

**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

**MEMORANDUM OF COUNSEL ON BEHALF OF
WESTERN BAY OF PLENTY DISTRICT COUNCIL IN RESPONSE TO
NORTH TWELVE MEMORANDUM**

Date: 2 November 2023

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MAY IT PLEASE THE COMMISSIONERS

Introduction

1. The hearing for Plan Change 92 (**PC 92**) before the Independent Hearing Panel (the **Panel**) was adjourned on 15 September 2023.
2. On 16 October 2023 the submitter, The North Twelve Limited Partnership (**North Twelve**), filed a memorandum seeking to correct matters that had only just come to the attention of Mr Gardner-Hopkins (the **North Twelve Memo**). These matters are described in the cover email dated 16 October 2023 as “*factual matters that appear to be in error*” and relate to matters in Council’s legal submissions in reply dated 29 September 2023. In a second email on 17 October 2023, Mr Garner-Hopkins provided four documents which he stated were materials referred to in the North Twelve Memo that should have been included with the original email.
3. With respect, the North Twelve Memo appears to supplement the issues raised at the hearing by the submitter. It is also notable that the four “documents” provided in the second email correspondence were not referred to in the North Twelve Memo as being attached, and one document (“1. Copy of the Wastewater Model”) appears to be a copy of the same document that was provided to the Panel at the hearing.
4. On 27 October 2023 the Panel issued Direction 4, advising that the North Twelve Memo would be received, and allowed a short period for any submitters to provide feedback on the matters raised in the North Twelve Memo, including from Council. This memorandum provides Council’s response.

Alleged errors in Council’s legal submissions

5. The North Twelve Memo states that two factual matters in the Council’s legal submissions in reply, at paragraphs 10(c) and 10(a), are incorrect. In our submission those paragraphs provide a summary of the Council’s evidence, and for the reasons explained at the hearing, and described below, no correction to the statements in paragraphs 10(a) and (c) are required.
6. While the matters raised in the North Twelve Memo relate to the calculation of financial contributions, in our submission, matters relating to the

Council's financial models and the formula in Rule 11.4.1 are outside the scope of the changes proposed by PC92. However, in order to assist the Panel, and respond to the suggestion that there were errors in the Council's legal submissions in reply, we address the two factual matters.

Expected population of Te Puke in the model is 13,000 for the purpose of calculating financial contributions

7. At the hearing the submitter raised the question as to whether the expected population of the financial contributions model for Te Puke is 13,000 or 16,500. At paragraph 10(c) of the Council's legal submissions in reply, the evidence presented by Mr Rod Barnett on behalf of the Council was summarised on this point. That is, in the Te Puke financial contributions model, financial contributions are calculated on an expected population of Te Puke of 13,000.
8. The North Twelve Memo appears to be questioning this evidence again by raising possible factual errors in the Council's legal submissions in reply. The North Twelve Memo refers to two documents to question whether the model is based on a population of 13,000 or 16,500; the Issues and Options Paper for the Te Puke Wastewater Treatment Plant Upgrade and Minutes of Council dated 23 February 2023. In particular, the North Twelve Memo (at paragraph 3) notes that the Issues and Options Paper for the Te Puke Wastewater Treatment Plant states that "Plan Change 92 further increases the growth to 16,236".
9. Mr Clow has reviewed the Issues and Options Paper and confirms that PC92 does not increase the population to 16,236. This confusion is thought to arise from an Aurecon report that was included in Council's Section 32 Report for PC92 in Appendix 4 – Infrastructure Assessment Reports. The Aurecon report discusses other potential areas of development that were **not** included in Plan Change 92 as notified. While other areas may have been taken into account by Council's Water Services Team in planning for a new Te Puke Wastewater Treatment Plant (TPWWTP), these areas do not form part of PC92.
10. In its rebuttal evidence (September 2023) Council experts described how wastewater items associated with a larger population of 16,500 were removed from the infrastructure schedules, and confirmed that the infrastructure schedules for PC92 are based on an expected population of

13,000.¹ As discussed at the hearing, in accordance with good infrastructure planning, Council is considering future work associated with providing for a population of 16,500 – however, a population of 16,500 is not what the infrastructure requirements of PC92 have been calculated on.²

11. At the hearing Mr Barnett confirmed that the Te Puke financial contributions model assumes an expected population of 13,000 for the purpose of calculating financial contributions.

Number of allotments remaining in Te Puke

12. The North Twelve Memo restates its view that the Council's figures on the numbers of allotments left to be created in Te Puke to grow the population to 13,000 people is incorrect. This issue was addressed in evidence on behalf of the Council and the submitter's case before the Panel. This is a matter where the Panel has differing evidence from two parties. There is no factual error in the Council's legal submissions in reply that summarise the Council's evidence on this matter.
13. As a point of clarification the North Twelve Memo refers (in paragraph 11) to a figure of 842 consented greenfield allotments to support its calculation of how many lots/units are left to be consented. This figure appears to overlook a variation to the North Twelve subdivision consent (RC13511) which reduces the number of consented greenfield allotments from 842 to 804. This variation is referred to in the rebuttal evidence of Tony Clow at paragraph 118 and would reduce the number of consented greenfield allotments by 38 (or 102 people).
14. In any case, in our submission, whether there are as few as 100 dwellings left to be consented to achieve the 13,000 population (the evidence of North Twelve³) or a greater number (see rebuttal evidence of Tony Clow), the key question for the Panel is whether the district plan provisions as proposed to be amended by PC92 are the most appropriate provisions.

¹ Tony Clow Rebuttal Evidence dated 6 September 2023, at [114].

² In response to a question from Chair Carlyon to Tony Clow concerning whether the figure of 16,500 was in the back of Council's mind although not in PC92, Mr Clow confirmed that was correct.


³ North Twelve Memo at [12].

15. Through its proposed changes to section 11, the Council is seeking to enable the ability to impose conditions on resource consent applications for new development. This is to provide for financial contributions that enable the costs of providing infrastructure to the estimated population of 13,000 to be borne by those generating the demand on the associated infrastructure. As described by Mr Tony Clow in rebuttal:

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.⁴

16. In conclusion, in response to the North Twelve Memo, the summary of the Council's evidence in paragraphs 10(a) and (c) of the legal submissions in reply remains an accurate summary of the matters addressed at the hearing.

Dated: 2 November 2023



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⁴ Tony Clow Rebuttal Evidence at [107].