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

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WESTERN BAY OF PLENTY DISTRICT COUNCIL PLANNING REPLY

Date: 29 September 2023

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INTRODUCTION

1. This reply statement has been prepared by the following Council witnesses; Mr Tony Clow, Mr Jeff Hextall, Mr Taunu Manihera, Ms Anna Price and Ms Georgina Dean. The statement relates to the following matters:

   (a) a written summary of the planning reply presented orally at the hearing on Thursday 14 September; and

   (b) a response to additional matters raised by submitters; and

   (c) response to the hearing directions issued by the Panel in the Hearing Direction 3 dated 20 September 2023 (**Post Hearing Directions**).

2. The reply statement has been prepared to address matters in the order they appeared (i.e. submitter by submitter) during the hearing. It does not repeat matters set out in the section 42A report and reply statements of evidence on behalf of the Council witnesses (dated 6 September 2023).

3. This statement provides a planning reply to the following submitters:

   (a) Waka Kotahi;

   (b) Bay of Plenty Regional Council (see also **Attachment A**);

   (c) KiwiRail Holdings Limited;

   (d) Ōmokoroa Country Club Limited;

   (e) PowerCo;

   (f) Kāinga Ora;

   (g) N and M Bruning (see also **Attachment A**);

   (h) Urban Taskforce for Tauranga / Brian Goldstone / Vercoe Holdings Limited;

   (i) Retirement Villages Association / Ryman Healthcare Limited;

   (j) Matthew Hardy;

(k) Richard Hewison;

(l) Jace Investments Limited and Kiwi Green NZ Limited;

(m) M & S Smith; and

(n) Russell Prout / David Bagley / Penny Hicks (addressed together as a response to questions from the Panel during the hearing in relation to the proposed Industrial Zoning along Francis Road).

4. For completeness, no written planning reply was considered necessary in relation to matters raised at the hearing by the following submitters:

(a) Warren Dohnt;

(b) Pete Linde;

(c) Foodstuffs;

(d) Tim Laing; and

(e) TDD Limited.

5. In this reply statement, further recommended changes to District Plan text are shown in green underline and ~~strikeout~~.

WAKA KOTAHI (SUBMITTER 41) [TONY CLOW]

6. Direction 1 in the Post Hearing Directions relates to the proposed rule for the Stage Highway 2 / Ōmokoroa Road intersection.

7. As the Panel is aware, at a meeting on Tuesday 12 September 2023 representatives from Waka Kotahi, Kāinga Ora and Council agreed the trigger for the rule should be a total of 2,680 residential units within Ōmokoroa Stage 3. This allows for most of the residential units anticipated in Stage 3. It also allows for the commercial and industrial zones to be developed, in addition to these 2,680 residential units.

8. In my oral right of reply, I supported a non-complying activity status once this total of 2,680 residential units was reached as requested by Waka Kotahi. This is because it indicates that further development is not being enabled. However, I appreciate that Kāinga Ora's position is that restricted discretionary status would be more suitable. I also noted that there were

still drafting issues to be resolved and agreed between the parties. This included the method for counting the 2,680 residential units and what exact activities would become non-complying (or restricted discretionary as per Kāinga Ora's position) once this limit was reached. There was also a need to draft wording to explain that every four residential units in a retirement village would be counted one residential unit. This is to recognise that their traffic movements at the intersection during the AM peak are lower than a typical residential unit.

9. Following the hearing, I met with staff from Council's building and resource consents teams. The general consensus was that counting the number of residential units granted building consent would be the most straightforward and reliable method. However, it was also acknowledged that this method would not be the most suitable way of counting for Waka Kotahi's purposes as it would overlook any other residential units approved through land use consent over and above the number approved through building consent. This method could present a situation where the count is say at 2,600 units but Council has granted land use consent for another 200 units and therefore has already approved 2,800 units before realising the need for the trigger.

10. The other option considered was to count residential units that had been granted either at building consent and/or land use consent. This option would be the most suitable for Waka Kotahi's purposes which is to know exactly when 2,680 units have been approved. This option is however seen by Council staff to be administratively difficult as it would require the building and resource consent teams to continuously (and manually) keep track of what residential units have been approved and to be able to recognise when to not 'double count'. For example, when land use consent was granted first and the building consent followed. It would also require Council staff to keep track of subdivisions to know exactly what residential units relate to what new lots, to assist with avoiding a double count.

11. In discussion with Waka Kotahi, I was advised that it would be unlikely that they would request a running count e.g. each year. Instead, it would likely be after say 15 years or at a point where there was significant growth in Ōmokoroa Stage 3 that necessitated a count. In my opinion, this would be a more manageable task for Council as it could primarily rely on its building consent count at the time and identify any recent land use consents that

have approved further residential units. There is still some potential for error, but less than needing to actively count application by application for a significant number of years.

12. In terms of what exact activities would become non-complying (or restricted discretionary as per Kāinga Ora's position) when 2,680 units were reached, the parties had already agreed during the week of the hearing that it should include subdivision. The remaining issue was around residential units. Waka Kotahi's preference was that any further residential units would be non-complying as this would be the most certain method for managing effects on the intersection. My preference was and is that there should still be provision for those remaining (and potentially few) landowners with vacant lots to be able to construct at least one dwelling as of right. Kāinga Ora's view was that only four or more residential units on a site should be restricted discretionary as one to three units on a site had been provided for as permitted by the MDRS and no qualifying matter had been advanced to remove this permitted activity status.

13. The issue of the qualifying matter has been addressed in Council's legal right of reply. In their submission, Waka Kotahi state that they believe that the "*inclusion of the intersection improvements (roundabout and interchange) as a qualifying matter would be appropriate*". They provide reasoning as to why the intersection is subject to safety and efficiency issues for the Panel's consideration.

14. If the Panel did consider that a qualifying matter was needed, it is my view that the safe and efficient operation of the State Highway network would be "*a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure*" under S77I(e) of the RMA. The recommended District Plan definition of "qualifying matter" would need to be added to accordingly, with the suggested wording being "The intersection of Ōmokoroa Road / State Highway 2".

15. I provided a draft rule to Waka Kotahi and Kāinga Ora on Monday 24 September 2023, which is now also the rule I have recommended further below to be added to the non-complying activity list in 14A.3.5.

16. Waka Kotahi confirmed in writing that they support the rule as drafted. However, they also explained that their preference would still be for "<u>one or more</u> residential units" (i.e. any further units) to be the non-complying

activity. They also said in their reply that they continue to seek the following objective and policy in Section 14A to support a non-complying rule.

Objective - *14A.2.1. 9 - A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.*

Policy - *14A.2.2. 19 – Providing for growth within the Ōmokoroa peninsula in sequence with the staged upgrade of the intersection of Ōmokoroa Road and State Highway 2, thereby ensuring that vehicular access to and from the peninsula is safe.*

17. Kāinga Ora have also responded in writing. They support the rule but only to the extent that it reads "restricted discretionary activities" and is for subdivision and "four or more units on a site". Matters of discretion have also been provided for the consideration of the panel. Kāinga Ora have asked if their preferred rule can be shown in full in this reply statement. This includes the associated matters of discretion, which I would support if the Panel did select a restricted discretionary status. The Kāinga Ora wording is directly below.

> ***Restricted Discretionary Activities***
>
> *Subdivision or four or more residential 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;*
>
> - *More than 2,680 new residential units have been approved within the Ōmokoroa Stage 3 Structure Plan; and*
> - *A grade-separated interchange or equivalent has not been established at the intersection of Ōmokoroa Road and State Highway 2.*
>
> *For the purposes of this rule*
>
> - *Every four residential units in a retirement village shall be counted as one residential unit.*
> - *"Approved" shall mean that a building consent and/or land use consent has been granted and has not lapsed.*
>
> *Matters of discretion*
>
> - *Evidence of consultation with the entity with statutory responsibility for State Highway 2 and its responses to that consultation.*
> - *The safe and efficient operation of the strategic road network.*

18. I recommend the following new rule and objective and policy to support it:

Non-Complying Activities

Subdivision or more than one residential unit on a site within the Ōmokoroa Stage 3 Structure Plan area:

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

- More than 2,680 new residential units have been approved within the Ōmokoroa Stage 3 Structure Plan; and
- A grade-separated interchange or equivalent has not been established at the intersection of Ōmokoroa Road and State Highway 2.

For the purposes of this rule

- Every four residential units in a retirement village shall be counted as one residential unit.
- "Approved" shall mean that a building consent and/or land use consent has been granted and has not lapsed.

Objective

A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.

Policy

Providing for growth within the Ōmokoroa peninsula in sequence with the staged upgrade of the intersection of Ōmokoroa Road and State Highway 2, thereby ensuring that vehicular access to and from the peninsula is safe.

BAY OF PLENTY REGIONAL COUNCIL (SUBMITTER 25) [JEFF HEXTALL / TAUNU MANIHERA]

19. Direction 2 in the Post Hearing Directions relates to the request during the hearing for the planning witnesses for Bay of Plenty Regional Council and Western Bay of Plenty District Council to see if further agreement could be reached in relation to the outstanding matters between the parties.

20. The statement showing the parties' positions in relation to the outstanding matters relating to wording of provisions is attached to this statement as **Attachment A**.

KIWIRAIL HOLDINGS LIMITED (SUBMITTER 30)

21. This reply statement relates to two separate matters raised by KiwiRail:

    (a) the proposed building setback rule (Rule 14A.4.1(d)(ii)(b)); and

    (b) the proposed indoor rail noise rule (Rule 4C.1.3.2(c)(iii)) (Direction 3 in the Post Hearing Directions relates to this rule).

The proposed building setback rule [Tony Clow]

22. This matter relates to Rule 14A.4.1(d)(ii)(b). For the reasons I explained in the oral reply on Thursday 14 September:

    (a) having heard the evidence from KiwiRail, my recommendation is now to reduce the required setback from 10m to 5m; and

    (b) I also recommend removing the wording that exempts properties that were created by way of an application for subdivision that was approved before 1 January 2010.

23. At the request of Chair Carlyon during the hearing I undertook further research in relation to the impact of the wording "(for sites created by way of an application for subdivision consent approved after 1 January 2010)". My research confirmed that there are unlikely to be many, if any, properties in a situation where they are vacant and unable to be built on as the result of needing to comply with the proposed setback.

24. In Te Puke, there are approximately 30 properties which adjoin the railway corridor and the large majority of these are pre 2010 (currently exempt under the proposed rule). However, most of these already have residential units, and many of these are large enough to have more residential units. In my opinion those which are vacant will have enough space to build a unit 5m back from the railway corridor.

25. In Ōmokoroa, there are approximately 50 smaller lots which adjoin the railway corridor. These are already fully developed and I do not anticipate the need for any further units near the corridor. The larger, greenfield sites are a mix of those created pre/post 2010, but in all cases there is sufficient room for units to be setback at least 5m from the railway corridor.

26. I recommend Rule 14A.4.1(d)(ii)(b) (standard for setbacks) be amended as follows:

This standard does not apply to:

a. …

b. *site* boundaries with a railway corridor or designation for railway purposes ~~(for *sites* created by way of an application for subdivision consent approved after 1 January 2010)~~ in which case all *yards* shall be 5m ~~10m~~.

27. As a consequential amendment, this would also require the recommended definition of qualifying matter be changed, as follows:

"Qualifying matter" means one or more of the following:

- Land within 5m ~~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)~~.

The proposed indoor rail noise rule [Anna Price]

28. Direction 3 in the Post Hearing Directions relates to the offer during the hearing by Mr Styles (for Kāinga Ora) to discuss directly with Dr Chiles (for KiwiRail) the drafting of a rule in relation to indoor rail noise (Rule 4C.1.3.2(c)(iii)).

29. In this section I also reply to the supplementary statement of evidence of Catherine Heppelthwaite filed on behalf of KiwiRail on Friday 15 September (after the presentation of the KiwiRail case and oral reply from Council).

30. Regarding Direction 3, at the time of finalising this reply I have not received a drafted rule or position agreed between Mr Styles and Dr Chiles. I understand from Ms Gunnell for KiwiRail that Mr Styles and Dr Chiles have spoken and that Mr Styles is confirming the outcome of those discussions in a written statement. As the statement is not available to review prior to finalising this reply, I would request additional time to consider the statement and any draft rule once it has been received and will provide a supplementary reply to the Panel following that review.

31. The supplementary statement of evidence prepared by Catherine Heppelthwaite has provided further overview of outstanding matters to KiwiRail. This includes the use of the term "place of assembly" and wording

within the rail noise rule I proposed in my rebuttal evidence. It would appear from reading the statement that KiwiRail are also no longer pursuing a specific definition for “noise sensitive activities”.

32. I agree with Ms Heppelthwaite’s recommendation to remove reference to “place of assembly” in the rule as drafted in my rebuttal evidence and replace with the terms “place of worship or marae”, because I agree that these are the actual noise sensitive activities within the wider definition of “place of assembly”.

33. Ms Heppelthwaite also proposes wording changes to the rule in relation to the 100m setback, designation boundary, ventilation controls and design certificate requirements. I do not agree that the setback should be 100m for reasons set out previously in my evidence. I also do not agree that the measurement should be applied from the designation boundary. As stated previously in my evidence the designation boundary is at least 20m from the rail track, and the measurement should be taken from the point at which the noise is generated, which is the rail tracks. As such I recommend that the setback be from the rail tracks and not the designation boundary. I will leave comment on the ventilation and acoustic design certificates until once I have been able to review any written statement from Mr Styles and Dr Chiles.

34. Regarding the Vibration Alert Layer, this has been accepted by both KiwiRail and Kāinga Ora as an acceptable alternative to KiwiRail’s Vibration Controls proposed in their submission. The Rail Vibration Alert Layer will be an information only layer on Council’s ePlan maps (non-statutory layers) that signals to the property owners within 60m of the rail tracks that higher levels of vibration may be experienced in the area. No rules or other provisions are proposed with the Rail Vibration Alert layer. KiwiRail requested that wording in relation to the Alert Layer be included in the Explanatory Statement of Section 4C - Amenity however as this is an information only layer and not related to a rule or provision in the District Plan I confirm my previous recommendation that this wording not be included in the Explanatory Statement.

ŌMOKOROA COUNTRY CLUB LIMITED (SUBMITTER 56)

35. During the submitter’s presentation Mr Morné Hugo provided the Panel with a memorandum (dated 8 September 2023) that referred to the Joint

Witness Statement (**JWS**). Mr Hugo sought further changes to the provisions that were set out in the JWS including additions to an advice note, and three additional items to be added under Rule 14A.7.

36. Direction 4 in the Post Hearing Directions was an invitation to the submitter to provide any further criteria in relation to the urban design matters raised during the hearing. At the time of writing no further matters have been provided by the submitter, however, Council reserves the right to respond should the submitter provide a response in relation to Direction 4.

Urban design matters [Georgina Dean]

37. I responded to these additional matters at the hearing on Thursday 14 September, and confirm my recommendations as follows:

38. I have considered the evidence on behalf of Ōmokoroa Country Club and my recommendation is that no further changes are needed. To address Mr Hugo's suggestion to require a landscape plan from a suitably qualified person on every consent for four or more residential units on a site, an agreed outcome of the expert conferencing (recorded in the JWS) was the drafting of a requirement in the matters of discretion (14A.7.1) as follows:

"An urban design assessment is to be provided with the application prepared by a suitably qualified person(s). The extent and detail of this assessment will be commensurate with the scale and intensity of the proposed development".

39. Mr Hugo's suggested wording in additional item (a) that would require a comprehensive landscape assessment to be submitted under 14A.7.1, in my opinion is not needed as it would be captured as a potential requirement in the wording above relating to the urban design assessment.

40. In my opinion, the wording in additional item (c) that has been suggested by Mr Hugo in regard to sufficient design variety and material variations is already covered in the matters of discretion in 14A.7.1. While it is worded differently, I prefer the existing wording which I consider would allow further "teeth" to create better outcomes. The existing proposed wording is *"providing building recesses, varied architectural treatments and landscaping to break up the visual appearance of the built form."*

Advice note: residential design outcomes [Tony Clow]

41. I have considered Mr Hugo's request to add further wording to the advice note in 14A.7.1 being "Council's Residential Design Outcomes (RDO) document provides guidance to assist with addressing the matters of discretion, and alignment with the key outcomes of the RDO should be demonstrated as part of the Urban Design Assessment process". The RDO is intended to be a guide as stated. The additional wording requiring that an applicant "should" demonstrate alignment with key outcomes of the RDO reads as a directive and may bring into question whether the RDO is a guide or something more. Therefore, I do not support the requested additional wording.

Fence height rule [Tony Clow]

42. Mr Hugo requested in additional item (b) a "*requirement that "fencing on all road frontages, have a maximum 1.2m solid fencing, and then any fencing up to 2.0min height is required to be a 60% permeable design*". However, the standard for "heights of fences, walls and retaining walls" in Rule 14A.4.2(h)(ii) already contains this same requirement. Therefore, I do not consider that there is a need for the requested wording.

POWERCO (SUBMITTER 33) [TONY CLOW]

43. PowerCo spoke at the hearing to the submitter's request for the addition of a new standard, to ensure safe separation distances are maintained between people and overhead electricity lines. I acknowledge that protecting people from overhead lines is important.

44. I do not support the requested standard that would require resource consent for breaching the Electrical Code of Practice, as the Code is already required to be met.

45. The requested standard does not make it certain if a building would be permitted or not. It requires a landowner to engage a suitably qualified person to carry out an assessment which needs to then be approved by PowerCo, who decide if consent is needed or not. This is not appropriate in my view. It also would result in extra costs and time delays to landowners.

46. I maintain my recommendation as set out in the section 42A report and reply evidence that an advice note at the start of the density standards is sufficient. This will make landowners aware of the Code of Practice and the need to comply if there are electricity lines in proximity of a development. I have also recommended adding maps of overhead electricity lines to the ePlan under the non-statutory mapping layers.

KĀINGA ORA – HOMES AND COMMUNITIES (SUBMITTER 29)

47. A response to the legal submissions on behalf of this submitter is provided in the reply legal submissions on behalf of Council.

48. This reply statement relates to the following matters raised by Kāinga Ora:

    (a) definition of building footprint in Section 3 – Definitions;

    (b) up to three residential units on a site permitted by rule 14A.3.1;

    (c) height in relation to boundary in rule 14A.4.1(c);

    (d) the minimum yields in rule 14A.4.2(a) and 14A.4.3(c)(i);

    (e) labelling of Ōmokoroa Stage 3A, 3B and 3C; and

    (f) the increased height sought in the Te Puke Commercial Zone.

Definition of building footprint [Tony Clow]

49. The definition of “building footprint” in Section 3 – Definitions was introduced to implement the MDRS for building coverage and is from the National Planning Standards. In response to submissions requesting that the definition of “building footprint” be aligned with the Operative District Plan definition of “building coverage”, it was recommended in the section 42A report to remove eaves less than 1m wide, pergolas, uncovered decks, terraces and steps, and swimming pools. Kāinga Ora opposed this in their evidence on the basis that the purpose of the MDRS for building coverage is to manage bulk and location of a building and that the buildings included in the definition of “building footprint” should be assessed accordingly. Kāinga Ora also noted that some of the items recommended to be excluded were already exempt through not being buildings e.g. uncovered decks, steps and terraces and swimming pools.

50. This was not addressed in my reply evidence. I agree however with Kāinga Ora that the excluded items should be deleted (i.e. for the definition to be retained as notified) for the reasons they provided. I agree that the MDRS for building coverage is about bulk and location and it would have been intended to consider eaves less than 1m and pergolas in this rule.

51. In contrast, the existing definition and rule in the Operative District Plan for building coverage is for stormwater management. Of note, the proposed standard for impervious surfaces is now intended to address stormwater management and includes “roofs” so would include all eves.

52. The required change would be as follows:

> **"Building Footprint"** within the definition of “*building coverage*” when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means the total area of *buildings* at ground floor level together with the area of any section of any of those *buildings* that extends out beyond the ground floor level limits of the *building* and overhangs the ground. ~~but excludes eaves less than 1m wide, pergolas or similar structure of a substantially open nature. uncovered decks, uncovered terraces, uncovered steps, and swimming pools.~~

Up to three residential units on a site [Tony Clow]

53. Kāinga Ora requested a specific reference to papakāinga housing in the rule permitting up to three units on a site (Rule 14A.3.1). I had initially recommended not to add this reference as it is already clear from the explanatory statement, objectives and policies that papakāinga is provided for in the rules. However, I now recommend adding the reference as it may be useful for those landowners who want to develop their land for this purpose but who would not be certain as to whether this rule was applicable or not. The recommended note is as follows:

> Note: This standard applies to papakāinga.

Height in relation to boundary [Tony Clow]

54. With respect to height in relation to boundary (Rule 14A.4.1(c)), I am comfortable that the 4m and 60 degree rule is flexible for allowing the higher density development intended for Ōmokoroa (being a minimum of 30 units per hectare and a 22m height limit).

The requested minimum yields [Tony Clow]

55. During the hearing Kāinga Ora lowered their requested minimum densities from 50 and 35 per hectare to 35 and 25 per hectare, and advised their acceptance of Council's definition of developable area.

56. I still however recommend that the proposed minimum yields are retained as notified being a minimum of 15, 20 and 30 lots/units per hectare in Ōmokoroa, and 20 lots/units per hectare in Te Puke (see Rules 14A.4.2(a) and 14A.4.3(c)(i)).

57. Council did not need to set these minimum densities but did so to ensure that land would efficiently deliver housing. They are minimums and do not prevent landowners from achieving higher densities now or in the future.

58. The level was set to reflect the densities that the Council believes are achievable in Ōmokoroa and Te Puke. This was supported by evidence from submitters (local developers) during the hearing. These yields were also set to ensure a suitable level of financial contributions can be collected to provide the required supporting infrastructure for that growth.

Labelling of Ōmokoroa Stage 3A, 3B and 3C [Tony Clow]

59. Mr Hextall had previously explained in his reply evidence that the labels for Ōmokoroa Stage 3A, 3B and 3C could benefit from being renamed to show their association with differing yield requirements. This was in response to evidence from Kāinga Ora which sought Ōmokoroa Stage 3C to be renamed and rezoned to High Density given it requires a minimum of 30 lots/units per hectare. If the panel did consider the need to rename these, an option is Ōmokoroa Stage 3 (15+), Ōmokoroa Stage 3 (20+) and Ōmokoroa Stage 3 (30+). This would provide an association with the yield requirements which is the main reason for the differing classifications.

60. I note that Section 14A already refers to the associated minimum yields on most occasions when it refers to Ōmokoroa 3C and in all cases where it refers to Ōmokoroa 3A and 3B. The main benefit of renaming the areas would therefore be for reading the maps. This would include the "Area Specific Overlay" map in the explanatory statement for Section 14A and the District Plan Maps. The "Area Specific Overlay" map could also benefit from a note to be more explicit that each area is associated with a particular

minimum yield requirement. These mapping changes can be made for the Panel if it did consider the need to rename the areas.

61. As a consequential amendment, any changes to area names would also need to be made in Section 11 – Financial Contributions as these set out different financial contributions for each of the areas.

Increased height sought in Te Puke Commercial Zone [Jeff Hextall]

62. As I explained in the oral reply on Thursday 14 September, the current Te Puke commercial provisions potentially allow for 4 levels (maximum height of 12.5m) but only two levels have been utilised. Accordingly, there is an existing provision that allows for additional levels as a permitted activity if parties wanted to do this in the short term.

N & M BRUNING (SUBMITTER 31) [JEFF HEXTALL]

63. A response to the legal submissions on behalf of this submitter are addressed in the reply legal submissions on behalf of Council.

64. The joint statement between WBOPDC / BOPRC that is referred to above and included as **Attachment A** includes comments from Mr Hextall specifically in relation to the Bruning land.

65. As indicated to the Panel following the presentation from Waka Kotahi, from a planning perspective Mr Hextall supports that either the recommended areas (as per the section 42A report) are included or the area is reassessed once the alteration to designation process is completed and there is more certainty as to appropriate zoning.

URBAN TASKFORCE FOR TAURANGA (SUBMITTER 39) (AND BRIAN GOLDSTONE (SUBMITTER 42) / VERCOE HOLDINGS LIMITED (SUBMITTER 40) [TONY CLOW]

66. On behalf of the submitters, Mr Collier raised concerns regarding the definition of developable area, seeking the exclusion of roads, reserves and accessways to remove the association with financial contributions. As I described in the section 42A report, reverting back to the existing rule framework which charges based on net lot area would mean that financial contributions would not be charged for roads, accessways and reserves. The definition of developable area also already excludes land which has a

primary purpose of stormwater management, so would exclude a stormwater management reserve. In my opinion, the requested changes are unnecessary.

67. The submitter also requested the removal of compacted soil from the definition of impervious surfaces. I agreed with the submitter and acknowledged it would be difficult to determine/monitor in my rebuttal evidence, and proposed to remove the relevant line of the definition.

68. In terms of the 50% limit of impervious surfaces in Te Puke, I agreed in my rebuttal evidence with the submitter's view that this could (by default) mean that the 50% building coverage allowance may not be achievable in some cases.

69. However, I have also taken into account the views of Council's stormwater team and Bay of Plenty Regional Council, who have concerns that anything more than 50% per site would lead to further flooding effects both within the urban area and downstream.

70. Further, Council holds a comprehensive stormwater consent (**CSC**) from the Regional Council which requires Council to avoid increasing downstream flooding. Council staff therefore consider that we would be non-compliant with the CSC if we were to allow impervious surfaces of more than 50% (without mitigation) based on the existing level of impervious surfaces in Te Puke and the capacity of its stormwater system.

71. On this same matter, Regional Council have requested further flood modelling be undertaken for Te Puke. This is to confirm whether the proposed limit on impervious surfaces in Te Puke's urban area should be 50% or less. I understand this concern arises from the need to manage the effects of flooding on Regional Council's downstream flood protection assets.

72. Whatever the outcomes of the flood modelling, I do not support the proposed 50% limit being reduced any further. Additional limits on impervious area will make the MDRS less enabling of development and are too restrictive.

73. Therefore, my recommendation is that this 50% limit is retained for Te Puke. But I agree with the submitter that longer term solutions should be investigated by Council and Regional Council.

RETIREMENT VILLAGES ASSOCIATION (SUBMITTER 34) / RYMAN HEALTHCARE LIMITED (SUBMITTER 35)

74. This reply statement relates to the following matters raised by these submitters:

(a) matters relating to the provisions in section 14A; and

(b) reductions sought to the financial contributions payable for retirement villages.

Changes requested to section 14A [Tony Clow]

75. Having heard the evidence of RVA at the hearing, I agree that the notification requirements from Clause 5 of Schedule 3A RMA need to be incorporated back into the District Plan. They were included in PC92 as notified, and were recommended to be removed as a number of submitters had sought to reword or make additions to these. Whilst I agreed with Urban Task Force that it is not necessary to repeat these provisions, I recognise that the RMA required these notification requirements to be included into the district plan through the IPI process. The wording that I recommend be reintroduced is as follows:

14A.5 Notification

14A.5.1 Requirements

a. *Council* may require public or limited notification of resource consent applications except as listed in (b) below.

b. *Council* shall not require:

i. Public notification if the application is for the *construction* and use of one, two or three *residential units* that do not comply with one or more of the density standards in Rule 14A.4.1 (except for the standard in 14A.4.1 (a)).

ii. Public or limited notification if the

application is for the *construction* and use of four or more *residential units* that comply with the density standards in Rule 14A.4.1 (except for the standard in 14A.4.1 (a)).

iii. Public or limited notification if the application is for a subdivision associated with an application for the *construction* and use of *residential units* described in subclause (i) and (ii) above.

76. I also support the RVA request to exempt sites that contain retirement villages from the performance standard for vehicle crossings and access. This standard requires that vehicle crossings do not exceed 5.4m in width and do not exceed 50% of the length of a front boundary. However, this standard is not practicable for retirement villages as they will generally require a wider vehicle crossing and have wider sites. This would require the following change:

i. 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 ~~40%~~ 50% of the length of the *front boundary* as shown in the diagram below.

Note: Any site that contains a retirement village is exempt from the requirements of this standard.

77. I support in part the RVA request to exempt units in retirement villages from the need to meet the performance standards for streetscape. Their specific request is to exempt "retirement units" but I have not supported the introduction of this definition into the District Plan for various reasons as outlined in the section 42A report and in my reply evidence. I understand their reasoning that non self-contained units in a retirement village should be afforded the same exemption as "residential units".

78. The District Plan's definition of "rest home" (which is also incorporated into the District Plan's definition of "retirement village") would capture many of these non self-contained units and adding an exemption for these will assist in providing for the relief sought. The definition of rest home is "*a facility that provides residential based health care with on-site (usually 24 hour) support to residents requiring nursing care or significant support with the activities of daily living. This may include a rest home or retirement village based hospital specialising in geriatric care*".

79. The recommended change is as follows:

Garages (whether attached to or detached from a *residential unit*) and other *buildings* (except *residential units* *and rest homes*), as measured at the façade, shall not cumulatively occupy more than 50% of the total width of the building frontage facing the *front boundary*.

Changes requested to section 14A [Jeff Hextall]

80. The matters raised by these submitters are overall noted and I acknowledge from my own experience that it can be difficult to establish retirement villages in some areas however this is not the case in the Western Bay of Plenty District. RVA did not actually identify what matters would inhibit a retirement village establishing within the subject area. I also note that Council had recently granted non-notified a resource consent for a large retirement within the Future Urban zone (to Ōmokoroa Country Club).

81. As I explained in the oral reply on Thursday 14 September, I would support a proposed new objective as follows:

> Provide for the diverse and changing residential needs of communities by enabling a variety of housing types with a mix of densities, including recognising that the existing character and amenity of the residential zones will change over time.

82. I recommend that this should become Objective 14.A.2.1.4 with subsequential renumbering of following objectives. It would also require the deletion of a policy I had earlier recommended in my reply evidence:

~~To provide for the diverse and changing residential needs of communities and recognise that the existing character and amenity of the residential zones will change over time to enable a variety of housing types with a mix of densities.~~

83. In response to the presentation from the submitters, I would support additional matters of discretion as follows:

(a) New matter of discretion (for four or more units on a site) at the end of 14A.7.1(a):

Other

The positive effects of the proposed activity.

[sequential renumbering of following matters]

(b) New matter of discretion for outdoor living space, outlook space and landscaped area as follows:

The extent that the potential adverse effects can be internalised within the development.

To be specifically added to:

- 14A.7.6: Restricted Discretionary Activities – Non-Compliance with Outdoor Living Space (Per Unit)
- 14A.7.7: Restricted Discretionary Activities – Non-Compliance with Outlook Space (Per Unit)
- 14A.7.9: Restricted Discretionary Activities – Non-Compliance with Landscaped Area

(c) Amend matter of discretion (for non-compliance with vehicle crossing and access) as follows:

The extent to which any extra width for a vehicle crossing ~~was~~ is required to provide for alternative housing typologies including multi-unit developments that are located within one site.

Financial contributions [Tony Clow]

84. I have not changed my recommendation having heard from the RVA and Ryman Healthcare at the hearing. I remain of the view that the financial contributions recommended for retirement villages are appropriate. This is to charge 0.5 of an HHE for 1-2 bedroom dwellings and independent apartments and to determine financial contributions for all other facilities (such as other units, cafes, rest homes and hospitals) by specific assessment. No further information was provided by the submitters at the hearing to address the concerns that I raised in my reply evidence.

85. With respect to independent units, my concern is that the requested financial contributions appear to be set very low based on an assumption that all retirement villages in the District will be the same as described by the submitters. In summary, this is that the residents of these independent units will have an average age in the early 80s and will generally be frail and immobile. These assumptions do not align with the nature of retirement villages that we see or are expecting to see in the District for the reasons I have explained in my reply evidence. The requested rules would also appear to exempt independent units occupied by one person from the need to pay financial contributions which I do not support.

86. I also note that the submitter Ōmokoroa Country Club confirmed at the hearing that it supports the recommendation to retain the 0.5HHE rate for retirement villages based on their reduced demand on infrastructure and services (see paragraph 3 of the summary statement of Ms Tracey Hayson provided to the Panel at the hearing).

87. With respect to other units such as assisted living, care and memory units, I maintain my view that these are already provided for under the assessment of "other facilities" in the recommended provisions. I also remain concerned that the rules drafted by the submitter appear to only apply financial contributions to units (independent or other) and as a result remove the need to pay financial contributions for additional facilities in a retirement village.

MATTHEW HARDY (SUBMITTER 13) [JEFF HEXTALL]

88. At the hearing Mr Hardy requested that the 800m2 minimum lot size proposed over this property was removed.

89. The reasoning for the amendment of the proposed zoning on the subject land is discussed in the section 42A report - Ōmokoroa Maps/Zoning [Topic 4]. The approach adopted came from a site meeting with Mr Hardy and his planning consultant Mr Sam Hurley. Mr Hurley in subsequent communications with the Council suggested an overlay over the land that restricts the subdivision potential of the land and specifically requiring larger allotments for this area. In an email from Mr Hurley dated 17 March 2023 he stated:

> *Given the attached scheme plan, we would anticipate an overlay stipulating that any subdivision would need to provide a minimum allotment size of 800m² gross, while also meeting an average of 1000m² gross site area across the development. As shown on the attached plan, this development could do so, with the smallest allotment being approximately 927m², and the larger allotment being 1269m², which would encompass the existing dwelling. This site plan has been drafted to follow existing retaining walls and contours, where possible, while also leaving sufficient space to allow for different residential options. So, taking on the concerns that have been discussed with us previously, there wouldn't necessarily need to be significant modifications and retaining walls to the land to allow for development on each of the sites.*
>
> *We have considered whether it would be better to amend the Rural Residential rules to allow for this type of development, create it's*

> *own separate chapter, or to rezone the land as Medium Density. As stated above, we would prefer that the land is rezoned to Medium Density, so that the applicant, or any future landowner, can use the MDRS to develop their site. The intention of this would be to ensure that it is easier to site a reasonably sized dwelling on each of the subsequent allotments, while reducing the potential need for retaining walls. From a practicality perspective, we also are of the opinion that it would be easier to have an overlay and separate rule within the Medium Density chapter than to create its own separate zoning or undertake significant rewrites to the Rural Residential chapter.*
>
> *It is noted that should the above be agreed to by Council then our client may withdraw their request to be heard at a hearing. However, they will not make this decision until closer to the hearing date.*

90. This approach was adopted with modification to fit with how the proposed District Plan was written. This supported a joint understanding and agreement that the site had attributes that supported a greater density that would be provided by the proposed Rural-Residential zone but also was highly visible, had a similar nature and topography to other land that was proposed to be zoned Rural-Residential zone in the locality and had geotechnical constraints.

91. I note that Mr Hurley did not provide any evidence or attend the hearing. I remain of the view that the recommendation in the section 42A report remains an appropriate planning response.

RICHARD HEWISON (SUBMITTER 1) [TAUNU MANIHERA]

92. Mr Hewison provided submissions which raised concern on wastewater and stormwater capacity, should intensification occur within the existing Lynley Park subdivision. The Panel asked for clarification and a response to these matters during the hearing.

93. In my opinion the concern would be valid should there be a likelihood of intensification occurring within the Lynley Park subdivision. It was considered that the likelihood of brownfield development is low.

94. This is due to the modern nature of the development, with dwellings constructed within the last 15 years. It was further noted that dwellings are centrally located within property boundaries, are large and therefore leave little space for brownfield development.

95. Landowners may opt to extend existing buildings and increase impermeable surfaces, leading to additional stormwater. Any additional stormwater is required to be managed to pre-development levels or less by recommended Rule 12.4.5.17. This would ensure capacity for existing stormwater infrastructure is not exceeded. There are also supporting provisions around maximum impermeable surfaces which would assist managing stormwater.

96. Wastewater in this subdivision is managed by a pump station which does have capacity limitations, however there is room within the current pump station land holdings to add capacity. Monitoring of the pump station is part of Council's existing levels of service. Should intensification occur and capacity becomes and issue, Council will need to identify a pump station upgrade as a project and determine how the upgrade is funded. Intensification may be restricted until the upgrade occurs. However as noted, there is a low likelihood of intensification.

JACE INVESTMENTS LIMITED AND KIWI GREEN NZ LIMITED (SUBMITTERS 58 AND 59)

97. This reply statement relates to the following matters raised by these submitters:

    (a) matters relating to the provisions in section 14A; and

    (b) request to include pump station in infrastructure schedules.

Changes requested to section 14A [Tony Clow]

98. This submitter considers rule 14A.4.2(j) controlling accommodation facilities should not exclude kitchens.

99. I have explained in my section 42A report and evidence at the hearing that small-scale accommodation for 5 occupants or less does not allow kitchens as a permitted activity. This provides for the likes of sleepouts and bed and breakfast activities, where the guests would also need to rely on the facilities of the dwelling on-site. Larger accommodation facilities, with kitchens if required, are provided for in the District Plan as discretionary activities e.g. hotels and motels.

100. Rule 14A.4.2(j) does not allow accommodation facilities to be self-contained with kitchens as they effectively become residential units. The District Plan already contains rules for residential units; for example, one to three per site are permitted as proposed in PC92, and in other areas of the District one residential unit is allowed on-site as a permitted activity. Allowing small-scale accommodation to have kitchens will permit extra units in error and out of line with the District Plan policies managing residential development.

Request to include pump station in infrastructure schedules [Taunu Manihera]

101. The submitters have requested that the structure plan pump station shown within the Ōmokoroa Town Centre site, be funded by financial contributions.

102. I provided further context for the pump station in the oral reply on Thursday 14 September. I explained that the pump station being included within the Ōmokoroa structure plan was driven by the good intentions of the submitter and the Ministry of Education (**MoE**), to work together and find a more efficient way for disposing of wastewater from their respective sites.

103. The conversations have not progressed in line with MoE development timelines, and as a result MoE are now planning an alternative means of wastewater management by connecting to a pump station within Prole Road. Council have agreed that MoE is able to connect to the alternative pump station.

104. In my opinion a decision around whether the pump station should be funded by financial contributions is based on the necessity and benefit of the infrastructure. In the case of the Ōmokoroa Town Centre and MoE sites, there are other options which are detailed in the existing town centre resource consent and the MoE notice of requirement. These consents include approval to connect to reticulation in Ōmokoroa Road.

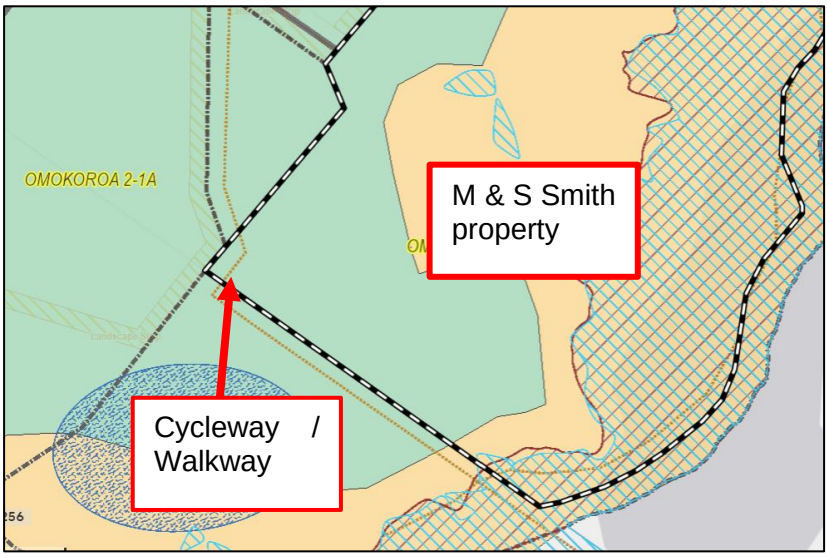
105. The consents demonstrate that neither site is reliant on the structure plan pump station. I also note there are no other upstream properties reliant on the pump station and therefore the benefit is only to the submitter and MoE.

106. The Panel also asked a question in relation to funding splits. In my opinion the options for funding splits would either be developer funded or FINCO funded. There should be no rates portion because the benefits of the pump station are directly to the submitter and the MoE only.

M & S SMITH (SUBMITTER 50) [TAUNU MANIHERA]

107. Mike and Sandra Smith made submissions on Plan Change 92, which amongst other things, requested a change to the walkway/cycleway shown on the Ōmokoroa Structure Plan where it crosses their boundary. The cycleway as notified is shown below (yellow line) in Figure 1.

Figure 1: Plan Change 92 – Notified District Plan Maps



108. The Section 42A Report recommended the alignment of the cycleway be changed such that it be wholly contained in the submitter's property, on the basis that this will align with a future road within the submitter's property which is to be formed via subdivision and development. The recommended change is shown in Figure 2 below.

Figure 2: S42A Report Recommended Change

109. The submitter remains unsatisfied by the change and I have revisited the submissions, considered the Waka Kotahi possible SH2 realignment and designation design information presented at the Plan Change 92 hearing with the submitter and have undertaken a further site visit. In considering this information, both the submitter and myself have agreed to support a further change as shown in Figures 3 and 4 below, on the basis that:

- The alignment is consistent with the notified version of the structure plan and the affected landowner (at 491 Ōmokoroa Road) did not submit against the proposed cycleway within their property;
- The alignment sits on the proposed industrial / rural residential zone boundary, adjacent to a landscape buffer zone. This is seen to be a better outcome than the notified version of the cycleway, which was located further into the rural residential zone;
- The alignment is mostly beyond the intended SH2 designation and sites wholly outside of the submitters property;
- The alignment will connect with the eastern extent of Council's planned industrial road project, which includes a walkway/cycleway to this point.

Figure 3: Supported Changes (refer green line) shown over Waka Kotahi Plans

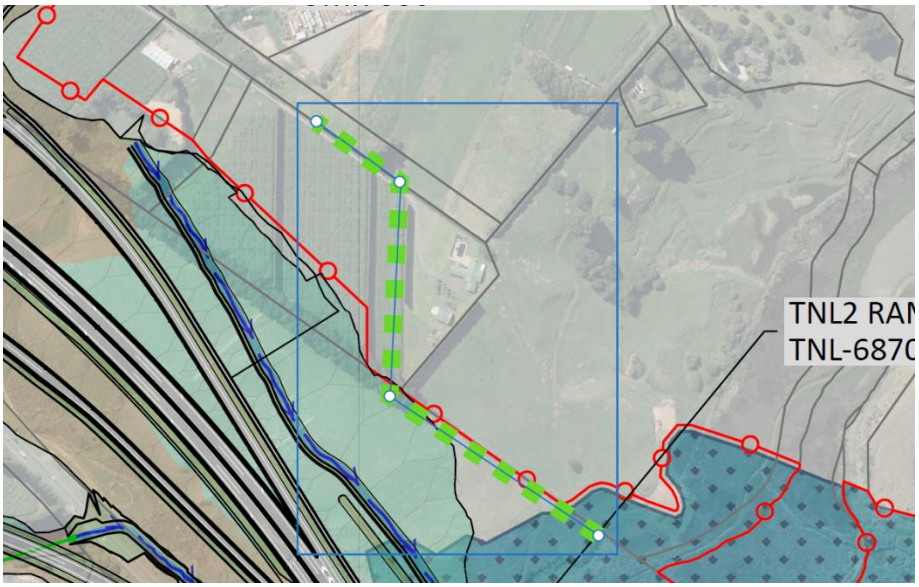
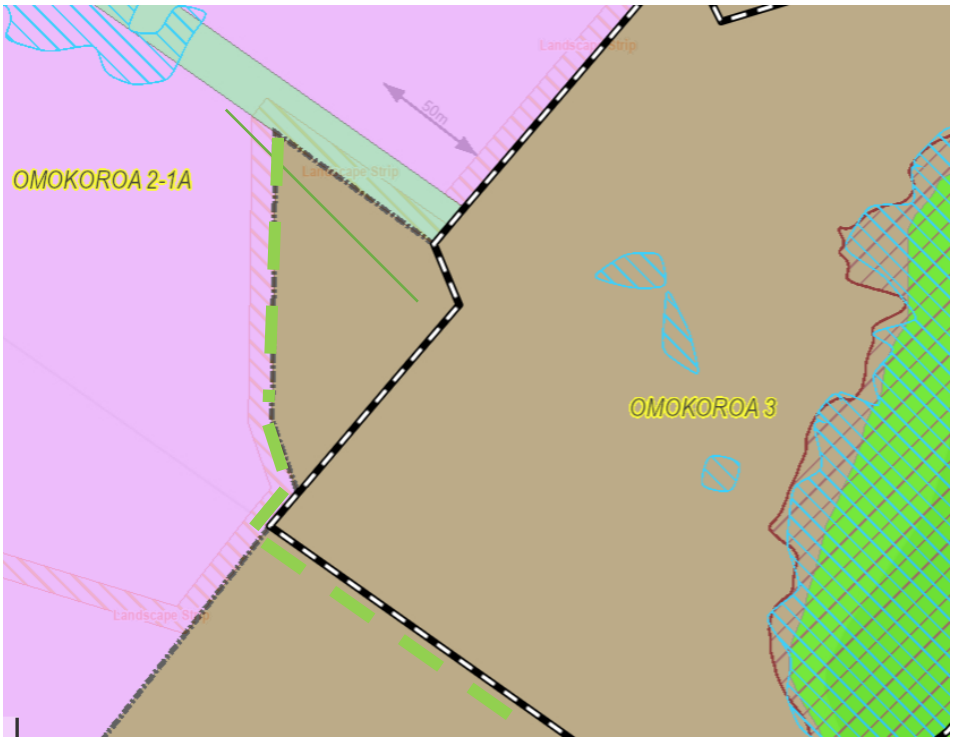


Figure 4: Agreed Changes (refer green line) shown over District Plan Map



RUSSELL PROUT (SUBMITTER 65) / BAGLEY (SUBMITTER 27) / HICKS (SUBMITTER 4) – INDUSTRIAL ZONING [TAUNU MANIHERA AND JEFF HEXTALL]

110. A planning response has been provided in relation to these three submitters to the extent they raised similar issues in relation to the proposed industrial zoning in the Francis Road area.

111. The Panel requested further reporting from Council's reporting team on two questions raised during the hearing. The questions relate to the proposed Industrial Zone adjoining Francis Road. The questions are summarised below:

(a) Whether a separate road providing access to the proposed Industrial Zone can be achieved so to separate industrial and residential traffic;

(b) Whether activities within the proposed Industrial Zone adjoining Francis Road should be further restricted so to manage the interface with residential activities.

Road access to the proposed Industrial Zone

112. The Panel questioned whether a 5th leg off the future Ōmokoroa / Francis Road Roundabout, would provide an alternative east/west access option to the entirety of the proposed Industrial Zone, and whether this should be included in the structure plan. In short, in our opinion the 5th access leg would not provide a viable access option.

113. Access to the western extent of the Industrial Zone is highly likely to be obstructed by future infrastructure that would form part of the future State Highway 2 realignment (SH2 project). Infrastructure of concern includes a stormwater pond and road carriageways. Please refer to the map included as **Attachment B** which identifies the relevant obstructions.

114. We would also caution consideration of the 5th access leg on the basis that the affected landowner (492 Ōmokoroa Road) has not been afforded due process for considering and responding to such a proposal. It should be noted that the current owner intends to establish a supermarket on this property and therefore engagement on any change in road connection is imperative.

115. The Panel also questioned whether the proposed Industrial Zone land narrowed to the extent that road access would be difficult. The narrowest point of the Industrial Zoned land is approximately 90m. Subject to design and earthworks, this width could have accommodated a 25m wide carriageway, suitable for the Industrial Zone. However as identified above, access is complicated by the SH2 project.

116. Taking note of the submissions from Mr Bagley, Mr Prout, Mr Hicks and Ms Hicks, in our opinion further refinement of the structure plan may assist the submitters. This includes:

(a) Deletion of the western roundabout from the Structure Plan and change this to a right turn bay. This would preclude industrial land using the western roundabout as an access point.

(b) Retain the roundabout which connects with the Prole/Francis link road as the single entry to the Industrial Zone. The location of this roundabout is an efficient transport outcome given it connects to other primary structure plan roads.

(c) Add a new east/west Industrial Zone structure plan road. This would ensure access is available to 51 Francis Road, being one of two proposed industrial zoned properties at the western end of Francis Road.

117. The above changes would provide for the separation of industrial and residential traffic at an earlier point along Francis Road, and mitigate the effects of the industrial traffic on the rural residential zoned properties at the western end of Francis Road. The recommended changes are annotated on the map included as **Attachment B**.

Activities permitted within the proposed Industrial Zone

118. The proposed zoning is “Industrial.” The industrial zone provisions are contained in Section 21 – Industrial of the Operative District Plan. Other than the recommended inclusion of a 10m setback from the Natural Open Space zone for buildings and structures (plus some reference updates) the Industrial Zone provisions remain unchanged. Please refer to recommended Section 21 of the Proposed District Plan provisions.

119. In addition to the Industrial Zone provisions, there are also specific amenity performance standards contained in Section 4C – Amenity of the Operative District Plan. These include noise and vibration, storage and disposal of solid waste, lighting and welding, offensive odours, effluent aerosols and spray drift, and screening (includes specific provisions for the Ōmokoroa industrial area adjacent to Ōmokoroa, Hamurana and Francis Road). Please refer to recommended Section 4C of the Proposed District Plan provisions.

120. In addition to these matters the Council has also proposed a road specific cross section which provides for additional separation of residential and related activities from industrial related activities.

121. There is a shortage of industrial land within the sub-region and as part of providing for increased residential opportunities within Ōmokoroa it is considered important to provide for employment opportunities. With the above mitigations in our opinion the operative Industrial zone activity list is appropriate in the proposed location.

CONSEQUENTIAL / MINOR AMENDMENTS

122. In preparing the planning reply a number of further consequential changes to the proposed plan change provisions have been identified. For completeness these are set out below for the Panel's considerations in making its recommendations.

Definitions of front boundary and front yard in Section 3 – Definitions [Tony Clow]

123. When PC92 was notified, a new definition of "front boundary" was proposed. This definition was to ensure that privateways and access lots serving three or more sites would be treated as a front boundary in addition to the road boundary. This definition is used in Section 14A – Ōmokoroa and Te Puke Medium Density Residential in the standards for vehicle crossings, streetscape and fence/wall height and in the matters of discretion for streetscape and setbacks. It also cross references to the definition of "front yard".

124. In the section 42A report, it was recommended to remove privateways and access lots from the definition of "front boundary". This recommendation

has not changed but further consequential amendments are required to the definition of “front boundary” and “front yard” to improve the readability of these definitions. The changes are below:

> **"Front Boundary"** when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) ~~and within the definition of "Front *Yard*"~~ means the road boundary (including the boundary of any structure plan road or designated road or paper road. ~~all of the following:~~
>
> - ~~Road boundary (including the boundary of any *structure plan* road or designated road or paper road);~~
> - ~~*Privateway* boundary (for a *privateway* that serves three or more *sites*);~~
> - ~~*Access lot* boundary (for an *access lot* that serves three or more *sites*).~~
>
> **Front Yard** means an area of land between the road boundary (including the boundary of any *Structure Plan* road or designated road or paper road) and a line parallel thereto, extending across the full width of the *lot*.
>
> Except that
>
> where any building line is shown on the Planning Maps this line shall be substituted for the existing road boundary.
>
> ~~Except that:~~

~~**Front Yard** when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means an area of land between the *front boundary* and a line parallel thereto, extending across the full width of the lot.~~

Section 11 - Financial Contributions - Rule 11.5.2 (Tony Clow)

125. One of the recommended changes (to Rule 11.5.2(b)) in the section 42A report was not carried through to the document of recommended changes to the District Plan text which the panel used at the hearing. For clarity, this wording has been re-inserted as follows:

> Where a balance *lot* is created for future subdivision or residential development, a financial contribution equal to one *household equivalent* only will be charged at this time. A financial contribution based on an average *net lot area* ~~of 625m²~~ (as specified in the table below) will only be applied to that *lot* once future subdivision or land use consent is applied for.

126. Also, as a consequential amendment to the descriptions in the proposed table at the end of Rule 11.5.2, the following changes identify that the financial contributions are payable for each lot/dwelling.

Area	Average net lot area and dwelling envelope (1 HHE per lot/dwelling)	Average net lot area and dwelling envelope (0.8 of an HHE per lot/dwelling)	Average net lot area and dwelling envelope for which a special assessment is required
Waihī Beach and Katikati	625m²	500m²	<500m²
Ōmokoroa Stage 3A	500m²	400m²	<400m²
Ōmokoroa Stage 3B	375m²	300m²	<300m²
Ōmokoroa (Outside of Stage 3)	375m²	300m²	<300m²
Te Puke	375m²	300m²	<300m²
Ōmokoroa Stage 3C	250m²	200m²	<200m²
Ōmokoroa Mixed Use Residential Precinct	250m²	200m²	<200m²

Section 14A – Ōmokoroa and Te Puke Medium Density Residential – Policy 15 (overland flowpaths) [Jeff Hextall]

127. This policy contains an error by repeating "retain" and "retained". To make the policy sensical it is recommended to reword as follows:

~~*Retain*~~ *Existing overland flowpaths are to be retained or if required to be modified shall maintain or enhance their existing function and not result in additional stormwater runoff onto neighbouring properties*.

Section 14A - Ōmokoroa and Te Puke Medium Density Residential - Rule 14A.4.1(b)(ii) (height in the mixed use residential precinct) [Tony Clow]

128. In Council's evidence, two recommendations were made in relation to height which have created conflicting rules for the Ōmokoroa Mixed Use Residential Precinct. One recommendation was to increase the height limit from 20m to 22m. Another recommendation was to duplicate the height rule from Section 19 – Commercial which allowed an increase in height from 20m to 23m subject to providing undercroft car parking. The latter rule needs to be deleted as shown below:

ii. This standard does not apply to:

a. Ōmokoroa Stage 3C where the maximum *height* for *residential units*, *retirement villages* and *rest homes* shall be ~~20~~ 22 metres and a maximum of six storeys.

b. Ōmokoroa Mixed Use Residential Precinct where the maximum *height* for *buildings* shall be ~~20~~ 22 metres and a maximum of six storeys.

~~c. Ōmokoroa Mixed Use Residential Precinct~~

~~where *buildings* locate all parking and servicing requirements enclosed below *ground level*, in which case the maximum *height* shall be 23 metres.~~

~~The maximum building/structure height in the Ōmokoroa Stage 3 Structure Plan area shall be 20m, except where buildings provide for parking enclosed, or partially enclosed/under-croft, below ground level in an area which is equal to the gross floor area of the above ground building, in which case the maximum height shall be 23m. In addition, visitor parking, servicing and loading requirements can be provided on-site at ground level in accordance with Section 4B.~~

~~For the purposes of this rule:~~

~~- Only the ground floor of the above ground building shall be included in the calculation of gross floor area; and~~
~~- The area for parking enclosed below ground level is inclusive of any areas required for manoeuvring, storage, stairwells, access and ramps.~~
~~- For any partially enclosed or undercroft parking areas the length of the exposed parking area must be screened in accordance with Rule 4C.5.3.1, except for where vehicle access is required.~~

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)

BAY OF PLENTY REGIONAL COUNCIL

AND

WESTERN BAY OF PLENTY DISTRICT COUNCIL

JOINT REPORTING ON RELIEF SOUGHT BY BAY OF PLENTY REGIONAL COUNCIL

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1. Firstly this report records that Western Bay of Plenty District Council (WBOPDC) and Bay of Plenty Regional Council (BOPRC) have reached consensus on several BOPRC submissions made on Plan Change 92.

2. Matters yet to be resolved include:

    - Further refinement of the Natural Open Space Zone;
    - Changes to objectives, polices and rules under Section 12 (Subdivision and Development);
    - Changes to objectives, policies and rules under Section 14A (Ōmokoroa and Te Puke Medium Density Residential);
    - Changes to policies and matters of discretion under Section 24 (Natural Open Space)

    The specific relief sought by BOPRC is included within **Appendix A of Mr Te Pairi's evidence dated 25 August 2023.**

3. This document reports on whether or not agreement has been reached on the relief sought and includes brief reasons. Agreed changes are shown in GREEN. Changes requested by BOPRC but not agreed by WBOPDC are shown in BLUE.

Section 12

4. Both councils support the retention of Objective 12.2.1.6 of the Operative District Plan, subject to the inclusion of new Objective 12.2.1.8, which is Te Puke and Ōmokoroa specific. The supported new objective is as follows:

    Objective 12.2.1.8

    Subdivision and development within the Ōmokoroa and Te Puke Structure Plan Areas which minimise the effects from stormwater discharge, including adverse flooding, erosion, scour and water quality effects and any resulting effects on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments.

BOPRC/WBOPDC Response:

- *The s42A report recommended a change to Objective 12.2.1.6 which had implications for communities outside of the Ōmokoroa and Te Puke Plan change areas and beyond scope. The recommended changes are still relevant however a new objective specific to Ōmokoroa and Te Puke is necessary to avoid the scope concern.*

5. Both Council's support the retention of Policy 12.2.2.7 of the Operative District Plan, subject to the inclusion of new Policy 12.2.2.10, which is Te Puke and Ōmokoroa specific. The supported policy is below with the relief sought by BOPRC in yellow.

Policy 12.2.2.10

Subdivision and development practices within the Ōmokoroa and Te Puke Structure Plan Areas should take existing topography, drainage and soil conditions into consideration with the aim of minimising the effects of stormwater discharge and should:

- *Avoid increased flooding effects and risk on the receiving environment including ~~people~~, property and to ensure no increases in risk to people, infrastructure and buildings.*
- *Incorporate water sensitive urban design and water quality.*
- *Avoid, remedy or mitigate further erosion and scour effects.*
- *Demonstrate consistency with, or achieve better outcomes than, the objectives, methods and options of the relevant Catchment Management Plan through stormwater management plans.*

BOPRC Response:

- *BOPRC considers it is necessary to ensure that the policy framework identifies that stormwater management plans (SMPs) are the most appropriate method to manage stormwater in favour of other methods including ad-hoc approaches. In this regard, SMPs are strongly supported as a policy level matter and, is*

supported appropriate to the scale and significance of the potential effects arising from PC 92.

- *Importantly, SMP's implement of the relevant sections of the catchment management plans via Rule 12.4.5.17 in response to directions in the NPS-FM which aims to protect receiving environments as a priority[1] and, is the primary method by which stormwater attenuation is managed through subdivision processes. SMP's are also the method by which subdivision proposal consider climate change in response to RPS directions[2].*

- *While WBOPDC considers Rule 12.4.5.17 to be primarily a method to gather information, BOPRC considers that Rule 12.4.5.17 also implements a range of wider stormwater management outcomes (see Objective 12.2.1.8 and Policy 12.2.2.10) and is method by which subdivision, stormwater management and environmental protection are considered in an integrated manner.*

- *For this reason, it is considered appropriate to ensure a clear and directive policy approach and, to rely on SMPs in favour of ad-hoc approaches to the manage cumulative stormwater effects arising from the plan change.*

- *BOPRC further considers the reference to SMPs supports a robust assessment of discretionary activities (via Rule 12.4.5.11 and 24.3.4) for proposals that do not comply with the structure plan - without inclusion, the ability to refuse inappropriate proposals is undermined. Other approaches to stormwater management should be carefully controlled in addition Rule 12.4.5.1.*

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[1] 2.1 Objective (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems
(b) second, the health needs of people (such as drinking water); and
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

[2] See BOP RPS Policy IR 2B (climate change).

WBOPDC Response:

- *WBOPDC does not agree that the words "through stormwater management plans" are necessary. SMPs are not a method for managing stormwater but rather the SMP is simply a preferred method for the collation and reporting information on stormwater management for a subdivision or development. However the information may be delivered in other forms (such as an infrastructure report or part of an AEE) which satisfies the information need. The primary goal of the policy is to enable implementation of a stormwater management approach that is consistent with the CMP, and conditions of any resource consent will then be used to implement the stormwater management approach. The intent is not to require information be provided in a single form. An SMP, in WBOPDC's view, is only a method of gathering information so to implement to CMP, and this method is captured by Rule 12.4.5.17.*

- *The s42A report recommended a change to Policy 12.2.2.7 which had implications for communities outside of the Ōmokoroa and Te Puke Plan change areas and beyond scope. The recommended changes are still relevant however a new policy specific to Ōmokoroa and Te Puke is necessary to avoid the scope concern.*

- *WBOPDC does not agree that Policy NH 4B of the Bay of Plenty Regional Policy Statement (RPS) provides direction that requires urban development be managed in a manner so that there is "no" increased risk outside the development site. Part of this view is because the RPS only provides three risk categories, High, Medium or Low.*

- *WBOPDC's view on Policy NH 4B is that it provides direction which requires a low natural hazard risk for a development site to be achieved, only in the event it does not increase risk elsewhere.*

- *If the panel is minded to support BOPRC's view, then we would suggest the following wording for bullet point 1.*

(First bullet point of Policy 12.2.2.10) - Avoid increased flooding effects and risk on the receiving environment including people, property, infrastructure and buildings.

6. BOPRC has requested an amendment to Rule 12.4.5.17(a). The change is not supported by WBOPDC for the reasons above relating to Policy NH 4B. Any changes by the panel should be consistent with any changes to Policy 12.2.2.10 above.

   a. *Be designed for attenuation of the 50% and 10% AEP critical storm events to predevelopment peak stormwater discharge and the 1% AEP critical storm event to 80% of the pre-development peak discharge except where it can be demonstrated that there will be no increased adverse flood effects on the receiving environment and avoids increases in flooding risk on people, infrastructure and property.*

   All stormwater attenuation shall be designed to take into account up to date national guidance for climate change over the next 100 years for sea level rise and rainfall intensity.

7. BOPRC has requested the following Explanatory Note be added to Rule 12.4.5.17. WBOPDC takes a neutral position on the inclusion of the explanatory note.

   The concurrent preparation and lodgement of resource consent applications to the District and Regional Councils is recommended to implement the integrated management outcomes anticipated by the relevant Catchment Management Plans through Rule 12.4.5.17 relating to subdivision stormwater management plans.

BOPRC Response:

- *As outlined in evidence, BOPRC seeks the Explanatory Note be included to support an integrated management approach. The note carries no legal weight itself and would signal to applicants and the council that concurrent preparation of applications is preferred to achieve integrated outcomes.*

WBOPDC Response:

- *WBOPDC's evidence opposed the note as it disagrees this relates to integrated management. A neutral position is adopted at this stage on the basis that the note is only "advisory" for decision makers.*

Section 14A

8. Both councils support the below amendment to Significant Issue 6. The reasons are included in Mr. Hextall's reply evidence.

Significant Issue 6

Urban development creates large areas of impermeable surfaces increasing stormwater run-off that can lead to flooding and the carrying of pollutants. These changes have implications for water quality and quantity effects on the receiving environment.

The modification of the landform can also adversely affect natural processes and the cultural values of the land.

9. Both councils support the below amendment to Objective 14A.2.1.7. The reasons are included in Mr. Hextall's reply evidence.

Objective 14A.2.1.7

Maintenance and enhancement of the stormwater management functions of both the natural and built stormwater network and, management of flooding risk and effects on the receiving environment.

10. BOPRC has requested the below amendment to Policy 14A.2.2.7. WBOPDC does not agree to the change.

Policy 14A.2.2.7

Require proposals of four or more residential units on a site to provide integrated assessments which fully assess how the land is to be used

effectively and efficiently, how the relevant requirements of the structure plan are met including provision of infrastructure including water sensitive design and, how high-quality urban design outcomes are being achieved.

BOPRC Response:

- *Water sensitive design is a primary method by which stormwater management is achieved through redevelopment processes enabled by PC 92 and, is integral to achieve integrated management directions in the RPS and the NPS-FM. As such, water sensitive design is strongly supported as a policy level matter and, is appropriate to the scale and significance of the potential effects arising from PC 92.*

- *As stated elsewhere, catchment management plans for Te Puke and Ōmokoroa specifically identify water sensitive design (WSD) as a key method to manage stormwater overtime, particularly incremental cumulative effects and the basis for this approach is addressed comprehensively in the evidence of Sue Ira for the Regional Council.*

- *In response and as discussed at the hearing, a policy level approach is appropriate which identifies WSD as a specific method to manage stormwater noting the challenges of outdated stormwater infrastructure and climate change.*

- *From an integrated management perspective, well-functioning urban environments would be enhanced by the consideration of BPO for water sensitive urban design which is inherently linked to urban design processes.*

- *For the above reasons and in terms of Chapter 14A, it is considered that WSD should be identified as a specific method (alongside other matters related to urban design) to be considered as part of integrated assessments identified in Policy 14.2.2.7. In effect, this reflects both an integrated approach and, responds to how development may occur i.e. design led or, subdivision led water sensitive design.*

- *In summary, WSD is strongly supported as a policy level matter and, is appropriate to the scale and significance of the potential effects arising from PC 92.*

WBOPDC Response:

- *WBOPDC considers the additional wording to be a duplication of Section 12 matters, with the intent of the policy to require compliance with a structure plan (versus catchment management outcomes).*

- *WBOPDC has included water sensitive urban design as part of Policy 12.2.2.10 and there is no need to replicate the same matter within Section 14A. Section 14A provides for Medium Density Residential Development and while water sensitive urban design is a matter of relevance to assessing aspects of such development it is considered that there is no need to go to this level of specificity within Section 14A. Section 12 is the appropriate section to provide this policy direction.*

11. BOPRC has requested the below amendment to Matters of Discretion 14A.7.1(l)(i). WBOPDC does not agree to the changes.

Matter of Discretion 14A.7.1(l)(i)

~~Providing~~ Identify and incorporate best practicable options for water sensitive urban design including the retention of permeable areas and the treatment of stormwater in accordance with the relevant catchment management plan.

BOPRC Response:

- *The comprehensive stormwater consents for Ōmokoroa and Te Puke include detailed options for WSD and are appropriate methods to rely on particularly in the absence of any other detailed methods to rely on and, in gaps in the Infrastructure Development Code (2002) in the Plan or guidance in the Urban Design*

Guideline which does not include reference to water sensitive design.

- *Further, this level of detail is considered appropriate to ensure the appropriate consideration of an integrated approach set out in Rule 12.4.5.17 i.e. both land-use and subdivision.*

- *In summary, an integrated approach is recommended in both the subdivision and development sections of the plan which also responses to how development may occur i.e. design led or, subdivision led.*

- *Further supporting reasons are set out in in response to Policies 14A.2.2.7 and 12.2.2.10.*

WBOPDC Response:

- *WBOPDC does not consider that the changes requested by BOPRC are appropriate as matters of discretion. It considers the wording suggested would create uncertainty for plan users as to what the best practicable option may be. Although the proposed reference to the relevant catchment management plan does provide additional guidance as to appropriate design matters at a specific point in time there may be further innovations that have yet to be updated in a catchment management plan.*

- *Catchment management plan references are more appropriate as part of Section 12, and it should be noted the rules apply to both land use and subdivision. It should be noted that matters of discretion are intended to apply to matters for consideration, rather than being a "performance standard" which the relief sought promotes.*

- *The wording as proposed by WBOPDC is succinct and identifies the relevant matter of discretion.*

Section 24

12. BOPRC has requested the below amendment to Policy 24.2.2.3. WBOPDC does not agree to the change.

Policy 24.2.2.3

'Control activities to avoid adverse effects on freshwater and coastal ecology and the functioning of the stormwater system, including ~~the~~ streams, wetlands, natural gully network and the coastal interface, and promote improvement of these areas by providing for development that supports restoration of the values of these areas.'

BOPRC Response:

- *BOPRC does not fully understand the WBOPDC position outlined below. These features have been identified extensively throughout Stage 3 of the Ōmokoroa Structure Plan in the catchment management plan to which the Natural Open Space zone (NOS) applies and would appropriately reflect the ecological matters (which are referred to in the Explanation) within the NOS and the interaction with the coastal marine area.*

- *For this reason, BOPRC consider a policy level is necessary in response to relevant directions in the NPS-FM (Objective 2.1, Policies 3, 6, and 7) and the network of connected water features across the structure plan area that have been included within the NOS zone.*

- *Consequential amendments may also be appropriate to Objective 24.2.2 which addresses functions but not ecological values.*

WBOPDC Response:

- *WBOPDC does not consider the change to be appropriate as the recommended wording links more directly with the Objective 24.2.2 (which was unchallenged by any submissions and states):*

"Maintenance and enhancement of the stormwater and coastal inundation management functions of the area."

- *The additional wording makes the policy unnecessarily lengthy and there is no need to list additional components at a policy level.*

13. BOPRC has requested the below amendment to the Matter of Discretion24.5.2. WBOPDC does not agree to the change.

Matter of Discretion 24.5.2

The potential adverse effects on the natural character, ecological, hydrological, cultural, recreational and amenity values of the area and how these may be avoided, remedied or mitigated.

BOPRC Response:

- *While regional council consent may be required, typically these consents are limited to earthworks and modification and include different threshold triggers for consent.*

- *For this reason, the inclusion of this matter is considered appropriate to ensure activities (see approach in Policy 24.2.2.3) consider the effects on the* ***function*** *of waterbodies features alongside ecological values.*

- *In summary, this provides for an integrated approach to protect the receiving environment from inappropriate development in the NOS and is supported by Policy 3.5 and Clause 3.5 of the NPS-FM.*

WBOPDC Response:

- *WBOPDC does not consider the change to be appropriate as the term "hydrological" is generally defined as relating to the study of water which can include distribution, conservation and use, and therefore unintendingly extend discretion beyond the purpose of*

this matter of discretion when practically applied through consent process. As stated in the evidence of Mr Hamill for the Regional Council hydrology is a matter that influences ecology, and accordingly the potential effects on ecology can incorporate this. The addition of the suggested term is not required in the context of the District Council provision although may be appropriate for a Regional Council provision?

Natural Open Space zone

14. BOPRC has requested additional areas to be zoned Natural Open Space zone in regard to 51 Francis Road and Lot 3 DP 28670 (N & M Bruning) and 467E Ōmokoroa Road (M & S Smith). WBOPDC does not agree to the changes.

BOPRC Response:

- *BOPRC has further considered the rebuttal planning evidence of Jeff Hextall. BOPRC continues to seek the recommended minimum changes in the ecological evidence of Keith Hamill[3] in particular, to protect ecological values in the landscape and ensure resilience of their ecosystem services, in particular for Lot 3 DP 28670.*

- *The effect of the designation (on Lot 3 DP 28670) and its interaction with national environmental standards, as well as a general response to the points made by Mr Hextall in relation to the NOS is covered in the legal submissions on behalf of BOPRC.[4].*

[3] See Figure 7 of his Primary dated 25 August 2023

[4] Including reference to s.43(1)(d).

Figure 1: Extent of NOS zone as amended in the s.42a report.

- *Of note, the NOS has otherwise been applied to most of the extent of the Designation 234 which extends down to the Mangawhai Estuary. To this end, BOPRC questions the consistency of approach as to why a different approach is applied for the extension to protect the headland of the ecological corridor down to the coastal marine area which is set out in Figure 7 of the ecological evidence of Keith Hamil.*

WBOPDC Response:

15. WBOPDC does not consider these changes are appropriate for the following reasons:

51 Francis Road

Additional areas of Natural Open Space zone were recommended to be included in the s42A report which was in response to a request by BOPRC. This property and related properties were inspected by Council staff and consultants and a GPS unit was utilised to ensure better accuracy than was available from aerial imagery. There are variations in the topography with banks and land spurs that have been taken into consideration. The latest inspection was not long after a heavy rain event that had resulted in flooding in the area and the extent of floodable area was very apparent and the related influencing factors. Discussion with the landowners on site provided additional insight into the attributes of the area. The extent of the Natural Open Space zone in this area is considered appropriate to provide for the water course feature and potential walkways in this area. Related

to this there is also a 10m landscape strip requirement for the proposed Industrial zone interface with the adjacent State Highway 2, proposed Rural-Residential zone and as recommended (expands into this interface) Natural Open Space zone which provides a further setback and controls any industrial activities (including the creation of impervious areas) in this area.

This area is not affected by any existing designations, but it is noted that the proposed alteration to the State Highway designation plans as provided to the Hearings Panel by Waka Kotahi includes this area and includes significant planned modifications to this area.

Lot 3 DP 28670 and 467E Ōmokoroa Road

The s42A report and statement in evidence in reply by Mr Hextall included detailed discussions on this matter [Refer s42A Report Planning Maps Ōmokoroa Zoning Topics 6 & 7, Statement in evidence in reply Jeffrey Hextall 42-45]. The Natural Open Space zone was significantly extended in response to the submission and subsequent further clarifications from BOPRC however further areas were included within the evidence submitted by BOPRC. The nature of the evidence was in part to provide additional buffer areas around the areas that had higher ecological values. These areas within the 'Bruning land' are generally readily identifiable through being fenced off while other areas such as the additional area that forms part of the Industrial zone in the Operative District Plan are not so and appear subject to grazing. There is also a landscape buffer strip within the Industrial zone that extends along the Rural-Residential and Natural Open Space zone areas adjacent to the Industrial zone.

The 'Bruning land' is currently subject to current designations for both stormwater and State Highway purposes. As noted above the proposed alteration to the State Highway designation plans were provided to the Hearings Panel and includes significant planned modifications including the area in the Bruning land that is in contention with BOPRC. Although concurring that this is yet to be lodged the planning is very well advanced, and as noted above there are operative designations. It has been confirmed by Mr Oliver who is the lead planning consultant working on this project for Waka Kotahi that they have engaged extensively with BOPRC

although this fact was not advised to the Panel by BOPRC staff. Mr Oliver has advised that on the consenting side it has been with Marlene Bosch and Eleanor Christianson. From the technical side (stormwater, hydrology, ecology) it has been Shay Dean, Sue Southerwood, Anna McKay and Alastair Suren. He has also advised that as well as topic-specific meetings they have a regular monthly Consenting Authorities Forum meeting where they meet with BOPRC, WBOPDC, DOC, hapu and Heritage NZ.

It is noted that the NPS for Freshwater Management includes specific provisions for urban development in the Bay of Plenty [3.34]. This includes providing for urban development in situations where this may result in the loss of natural inland wetlands subject to meeting various requirements.

Overall, the inclusion of further areas of Natural Open Space zone is not supported and either the recommended areas (as per the s42A report) are included or the area is reassessed once the alteration to designation process is completed and there is more certainty as to appropriate zoning.

PC92 – Joint Reporting - Signed on behalf of BOPRC

Name:

Position: PLANNER

Signature: Nathan Te Pairi for BOPRC.

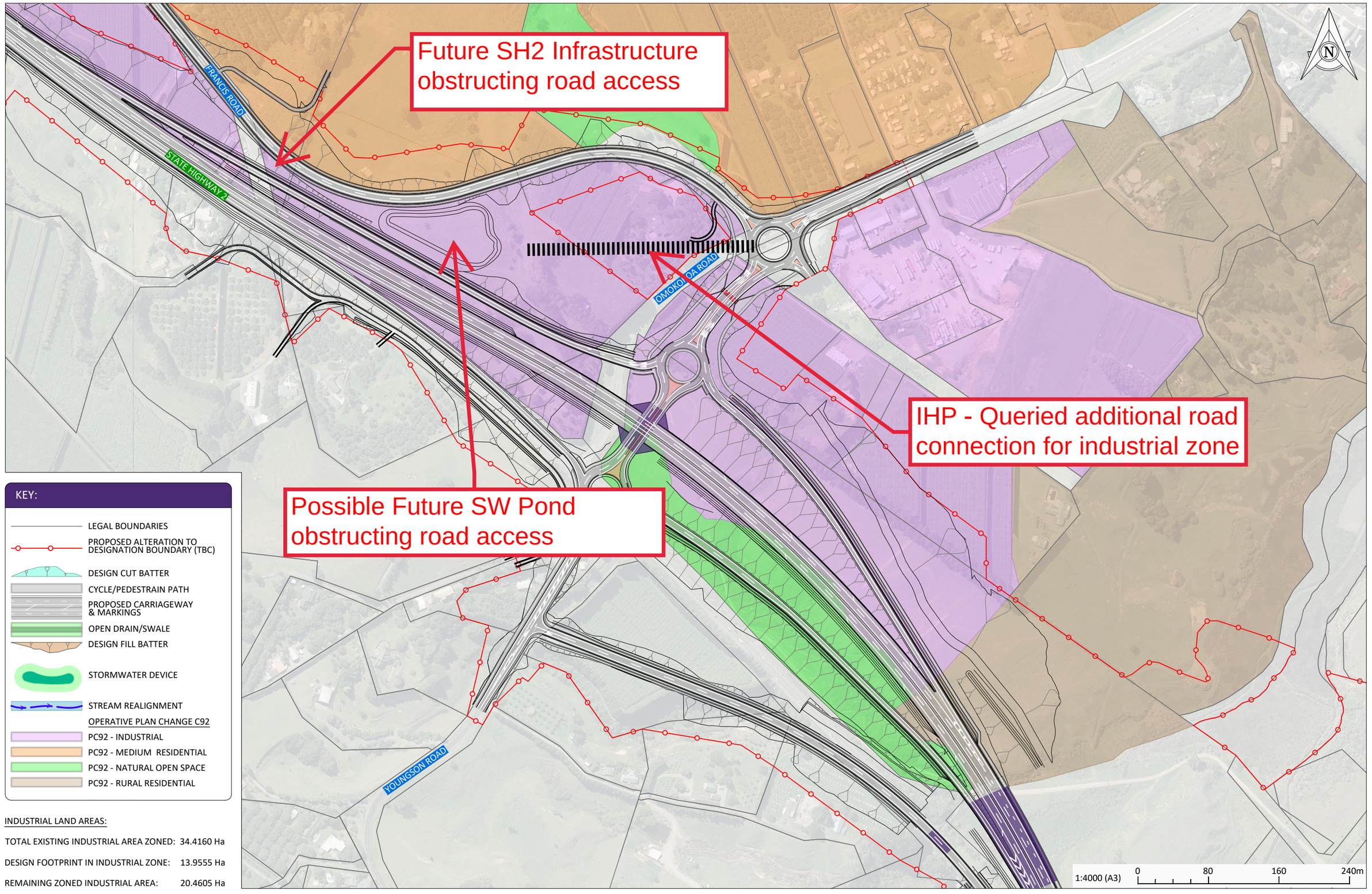
PC92 – Joint Reporting - Signed on behalf of WBOPDC

Name: Taunu Manihera

Position: Consultant Planner

Signature:

Attachment B:



KEY:

- LEGAL BOUNDARIES
- PROPOSED ALTERATION TO DESIGNATION BOUNDARY (TBC)
- DESIGN CUT BATTER
- CYCLE/PEDESTRAIN PATH
- PROPOSED CARRIAGEWAY & MARKINGS
- OPEN DRAIN/SWALE
- DESIGN FILL BATTER
- STORMWATER DEVICE
- STREAM REALIGNMENT

OPERATIVE PLAN CHANGE C92

- PC92 - INDUSTRIAL
- PC92 - MEDIUM RESIDENTIAL
- PC92 - NATURAL OPEN SPACE
- PC92 - RURAL RESIDENTIAL

INDUSTRIAL LAND AREAS:

TOTAL EXISTING INDUSTRIAL AREA ZONED: 34.4160 Ha

DESIGN FOOTPRINT IN INDUSTRIAL ZONE: 13.9555 Ha

REMAINING ZONED INDUSTRIAL AREA: 20.4605 Ha

	DATE	ISSUE/REVISION DETAIL	BY	CHK	APPR
A	11.04.2023	INITIAL ISSUE	ER	JO	JO

mx model version:

DESIGNED: CMC | CHECKED: JO | DRAWN: ER | APPROVED: JO

BLOXAM BURNETT & OLLIVER

CLIENT: WAKA KOTAHI NZ TRANSPORT AGENCY

PROJECT: TAKITIMU NORTH LINK STAGE 2

DRAWING: OMOKOROA INTERCHANGE PROPOSED DESIGN OPTION 1 AND PLAN CHANGE 92 OF OPERATIVE PLAN

STATUS: PRELIMINARY

DATE: 09.02.2023 | SCALE (ORIGINAL SIZE A3): 1:4000

DRAWING NUMBER: 144702-00-0755 | REVISION: A

Version 4.0 - March 2020

Attachment B: