

WESTERN BAY OF PLENTY DISTRICT COUNCIL
PRIVATE PLAN CHANGE 95
Pencarrow Estate Pongakawa

HEARING MINUTE & DIRECTION

You are a party to proposed Plan Change 95, having either applied for the plan change or having made a submission to it. This minute sets out the framework for the hearing process and associated activities. The requirements for Submitters are set out below. Should you require any clarification, please contact the Hearing Manager for Western Bay of Plenty Council.

Hearing Manager Contact Details

Name: Lauren Coyle

Direct dial: 07 579 6605

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Private Plan Change 95

On the 26th of October 2023, Western Bay of Plenty District Council's (**'the Council'**) District Plan Committee accepted a Private Plan Change application to the Western Bay of Plenty District Plan. Council then proceeded to notify the request for the Private Plan Change on the 10th of November 2023.

The Resource Management Act 1991 (**'the Act'**) enable applicants to initiate proposed changes to the District Plan. They are referred to as 'Private Plan Change Applications', or **'PPCs'** for short. The PPC process requires applicants to support the Private Plan changes through the submission and hearing process.

The purpose of the PPC lodged by Kevin and Andrea Marsh (which is referred to as the Pencarrow Estate Pongakawa Structure Plan (1491 SH2 & 53 Arawa Road, Pongakawa)) is to rezone the existing rural zone to predominantly residential, with provision for commercial zone and associated reserves. A Structure Plan has been developed for the site which proposes specific development requirements across three stages. Rule changes are proposed for the Structure Plan area to allow for specific residential lot sizes and development controls in the residential zone, and some specific controls in the commercial zone. The Structure Plan also proposes a new link road through the site, with access from Arawa Road.

37 submissions were received, and 4 further submissions were received for Plan Change 95. The Council has established a Hearing Panel comprising two Independent Hearing Commissioners to hear Plan Change 95. The Independent Hearings Commissioners are:

- Gavin Kemble (Chair)
- James Whetu

The Hearing Panel is acting under delegated authority from the Council in accordance with clause 34A(1) of the RMA.

The Hearing Panel is required to make decisions on Private Plan Change 95, after it has heard the submissions, on whether to accept or reject the submissions received and any amendments to the provisions of Plan Change 95.

Principles of the Hearing

The Hearing Panel has established hearing procedures that will operate on the following basis:

- Are appropriate and fair;
- Avoid unnecessary formality;
- Are efficient;
- Recognise Tikanga Māori; and,
- Work with Submitters to provide for their specific needs within the hearing process where possible.

Council has appointed Commissioners to hear this matter to avoid any actual or perceived conflict of interest.

During their engagement, the Hearing Commissioners have identified that they know some of the parties to the proceeding. In this regard:

Mr Kemble:

1. Knows the expert planner (Mr Richard Coles) being called by the Applicant. Mr Kemble and Mr Coles worked together at Boffa Miskell Limited in Tauranga some 15 years ago. After Mr Kemble left Boffa Miskell, he worked at Trustpower Limited. Mr Coles was engaged (as a consultant) to complete one small planning project for Trustpower while Mr Kemble was employed by that company. That engagement was well over 10 years ago. While Mr Kemble and Mr Coles sometimes see each other at professional functions, they are not regularly in contact;
2. Knows Mr Nick Swallow, who is the legal counsel assisting the Bay of Plenty Regional Council. Mr Kemble and Mr Swallow came into relatively regular contact in 2009 to 2011 when Mr Kemble was called as a planning expert for the Port of Tauranga Limited (in relation to a substantial resource consent application). Mr Swallow was working for Holland Beckett Lawyers at that time, who were counsel for the Port of Tauranga. As with Mr Coles, while Mr Kemble and Mr Swallow sometimes come into contact at professional functions and hui, this contact is intermittent;

3. Knows Ms Mary Hill, who is the legal counsel assisting the Council. Mr Kemble and Ms Hill have never worked on the same project, but come also into contact at professional functions; and
4. Has known Ms Vanessa Hamm for a number of years. Both attended Otumoetai College and the University of Auckland at the same time and have worked together on projects (albeit not for some years). Ms Hamm and Mr Kemble have occasionally been at social functions but has not been a recent occurrence.

Mr Kemble has been proactive in identifying these relationships. He is confident that no actual or potential conflict of interest exists. The Council has sought advice from its legal counsel, who agrees that no actual or potential conflict will arise. After careful consideration, the Applicant also agrees that no actual or potential conflict of interest exists. Mr Kemble has asked that we notify all parties to the PPC of the aforementioned associations and afford everyone an opportunity to comment / raise concerns that they have.

In accordance with Mr Kemble's instruction, it follows that the Hearing Commissioners **direct** that should any party be concerned about conflict of interest for any of the Commissioners, those concerns should be provided in writing to the Hearing Manager prior by no later than 5pm on the **24th of May 2024**. The Hearing Commissioners will consider any matters raised on their receipt and will provide the parties of any associated determinations in a minute prior to the commencement of the hearing.

Hearing Schedule

At the request of the Applicant, the hearing of the PPC has been placed on hold for up to three months. The Council is working with the Applicant to set a hearing schedule that is reasonable for all parties. More details regarding the date and times will be conveyed in a separate minute that will be issued by the Hearing Panel in due course.

Preparation for Hearing – Submitters

Council has a dedicated Hearing Manager appointed for the process ahead. The Hearing Manager is available to assist all parties, as they prepare for their presentation to the hearing. Submitters will, once the hearing schedule is notified, receive a request from the Hearing Manager to provide the following details.

- Confirmation that the party wishes to be heard (as per submission);
- Confirmation that they will be represented or not. If a party is to be represented, the Hearing Manager will seek the names of any legal counsel and/or independent experts that the party is to call; and
- An estimate of how long the presentation of their case will take.

The Hearing Manager will work with all parties to confirm time requirements and schedule representation. It is critical that parties have the time required to present their case to the Hearing Panel, including the contribution of counsel or witnesses.

Communication from the Hearing Panel

All communication to parties shall only be via the Hearing Manager. Hearing Panel members should not be contacted by any party and will not respond to communication from any party. The Hearing Manager will bring any matters required to the attention of the Hearing Panel.

Communication to Submitters will be via the contact details provided in submissions, and all communication (including all hearing material) to parties, will be available on the Council's website at westernbay.govt.nz.

Site Visits

The Hearing Panel will undertake a site visit in order to fully understand the context for the Plan Change. The Hearing Panel will not have other parties in attendance. Where a Submitter believes it would assist the Hearing Panel to make a site-specific visit to a property or other site, the Hearing Panel should be advised via the Hearing Manager, of the Submitter's request, by no later than 5pm on **Friday 24th May 2024**. The determination on whether or not a site is visited, will rest with the Hearing Panel.

While Submitters or landowners may be present during a site visit, there will be no opportunity to discuss elements of a submission. The Hearing Panel will be focused on improving their knowledge of particular features of the site.

The Hearing Panel has advised that it will conduct a site visit after it has been heard from the Applicant, the Submitters, and the Council Officers, but prior to the close of the hearing. The Applicant should expect the hearing to be adjourned after these parties have been heard, and that either:

- i. The hearing will be reconvened after the completion of the site visit to hearing the Applicant's closing; or
- ii. The Applicant will be invited to provide a written closing without further hearing time after the completion of the site visit; or
- iii. Further information will be sought after the completion of the site visit and a further exchange timetable set (with the possibility of the hearing being reconvened after that information is supplied).

Summary

The Hearing Panel looks forward to the hearing this PPC, facilitated by the Western Bay of Plenty District Council. The Council team and Hearing Panel are focused on providing a hearing process that enables the best opportunity for Submitters. In turn, this will allow the Hearing Panel to make the best decisions it can.

A handwritten signature in black ink on a light background. The signature is stylized and appears to read 'Gavin Kemble'.

Gavin Kemble

Independent Hearing Commissioner, Chair

Hearing Manager

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