 8 – NATURAL HAZARDS AND PLANNING MAPS

6 SEPTEMBER 2023

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INTRODUCTION

1. My name is Tony Robert Clow.

2. My qualifications and experience are detailed at page 6 of the Introduction section of the Section 42A Report for PC 92 dated 11 August 2023 (the **section 42A report**).

3. As also recorded in the section 42A report, I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023 and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state I am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

SCOPE OF REPLY EVIDENCE

4. I prepared the following sections of the section 42A report:

   (a) Section 14A – Ōmokoroa and Te Puke Medium Density Residential – Part 2 – Definitions, Activity Lists and Activity Performance Standards

   (b) Section 11 – Financial Contributions

   (c) Ecological and Landscape Features (co-author)

   (d) Section 8 – Natural Hazards and Planning Maps

5. I have reviewed the following statements of evidence provided in support of submissions and in response to the section 42A report:

   (a) Ara Poutama Aotearoa Department of Corrections – Andrea Miller

   (b) Ara Poutama Aotearoa Department of Corrections – Sean Grace

   (c) Bay of Plenty Regional Council – Mark Ivamy

   (d) Bay of Plenty Regional Council – Mark Townsend

   (e) Fire and Emergency New Zealand – Nicola Hine

(f) Jace Investments and Kiwi Green Limited – Richard Coles

(g) Kāinga Ora – Homes and Communities – Lezel Beneke

(h) Kāinga Ora – Homes and Communities – Phillip Osbourne

(i) Kāinga Ora – Homes and Communities – Susannah Tait

(j) KiwiRail Holdings Limited – Catherine Heppelthwaite

(k) KiwiRail Holdings Limited – Michael Brown

(l) KiwiRail Holdings Limited – Catherine Heppelthwaite

(m) Mike and Sandy Smith – Richard Coles

(n) North Twelve Limited Partnership – John Dillon

(o) North Twelve Limited Partnership – Shae Crossan

(p) Powerco Limited – Gary Scholfield

(q) Retirement Villages Association of New Zealand Incorporated – John Collyns

(r) Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited – Gregory Akehurst

(s) Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited – Ngaire Kerse

(t) Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited – Nicola Williams

(u) Ryman Healthcare Limited – Matthew Brown

(v) Urban Task Force for Tauranga - Aaron Collier

(w) Urban Task Force for Tauranga - Scott Adams

(x) Waka Kotahi – Duncan Tindall

6. My evidence in reply addresses matters raised in the written evidence circulated on behalf of the submitters as it relates to the sections/topics that I addressed in the section 42A report. For some topics there was no written evidence received from submitters, or any written evidence received from submitters was in support, so I have not addressed those topics further in this statement of reply evidence.

7. I cover the following sections in this statement:

   (a) Section 14A – Ōmokoroa and Te Puke Medium Density Residential – Part 2 – Definitions, Activity Lists and Activity Performance Standards

   (b) Section 11 – Financial Contributions

   (c) Ecological and Landscape Features

   (d) Section 8 – Natural Hazards and Planning Maps

8. The changes recommended in my evidence are also included in the collated changes document, dated 6 September 2023 and circulated with the Council reply evidence.

SECTION 14A – ŌMOKOROA AND TE PUKE MEDIUM DENSITY RESIDENTIAL – PART 2 – DEFINITIONS, ACTIVITY LISTS AND ACTIVITY PERFORMANCE STANDARDS

Topic 2 – Definitions – Qualifying Matter

9. Catherine Hepplethwaite (in part 7 of her evidence) and Mike Brown (in part 4 of his evidence) for KiwiRail Holdings Limited have supported the recommendation to add a definition of "qualifying matter" as requested in the Western Bay of Plenty District Council submission. This definition includes "land within 10m of a railway corridor or designation for railway purposes (for sites created by way of an application for subdivision consent approved after 1 January 2010)". Ms Hepplethwaite and Mr Brown request that the bracketed wording be removed as it is not consistent with KiwiRail's wider relief sought. They note that the setback is needed for the safe and efficient operation of nationally significant infrastructure and that it should apply regardless of when a site was created.

10. This matter was previously addressed in the section 42A report in Topic 2. In summary, I supported the KiwiRail request for this definition to be added

including the reference to the rail corridor. For context, the reference to the rail corridor is to ensure that proposed Rule 14A.4.1(d)(ii)(b) (which has the same wording as an existing rule that applies to the existing Residential Zone) will continue to have legal effect to make the MDRS less enabling of development. In this case, the rule requires a 10m setback from the rail corridor which is less enabling than the 1m setback under the MDRS that would otherwise apply to side and rear boundaries. The purpose of the rule is to ensure that buildings and structures are able to be used and maintained without needing access on or over the rail corridor.

11. It is however also intentional that the setback only applies to sites created by way of an application for subdivision consent approved after 1 January 2010. This rule and bracketed wording was originally introduced through the previous District Plan Review (notified in 2009 and made Operative in 2012) to recognise that it would be unreasonable to require buildings on existing residential sites to meet a 10m setback when the sites had been created without knowledge that Council would be introducing the 10m setback. Residential sites are typically of a size that would not enable a residential unit to be constructed if a 10m setback was to apply.

12. I do not support the KiwiRail request to remove of the bracketed wording for two reasons. Firstly, because KiwiRail's "wider relief" (submission point 30.1) includes a request to retain Rule 14A.4.1(d)(ii)(b) as notified, which I have supported (see Topic 12 of the Section 42A report). Secondly, because the bracketed wording was introduced for the reason explained in the paragraph above. This wording would allow existing residential properties (created by way of subdivision consent approved before 1 January 2010) to provide for residential units and buildings without being unnecessarily constrained, whilst still ensuring that any buildings on new sites would be required to comply.

Topic 3 – Definitions – Residential Unit, Residential Activity, Retirement Village, Retirement Village Dwelling and Retirement Village Independent Apartment (Request for New Definition of Household)

13. Sean Grace and Andrea Millar for Ara Poutama seek this new definition:

*"**Household**" means a person or group of people who live together as a unit whether or not:*

(a) any or all of them are members of the same family; or

(b) one or more members of the group ~~(whether or not they are paid) provides~~ receives ~~day to day~~ care, support and/or supervision ~~to any other member(s) of the group~~ (whether or not that care, support and/or supervision is provided by someone paid to do so).

14. This matter was previously addressed in the section 42A report in Topic 3 (on page 10). I recommended that the submission point from Ara Poutama be rejected. The reasons were as follows:

Council staff understand that Ara Poutama are seeking to add a definition of household to recognise that these are not limited to a family unit and so that residential units can be used for supported and transitional accommodation activities such as those provided by Ara Poutama. This means people living in a residential situation subject to support and/or supervision.

It is agreed that those living together as a unit, although not being a family, are still a household. However, it is considered that a definition is not needed to make this clear. The term "household" in the existing definition of "dwelling" has been referred to many times over the years with no problems previously being raised. This is other than one query regarding whether RSE workers were a household to which the answer was yes.

The concern is understood to be that those living together under the supervision of Ara Poutama may not be perceived by some members of the public as a household. However, it is not considered that a new definition of "household" is needed to resolve that. Council staff are also hesitant to introduce new definitions on the basis that one party would prefer to have absolute certainty on a matter. Further, the requested definition may introduce confusion for plan users that hasn't previously existed.

The suggested definition is also open in that an unlimited number of people, including most notably support staff, could live under one roof as a household. While it is agreed that a residential unit can be utilised by those under the support and/or supervision of Ara Poutama, any purpose built facilities for a larger number of people including staff would no longer clearly be the use of a residential unit. The scale and nature of these larger activities may be different to that of the use of a residential unit. It is preferable to avoid a definition of "household" which implies that larger purpose built facilities are residential units. These purpose built facilities may fit better within the definition of another activity (for example an accommodation facility).

Council staff are also concerned that part (b) of Ara Poutama's suggested definition of household could inadvertently permit other activities that should have otherwise required consent.

Ara Poutama raised in discussions that a number of other definitions in the Operative District Plan and Plan Change 92 refer to "household" and would

benefit from a definition of household. In response, Council staff noted that the definitions of accessory building and household equivalent have also been in the District Plan for many years without needing a definition of household. Further, the new definitions of residential unit and showhome are essentially the same as dwelling, so it is not anticipated that issues will arise for these definitions either.

In summary, Council staff concluded that there should not be any issues for Ara Poutama if residential units are to be used for genuine residential purposes in line with the definitions of "dwellings" and "residential units".

15. My position has not changed in response to the submitter's evidence.

Topic 4 – Rule 14A.3.1 – Permitted Activities (Papakāinga Housing)

16. Susannah Tait (in part 11 of her evidence) for Kāinga Ora has opposed the recommendations to not add an advice note explaining that Rule 14A.3.1(a) (up to three residential units on a site) "applies to papakāinga". Ms Tait states that the reporting officer's reasons for not supporting the request is "primarily on the basis that a specific plan change for papakāinga is being contemplated by Council". Ms Tait believes that this advice note, and her suggested definition of papakāinga, is required to allow papakāinga housing in Ōmokoroa and Te Puke. Further, Ms Tait suggests that explicit provision of papakāinga is expected and directed by Section 80E(1)(b)(ii) of the RMA Amendment Act.

17. This matter was previously addressed in the section 42A report in Topic 4. My reasons for not supporting the request, which included both the advice note under 14A.3.1(a), and that "provisions for marae and cultural activities in association with papakāinga housing be provided for as a restricted discretionary activity", were as follows:

Kāinga Ora's request for the permitted activity status for up to three residential units to apply to papakāinga is also noted. However, this is already the case. Any development (including papakāinga) which has residential units will be allowed up to three on a site as a permitted activity. While a note may assist in making it more obvious, it may also bring into doubt why other development types are not also mentioned. The explanatory statement already explains that residential units will be provided for in many developments including papakāinga. Marae and cultural activities associated with papakāinga housing are also already provided for as discretionary activities as "Places of Assembly".

Council is considering a specific Plan Change for papakāinga development for the whole of the District in the near future. Therefore, it would be more appropriate to review the provisions of the District Plan in consultation with tangata whenua through this process rather than in response to a submission on Plan Change 92. This future Plan Change would present the opportunity to address how to provide for papakāinga housing, marae and cultural activities as well as how to define papakāinga development.

18. My recommendation and reasons have not changed in response to the evidence from Ms Tait. I believe that Plan Change 92 has enabled papakāinga housing through the general provision for "residential units". This is specifically recognised in the explanatory statement and in Objective 3 and Policy 6. An advice note under 14A.3.1(a) to confirm that up to three residential units "applies to papakāinga" could also assist is making this even clearer if the panel did wish to add such wording.

19. I would also note that Section 80E(1)(b)(ii) of the RMA Amendment Act does not expect or direct Council to add specific provisions for papakāinga housing but rather says that a proposed district plan "may also amend or include… provisions to enable papakainga housing in the District".

Topic 4 – Rule 14A.3.1 – Permitted Activities (Gross Floor Area for Non-Residential Activities)

20. Ms Tait for Kāinga Ora has supported the recommendation to confirm that Rule 14A.3.1(g) allows certain non-residential activities subject to a maximum gross floor area of 150m² "per activity". Of note, this rule permits retailing, restaurants, other eating places, taverns and commercial services all at "ground floor only". Ms Tait suggests (in paragraph 9.32 of her evidence) that the drafting of the rule would inadvertently allow these activities to exceed 150m² if they were above ground.

21. This rule was previously discussed in the section 42A report in Topic 4. However, the particular concern from the submitter was not raised and therefore was not addressed.

22. In my opinion, what Ms Tait is raising is not of concern. Rule 14A.3.1(g) is permitting certain non-residential activities. Any activity which is not included in the rule, such as above ground retailing, restaurants, other

eating places, taverns and commercial services, would not be permitted. Therefore, these would not be allowed to exceed 150m² as a permitted activity. Instead, any activity which is not listed would default to a non-complying activity under Rule 4A.1.4.

Topic 7 – Rules 14A.3.4 and 14A.3.5 – Discretionary and Non-Complying Activities (Request for Discretionary Activity Status for Emergency Services Activities)

23. Nicola Hine (on page 5 of her evidence) for Fire and Emergency New Zealand has provided evidence supporting the original submission requesting that provision be made within the Medium Density Residential Zone for "emergency services activities" as a discretionary activity. The section 42A report in Topic 7 (page 21) recommended the rejection of this submission point noting that it is more appropriate for emergency activities to establish in Commercial and Industrial Zones. Police stations, fire stations and St Johns Ambulance stations are permitted in Industrial Zones. Police stations are also permitted in the Commercial Zone.

24. Fire and Emergency New Zealand have also submitted requesting that a definition of "emergency services activities" be included in the District Plan. As the recommendation in the section 42A report was not to provide explicitly for emergency services as a discretionary activity, there was no consequential requirement to consider the definition.

25. Emergency service activities default to be assessed as non-complying activities as they are not explicitly provided for. It is considered unlikely that emergency services would seek to be located within the Medium Density Residential Zone. However, if for locational reasons this was the best option to service the community and associated adverse effects could be appropriately mitigated, it is considered reasonable to provide for these. I therefore recommend that the Plan Change be amended to include emergency services as a discretionary activity in Section 14A (Ōmokoroa and Te Puke Medium Density Residential).

26. As a result of this there is now also the need to include a definition of emergency services activities in the plan change. Fire and Emergency New Zealand proposed the following definition:

Those activities and associated facilities that respond to emergency call-outs, including police, fire, civil defence and ambulance services, but excluding health care facilities and hospitals.

27. This is considered appropriate noting however that this can only apply in the context of this plan change and accordingly will only apply to Section 14A (Ōmokoroa and Te Puke Medium Density Residential).

28. I recommend that the plan change be amended as follows:

Insert new discretionary activity into Rule 14A.3.4:

Emergency Services Activities.

Insert new definition into Section 3 - Definitions:

"Emergency Services Activities" when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means those activities and associated facilities that respond to emergency call-outs, including police, fire, civil defence and ambulance services, but excluding health care facilities and hospitals.

29. **Topic 7 – Rules 14A.3.4 and 14A.3.5 – Discretionary and Non-Complying Activities (Request for Non-Complying Activity Status for Subdivision and Development to Manage Effects on the Ōmokoroa Road / State Highway 2 Intersection)**

30. Waka Kotahi are seeking non-complying activity status for subdivision and four or more units on a site in Ōmokoroa Stage 3 once a temporary roundabout soon to be constructed at the Ōmokoroa Road / State Highway 2 intersection reaches capacity. This is to cover the scenario where the Takitimu Northern Link Stage 2 grade separated intersection (or similar) is not in place prior to the roundabout reaching its capacity (in the vicinity of 2048, discussed below).

31. Duncan Tindall for Waka Kotahi has provided evidence (see parts 7-11) in relation to how much development could be allowed before capacity will be exceeded. This is based on his review of BECA's Ōmokoroa Roundabout Performance Metrics and Development Thresholds Memo, dated 16 August 2023. This is provided as Attachment E to Council's Section 42A reports.

32. In Part 11 of his evidence, Mr Tindall concludes that the roundabout does not have adequate capacity for the full demand which would result from Plan Change 92. He explains that this could be mitigated by only allowing the development to 4,904 HEUs (Household Equivalent Units) or 97% of the total residential land use enabled by the Plan Change. This would allow the development of 1,361 HEUs in Ōmokoroa Stage 3 (89% of its possible 1,534 HEUs) before a restriction would be needed. This is explained by Mr Tindall as follows:

Assuming the base 2028 development of 3,344 HEU within Ōmokoroa, an additional increment of 1,560 HEU can be accommodated by the two-lane roundabout, which would provide a nett Stage 3 residential development threshold of 1,361 HEU. If development were to exceed this level prior to the TNL Stage 2 there would be deterioration to the efficiency of the network, and in my opinion a decline in the safety as a result of driver frustration. As such I consider it appropriate and necessary to include a rule that prevents such a threshold being exceeded prior to the appropriate infrastructure being provided.

33. I would note at this point that the roundabout will have capacity to the year 2048 based on the findings of the BECA Memo.

34. Ms Tait for Kāinga Ora does not consider that any rule is needed to restrict development within Ōmokoroa. This is based on the outcomes of the traffic modelling and long planning horizon. However, in response to the concerns of Waka Kotahi, Ms Tait does offer support for a restricted discretionary status (rather than non-complying).

35. Lezel Beneke for Kāinga Ora is concerned about non-complying activity status as this would indicate that the activity is not anticipated when in fact the growth of Ōmokoroa Stags 3 is anticipated by the RMA Amendment Act. Ms Beneke supports the recommendations of Ms Tait for a restricted discretionary status.

36. Richard Coles for Jace Investments and Kiwi Green Limited notes that funding has been secured for the Ōmokoroa Road/State Highway temporary roundabout and supports “the recommendation to change the activity classification to discretionary, being Option 2”.

37. This matter was previously addressed in the section 42A report in Topic 7. However, I did not make a recommendation. This is because Waka Kotahi, Kāinga Ora and Council staff had been unable to reach an agreement on whether a rule restricting further development was needed and how it should be drafted. In particular, it was not clear how a restriction should be triggered or whether this should result in a non-complying or other activity status.

38. Since the section 42A report was published, the parties have continued to discuss a potential rule but still have not agreed. Waka Kotahi remain of the opinion that a non-complying rule is needed whereas Kāinga Ora have supported a restricted discretionary status. Two possible options for when to trigger a consent have also been discussed. One option is when a certain number of HEUs in Ōmokoroa Stage 3 have been reached e.g. the 1,361 HEUs put forward by Mr Tindall. The other option is when a certain number of residential units have been provided for within Stage 3.

39. I do not support the first option. If Council were to use HEUs in the District Plan to align with the technical findings of the BECA report, this would require Council's planning and building staff to understand how to calculate and count these (for commercial, industrial and residential activities) and potentially for a timeframe of 20 or more years. In my opinion this would be overly complicated and is an unrealistic expectation to put on Council staff. It would likely result in counting/recording errors and defeat the purpose of having a technically correct method to count the exact number of HEUs. I would therefore prefer the second option which is to count residential units, provided there is an accurate way to convert the technical findings of the BECA report into a certain number of residential units. Council staff already keep records of residential units and would be able to determine how many have been approved in Stage 3 either in total or from a certain date.

40. In support of the second option, the following draft rule was worked on amongst the parties but again has not been formally agreed. If the Panel did consider it appropriate to introduce a rule, this wording could be used as a basis.

<u>Non-Complying / Restricted Discretionary Activities (to be selected)</u>

Subdivision and four or more units on a site within the Ōmokoroa Stage 3 Structure Plan area:

i. Following the establishment of a roundabout at the intersection of Ōmokoroa Road and Stage Highway 2 if;

1. More than **X** new residential units have been approved within the Ōmokoroa Stage 3 Structure Plan (with approved meaning a granted building consent that was lodged on or after the date of **X**); and

2. A grade-separated interchange or equivalent has not been established at the intersection of Ōmokoroa Road and State Highway 2.

41. My opinion is that such a rule is not required. The traffic modelling indicates that the roundabout can accommodate 97% of Ōmokoroa's total growth and 89% of the growth in Ōmokoroa Stage 3. When Plan Change 92 is operative, it is anticipated that growth can occur without restriction until 2048. This is a significant amount of time and indicates that there is no immediate issue to be addressed. It would also mean that any such rule would need to be reviewed again well before this date, which brings into question why a rule is required at this point in time. If a rule was to be introduced now however, I would suggest that non-complying status is more aligned with the intent of the rule which is to disenable further development rather than to enable it. Although, restricted discretionary activity status with appropriate matters of discretion would also work. My recommendation would also be that any such rule relies on counting residential units rather than HEUs as a trigger.

42. In response to Mr Coles' request for discretionary status, this was not the recommendation in the section 42A report, nor provided as Option 2. Rather, Option 2 related to a proposed subdivision rule for the creation of vacant lots.

Topic 12 – Rule 14A.4.1(d) – Density Standards - Setbacks (Exemption for Neighbour's Written Approval)

43. Ms Tait for Kāinga Ora opposes (in paragraph 9.35 of her evidence) the recommendation to retain Rule 14A.4.1(d)(ii)(e) which allows landowners to obtain the written approval of their neighbours in order to reduce their side and rear yards to less than 1 metre. This opposition is on the basis that s87BA of the RMA already provides a similar process to protect the landowner, the affected party and Council by creating a paper trail. Ms Tait

requests the deletion of Rule 14A.4.1(d)(ii)(e) and suggests that an advice note could be added to refer readers to s87BA of the RMA instead.

44. This matter was previously addressed in the section 42A report in Topic 12. I recommended retaining the rule for the following reason:

Rules allowing setbacks to be reduced as a permitted activity if written approval is received from neighbours have been in the District Plan for many years. Kāinga Ora have pointed out that the RMA now provides a similar clause allowing permitted activity status for boundary infringements. However, this clause is more stringent than the District Plan. The RMA still requires the consent authority to issue a notice to the landowner causing the infringement (which can be charged as a consent fee) whereas the proposed District Plan rule does not require the landowner to obtain or pay for approval. It is considered fairer for landowners if the District Plan rule is retained.

45. I remain of the view that Rule 14A.4.1(d)(ii)(e) should be retained for the reason above and for an additional reason being that the rule also results in a paper trail. The written approval must be provided to Council and is included on the property file as a record, and without the need to obtain or pay for approval as would be required by s87BA of the RMA. I do not believe that s87BA of the RMA sought to override written approval rules that were already in district plans but rather intended to provide for such opportunities where district plans did not already allow them.

Topic 19 – Rule 14A.4.2(a) – Other Standards – Residential Unit Yield

46. Ms Tait for Kāinga Ora opposes the recommendation is retain minimum yields of 15, 20 and 30 lots/residential units per hectare in Ōmokoroa and Te Puke (in paragraphs 9.38-9.42 of her evidence). Instead, minimum yields of 35 and 50 lots/residential units per hectare are requested on the basis that these would be more appropriate and better provide for the outcomes sought by Plan Change 92.

47. Ms Beneke for Kāinga Ora also opposes the proposed minimum yields (in paragraphs 11.2-11.5 of her evidence). Ms Beneke suggests that these are not medium density yields and explains that higher minimum densities will be required to enable the efficient use of land. Examples are given of Kāinga Ora achieving minimum densities of 47 and 87 residential units per

hectare. Ms Beneke also notes that Council is targeting 13,000 people and states that "Council are limiting the development potential of the Ōmokoroa Peninsula and driving an inefficient use of land (so as not to exceed the capacity of the infrastructure)."

48. Kāinga Ora's requested changes to the yield requirements (based on their submission to the proposed rules) are shown in the table below.

Area	**Minimum unit yield** **Per ha of developable area**
~~Ōmokoroa Stage 3A~~	~~15~~
Ōmokoroa Stage 3A	35
Ōmokoroa Stage 3B	~~20~~ 35
Ōmokoroa (Outside of Stage 3)	~~20~~ 35
Te Puke	~~20~~ 35
Ōmokoroa High Density ~~Stage 3C~~	~~30~~ 50
Ōmokoroa Mixed Use Precinct	~~30~~ 50
Te Puke High Density	~~30~~ 50

49. Ms Tait and Ms Beneke also request that the definition of "developable area" be changed to exclude any land to be vested i.e. roads, reserves and accessways. This is to support their view of a "true" developable area.

50. This matter was previously addressed in the section 42A report in Topic 19. My recommendation was to retain the yield requirements as notified. My reasons were as follows:

Kāinga Ora believe however that these minimum densities are too low for medium or high density housing. Their suggested minimums are substantially higher than what was proposed and would require at least 35 lots/units per hectare. They request a minimum of 50 lots/units per hectare in areas of Ōmokoroa which are already identified for higher density plus additional areas in Te Puke within a 400m walkable catchment of its town centre. This is opposed by Jace Investments and Ōmokoroa Country Club. General feedback from other developers is also that these densities are likely unachievable.

In a meeting with submitters on this topic, Kāinga Ora noted that these suggested densities were based on an understanding that developable area would exclude roads and reserves. However, Council's proposed definition of "developable area" does include these. Taking into account that roads and reserves would generally be assumed to account for 25% of a 'gross' hectare, Kāinga Ora's figures would re-adjust to approximately 25 and 35 lots/units per hectare respectively.

These adjusted densities are still higher than what has been proposed by Council but not significantly higher. The notified densities of 15, 20 and 30 lots/units per hectare are still considered by the Reporting Team to be the most appropriate for the reasons they were originally chosen based on topography and proximity to certain amenities. Also, because they are commensurate with the level of commercial activity and community services in these 'smaller' towns. Another key issue for Council is the capacity of wastewater infrastructure in Ōmokoroa. There is no treatment plant and the wastewater pipe to Tauranga City only has capacity for around 13,000 people.

51. I remain of the opinion that the minimum yields proposed by Plan Change 92 are suitable for Ōmokoroa and Te Puke for the reasons above. I would also emphasise that these are <u>minimum</u> yields and do not prevent Kāinga Ora or any developer from achieving higher densities of 35 or 50 lots/units per hectare if they wished (provided it was achievable). As minimums, they are also not "limiting development potential" as claimed by Kāinga Ora. In fact, the purpose of the rule is to require landowners to use land more efficiently than what may have resulted without such a rule. For clarity, Council has also not proposed maximum densities which has perhaps been overlooked by Kāinga Ora.

52. With respect to the definition of developable area, I do not support the submitter seeking to re-draft this to reflect their own view of what "true" developable area should be. There are many ways of defining developable area and Council staff have decided that it is appropriate to take into account roads, reserves and accessways when calculating yield. This is an existing approach reflected in the Operative District Plan. The definition proposed in Plan Change 92 is also consistent with the Tauranga City Plan definition of "nett developable area" which includes local roads and neighbourhood reserves.

Topic 21 – Rule 14A.4.2(d) – Other Standards – Impervious Surfaces (Rule)

53. Aaron Collier for Urban Task Force for Tauranga opposes the proposed performance standard for impervious surfaces, in particular the 50% limit for Te Puke's existing urban area (in part 21 of his evidence). This opposition is on the basis that the 50% limit on impervious surfaces will lead by default to a smaller maximum building coverage (which is also 50% as allowed for by the MDRS). Mr Collier also states that a separate impervious surfaces rule is not supported by the MDRS provisions.

54. Mark Townsend for Bay of Plenty Regional Council supports an impervious surfaces rule for Te Puke. However, Mr Townsend believes that further work is needed to determine whether 50% is the correct limit for Te Puke. The reasoning in his evidence is below.

The stormwater modelling undertaken for this plan change did not determine the downstream effects. It was previously highlighted that the modelling report did not separate out the effects of the proposed plan change and the effects of climate change. Consequently, it could not be determined whether effects on the downstream flood protection infrastructure was caused by the plan change or climate change.

Attempts to address this with the modeller has revealed that the model requires further work, and subsequently results are not available yet to address the above concerns. Given the above it cannot be determined yet whether a 50% limit for impervious surfaces, or a lesser percentage, in Te Puke would be supported.

55. This matter was previously addressed in the section 42A report in Topic 19. The reason for the proposed rule and for recommending it be retained as notified were explained as follows:

Introducing a new rule to manage all impervious surfaces will allow Council to better utilise its stormwater network and protect landowners from flooding that would not have otherwise been anticipated.

A limit of 70% still provides flexibility for landowners to utilise the building coverage rules whilst also being able to provide additional areas for paths, driveways and carparking. In the case of Te Puke, the rule is also in response to a request from the Bay of Plenty Regional Council to avoid effects on its flood protection scheme downstream of the township. Within

existing areas of development, identified as the Te Puke Stormwater Management Area, this limit is proposed to be 50%. This was selected based on a modelling exercise which indicated that mitigation would be required to address impacts on Council's stormwater network beyond this point. It is recommended that this limit of 50% is therefore retained as notified.

Section 80E(2) of the RMA gives Council the ability to include related provisions that support or are consequential to the MDRS, which specifically includes "stormwater management (including permeability and hydraulic neutrality)". Submissions requesting that the rule be deleted on the basis that impervious surfaces rules are not part of the MDRS are therefore not supported.

56. I am still of the view that a rule is necessary to manage the effects of runoff from exceeding the capacity of Council's stormwater network and that stormwater management (where supporting or consequential to the MDRS) is specifically provided for by the RMA Amendment Act.

57. Council's stormwater engineers have confirmed that a limit of 50% would be the most appropriate in their view for Te Puke's existing urban areas. The existing stormwater network was designed for a 1 in 5 year event and was designed only to serve the roads but not private property. Rainfall intensities have increased overtime and it was already recognised more than a decade ago that the system could no longer cope with a 1 in 5 year event (without climate change).

58. The Bay of Plenty Regional Council had also supported the 50% limit in their submission but are no longer supporting this in their evidence. Instead, they wish to wait upon a new modelling exercise to determine what limit would be needed to protect their downstream flood assets. In any case, I would not recommend reducing the impervious surfaces limit below 50% as this would become overly restrictive in allowing growth.

59. In terms of the practicality of the rule, I agree with Mr Collier's argument that the rule could have the effect of reducing a landowner's ability to realise the permitted maximum building coverage of 50%. For example, where a landowner chooses to reduce building coverage to 40% in order to allow a paved driveway which covers another 10% of the site. However, it is also important to note that the impervious surfaces rule has been

introduced for a reason and is not necessarily seeking to prevent further impervious surfaces but rather to manage the effects of these. Landowners are still able to reach a maximum building coverage of 50% and could add further surfaces such as carparks and driveways through the resource consent process subject to measure for managing runoff e.g. on-site tanks.

60. My recommendation is to retain the rule as notified.

Topic 21 – Rule 14A.4.2(d) – Other Standards – Impervious Surfaces (Definition)

61. Mr Collier for Urban Task Force for Tauranga (in paragraph 5.5 of his evidence) generally agrees with the definition of impervious surfaces but seeks the removal of "soil layers engineered to be impervious such as compacted clay" as it would be "almost impossible to determine or monitor".

62. This definition was previously addressed in the section 42A report in Topic 19 but did not provide a reason for retaining engineered soil layers.

63. I agree with Mr Collier that soil layers engineered to be impervious would be difficult to monitor and therefore I recommend that this be deleted from the proposed definition as follows:

"Impervious Surfaces" when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means an area with a surface which prevents the infiltration of rainfall into the ground and includes:

~~e. Soil layers engineered to be impervious such as compacted clay.~~

Topic 22 – Rule 14A.4.2(e) – Other Standards – Vehicle Crossings and Access

64. Ms Tait for Kāinga Ora (in paragraphs 9.45-9.47 of her evidence) has suggested a further amendment as follows:

For a site with a front boundary, the vehicle crossing shall <u>be the lesser of the following:</u> ~~not exceed 5.4m~~ <u>6m</u> in width ~~(as measured along the front boundary)~~; or cover more than 50% of the length of the front boundary ~~as shown in the diagram below~~.

65. The basis for the amendment is to provide improved clarity to the performance standard. Ms Tait also correctly identifies that the revised

drawing is in conflict with the revised performance standard. This is a mistake in the diagram which should state 5.4m rather than 5.9m.

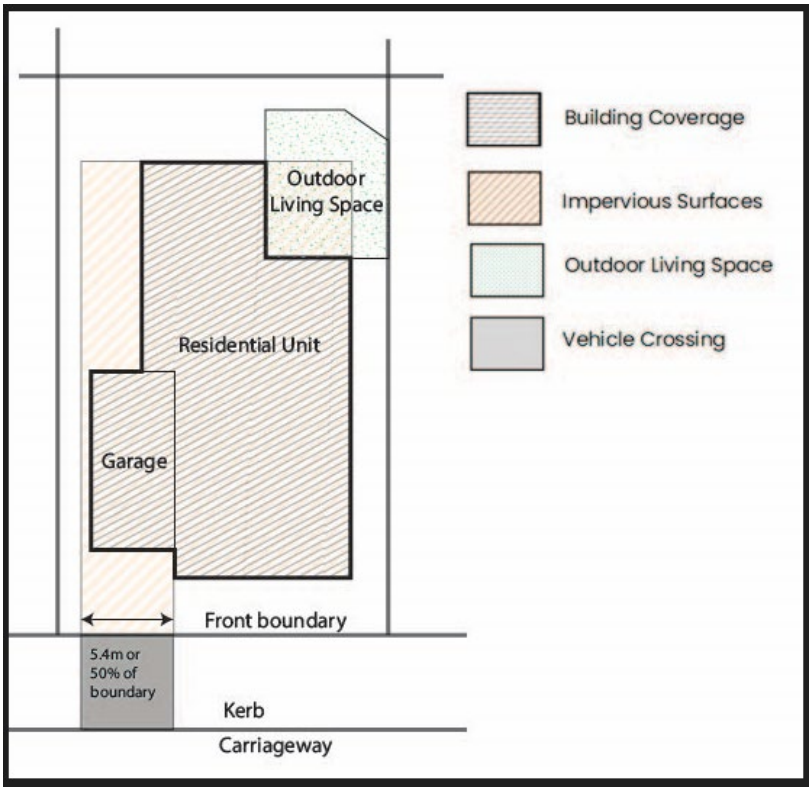
66. The 5.4m maximum is based on the Council Development Code which is based on the New Zealand standard and has been confirmed by Council engineers as appropriate to allow for comfortable two way access for individual sites. The basis for 6m as suggested by Ms Tait is unclear. It is noted however that the urban vehicle crossing in the Development Code does identify the width at the actual roadside as being 6m so it is possible that this is where the 6m reference comes from. The performance standard is only in regard to the width at the legal property boundary.

67. I acknowledge that the standard could be written to improve clarity noting that it could be interpreted as an option by using the word "or" when the intent is whichever is the lesser. Similarly, the associated diagram needs to be amended to reflect the correct maximum width in the performance standard. The diagrams are used throughout s14A and are considered useful to provide a visual summary of the matters being addressed.

68. I recommend that the wording of Rule 14A.4.2(e) be amended as follows:

For a site with a front boundary the vehicle crossing shall not exceed 5.4m in width (as measured along the front boundary) and shall not ~~or~~ cover more than 50% of the length of the front boundary as shown in the diagram below.

The consequential change to the diagram is below:



Topic 26 – Rule 14A.4.2(j) – Other Standards – Accommodation Facilities

69. Mr Coles for Jace Investments and Kiwi Green Limited has sought (in paragraph 20 of his evidence) that Rule 14A.4.2(j) (standards for accommodation facilities) be amended to provide for kitchens. This is in support of a submission made by Kāinga Ora.

70. Ms Tait has now confirmed (in paragraph 9.50 of her evidence) that Kāinga Ora are no longer seeking that these smaller accommodation facilities (for five persons) be permitted to have kitchens. However, Ms Tait has suggested re-drafting Rule 14A.3.1(d) (permitted activity status) and Rule 14A.4.2(j) to make these provisions clearer, as follows:

Rule 14A.3.1 Permitted Activities

Accommodation facilities ~~for a combined maximum of five persons (excluding staff)~~ <u>complying with 14A.4.2(j).</u>

Performance Standard 14A.4.2

Accommodation Facilities<u>, where:</u>

(i) There are no more than ~~Have maximum occupancy of~~ five ~~persons~~ guests at any one time ~~(excluding staff);~~

(ii) ii. The total area available for the exclusive use ~~for the occupiers be~~ of guests is no greater than 60m² gross floor area; and

(iii) There is no ~~Must not contain a kitchen~~ food preparation facilities within the area available for the exclusive use of guests ~~facility or otherwise be self contained;~~

~~(iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.~~

71. This matter was previously addressed in the section 42A report in Topic 4. My recommendation to retain the standard (iii) which prevents permitted small-scale accommodation facilities from having a kitchen was for the following reasons:

The standards for accommodation facilities are to limit permitted activities to smaller scale activities such as bed and breakfasts and sleepouts. The standard preventing kitchen facilities is to ensure that these smaller accommodation facilities do not become self-contained and hence residential units (these are provided for separately).

Larger accommodation facilities such as hotels, camping grounds and motels are provided for as discretionary activities. It is known that these larger accommodation facilities will require kitchen facilities and as such these are provided for in granted resource consents. Discretionary status is to allow Council to manage the effects of these larger activities such as noise and traffic, not to assess whether a kitchen facility is needed or not.

72. My position has not changed in response to the evidence from Mr Coles for the reasons I have explained.

73. I also do not support the further suggested rule changes from Ms Tait. While I would agree that the suggested changes to Rule 14A.3.1(a) and 14A.4.2(j) (i)–(ii) are generally well-worded, they simply find another way of saying what is already said. I do not agree with the wording in (iii) as it overlooks that there are definitions of “kitchen” and “kitchen facility” in the District Plan which were written for this rule. I understand the reasons for the suggested deletion of (iv) but would also suggest that this be retained

as it does help readers to understand their requirements if they fail to comply with the standards. I would also note that the standards for accommodation facilities are identical for other zones in the District, and have been well-tested in practice, and I see no need to reword these for a particular zone. I would further note that Kāinga Ora did not seek such wording changes in their submission.

Topic 27 – Rule 14A.4.2(k) – Other Standards – Home Enterprises

74. Ms Tait for Kāinga Ora (in paragraph 9.52 of her evidence) notes that the submitter opposes the standards for home enterprises insofar as the rule applied cumulatively to a site. This notified wording is found in the note at the end of the rule and would have prevented each individual unit of a multi-unit and/or apartment building having its own permitted home enterprise. This is because the RMA's definition of site excludes land subdivided under the Unit Titles Act 1972. Ms Tait has not agreed with the solution in the section 42A report and has instead suggested new wording for the note, along with a number of other rule changes, as follows:

Home Enterprises

(i) ~~Shall only~~ Will be conducted within a building.

(ii) ~~Shall only~~ Will be conducted within a gross floor area not exceeding 25m^2 . Carparks ~~shall be~~ are excluded from the ~~maximum~~ gross floor area calculation ~~of~~ for the activity.

(iii) Involves no more than three staff on site at any one time. ~~Is carried out by a maximum of three persons.~~

(iv) Any goods sold must be:

a. goods produced onsite; and/or

b. goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or

c. goods ancillary and related to a service provided by the home enterprise.

(v) Any advertising shall comply with Section 4D.3.2.1.

Note: The above activity performance standards will ~~shall~~ apply to every residential unit on a site ~~cumulatively to all home enterprises per site~~. ~~Except that in the case of land subdivided under the Unit Titles Act 1972 or the Unit Titles Act 2010 or a cross lease system, the above activity performance standards shall apply cumulatively to all home enterprises per individual unit title or cross lease title.~~

75. This matter was previously addressed in the section 42A report in Topic 4. The recommendation was to retain the note wording that applied the standards cumulatively to a "site" to avoid multiple small businesses being established in a way that exceeds the standards e.g., two businesses with six staff in total. However, an exemption was recommended to be added to allow each unit title to have its own home enterprise.

76. The new wording for the note suggested by Ms Tait would apply the rules to each "every residential unit on a site". While I agree that this wording is more simple, and it may be a better solution for a multi-unit building, it overlooks other housing types beyond the focus of the submitter and inadvertently prevents landowners being able to utilise other buildings that may not be residential units. For example, landowners can also use sheds and garages as appropriate, such as for an e-bike retail/repair or carpentry business. Not all home enterprises are office activities and this needs to be recognised. I therefore suggest retaining the recommended wording for the note that is in the section 42A report.

77. In terms of the other requested changes to Rule 14A.4.2(k), I do not support replacing the words "shall only" (a clear directive) with "will" in (i) and (ii) as it would weaken the rules and lead to potential arguments that the rule does not need necessarily to be met. The word "shall" is used extensively in Section 14A and the word "must" is used in the density standards (MDRS) and not objected to by the submitter. I also do not support the requested change to the carparking note in (ii) as there is no need for such a change. Also, carparks do not have a gross floor area (the definition of gross floor area refers to floors in a building).

78. The requested change to (iii) is also not suitable wording in my opinion. The standards are to limit the scale of a permitted home enterprise and minimising the total number of staff is an appropriate way to achieve this. Changing the limit to "no more than three staff at any one time" would

appear to be promoting a more substantial business with a larger number of staff who potentially could also work shifts. Home enterprises are provided for in the District Plan to allow the genuine use of a residential property for a small-scale operation. The standards limit scale to manage effects such as traffic and to protect the viability of commercial centres.

79. I would also note that the standards for home enterprises are largely identical for other zones in the District, and have been well-tested in practice, and I see no need to reword these for a particular zone. Kāinga Ora also did not seek these changes in their submission.

Topic 29 – Request for New Rule – Other Standards – Overhead Electricity Lines

80. Gary Scholfield for Powerco Limited does not support the recommendation to introduce advice notes into the District Plan to make plan users aware of the risks of building in close proximity to overhead electricity lines. Instead, Mr Scholfield seeks that a reference to the New Zealand Electrical Code of Practice 34:2001 be included in the performance standards.

81. This matter was previously addressed in the section 42A report in Topic 29. The following explanation was given as to why, in my opinion, it is not appropriate to use the District Plan to trigger resource consent for failure to comply with the Electrical Code of Practice:

Council staff do not believe it is appropriate to use the District Plan to trigger resource consent for non-compliances with its requirements. Firstly, it is not Council's role to administer this Code of Practice and it is legally required to be met without Council introducing it into the District Plan. Secondly, any introduction of such a rule into the District Plan would bring extra costs and time delays to those seeking to proceed with a residential unit or building that would otherwise be a permitted activity. Council would also become responsible for informing landowners of the need to meet this standard, requiring them to engage the services of an expert to prepare an assessment and dealing with disputes.

82. Mr Scholfield has acknowledged the first point as being factually correct but does not consider that this should absolve Council of a responsibility to ensure that the District Plan provides for the well-being of the community. He also does not agree that a rule triggering resource consent for failure to comply with another party's regulations would bring extra

costs and time delays for the Council and its customers. Further, it has been suggested by Mr Scholfield that because Council protects heritage features which are also subject to protection under the Heritage New Zealand Pouhere Taonga Act 2014, this shows that Council is also able to administer the Electrical Code of Practice in the District Plan.

83. While I agree that Council does have a responsibility to ensure community well-being, this does not mean that Council must do this in the manner that Powerco are suggesting, nor does it mean that Council must offer to take responsibility from other parties who may be struggling to administer regulations which they have been given responsibility for.

84. Powerco's submission states that:

Developers (or their agents) typically engage with Powerco to determine whether there is sufficient network capacity to service their development, or to relocate Powerco assets that are present on their development site. However, there are increasing instances where distribution network safety concerns are overlooked, and buildings (as well as scaffolding and mobile plant) do not meet the requirements of the New Zealand Electrical Code of Practice for Electrical Safe Distances - NZECP 34:2001 (ECP34).

85. In my opinion the proposed advice note would make plan users aware of the Electrical Code of Practice (a regulation that must be legally complied with) but that it is not appropriate for Council to determine whether or not it is being complied with to determine a permitted activity standard.

86. When considering my recommendation in the section 42A report, I also took into account the wording of the rule that was requested, which is:

Where a site contains or adjoins (e.g. on legal road) an overhead electricity line identified on the [nonstatutory] planning maps, an assessment of the building(s) against the provisions of the New Zealand Electrical Code of Practice for Electrical Safe Distances - NZECP 34:2001 (ECP34) must be undertaken by a suitably qualified person with the report approved by the asset owner. If no report is provided, or a breach of ECP34 is identified, then resource consent is required for the development as a Restricted Discretionary Activity with the asset owner identified as an affected person.

87. In my opinion, it is not appropriate to trigger resource consent for failure to meet a regulation which sits outside the RMA and which is already legally required to be met. As drafted that would require an assessment by a suitably qualified person and then approval from the asset owner e.g. Powerco. The purpose of the MDRS was to provide flexibility and certainty for landowners. Permitted activities should be measurable and it is not appropriate for Council to require an assessment against the provisions of the Code, and for the report to be approved by Powerco as part of a permitted activity standard. It is not appropriate for third parties to determine whether resource consent is needed or not.

88. The submitter's evidence concludes that there are no extra costs and time delays from their suggested approach. I disagree from an RMA perspective because landowners will need to engage a suitably qualified person to carry out an assessment, wait for Powerco's approval and potentially apply for resource consent (for which Powerco would then be involved with as an affected party). There are also extra costs and time commitments for Council, associated with its staff needing to administer and enforce the requirements.

89. I also do not agree with the submitter's evidence where it suggests that Council must take responsibility for the Electrical Code of Practice because of an example where Council shares a joint responsibility to protect heritage alongside those who administer the Heritage New Zealand Pouhere Taonga Act 2014. Council is directed under the RMA to protect historic heritage from inappropriate subdivision and development as a matter of national importance. The RMA's requirements are different to that of the Heritage New Zealand Pouhere Taonga Act 2014 and reflect the different roles that Council and Heritage New Zealand Pouhere Taonga play in protecting heritage. It is not a duplication of roles, nor does Heritage New Zealand Pouhere Taonga seek to pass on their role to Council. In the case of the Electrical Code of Practice, Powerco are essentially asking that Council play a role of administering or helping to administer a regulation that it does not otherwise have responsibility for.

90. I have not changed my recommendation for the various reasons above and remain of the opinion that the matter is most appropriately addressed as an advice note.

Topic 30 – Rule 14A.4.3 – Subdivision Standards

91. Ms Tait for Kāinga Ora (in paragraph 9.55 of her evidence) is seeking that the discretionary activity status of subdivision not for the purpose of the construction and use of residential units be changed to restricted discretionary activity. The basis as provided in the evidence is that "this will enable the relevant matters to be assessed and enable Council to decline the application if appropriate". Ms tait has helpfully provided a number of matters of discretion.

92. This matter is discussed in Topic 30 (page 82) of the section 42A report. The provision only relates to subdivision not for the purpose of the construction and use of residential units which is intended to provide for vacant lots. The discretionary activity status provides a clearer signal that while it may be possible to undertake such a subdivision it will be subject to a more stringent test than subdivision that is for the purpose of the construction and use of residential units (provided for in the RMA Amendment Act as a controlled activity). This better reflects the primary intent of the zone and enables all appropriate matters to be assessed and allows the Council to decline any applications if appropriate.

93. I am of the opinion that the discretionary activity status is the most appropriate and no changes are recommended.

Various Topics – Retirement Villages

94. Mr Collyns for Retirement Villages Association of New Zealand Incorporated, Mr Brown for Ryman Healthcare Limited, and Ms Williams and Ms Ngaire Kerse for Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited, have all provided evidence in support of provisions for retirement villages. The more detailed planning evidence in relation to the provisions is provided by Ms Williams and is supported by the other experts in their evidence.

95. The accompanying rule changes are requested by Ms Williams on page 38 onwards of her evidence. My summary of the requested changes is as follows:

    (a) Page 55 – delete existing definitions of retirement villages, retirement village dwelling and retirement village independent apartment and replace with new definition of retirement villages

(National Planning Standards) and retirement unit. The requested definition of retirement unit is below for context.

Retirement Unit means any unit within a retirement village that is used or designed to be used for a residential activity (whether or not it includes cooking, bathing, and toilet facilities). A retirement unit is not a residential unit.

(b) Page 95 – add three retirement units on a site as a permitted activity (instead of retirement villages being incorporated as three residential units per site).

(c) Page 96 – add four or more retirement units on a site as a restricted discretionary activity (instead of retirement villages being incorporated into four or more residential units on a site).

(d) Page 100 – add an exemption allowing retirement villages to achieve the outdoor living requirements over 1 or more communally accessible locations (this was recommended in the Section 42A report but should have also extended to part (ii)).

(e) Page 100 – add an exemption allowing retirement villages to achieve 50% of the outdoor living requirements by instead using indoor areas (note the existing references to residential units have not been replaced with references to retirement units).

(f) Page 102 – add an exemption which allows retirement units to reduce outlook space in principal living rooms from 4x4m to 1x1m.

(g) Page 102 – add retirement unit to the windows to street standard so that the rule applies to these as well as residential units.

(h) Page 102 – add retirement unit to the landscaped area standard so that the rule applies to these as well as residential units.

(i) Page 103 – add a note to the residential unit yield standard to exempt retirement units from the need to achieve minimum yields per hectare.

(j) Page 103 – add an exemption to the minimum (two) storey standard for the Ōmokoroa Mixed Use Residential Precinct so that retirement units do not need to meet this rule.

(k) Page 104 - add an exemption to the vehicle crossings and access standard so that retirement units do not need to meet this rule.

(l) Page 105 – add a reference to retirement unit in the streetscape rule so that these are not required to comply as “other buildings”.

96. The relevant matters were discussed across the following topics in the section 42A report (the submitters did not submit on Topics 19, 22 and 23 as they were then of the view that these standards could not be added):

(a) Topic 3 – Definitions for Retirement Villages (page 8)

(b) Topic 6 – Restricted Discretionary Activities (page 17)

(c) Topic 14 – Outdoor Living Space (page 42)

(d) Topic 15 – Outlook Space (Per Unit) (page 44)

(e) Topic 16 – Windows to Street (page 46)

(f) Topic 17 – Landscaped Area (page 47)

(g) Topic 19 – Residential Unit Yield (page 50)

(h) Topic 22 – Vehicle Crossing and Access (page 22)

(i) Topic 23 – Streetscape (page 68)

97. In summary, my recommendation was to not accept the new definitions for retirement villages and retirement units (and therefore no introduction of a specific set of rules for retirement units). The reasons are best captured on page 11 of the section 42A report as follows:

Retirement villages – request to change definitions

Retirement Villages Association seek the definition of retirement village to be amended to comply with the National Planning Standards. Amendments to definitions are however not required until May 2026 unless through notification of a District Plan Review (but not a Plan Change). This Plan Change has therefore only added definitions from the National Planning Standards where necessary to incorporate the MDRS in Ōmokoroa and Te Puke. This has already caused an unwanted complexity in the District Plan of having a number of duplicating definitions as discussed earlier. If the submitter’s intent is to introduce the new definition district-wide, this is also not preferable as this Plan Change is not intending to make changes for other areas.

Retirement Villages Association are also seeking a new definition of "retirement unit". This is suggested as an alternative to the definition of "residential unit" which currently only captures their self-contained units but overlooks those that are not. Based on their submission, units that would not be self-contained appear to include "serviced apartments" and "care rooms". They request for this term "retirement unit" to be used throughout the rules with the main purpose being to provide exemptions from the MDRS. This reflects their submission which considers the development standards for retirement villages should reflect the MDRS, except where amendments are necessary to reflect the particular characteristics of retirement villages.

For the self-contained units, these are already provided for in the definition of "residential unit" and Council staff view this as being sufficient without any further need to re-define them. It was also intentional to use this definition to ensure that self-contained units in retirement villages would meet the same standards as like units within other developments. Excluding retirement units from the definition of "residential unit" would mean that some standards will cease to apply to these. This includes being able to have three units as a permitted activity (which the submitter supports) and needing to achieve a minimum number of units per hectare which is important for enabling housing supply. It was intended that these standards and others do apply.

For the serviced apartments and care rooms, it is not entirely clear why the submitter is seeking to have these included in a definition of "retirement unit" and made subject to the density standards for outdoor living space, outlook space, windows to street or landscaped area. This would volunteer these units for restrictions that are not intended by the MDRS, or proposed by the Plan Change, and would remove the flexibility that villages currently have to deliver the "unique internal amenity needs" that are sought to be provided for by the submission. The request is also unusual as the submitter has then sought exemptions from these same standards on the basis that they are difficult to meet, not relevant or in one case "simply not needed".

The intent of the Retirement Village Association submission is to provide a set of rules that are suitable for retirement villages. Further, they wish to avoid "an expectation from council officers that the internal amenity controls used for transitional housing typologies (e.g. outlook, sunlight, privacy, outdoor living spaces, landscaping and the like) are appropriate for retirement villages". The exemptions sought for self-contained units (which need to meet such standards) would align with this. However, volunteering to apply the same standards to serviced apartments and care rooms, when there are no existing or proposed rules requiring this, appears to be a less suitable option for retirement village providers.

98. I also recommended rejecting the point seeking that retirement villages be permitted activities. However, I note that the submitters have now agreed to restricted discretionary status (for retirement units at least). I am not clear whether it was their intention to remove "retirement villages" from the list of restricted discretionary activities. If this was on the basis of a view that retirement villages are a "residential activity" I do not agree with this

as the suggested new definition specifically mentions a range of other activities such as recreation, leisure, supported residential care, welfare, medical facilities, hospital care and "other non-residential activities".

99. My recommendations have not changed and I remain of the opinion that Plan Change 92 has already sufficiently provided for retirement villages through the existing definitions and the appropriate inclusion of their units in the rules for residential units. The submitters' acceptance of restricted discretionary activity status for four or more retirement units on a site would further align with Plan Change 92 as it was notified.

100. There are more substantial matters that are not agreed between myself and the submitters including the requests to avoid needing to meet minimum yields and to volunteer serviced apartments and care rooms (through the definition of retirement unit) to meet the MDRS for outdoor living, outlook space, windows to street and landscaped area. In my opinion, retirement villages should meet minimum yield requirements for the same reasons as other developments which is to enable housing, use land more efficiently and to utilise and pay for provided infrastructure.

101. If the Panel was to consider any changes were required (which I do not support) I have provided the following drafting considerations to assist:

(a) The existing definitions of retirement village, retirement village and retirement village independent apartments apply to the whole of the District. The submitter evidence seeks to remove these existing definitions in their entirety which would affect other areas not part of the scope of the Plan Change. However, if not done this way, there would be two different sets of definitions for retirement villages. Either way, the introduction of the new definitions at this point may be confusing. The requirement is for Council to introduce the definition of retirement villages from the National Planning Standards by May 2026.

(b) The submitter has deleted the reference to "retirement villages" from Rule 14A.3.3 which provides for these as a restricted discretionary activity. This would mean that retirement villages would not be specifically provided for and would be treated as a non-complying activity as per Rule 4A.1.4. The reference would need to be retained for these to be restricted discretionary.

(c) Many of the exclusions from rules being sought by the submitter (e.g. that retirement units would not be subject to the vehicle crossing or streetscape standards) are not required because their suggested definition of retirement unit would already say that it would not be a residential unit.

(d) The suggested inclusions into the MDRS for outdoor living space, outlook space, windows to street and landscaped area would appear to introduce more stringent requirements (for serviced apartments and care rooms) than the Plan Change as notified.

(e) There are many provisions that apply to residential units (including those in retirement villages intentionally). The definition of retirement unit would automatically remove retirement villages from these, whether intentionally or in error. For example, the need to meet policies, the ability to subdivide for the purpose of the use and construction of residential units, and exemptions from height, height in relation to boundary and setback rules etc.

(f) There may be other anomalies also.

SECTION 11 – FINANCIAL CONTRIBUTIONS

Topic 3 – Rules 11.5.4, 11.5.5 and 11.5.7 – Subdivision, and Four or More Residential Units on a Site Including within Retirement Villages – Consideration of a Per Hectare Charge (Overview of Recommendations)

102. Plan Change 92 proposed to charge most subdivisions and four or more units based on a per hectare charge, including for retirement villages. In the discussion of Topic 3 (page 14) of the section 42A report, the following summary is provided about the recommendations in response to submissions (with the actual recommendations on page 16 onwards).

Redrafting of provisions

In light of the discussion above, the overall recommendation is as follows:

- *For all subdivision (including small infill subdivision) to be subject to the same method of calculating financial contributions.*
- *To not proceed with the per hectare charge as drafted, however, to carry the intent of this into the existing rule framework for urban*

growth areas which are also based on planned density and capacity of infrastructure.

- *Note that using the existing rule framework would also mean that:*
    - *Existing lots and first units would not be charged (Rule 11.5.2 (b) (ii)).*
    - *Roads, reserves and accessways would not be part of the net lot area and therefore would not be charged (see definition of net lot area in Section 3 - Definitions).*
    - *Other land not suitable for development due to geotechnical constraints or natural hazards would also be excluded from being charged (Rule 11.5.2 (a) (i-ii)).*
    - *The special assessment is triggered when exceeding density (Rule 11.5.2 (b) (iv)).*
    - *Residential units of 60*m^2 *would be charged 0.5 of an HHE (Rule 11.5.6).*
    - *Revert back to the existing rules for retirement villages which charge 0.5 of an HHE for dwellings and independent apartments and allow a special assessment for other facilities*

Topic 3 – Rules 11.5.4, 11.5.5 and 11.5.7 – Subdivision, and Four or More Residential Units on a Site Including within Retirement Villages – Consideration of a Per Hectare Charge (Te Puke Net Lot Area)

103. Shae Crossan and John Dillon for North Twelve Limited Partnership oppose the re-drafting of Rule 11.5.2 as it relates to Te Puke. Their reasons can be summarised as follows:

- Plan Change 92 increases financial contributions by 67% in Te Puke by charging 1 Household Equivalent (HHE) for every 375m^2 of net lot area / dwelling envelope as opposed to every 625m^2.

- The re-introduction of the special assessment for average densities below 300m^2 is a misconception of the submission.

- Smaller lot sizes are a reality of recent development in Te Puke but increasing densities do not trigger the need to review and increase financial contributions.

- Te Puke is significantly different to Ōmokoroa as Te Puke has little to no greenfield land available and that all greenfield land is now consented for subdivision and development.

- The increased population expected is already largely met through this existing consented development which will pay financial contributions as approved per their consents.

- Reports prepared by Council at the time of notifying Plan Change 92 indicate that if Te Puke's population was to approach 16,500, some additional wastewater infrastructure would be required. However, no decision has been made to grow Te Puke's population to 16,500 or land rezoned to enable such growth.

- There is no requirement for additional stormwater, water and wastewater infrastructure to support a development beyond a population of 13,000 people in Te Puke. This lends further weight to retaining existing rules and reviewing these for Te Puke when further land is rezoned.

- There has been no assessment to show that additional reserves or transportation infrastructure is required and therefore no justification to trigger additional financial contributions for these.

- The section 42A report observes that increased density may require additional infrastructure. However, no assessment is made of whether additional infrastructure is required in Te Puke.

- The submitter is aware from consents they have obtained that no additional infrastructure is required to enable additional density of greater than 12 lots per hectare in relation to currently zoned greenfield residential land.

- The submitter is not aware of any work carried out by Council that demonstrates that there is a need to collect additional financial contributions per hectare to fund growth infrastructure in Te Puke. The Council has declined to provide such information.

- Rule 11.5.2 should therefore retain a charge of 1 HHE per 625m^2 of net lot area / dwelling envelope and allow a special assessment for an average net lot area / dwelling envelope area below 500m^2.

104. The reasons for reverting back to charging financial contributions based on "net lot area" (instead of per hectare) and re-introducing the "special assessment" are explained in the section 42A report in Topic 3. In summary, the use of net lot area is to align with the current rule framework that plan users are already familiar with for urban growth areas including Waihi Beach, Katikati, Ōmokoroa and Te Puke. Under this framework Council charges 1 HHE for every 625m^2 of net lot area / dwelling envelope with a potential reduction to 0.8 for smaller sizes and a special assessment for much higher densities. I have however recommended that this would require adjusting the net lot areas to reflect the yields which are now expected in Te Puke. On page 14, I explain this as follows:

*Ōmokoroa and Te Puke will need specific consideration of the higher densities that are now being planned for which is a minimum of 15, 20 or 30 lots/units per hectare depending on the development potential of the specific area. It is not considered appropriate to rely on an average net lot area or dwelling envelope of 625*m^2 *as these equate to a much lower density of 12 units/lots per hectare. This would however need to remain in place for Waihī Beach and Katikati until such time as these settlements are subject to a Plan Change.*

105. With respect to the special assessment, I provided the following reasoning on page 13 as to why this should also align with expected yields:

The Plan Change now targets minimum yields of 15, 20 or 30 lots/units per hectare and the charges for financial contributions need to be adjusted accordingly. Under current conditions, Council is no longer expected to need to encourage developers to exceed 12 lots/units per hectare as this is now a very low density but Council would still want to encourage developers to exceed the new minimum yields. The special assessment also wouldn't be needed as early as 16 lots/units per hectare as Plan Change 92 has provided for new and upgraded infrastructure to support a greater level of density. The special assessment will be needed at some point after the new minimum yields are exceeded. Council's infrastructure

is capable of accommodating more than the minimum yields but only to an extent.

106. The recommended rule wording, and the submitter's requested change with respect to Te Puke, is shown in the table below:

Area	*Average net lot area and dwelling envelope (1 HHE)*	*Average net lot area and dwelling envelope (0.8 HHE)*	*Average net lot area and dwelling envelope for which a special assessment is required*
*Waihi Beach, **Te Puke** and Katikati*	*625m²*	*500m²*	*<500m²*
Omokoroa Stage 3A	*500m²*	*400m²*	*<400m²*
Omokoroa Stage 3B	*375m²*	*300m²*	*<300m²*
Omokoroa (Outside of Stage 3)	*375m²*	*300m²*	*<300m²*
~~Te Puke~~	***~~375m²~~***	***~~300m²~~***	***~~<300m²~~***
Omokoroa Stage 3C	*250m²*	*200m²*	*<200m²*
Omokoroa Mixed Use Precinct	*250m²*	*200m²*	*<200m²*

107. In responding to the submitter's evidence, I focus on the purpose of financial contributions which is for Council to recover the costs of providing the infrastructure needed to service growth. If Council does not receive the required level of financial contributions, it could mean that infrastructure is unable to be provided, or that costs of completed infrastructure are unable to be recovered. Any shortfall would need to be made up in other ways e.g. through rates.

108. I do not agree that Plan Change 92 is increasing financial contributions by 67% in Te Puke through charging 1 HHE for every 375m^2 of net lot area / dwelling envelope as opposed to every 625m^2. In other words, by charging 20 HHEs per hectare instead of 12 HHEs per hectare.

109. In my opinion, the submitter's calculation is not an accurate representation of what has been proposed by Plan Change 92. This calculation needs to be considered in wider context.

110. It is important to understand that the rules for financial contributions in the Operative District Plan were introduced during a period of time where subdivision and development in the District was not happening at the pace it is today and when 12 dwellings per hectare were anticipated. This is explained on page 7 of the section 42A report:

When these rules were introduced through Plan Change 73 – Financial Contributions (2016), 12 dwellings per hectare was the 'norm' but the Bay of Plenty Regional Policy Statement (RPS) was encouraging a transition to 15 dwellings per ha over the longer term. Council responded by offering landowners the chance to provide those three extra lots/dwellings per hectare whilst still only paying for 12 (15 x 0.8 = 12 HHEs).

Exceeding 15 lots or dwellings per hectare (16+) was viewed as unlikely because of the conservative housing market at the time. However, there was evidence suggesting that densities were beginning to rise. This led to a concern that if density (15) was exceeded, Council's infrastructure may not have the capacity to accommodate it.

111. Over time, these densities have increased, and the rules of Section 13 – Residential (made Operative in 2012) did not anticipate the much higher densities that are now occurring in the District, including Te Puke. As such, these applications for higher densities are typically assessed as non-complying activities. Council has provided flexibility in allowing these subdivisions and developments to be granted despite the District Plan not anticipating them. Financial contributions in these cases are therefore typically assessed by way of special assessment. These are generally charged at 0.8 of an HHE for greenfield developments.

112. Plan Change 92 is now seeking to formalise the allowance for higher densities (as required by the RMA Amendment Act) and to update the drafting of the financial contributions to specifically align with these higher densities. This provides a clearer pathway for subdivision and development and more certainty of what financial contributions would need to be paid.

113. At the time of writing the Section 42A report relating to financial contributions, it was my understanding that the infrastructure schedules in Plan Change 92 had planned for Te Puke's growth based on an expected population of 13,000 people. In Topic 7 of the evidence of Mr Te

Taunutanga O Waikato (Taunu) Manihera on behalf of Council, I note that some changes have been recommended to the infrastructure schedules to amend or remove a small number of wastewater items that were associated with a larger population. With these corrections to be made, it is confirmed that all infrastructure provision in Plan Change 92 is required for an expected population 13,000 people.

114. I also understand that the Operative District Plan had already planned infrastructure for this same population of 13,000 and that Plan Change 92 has only made specific adjustments to the infrastructure schedules in Appendix 7 – Structure plans where required to react to the introduction of the MDRS. This is where higher densities in particular areas cause the need to upsize some parts of the supporting infrastructure to cope.

115. Further, I understand that Council's financial contributions model for Te Puke is also based on the same expected population of 13,000 and that the model anticipates that a certain number of HHEs will therefore need to be collected from this population (through charging lots / residential units) to recover the costs.

116. Since the writing of the section 42A report relating to financial contributions, Council staff have done an exercise to determine the population that the Operative District Plan had enabled for Te Puke. By enabled, this means permitted or controlled activities in compliance with density rules. This exercise was to understand the impact on Council's cost recovery if it were only to collect 12 HHEs per hectare which the submitter is suggesting is sufficient. Further, we took into account the amount of infill that may have been possible from utilising the Operative District Plan rules, which allows one dwelling for every 350m^2 of net lot area.

117. Council staff also looked at the 'modern-day' situation which takes into account the actual densities that are now being consented in Te Puke as non-complying activities, the rezoning of additional greenfield land, the proposed rule in Section 14A for a minimum of 20 lots / residential units per hectare, and the additional infill that is now permitted by the MDRS.

118. This exercise has shown that the Operative District Plan rules, which were aligned with the slower-moving and lower density development trends of the time, would have only enabled Te Puke to grow to a population of 11,660 people. Whereas it is only through the 'modern day' situation that

Te Puke's population may now be able to reach 13,000 people and Council able to recover its full costs. These numbers are broken down in the table below.

Operative District Plan enabled	**'Modern-day' situation**
Existing population 9,700 (in 2021)	Existing population 9,700 (in 2021)
Infill potential based on 350m2 minimum net lot area rule is 190 units or 513 people	Infill potential based on using MDRS (high projection) is 591 units or 1595 people. Or infill potential based on using MDRS (low projection) is 216 units or 583 people.
Greenfield development at 12 units per ha of net developable land (assumed 75%) is 536 units or 1447 people	Greenfield development from higher density consented developments is 842 units or 2273 people Note: A variation to RC 13511 (not yet granted) would change this to 806 units or 2176 people
Total estimated population Approximately 11,660	Total estimated population Approximately 13,570 Notes: If the low projection was used for infill and if the variation was granted it would be a total estimated population of approximately 12,460 Any middle projection for infill could lead to an estimated total population of approximately 13,000.

119. The corresponding data is provided in Attachment 1 of my evidence.

120. Based on the projected population of 13,000 people being the basis for the provision of infrastructure and collection of financial contributions, and the information in the table above, it is my opinion that:

- The Operative District Plan did not anticipate densities significantly increasing to 20 or more units per hectare. Nor did it anticipate that there should be no ability to charge for any more than 12 HHEs per hectare if densities did begin to increase. The special assessment is a means for charging more and has largely been an accepted method for doing so.

- The Operative District Plan did not enable Council to recover the full costs of infrastructure to support the Te Puke population to grow 13,000 people. This population has instead been enabled through granting non-complying applications for higher density developments and through additional measures in Plan Change 92. It would therefore be appropriate to charge lots / residential units in a manner that allows Council to recover its costs of providing infrastructure for 13,000 people.

- The submitter's suggestion to charge 1 HHE for each 625m2 of net lot area / dwelling envelope instead of 375m2, which is the equivalent of 12 HHEs per hectare instead of 20 HHEs, would likely create a significant shortfall for Council. This request is essentially asking that Council allows significant further development without being able to collect the necessary financial contributions for growth to fund the infrastructure to service it. This does not align with Council's financial contributions approach which is to charge each activity relative to its use of Council infrastructure.

- Plan Change 92 should therefore be allowed to react to higher densities and charge financial contributions based on an average lot size / dwelling envelope of 375m^2.

- Because the financial contributions model already assumes a projected population of 13,000 people for Te Puke, this will not result in a 67% increase in financial contributions for Te Puke.

Topic 3 – Rules 11.5.4, 11.5.5 and 11.5.7 – Subdivision, and Four or More Residential Units on a Site Including within Retirement Villages – Consideration of a Per Hectare Charge (Definition of Developable Area)

121. Ms Tait for Kāinga Ora supports the deletion of Rules 11.5.4 (small infill subdivision) and 11.5.5 (the per hectare charge for all other subdivision and four or more units) in favour of reverting to the current rule framework in Rule 11.5.2. However, Ms Tait only supports the re-drafting of Rule 11.5.2 in part, explained in her evidence (paragraph 17.4) as follows:

I support, in part, Rule 11.5.2 as amended, but from my reading of the rule, the exclusion of roads, reserves and accessways has not been adopted into the rule (i.e. a true representation of developable area) and I consider that the expected yields set out in the rule table are too low.

122. Mr Collier for Urban Task Force for Tauranga (in paragraphs 5.1-5.4 of his evidence) makes a similar point to Ms Tait in opposing financial contributions being charged for roads, reserves and accessways. Mr Collier notes the following:

This is contrary to a well-functioning urban environment and there is no nexus between reserves/open space land and FINCOS, as Reserves and walkways do not generate demand on infrastructure.

123. The issue of "developable area" was a matter addressed in the section 42A report in Topic 3. On page 12, I explain my support for submissions requesting the removal of roads, reserves and accessways from the payment of financial contributions, as follows.

*The various requests to remove public roads, local purpose stormwater reserves, neighbourhood reserves and pedestrian accessways from being charged financial contributions are supported. This would be consistent with the existing rules for urban growth areas which charge based on net lot area. The definition of net lot area is limited to the land which is available for development i.e., housing, roads, reserves and accessways are not part of the net lot area and would not be charged. In the existing rules, land needed for these is assumed to account for 25% of a gross hectare. This is why 12 dwellings per hectare is the equivalent of an average net lot area of 625*m^2*. The calculation being 12 x 625*m^2 *= 7,500*m^2 *(with the remaining 2,500*m^2 *or 25% being deemed undevelopable and therefore not able to be charged).*

124. I also explain on page 15 that re-drafting Rule 11.5.2 (to charge financial contributions based on net lot area instead of the proposed per hectare charge based on developable area) will achieve the following:

Roads, reserves and accessways would not be part of the net lot area and therefore would not be charged (see definition of net lot area in Section 3 - Definitions).

125. As a consequential amendment to the re-drafting of Rule 11.5.2, I also recommended on page 20 to remove the association between financial contributions and the definition of developable area, as shown below. I am therefore of the opinion that the concerns of the submitters have been met in this regard.

Section 3 – Definitions

"Developable Area" when used in ~~Section 11 (Financial Contributions) and~~ Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means all land zoned Medium Density Residential except for the following:

- *Road reserves of Ōmokoroa Road, Prole Road and Francis Road (including its extension to Ōmokoroa Road); Identified structure plan link road between Prole Road and Francis Road;*
- *Identified structure plan active reserve.*
- *As part of a resource consent, areas identified as unsuitable for the construction of a residential unit by a suitably qualified and experienced:*
    - *geotechnical engineer or equivalent, or*
    - *stormwater engineer or equivalent due to the land having stormwater management as its primary function, or*
    - *natural hazards engineer or equivalent due to the land being subject to one or more natural hazards.*

Topic 3 – Rules 11.5.4, 11.5.5 and 11.5.7 – Subdivision, and Four or More Residential Units on a Site Including within Retirement Villages – Consideration of a Per Hectare Charge (Retirement Villages)

126. John Collyns for Retirement Villages Association of New Zealand Incorporated, Matthew Brown for Ryman Healthcare Limited, and Gregory Akehurst and Nicola Williams for Retirement Villages Association of New Zealand Incorporated and Ryman Healthcare Limited, have all provided evidence relating to financial contributions for retirement villages. The specific evidence is provided by Mr Akehurst and is supported by the other experts in their evidence. The accompanying rule changes are requested by Ms Williams on page 78 of her evidence.

127. In paragraphs 12-21 of his evidence, Mr Akehurst explains his views on the economic principles relevant to financial contributions, including the need for Council to understand how each part of its community uses services and to recognise where lower demand requires an adjustment to funding policy. Mr Akehurst concludes this part of his evidence with his opinion that the most appropriate way of doing this for retirement villages is through the use ratios that reflect to proportionate load on infrastructure relative to standard demand.

128. Mr Akehurst, from paragraph 33 of his evidence onwards, provides his views on Plan Change 92. He does not support the recommendation to

revert to charging 0.5 of an HHE for retirement village dwellings and independent apartments based on their occupancy being 1.3 people per unit compared to the average of 2.7 persons across the District. Nor would it appear that he supports the recommendation for a specific assessment for other facilities in a retirement village. Instead, Mr Akehurst notes:

- Residents use public open space, parks, reserves etc at a rate equivalent to 5% of a standard household.
- Independent units generated approximately 27% as many trips as an average dwelling (2.6 trips per day versus between 9 and 10) while assisted living units generate 24% (2.4 trips per day).
- The nature and age of residents and their living arrangements mean that their consumption of water and wastewater is significantly lower (set at 80% of an average person).
- The calculation of stormwater needs to take into account the amount of impervious surfaces per unit compares to an average dwelling as well as on-site mitigation measures.

129. Mr Akehurst proposes the ratios as set out in the following table, based on research of actual use generated by retirement villages in New Zealand, but which does not appear to be accompanied by any evidence such as surveys, traffic counts, or water metering data etc.

FC Category	Independent Units	Assisted Living/ Care/ Memory Units
Recreation and Leisure; including for Parks, Reserves, Open Spaces, Public Amenity, & other social infrastructure	0.05	0.01
Traffic and Transport	0.27	0.24
Water/ Wastewater	0.40	0.30
Stormwater	based on onsite offsetting/design	

130. Ms Williams uses this information to propose the following rule, which is intended to replace to recommendation rule:

FC Category	Retirement units that have full kitchen and bathroom facilities and are able to be occupied by more than 1 person (eg	Other retirement units (eg, assisted living suites, care rooms, hospital and dementia beds.

	independent apartments and dwellings)	
Recreation and Leisure; including for Parks, Reserves, Open Spaces, Public Amenity, & other social infrastructure	0.05	0.01
Traffic and Transport	0.27	0.24
Water/Wastewater	0.40	0.30
Stormwater	based on onsite offsetting/design	

131. The financial contributions for retirement villages were previously addressed in the section 42A report in Topic 3 (pages 13 and 14). This acknowledged that retirement villages should not be charged on a per hectare basis but instead based on their demand for Council services. The specific recommendation was to revert to the existing rule as follows:

~~Land use consent for a retirement village~~ Retirement villages

~~Except for Medium Density Residential Zones in Ōmokoroa and Te Puke (see 11.5.3 and 11.5.5 above):~~

i. Retirement village dwellings and retirement village independent apartments shall be charged a financial contribution for recreation and leisure, transportation, water supply, wastewater, stormwater and ecological protection equal to 0.5 of a household equivalent for 1 and 2 bedroomed dwellings/apartments.

This rule shall also apply to 1-2 bedroomed residential units within retirement villages in the Medium Density Residential Zones in Ōmokoroa and Te Puke.

ii. The financial contributions for facilities other than *retirement village dwellings* or *retirement village independent apartments* shall be done by specific assessment.

132. I have considered the information provided by the submitter in seeking to have this recommended rule replaced by their own specific rule. However, I have the following concerns with the information that has been provided and the manner in which their requested rule has been drafted:

- The research does not take into account nature of retirement villages which occur in the Western Bay of Plenty District and how they may differ to the examples used by the submitter. A recent application for a retirement village in Ōmokoroa provides for luxury living and an extensive range of on-site amenities. It also provides a wide range of housing options. Another recent application for a retirement village in Waihi Beach also provides a range of housing options including for up to 4 bedrooms per unit. These larger units if used by younger retirees may also more readily accommodate additional visitors compared to smaller units that are more common for the 80+ year category. Both developments also provide double garages for units in some cases.

- The research does not take into account that many people choose to move to the District to retire while they are still younger and active to take advantage of the scenery, beaches and recreational opportunities in the area. Retirement villages are also marketed as such to appeal to those people looking for lifestyle living. The Ōmokoroa example provides for residents from the age of 55. Younger retirement village residents are likely to be a lot more active in the community and use Council facilities more.

- The research does not take into account the financial contributions that have been agreed through the resource consent process for recent retirement village applications in the District. Applicants have largely accepted financial contributions for 0.5 of an HHE or 0.48 of an HHE in some cases, even following an assessment of actual usage rates. However, I note that specific assessments are sometimes provided in relation to traffic to reduce this figure. Applicants also generally accept the need to pay financial contributions towards other facilities in a retirement village.

- The research assumes that the average age of residents living in independent units will be in the early 80s. This estimate appears to be too high for the District based on my reasons above and in turn a rule based on this assumption could set financial contributions lower than they should be. I also do not support the assumption that people living in independent units in the District will use recreation and leisure facilities 5% as often as a normal household,

for the same reasons. I accept however that the “other retirement units” would have lower usage rates than independent units, such as in the table provided.

- Stormwater should not need to be determined on a case by case basis for independent units. The current rules allow 0.5 of an HHE for these 1-2 bedrooms units, the same as minor dwellings, which in my opinion is fair. It also provides certainty. Existing Rule 11.4.2(c)(ii) does however allow financial contributions to be reduced further where stormwater is managed on-site and there will be no additional demand on Council infrastructure.

- No research is provided as to why other facilities (such as cafes and rest homes) in a retirement village would no longer need to pay financial contributions unless this has been incorporated into the usage of the units (which should be explained). In my opinion, these other facilities should be assessed for financial contributions as they will also contribute, in addition to units, water and wastewater usage, traffic movements (e.g. a public café) and stormwater runoff (all buildings and paved areas such as driveways and carparking will have an effect). This is how the operative rule 11.5.4(ii) has worked in practice for other facilities and is not proposed to change.

- The submitter’s rule seeks to formalise that financial contributions will only be payable for the units within a retirement village. It removes the need for the payment of financial contributions for other facilities, which is an existing requirement of the Operative District Plan.

- The submitter’s rule limits payment of financial contributions to independent units which are able to be occupied by more than one person. This may lead to an interpretation that financial contributions are not payable for 1 bedroom units, or units which are intended to only be occupied by one person. All independent units should pay towards financial contributions because they generate demand on infrastructure.

- The rule removes the need for retirement villages to pay financial contributions towards ecological protection in the District. These need to be paid by retirement villages as do other developments.

133. Due to my concerns above, I maintain my recommendation that the rule should provide that retirement village dwellings and independent apartments pay 0.5 of an HHE for recreation and leisure, transportation, water supply, wastewater, stormwater and ecological protection.

134. I also maintain my recommendation that financial contributions for other facilities should be done by specific assessment, as they may differ along with the varying natures of the village that may be proposed. However, I do generally support the reasoning and figures provided by Mr Akehurst in relation to assisted living, care / memory units. These would be captured as "other facilities" in the recommended rule and able to be assessed fairly through each consent. This rule was recently used to assess a care facility in the Ōmokoroa example. If the panel did however consider a need to specifically recognise these, my only remaining concern would be any implication in the rule wording that these payments would cover the need to also pay towards any other facilities on-site that may generate additional effects (noting the submitter has deleted reference to these).

ECOLOGICAL AND LANDSCAPE FEATURES

Topic 1 – Significant Ecological Feature U14/135 Mangawhai Bay Inlet

135. Mr Coles for Michael and Sandy Smith (on page 3 of his evidence) is seeking the removal of three small areas from the revised ecological feature boundary for U14/135 as recommended in the section 42A report. These areas are shown on a map in Mr Coles' evidence and relate to land which is used for grazing or which has an existing farm track. Mr Coles explains that the accurate mapping of the feature is "highly important to ensure that the rules are applied correctly and do affect land that it suitable for rural-residential development".

136. This matter was previously addressed in the section 42A report in Topic 1. The ecological feature boundary was recommended to be reduced in size to better reflect the inland extent of the freshwater wetland area and to exclude any 'dry' land above that area.

137. In response to Mr Coles' evidence, I am now recommending that one further area be removed from the ecological feature. This is based on the advice of Bryan Norton of Nautilus Contracting Limited. Mr Norton's assessment is provided as Attachment 2 to my evidence. In summary, this assessment concludes that area (b) identified in plate 2 can be removed but not areas (a) and (c). Reasons are provided in that assessment.

SECTION 8 – NATURAL HAZARDS AND PLANNING MAPS

General

138. My recommendations in the section 42A report for Section 8 – Natural Hazards and Planning Maps have been supported by those who have provided evidence. This includes evidence from Mark Townsend and Mark Ivamy for the Bay of Plenty Regional Council, Ms Tait for Kāinga Ora, Mr Coles for Michael and Sandy Smith, Mr Coller and Scott Adams for Urban Task Force for Tauranga and Mr Crossan for North Twelve Limited Partnership. I note that the support from each submitter is limited to the topics that were of relevance to them. Because there is no evidence in opposition of my recommendations, I have not provided any further evidence in response.

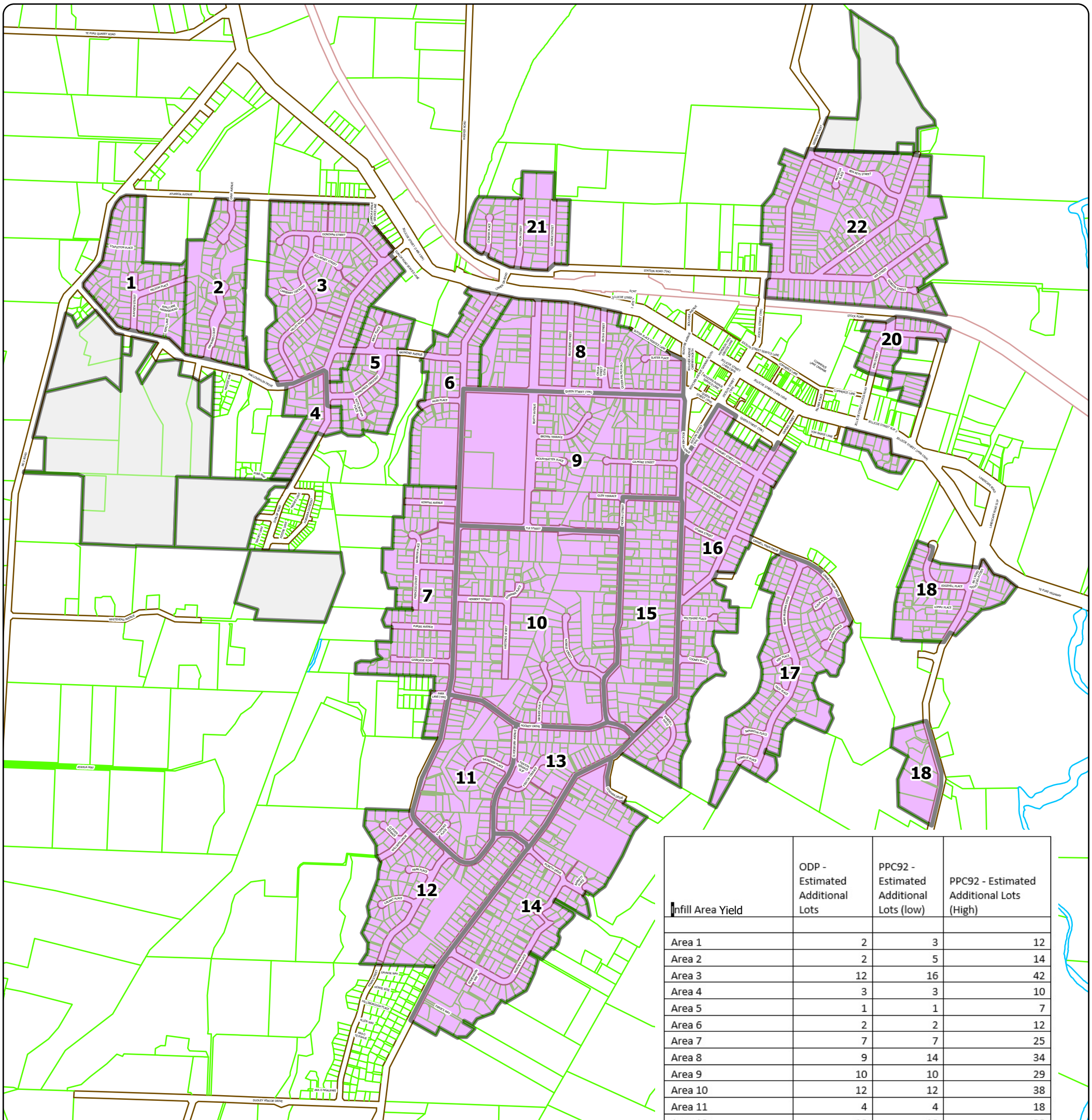
Corrections

139. Ms Tait for Kainga Ora (in paragraph 17.4 of her evidence) noted that Rule 11.5.2 appears to delete a reference to stormwater (needing to pay financial contributions). In response, I can confirm that this is not the case. What looks to be a strikeout in the word ~~storm~~water is an image sitting behind the word. This will need to be noted in final rule drafting.

140. In Topic 12 of the section 42A report for Section 14A, the recommendation is to "amend Rule 14A.4.1(d)(ii)(e) so that written approval does not apply to front yards", This rule should be recommended as follows:

    For side and rear yards, where the written approval of the owner(s) of the immediately adjoining property to the specific encroachment is obtained.

Tony Robert Clow
6 September 2023



Infill Area Yield	ODP - Estimated Additional Lots	PPC92 - Estimated Additional Lots (low)	PPC92 - Estimated Additional Lots (High)
Area 1	2	3	12
Area 2	2	5	14
Area 3	12	16	42
Area 4	3	3	10
Area 5	1	1	7
Area 6	2	2	12
Area 7	7	7	25
Area 8	9	14	34
Area 9	10	10	29
Area 10	12	12	38
Area 11	4	4	18
Area 12	10	10	28
Area 13	7	7	13
Area 14	15	15	37
Area 15	6	6	18
Area 16	15	15	29
Area 17	0	0	0
Area 18	7	8	14
Area 19	0	0	6
Area 20	6	10	32
Area 21	3	3	10
Area 22	57	65	163
Total	190	216	591
Population (= total x 2.7)	513	583.2	1595.7

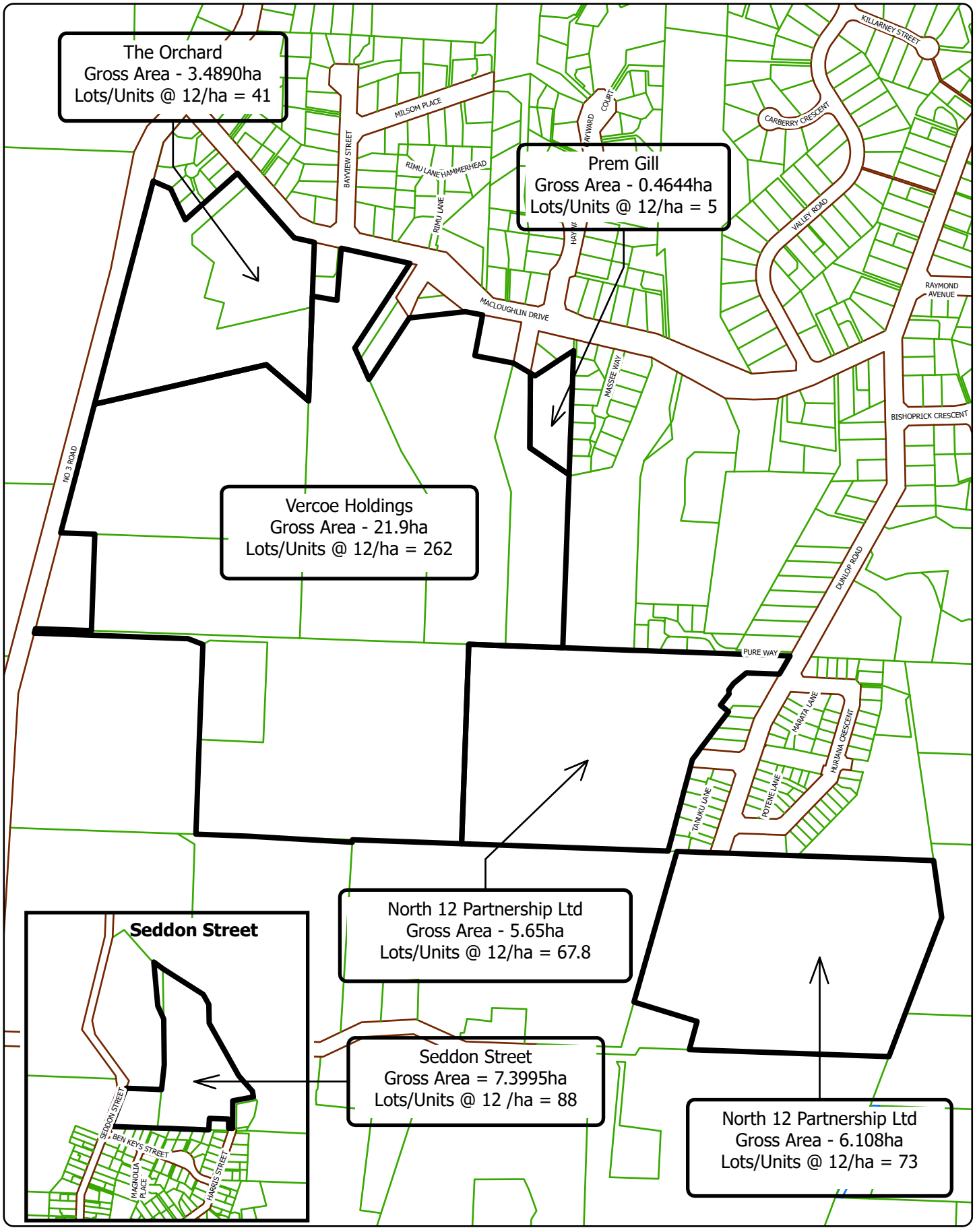
Email: gis@westernbay.govt.nz
Date: 1/09/2023
Operator: mlb
Map: E:\Shape\DistrictPlan\Te Puke Structure Plan and Plan Change\Te Puke - ODP vs PPC92 - Estmated

Scale A3 -1:12,000
0 50 100 200 300 400 500 600 700 800
Metres

Western Bay of Plenty District Council | For our people

Te Puke
OPD vs PPC92 - Estimated Projection Infill Development

N



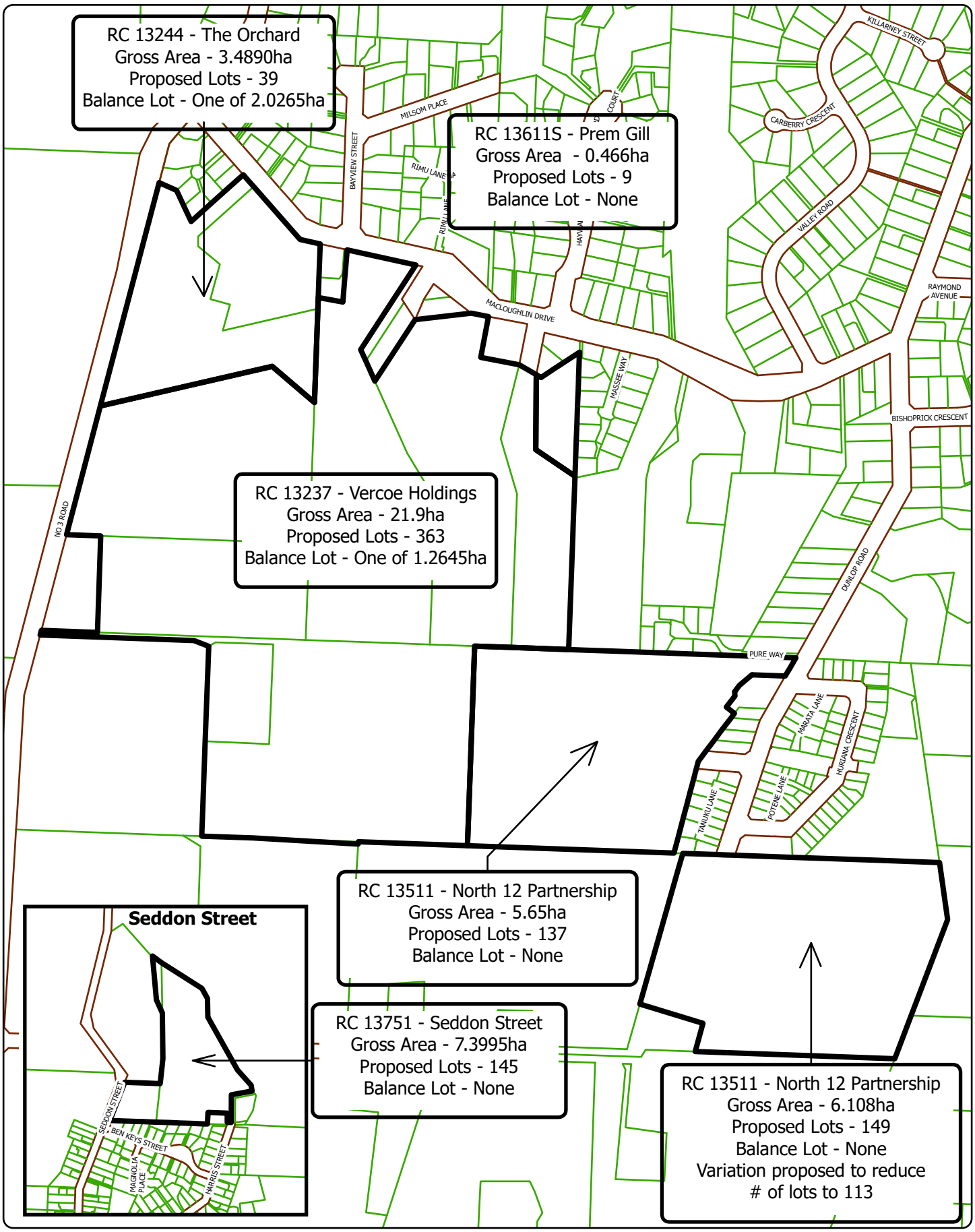
Email: gis@westernbay.govt.nz
Date: 1/09/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\ODP Te Puke Greenfield Areas - Consented Developments

Scale A4 - 1:5,500
0 25 50 100 150 200
Metres

Western Bay of Plenty District Council
For our people

ODP - Te Puke Greenfield Yield @ 12 Lots/Units per ha

N



Email: gis@westernbay.govt.nz
Date: 1/09/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\ODP Te Puke Greenfield Areas - Consented Developments

Scale A4 - 1:5,500
0 25 50 100 150 200
Metres

Western Bay of Plenty District Council
For our people

Te Puke Greenfield Yield Areas
Consented Developments and Yield

N

Smith Property – Significant Ecological Feature (SEF) Comparative Illustration of Issues – 1 Sept. 2023

Landward margins of: D.P. SEF (▭); Proposed Revised D.P. SEF (▭); Smith Submission (▭);
Margin of on-site ecological characteristics* (▭)

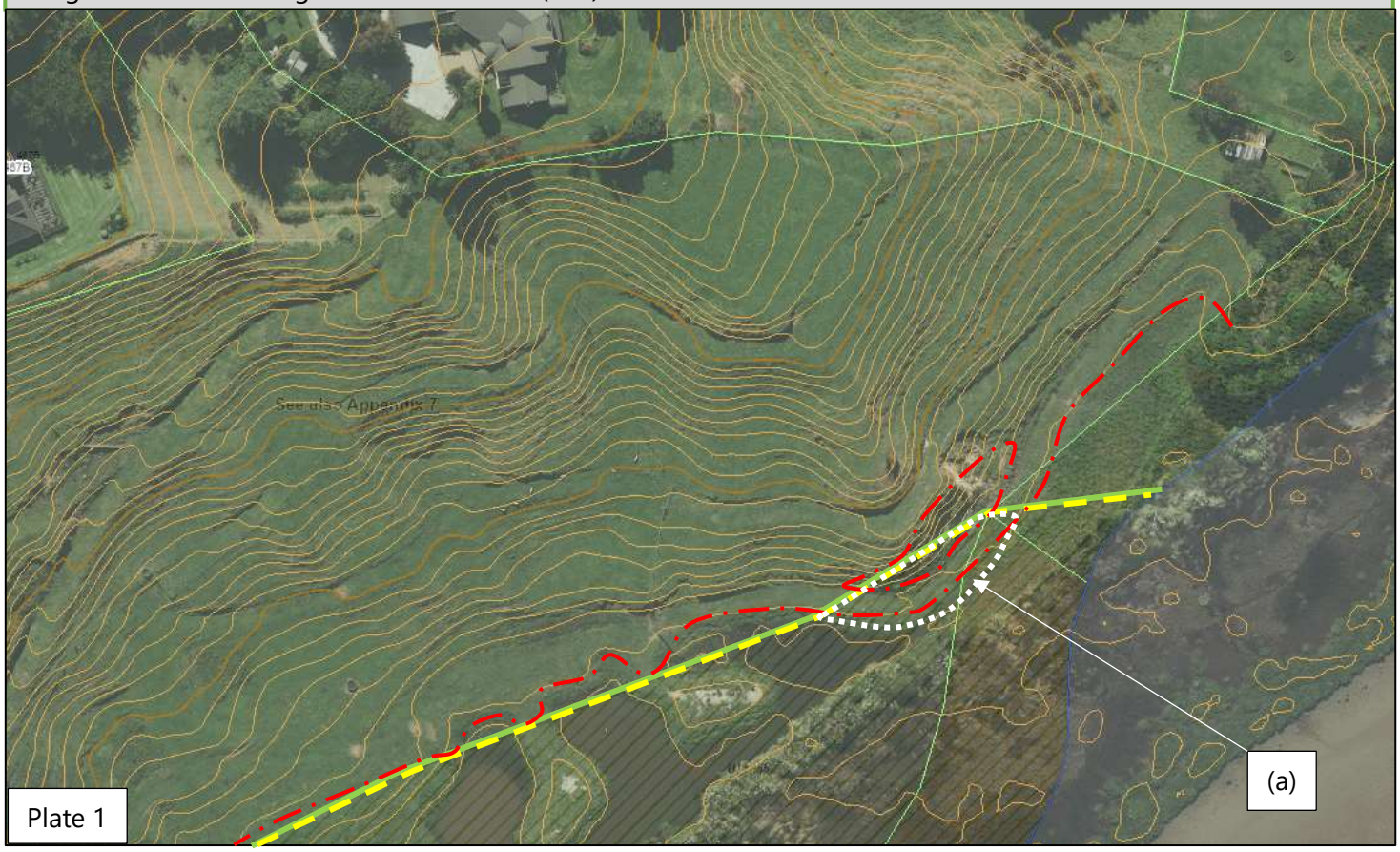


Plate 1

Note: Approx 25% of Area (a) above, as submitted by Mr & Mrs Smith, is within existing esplanade reserve, and when future subdivision happens a MHWS fix will place all of this within a 20m wide esplanade reserve adjustment.

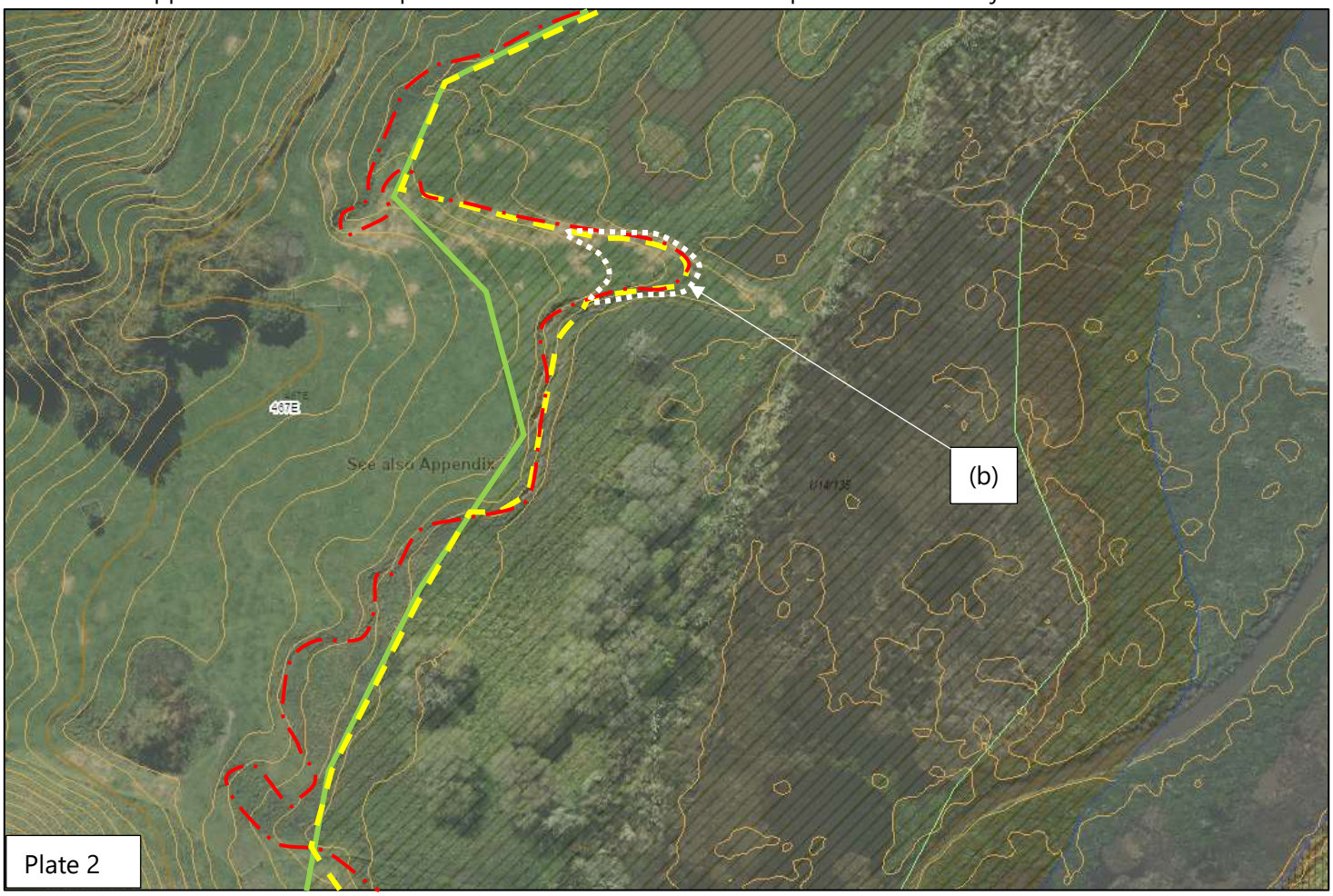


Plate 2

Note: Area (b), as submitted by Mr & Mrs Smith, is to be landward of the revised DP SEF.

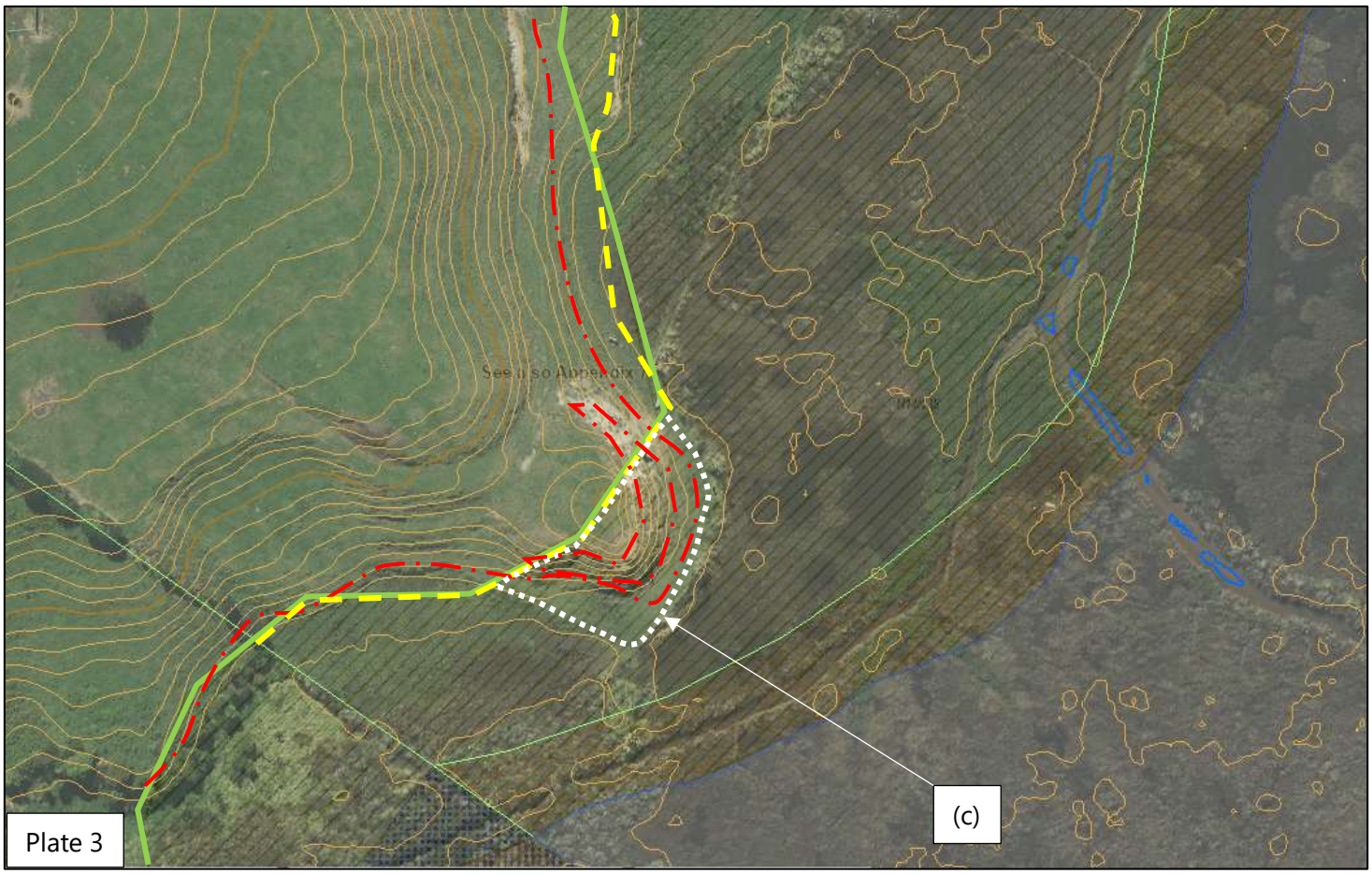


Plate 3

NOTES:

- In Plate 1 the DP SEF alignment remains unchanged. This recognises that: (i) some of Area (a), as submitted by Mr & Mrs Smith, is actually esplanade reserve; (ii) the balance would become esplanade reserve upon any future subdivision; (iii) some of the terrain has been modified; (iv) the steep batter alongside is unstable and should not be grazed or otherwise developed.
- In Plate 2 the DP SEF alignment can be adjusted to align with the extent of the wetland feature – which would develop in the absence of grazing – and which would reasonably closely align with the proposed Plan Change 92 Natural Open Space Zone (NOSZ). This supports Mr & Mrs Smith's submission respecting Area (b).
- In Plate 3 the DP SEF alignment remains unchanged. This recognises that approx. half of the site is within the freshwater wetland feature – which would develop in the absence of grazing – and includes most of the very steep batter which is erosion prone. Upon future land subdivision all of this area would become esplanade reserve after MHWS refix. This alignment also accords with the NOSZ alignment referred to above. On balance, any ground within Area (c) which is not captured by wetland values or very steep erosion-prone terrain is somewhat insignificant. On that basis it seems meaningless to alter the DP SEF at this site.
- Along the entire length of this farm margin the area of actual ecological characteristics extending landward of the existing DP SEF line is greater than the area between the green & yellow lines.
- The freshwater wetland values would become more evident in the absence of stock grazing and would occupy everything seaward of the continuous dashed-red line.
- Ecological & natural open space zone interests here include the merit of retiring two small but very steep erosion-prone sites (red-circled outliers in Plates 1 & 3 refer*) to protect the natural wetland area and the aesthetic values along this margin.
- The proposed amendment of the District Plan SEF landward line is almost identical to the Plan Change 92 Natural Open Space Zone line. In is sensible for these to be generally consistent.

ENDS