

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Private Plan Change 95 Pencarrow Estate Pongakawa
to the Western Bay of Plenty District Plan

LEGAL SUBMISSIONS ON BEHALF OF KEVIN AND ANDREA MARSH

Introduction

1. Private Plan Change 95 (**PC95**) is a much-needed opportunity to assist in reducing the housing shortage in the Western Bay of Plenty. The site comprises 10.03ha of land at 1491 Arawa Road, Pongakawa (the **Site**) proposed to be re-zoned to Residential and Commercial from Rural (including proposed roads and reserves). The evidence for the Applicants Kevin and Andrea Marsh is that PC95 will create positive effects by expanding and consolidating the thriving community of Pongakawa and will support necessary growth consistent with strategic planning documents for urban development.
2. Pongakawa has at Arawa Road an established settlement with approximately 70 houses. The settlement is located within eight kilometres of the Rangiuru Business Park, 15 kilometres of Te Puke and is seven kilometres from Paengaroa, and is bordered by the PC95 site. The Site is by no means isolated in the context of the Western Bay. Several businesses and community facilities are established nearby in the settlement or within a 1.8km radius including a service station, two engineering workshops, Pongakawa School, Pongakawa Hall, the sports action centre and squash courts, a 25m all season swimming pool, and the Pongakawa Domain

Reserve.¹ It is well connected to transport corridors, has direct access to SH2 and easy access to the Tauranga Eastern Link.

3. The Site is suitable for housing due to its location adjoining the existing settlement, and its proximity to existing and future important infrastructure and development. The Site is mostly free of all natural hazards, save for localised overland flow paths, which will be managed through the detailed design of the future subdivision as informed by the proposed Structure Plan accounting for these hazards. The Site is located on generally flat land that is elevated above the modelled climate-adjusted 100-year flood plain and outside of mapped tsunami risk areas.
4. The evidence before you is that there is support for PC95 from the community who speak to the desire for new homes in Pongakawa, and from property developers who endorse its viability as a commercial development. The Plan Change will further enhance the community of Pongakawa and in turn complement growth within the Eastern Corridor which is deficient in housing supply currently and as forecast over the short, medium and long terms (as is the case for the entirety of the Tauranga and Western Bay of Plenty urban environments).²
5. The main opposition to the plan change is from the Western Bay of Plenty District Council (**WBOPDC**) which largely appears to be based on the fact that the site is not identified as a future growth area and its view that the site is not an urban environment. With respect, this opposition is based on a fundamental misunderstanding of the definition of “urban environment” and ignores the responsive planning provisions which anticipate private plan changes of this kind.
6. The case for the Applicants is that there is a clear planning pathway for PC95 as:
 - (a) The Site meets the definition of an urban environment due to the adjacent settlement’s existing level of residential development and being part of a housing and labour market of at least 10,000 people;³

¹ Others businesses include a panel beating business, BOP Fertiliser bulk store, Weallean’s Ground Spread base for BOP, physio, 2 major Agricultural Contracting businesses, Kiwi Land Development, Well drilling/bores, Irrigation business, a major pack house with 200 employees, BayGold Horticultural Development & accommodation for RSE workers.

² SmartGrowth Strategy 2024-2074 at page 153. The Western Bay of Plenty urban environment is currently short 2,590 dwellings rising to 2,700 cumulative over a 30 year period.

³ Noting that this is a conservative assessment, as the NPS-UD treats the districts as urban environments, the Bay of Plenty Regional Policy Statement refers in Policy UG 7A to the “Tauranga City and Western Bay of Plenty District urban environments”, and the Housing and Business Capacity Assessment 2022 assesses capacity at a district level.

- (b) It meets the requirements of the NPS for Highly Productive Land 2022 (**NPS-HPL**) (clause 3.6(1)) as it will contribute to the supply of land for residential housing where there is a deficit, there are no other reasonably practicable or feasible options and the environmental, social and cultural benefits outweigh the small loss of highly productive land;
 - (c) PC95 will contribute to a well-functioning urban environment (NPS-UD Clause 3.8(2)) and is consistent with the NPS-UD overall;
 - (d) PC95 will meet the criteria under the Bay of Plenty Regional Policy Statement (**BOP-RPS**) as unanticipated urban growth that will add significantly to development capacity (BOP-RPS Policy UG7A); and
 - (e) It would be contrary to the clear direction of the NPS-UD and BOP-RPS to attempt to confine urban growth in the Western Bay only to the mapped future urban areas. That approach is not reflective of the planning regime and would not achieve sustainable management.
7. With the planning pathway established, the case for the Applicant is that all effects from PC95 can be managed appropriately, including:
- (a) Loss of highly productive land;
 - (b) Wastewater;
 - (c) Stormwater;
 - (d) Natural hazards;
 - (e) Traffic.
8. There is no denying that the decision to allow residential development on highly productive land requires careful scrutiny, particularly so in areas such as the Western Bay of Plenty with its thriving and fertile primary production industry. The competing tensions between the NPS-UD and NPS-HPL are ones that must be balanced carefully.
9. It is also important to remain cognisant of the opportunity that is being presented. PC95 is a realistic option to provide a significant injection of housing to this market and, crucially, it is

land that is being made available now. It is also land that can be surrendered from dairying and does not require the removal of expensive kiwifruit/orchard infrastructure. While it is highly productive land, the evidence is that there are constraints with the Site that make it the most realistic and feasible option in comparison to other options in the same locality and market which would be more highly adverse to productive land in the locality.

10. Overall, my submission is that PC95 can comfortably be approved within the planning pathway for urban development and will assist to remedy the housing shortage in the Western Bay. The overall benefits of the loss of a small area of highly productive land greatly outweigh any costs.
11. Such a decision is supported by the evidence and will reflect a sound resource management outcome that will meet the needs of the community of Pongakawa and the wider Western Bay of Plenty.

Structure of legal submissions

12. These legal submissions will address the following issues:
 - (a) The statutory tests under the RMA.
 - (b) The planning pathway under the NPS-UD and NPS-HPL – is PC95 in an urban environment?
 - (c) Having established PC95 is in an urban environment:
 - (i) The appropriateness of PC95 against the NPS-UD and NPS-HPL;
 - (ii) The appropriateness of PC95 against the responsive planning framework under the BOP-RPS; and
 - (d) The management of effects of PC – stormwater, wastewater, natural hazards, traffic and highly productive land.
13. I now address each issue in turn.

Legal framework for assessing PC95

14. Section 74 RMA sets out the matters that must be considered by a territorial authority when preparing or changing its district plan. These requirements for assessing plan changes are outlined by the Environment Court in its interim decision in *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*.⁴
15. The Commissioners must consider:
- (a) Whether the plan change is designed to accord with, and assist a territorial authority to carry out its functions under s 31 of the RMA, to achieve the purpose of the RMA;⁵
 - (b) Whether the plan change gives effect to a national policy statement, a New Zealand coastal policy statement, a national planning standard⁶ and any regulations;⁷
 - (c) Whether the plan change gives effect to the regional policy statement⁸ and is not inconsistent with any regional plan for any matter specified in s 30(1) RMA⁹ or plans or proposed plans of adjacent territories;¹⁰
 - (d) Whether the plan change has had regard to any proposed regional policy statement,¹¹ proposed regional plan on matters of regional significance¹², relevant planning documents recognised by an iwi authority, or relevant management plans;¹³
 - (e) Whether, in accordance with section 32(3)(a), the proposed objectives and policies and methods are the most appropriate way to achieve the purpose of the RMA.
16. The Panel must also have regard to any Emissions Reduction Plan and National Adaptation Plan made in accordance with sections 5ZI and 5ZS of the Climate Change Response Act 2002.¹⁴

⁴ *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council* [2018] NZEnvC A078/08 at [35].

⁵ Section 74(1)(a) RMA.

⁶ Section 74(1)(ea) RMA.

⁷ Section 74(1)(f) RMA.

⁸ Section 75(3)(c) RMA

⁹ Section 75(5) RMA.

¹⁰ Section 74(2)(b) RMA.

¹¹ Section 74(2) RMA.

¹² Section 74(2)(a) RMA.

¹³ Section 74(2)(b) RMA.

¹⁴ This is a new requirement which came into effect in December 2022 and there is no case law available yet.

Planning pathway under the NPS-UD and NPS-HPL

17. Like much of New Zealand, Tauranga and Western Bay are facing a housing shortage. This is inconsistent with Policy 2 of the NPS-UD and the latest HBA identifies there is a need for more housing in the short, medium and long term.¹⁵ PC95 intends to address that shortage.
18. The Site contains highly productive land which brings into play the NPS-HPL. Clause 3.6(1) NPS-HPL provides that WBOPDC as a Tier 1 authority may only allow the urban rezoning of highly productive land if:
 - (a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to NPS-UD;
 - (b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
 - (c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
19. The key issue of contention between the Applicant and WBOPDC is whether PC95 is in an urban environment, and thus putting PC95 within the ambit of the NPS-UD (and in turn providing a pathway under the NPS-HPL). The crux of WBOPDC's position appears to be based on the Site not being identified or mapped for future urban growth. I say that is not the determinative factor and that WBOPDC has fundamentally misunderstood the intent of the responsive planning framework.

¹⁵ Housing and Business Capacity Assessment 2022, page 5 (as used by the Smartgrowth Strategy 2024-2074). Also refer Statement of Evidence of Richard Coles at paragraph 44 regarding the latest HBA report which identifies a shortage of housing over the short, medium and long term.

Is PC95 in an urban environment?

20. My submission is that PC95 is an urban environment. The definition of urban environment in the NPS-UD means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
- (a) is, or is intended to be, predominantly urban in character; and
 - (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.
21. The term “predominantly urban in character” is not defined in the NPS-UD. There are multiple other definitions for the term ‘urban’ (or variations of that term) that can be considered to assist with determining what is “predominantly urban in character”. In my submission the existing settlement largely complies with these definitions such that it can be considered *predominantly* urban in character, but PC95 wholly meets these definitions which puts the issue beyond doubt when considering that the direction is to be *predominantly* urban in character:

Source of definition	Definition	Does PC95 comply with the definition?
RMA, s 76	<p>urban environment allotment or allotment means an allotment within the meaning of section 218—</p> <ul style="list-style-type: none"> a) that is no greater than 4,000 m²; and that is connected to a reticulated water supply system and a reticulated sewerage system; and b) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and c) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977. 	<p>PC95 complies with this definition of ‘urban environment allotment’.</p> <p>Lots in the existing Pongakawa Village are generally occupied by one residential dwelling house. The sizes of lots in the area are in the range of 800m² to 2,000m². Lots are predominantly 800m² to 1,000m² in size, but there are eight lots that are closer to or slightly exceed 2,000m² in size.</p> <p>Existing lots with dwelling houses are connected to a reticulated water supply, and lots within the Site will be connected to both reticulated water and sewerage systems</p>

		<p>(with potential to reticulate the existing settlement as well for sewerage).</p> <p>The Site is not reserve land.</p>
NPS HPL	<p>urban, as a description of a zone, means any of the following zones:</p> <ol style="list-style-type: none"> a) low density residential, general residential, medium density residential, large lot residential, and high density residential: b) settlement, neighbourhood centre, local centre, town centre, metropolitan centre, and city centre: c) commercial, large format retail, and mixed use: d) light industrial, heavy industrial, and general industrial: e) any special purpose zone, other than a Māori Purpose zone: f) any open space zone, other than a Natural Open Space zone: g) sport and active recreation. 	<p>I submit that PC95 complies with this definition of 'urban'.</p> <p>The Pongakawa Village is a settlement of approximately 70 residential dwellings with a density typical of smaller centres.</p> <p>The area is predominately zoned residential, with eight lots with existing dwelling houses located in the rural zone.</p>
RPS	<p>Urban activities include:</p> <ul style="list-style-type: none"> • Residential accommodation at a density of more than one dwelling per 2,000m² of site area; • Commercial and industrial business, retailing and other commercial activities; • Papakāinga or other Marae-based housing; and • Any other land use for which reticulated wastewater and water supply is a requirement. 	<p>PC95 complies with this definition of 'urban activities'.</p> <p>Pongakawa Village includes one residential dwelling per approximately 1,000m² of land. Lots that contain a dwelling house are predominately smaller than 1,000m² in size, but there are a small percentage of the sites that are approximately 2,000m² in size and contain only a single dwelling house.</p> <p>Existing lots with dwelling houses are connected to a reticulated water supply, and lots within the Site will be connected to both reticulated</p>

		water supply sewerage systems (with potential to reticulate sewerage to the existing settlement as well).
RNRP	Urban area or settlement – an area which contains an aggregation of more than 50 lots or sites of an average size of no more than 1,000m ² .	<p>PC95 complies with the definition of ‘urban area or settlement’.</p> <p>The existing Pongakawa Village area contains approximately 70 lots. These lots are predominately between 800m² to 1,000m² in size, but there are eight lots that are approximately 2,000m² in size.</p> <p>The average lot size in the Pongakawa Village is 1,038m².¹⁶ However, the majority of the lots are under 1,000m² and the average is skewed by the eight larger sized lots that are located in rural zoning.</p>
SmartGrowth Strategy 2024-2027 Future Development Strategy (SmartGrowth)	Urban A concentration of residential, commercial and/or industrial activities, having the nature of a city, town, suburb or a village which is predominantly non-agricultural or non-rural in nature.	<p>PC95 complies with this definition of ‘urban’.</p> <p>Activities in the Pongakawa Village are predominantly residential in nature and not agricultural or rural.</p> <p>As detailed above, the village provides for approximately 70 dwellings that are predominantly located on lots 1,000m² or under in size that share boundaries. I submit that these characteristics are similar to that of a village.</p>

¹⁶ Section 9.68, s 42A Report.

22. The above table demonstrates that the Site can meet all key definitions of 'urban' in the relevant planning and policy documents.
23. This is also supported by Mr Murphy's evidence where he details his opinion about how the Arawa Road residential settlement is urban in character due to meeting the numerous definitions in the Bay of Plenty Regional Council (**BOPRC**) planning documents, the definition of urban in the SmartGrowth, and the definition of 'urban' as a description of zoning in the NPS-HPL.¹⁷
24. The evidence of Mr Kevin Counsell is that the site is in the same housing market as Te Puke, due to:
- (a) Geographic proximity (15km apart), being the radius typically considered to establish the boundaries of a housing market;
 - (b) Having similar accessibility to amenities;
 - (c) Having similar accessibility to employment opportunities; and
 - (d) Having house prices which are meaningfully correlated.¹⁸
25. The evidence of Mr Counsell, with support from Mr Murphy, can be relied upon to find that the site satisfies the second limb of the test as being within an urban environment.

Relevance of not mapped for urban growth

26. The s42A report says that the Site is not mapped for future growth as grounds to say that it is not in an urban environment.¹⁹ It is not in contention that the Site is not mapped for future growth. It is also not fatal to the Site being an urban environment. My submission is that SmartGrowth is not intended to operate as hard limits on where urban growth can be located.
27. SmartGrowth expressly anticipates that development outside of the mapped areas may occur through its recognition of the need for responsive planning, albeit with clear expectations that

¹⁷ Statement of Evidence of Vincent Murphy at paragraph 63.

¹⁸ Statement of Evidence of Kevin Counsell at paragraph 16.

¹⁹ Section 42A Report at paragraph 9.62.

such development will not compromise SmartGrowth objectives or growth directives. In this respect, SmartGrowth says²⁰:

The Connected Centres settlement pattern needs to be agile enough to respond to change. There are many factors that influence growth and the timing of development. This includes migration rates, economic cycles and unforeseen events. In addition, the timing of development is affected by regulation, infrastructure and funding.

For this reason, it is important that the settlement pattern is responsive to changes that could occur. This includes the need to increase intensification or bring development areas forward if there is a shortfall or if particular growth areas don't occur in the timeframes anticipated. SmartGrowth monitors development annually through the Development Trends report. In addition, Priority Development Areas are monitored on a quarterly basis.

.....

It is important that any alterations to the connected centres programme, including changes to staging, do not compromise the SmartGrowth objectives or growth directives. A robust evidential basis for such changes will be required and will include the need to consider infrastructure requirements, funding impacts, development capacity and planning assessments as well as considering any implications that might exist for the wider sub-region. Proposals for change will need to meet the Bay of Plenty Regional Policy Statement criteria for development that is out-of-sequence and unanticipated by the FDS.

(emphasis added)

28. SmartGrowth anticipates the Connected Centres settlement pattern must be “agile” and “responsive to change”. It then trusts that the consideration of such proposals for change will be assessed appropriately under the BOP-RPS.²¹ It does not outright exclude these areas from growth.

²⁰ SmartGrowth Strategy 2024-2027 at page 163.

²¹ SmartGrowth Strategy 2024-2027 Future Development Strategy, page 163.

29. Where SmartGrowth has been clear to provide a direction to avoid development in certain areas, it has done so through identifying ‘No-Go’ areas.²² The PC95 site is not identified as a No-Go area. The SmartGrowth FDS says:

In addition to protecting and enhancing our natural environment, we need to manage our risk from natural hazards and the effects of climate change by directing future growth and urban form away from these areas where appropriate. We have identified and mapped areas where there are intrinsic environmental and cultural attributes that must be protected from future land development, and areas to avoid which have critical constraints to development. This is to provide an understanding of where future investment and land development should be avoided. These areas are shown in Map 1 as ‘No-Go’ – Areas to Protect and Avoid.

(emphasis added)

30. The intent of SmartGrowth on No-Go area is clear, providing a directive to “protect” certain areas and to “avoid” development within them.
31. SmartGrowth also identifies ‘Go-Carefully’ areas which have a precautionary approach to growth.²³ PC95 is identified as Go-Carefully for highly productive land. I submit that the direction to ‘Go-Carefully’ inherently anticipates that development may be possible in these areas, but that it requires a careful assessment, which has been undertaken by the Applicant and will be considered by the Commissioners. If it did not, they would also be No-Go areas.
32. I therefore submit that not being mapped as a future growth area is not determinative to whether the Site meets the definition of urban environment.
33. To the extent the mapped areas are relevant, the NPS-UD only directs local authorities to “have regard to” the relevant future development strategy (in this case SmartGrowth).²⁴ This is a significantly weaker obligation than the requirement that PC95 must “give effect to” the BOP RPS. The case for the Applicant is that PC95 meets the BOP-RPS (mainly Policy UG-7A) which takes prominence over the mapped urban areas in the SmartGrowth FDS.

²² Map 1, page 58: ‘No-Go’ – Areas to Protect and Avoid.

²³ These are areas of flooding, highly productive land use classifications, hazardous activities and industries list and archaeological sites, land elevation, land instability and liquefaction and peat soils.

²⁴ NPS-UD 3.17(1)(a).

34. Further, I submit that the consideration of what is 'urban' must be viewed through a pragmatic lens. The NPS-UD purposely takes a wide view by saying a site needs only to be, or intended to be, "predominantly urban in character" rather than "wholly urban" or similarly prescriptive terms (emphasis added).
35. The Applicant is not purporting that the Site is a large urban centre to the scale of Tauranga as a city or Papamoa as a sub-regional centre. That would be unrealistic (and it is also not the threshold that the NPS-UD requires). What can't be ignored is that the approximately 70 existing dwellings is a sufficient number and concentration of dwellings to support Pongakawa comfortably being considered a settlement or village. One only needs to walk around the Arawa Road and Penelope Place development to understand that the area has a predominantly urban character in addition to its rural characteristics that surround the settlement.
36. Importantly, the Site also sits within a housing and labour market of at least 10,000 people. Again, the NPS-UD did not restrict the housing and labour threshold to be tied to geographical or urban boundaries, such as being within a single established town. Rather it looks at a 'market', which requires a more nuanced approach, as Mr Counsell has provided.
37. If the reporting officer's position was correct, then it would be difficult to imagine how any greenfields development could be considered 'urban' as by its nature the site would have a rural outlook with no mixture of built form or amenities. It would also mean that any development beyond that immediately adjoining the fringes of urban areas may struggle to fall under the NPS-UD. This would straight jacket urban growth in Western Bay and would ignore the responsive planning provisions of SmartGrowth, the NPS-UD and the Bay of Plenty RPS (Policy UG 7A), which I discuss further below. Mr Murphy has also detailed his opinion why the reporting officer's opinion is flawed at paragraphs 143-174 of his evidence.
38. Overall, my submission is that PC95 is within an urban environment as defined in the NPS-UD and that the provisions of the NPS-UD are engaged. I now set out how PC95 satisfies the criteria in clauses 3.6(1)(a)-(c) NPS-HPL.

Clause 3.6(1)(a) - Is the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020?

39. Mr Counsell has closely assessed whether PC95 provides sufficient development capacity to meet the demand for housing in the Pongakawa Statistical Area 2 (**SA2**).²⁵ Mr Counsell's evidence confirms that in the next five-ten years there will be demand for at least 137-266 households in the Pongakawa SA2²⁶ and that there is no other source of planned residential supply in this area to absorb this demand. If the trend of rural subdivision continues, there is still an expected shortfall of 85-162 households for the level of demand.²⁷
40. Mr Counsell also notes that various contextual factors, such as increased growth in horticultural employment in the region, new employment opportunities from the Rangiuru Business Park, along with housing constraints and affordability in the area (and across New Zealand generally) support his finding that there is a strong demand for housing in Pongakawa.
41. I submit that Mr Counsell's expert opinion is also supported by the lay evidence from the community who speak to the demand for housing the area through new families wanting to move to attend the local Pongakawa School,²⁸ and due to kiwifruit growth,²⁹ as well as from locals wanting to settle in their home communities to be close to family.³⁰
42. Clauses 3.2(2)(a-d) of the NPS-UD provide parameters to explain what is sufficient development capacity. Mr Richard Coles provides an assessment of PC95 against these parameters at paragraphs 45 to 48 of his evidence which are summarised below:
- (a) Plan enabled - clause 3.2(2)(a). Mr Coles notes that other than greenfield zoned residential land in Te Puke via Plan Change 92, there is no new zoned residential land in the eastern area of the district and there has not been any greenfield zoned residential land added to the Western Bay for several decades. Further, the yield

²⁵ Statement of Evidence of Kevin Counsell at paragraph 48.

²⁶ Statement of Evidence of Kevin Counsell at paragraph 51.

²⁷ Statement of Evidence of Kevin Counsell at paragraph 51.

²⁸ Statement of Evidence of Craig Haggo.

²⁹ Statement of Evidence of Sue Matthews, Evidence of Paul Hickson.

³⁰ Evidence of Robyne Cooper.

added by Plan Change 92 also does not provide sufficient development capacity and therefore the first hurdle is not met.

- (b) Infrastructure ready - clause 3.2(2)(b). The development of the site will upgrade the water supply and create new wastewater and stormwater infrastructure to service the residential commercial development which will be developer funded to avoid financial debt burden on the Council. This will have a benefit to the community by increasing water pressure and providing firefighting supply.
 - (c) Feasible and reasonably expected to be realised - clause 3.2(2)(c). The submissions and evidence of Scott Adams of Carrus Corporation and Peter Cooney of Classics Group confirm that residential development in this area is a viable commercial opportunity and that there would be demand for residential dwellings. I also submit that there are very real drivers behind PC95 from the Applicants who want to see the proposal reach fruition to benefit their community as well as for their own future opportunities. This gives PC95 a head start to other future urban zoned land which may not be realised for another decade (such as the Eastern Centre).
43. I also note Mr Murphy's view that PC95 passes the first test under clause 3.6(1)(a) of the NPS-HPL as it is in an urban environment that is suffering from a housing shortage.³¹ This is independently determined to be currently 2,590 dwellings short in the Western Bay of Plenty urban environment as determined by the Future Development Strategy.
44. Overall, PC95 will provide 120-130 dwellings in Pongakawa in the next 5-10 years, which will significantly close the gap between the demand and supply for housing in Pongakawa and the Te Puke market, particularly as there are no other live measures to introduce residential growth to this area. I submit that the evidence satisfies the requirement of clause 3.6(1)(a) NPS-HPL.

³¹ Statement of Evidence of Vincent Murphy at paragraph 67.

3.6(1)(b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment?

Any other reasonably practicable and feasible options?

45. The issue will draw on the evidence of Mr Counsell (economics), Mr Perry (soil/HPL) and Mr Murphy (planning).
46. The key finding from the evidence for the Applicant as to why there are no other practical and feasible options for this locality and market is due to the majority of the surrounding land being orchard land, mainly gold kiwifruit, which requires extensive investment, generally has smaller land parcels and higher land values.
47. Mr Counsell has considered the impact of Plan Change 92 as an option which does not incorporate urban growth beyond orchards that were previously signalled to accommodate that urban growth. The Eastern Centre (as signalled in SmartGrowth) also includes almost exclusively developed orchard land. Mr Counsell notes that:
- (a) The feasibility of using orchard land may be impacted by fragmented ownership of smaller land parcels – this may make it difficult to have sufficient landholding for a viable commercial development.³²
- (b) A significant difference in land value – the average dairy price for New Zealand is \$34,000/ha while the average value of kiwifruit land in the Bay of Plenty is \$449,585/ha.³³
48. Mr Perry echoes these findings in respect of soil productivity. Having assessed 191.2ha of land on the fringes of Pongakawa and immediately around the PC95 site, Mr Perry has undertaken a thorough assessment of the land in this locality and market and found that (from a land resource perspective):

³² Statement of Evidence of Kevin Counsell at paragraph 60.

³³ Statement of Evidence of Kevin Counsell at paragraph 61.

- (a) There are areas of land within the same locality and market with lower versatility than the plan change site found on the eastern and southern fringes of Paengaroa and southern fringes of Pongakawa. However, these large contiguous land units still have a high productive capacity to sustain highly productive activities including intensive kiwifruit production.³⁴
- (b) The discrete areas of non-highly productive land areas are not suitable for residential development for a number of reasons, including already being in kiwifruit orchards,³⁵ within flood hazard overlays,³⁶ moderately steep slopes,³⁷ or steep or very steep slopes,³⁸ being zoned industrial and subject to flooding.³⁹
- (c) Turning to the PC95 site, Mr Perry's view is that its overall productive capacity is diminished by⁴⁰:
 - (i) Composition of fragmented HPL units intertwined with non-HPL units;
 - (ii) Small scale of land divided by a watercourse to the north and west;
 - (iii) The presence of SH2 and the existing Arawa Road development, making it difficult to combine the land with adjacent HPL units to the east and south.
 - (iv) Reverse sensitivity constraints to the east and south.

49. Turning to the planning evidence, Mr Murphy has commented on the qualifiers at clauses 3.6(2)(a)-(c) for clause 3.6(1)(b), which require a territorial authority to consider a range of reasonably practicable options for providing the required development capacity, including:

- (a) greater intensification in existing urban areas; and
- (b) rezoning of land that is not highly productive land as urban; and

³⁴ Statement of Evidence of Joel Perry at paragraph 64, see detailed analysis at paragraphs 59-63.

³⁵ Statement of Evidence of Joel Perry at paragraph 63(a).

³⁶ Statement of Evidence of Joel Perry at paragraph 63(b).

³⁷ Statement of Evidence of Joel Perry at paragraph 63(c).

³⁸ Statement of Evidence of Joel Perry at paragraph 63(d).

³⁹ Statement of Evidence of Joel Perry at paragraph 63(e).

⁴⁰ Statement of Evidence of Joel Perry at paragraph 65.

- (c) rezoning different highly productive land that has a relatively lower productive capacity.

50. Mr Murphy has considered:

- (a) Infill potential to Te Puke following the recent Plan Change 92 and considers this alone is inadequate to provide sufficient development capacity.⁴¹
- (b) Infill potential to existing Paengaroa settlement is similarly limited due to the current zoning and settlement pattern, which would require the acquisition of dwellings and loss of productive land, as all land within Paengaroa is highly productive.⁴² Expansion of the Eastern Centre is also not expected to contribute to the housing supply until post-2034,⁴³ which I submit is not a realistic option to address the current housing needs.
- (c) The expansion of Te Puke or Paengaroa. Again, this is likely to have worse outcomes as it would be more highly adverse to land productivity in comparison to the proposal..⁴⁴

51. I note the reporting officer has referred to *Blue Grass Ltd & Ors v Dunedin City Council* [2024] NZEnvC 83 to say that the more detailed mapping of a site does not prevail over the identification of the land as land use capability 1, 2 or 3 as mapped by the New Zealand Land Resource Inventory, and that the specific use of the paddock level assessment in comparison to the broader scale LUC classed land on the edges of Te Puke and Paengaroa is not appropriate.

52. With respect to Ms Mark, I question the relevance of *Blue Grass*. That case concerned whether land should be brought under the NPS-HPL transition period using the LUC process as a “holding position”, pending regional council mapping, or whether additional detailed mapping could prevail over the LUC system in the interim.

⁴¹ Statement of Evidence of Vincent Murphy at paragraph 95.1.

⁴² Statement of Evidence of Vincent Murphy at paragraph 95.2.

⁴³ Statement of Evidence of Vincent Murphy at paragraph 95.3.

⁴⁴ Statement of Evidence of Vincent Murphy at paragraph 95.2, in reliance on the evidence of Joel Perry.

53. In this case, there is no question about its highly productive status and the purpose of Mr Perry's detailed assessment was to compare the productive capacity of the land with other sites, not its status as highly productive land, in line with the definition of productive capacity in the NPS-HPL.
54. For completeness, Mr Perry has reassessed his findings using the New Zealand Land Resource Inventory method and confirms that his conclusions remain the same.⁴⁵
55. With that evidence in mind, I submit this is a situation where it is important not to lose sight of common sense. The settlement at Arawa Road is part of an urban environment suffering from housing shortage. The (theoretically) reasonably practicable and feasible options in the same locality and market would be more highly adverse in terms of productive land impacts in comparison to enabling development as proposed by PC95. There is very limited land available in this locality and market that could be developed for housing that would not result in a loss of highly productive land. Of the land that is not highly productive, there are constraints that affect its development potential, making the use of that land unrealistic.
56. The planned urban growth areas are not due to come available for decades and the recent plan changes in the Western Bay have not bridged the need for further development capacity to be added to meet demand. While it may be tempting to look at Paengaroa and Te Puke for increased growth, these options also come with greater constraints around and adversity to highly productive land.
57. That leaves the questions – why is this Site the best option?
58. The key difference is that the PC95 site is a dairy farm, not a kiwifruit orchard and that it borders an existing residential settlement. It has constraints that means it is the least impactful loss of highly productive land. The reality of the matter is that there is a greater opportunity cost for a landowner to convert a profitable kiwifruit orchard to housing, which means there is less incentive for that landowner to offer their land for urban growth. For PC95, there is a willing landowner ready to convert a dairy farm to residential development in a suitable location.

⁴⁵ Evidence of Joel Perry at paragraphs 85-95.

59. I submit that the Site is the most reasonably practicable and feasible option before you.

Will PC95 achieve a well-functioning urban environment?

60. PC95 has been carefully thought through and designed to achieve a “well-functioning urban environment” as per the meaning in Policy 1 of the NPS-UD. Mr Coles has considered these requirements at paragraphs 51 – 55 of his evidence and concludes that PC95 will make a positive contribution to the urban environment, in that:⁴⁶

- (a) PC95 will enable a variety of different lot sizes which will provide a range of homes of typology and price point. Access to Puanene Stream will be improved, creating a landscape buffer and riparian improvements to the stream which will improve water quality being discharged into this stream. This will in turn improve public access and enhance kaitiakitanga (Policy 1(a) NPS-UD).⁴⁷
- (b) PC95 will include a commercial area for commercial activities which are only provided for a limited extent under the commercial zoning (Policy 1(b) NPS-UD).⁴⁸
- (c) Pongakawa is on the existing strategic roading network and part of Council walking and cycling strategy that proposes offroad connections between centres.⁴⁹ The Site is also serviced by a bus stop and is located close to existing employment areas (e.g. orchards and farms, Te Puke/Paengaroa and the Rangiuru Business Park (Policy 1(c) NPS-UD).
- (d) Pongakawa has its own demand for housing that is not otherwise being met by other developments (other than a small amount of rural subdivision), PC95 does not have adverse impacts on the competitive operation of land development markets.⁵⁰ Further, even with PC95 there is still a shortfall in the supply of housing for the area (Policy 1(d) NPS-UD).

⁴⁶ Statement of Evidence of Richard Coles at paragraph 56.

⁴⁷ Statement of Evidence of Richard Coles at paragraph 51.

⁴⁸ Statement of Evidence of Richard Coles at paragraph 52.

⁴⁹ Statement of Evidence of Richard Coles at paragraph 53.

⁵⁰ Statement of Evidence of Richard Coles at paragraph 54, Statement of Evidence of Kevin Counsell at paragraph 55.

(e) There is likely to be a reduction in vehicle kilometres travelled, transition away from dairying and the connection to active transport options (Policy 1(e) NPS-UD).

61. With respect to resilience to the likely current and future effects of climate change (Policy 1(e) NPS-UD), Mr Coles' evidence confirms that the Site is located on generally flat land elevated above the modelled climate adjusted 100-year flood plain and outside the mapped Tsunami risk area, and free of all hazards, with the exception of localised overland flow paths that are addressed in the proposed Structure Plan and rule pre-requisites and consequently will be further managed and responded to through the detailed design of future subdivision (addressed by Daniel Hight in his evidence).⁵¹

62. This is why I submit, based on the evidence, that PC95 satisfies the second limb of the test in clause 3.6(1)(b) NPS-HPL.

3.6(1)(c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values

63. We now turn to the final limb of the test.

64. Mr Perry has carefully considered the overall productive capacity of the land and has found that it is likely that the overall productive capacity of the site is constrained by the fragmentation and lack of size and scale of the highly productive units, the size and location in relation to surrounding land uses and the presence of a modified watercourse dividing the site.⁵² Mr Murphy has provided a comprehensive assessment of the cultural, economic, social and environmental benefits of PC95.⁵³

65. Mr Perry details why constraints limit the overall productive capacity of the land as:⁵⁴

(a) Fragmentation – non-highly productive land units intertwine the highly productive land units as well as non-effective utilities area. These pose management challenges

⁵¹ Statement of Evidence of Richard Coles at paragraphs 30 and 31.

⁵² Statement of Evidence of Joel Perry at paragraph 17.

⁵³ Statement of Evidence of Vincent Murphy at paragraphs 98-99, Appendix C.

⁵⁴ Statement of Evidence of Joel Perry at paragraph 49.

and difficulty as there is not one large contiguous area of highly productive land to work with.

- (b) Lack of size and scale – the fragmentation has isolated small areas of highly productive land which may impact investment if there was a desire to change to more productive activities.
 - (c) Site and location in surrounding land uses. The location of the site in the south eastern corner of the land parcel and the immediately surrounding land to the south is State Highway 2 and existing residential development to the east. This limits the ability of the highly productive land within the site to be amalgamated with other highly productive land further to the south and the east.
 - (d) Reverse sensitivity constraints. The site is bordered by existing residential development which means land uses such as kiwifruit orchards, where large quantities of chemicals are applied, will require a robust spray management plan including on-going consultation with neighbours prior to spraying and effective shelter belts on the perimeter.
66. The Site must be viewed with these constraints at the forefront. While it may be tempting to take a broad brush approach to the Site's productive capacity, the direction of the NPS-HPL is to give careful consideration to these constraints when considering the loss of that land for other uses.
67. Mr Perry concludes that with respect to cumulative land productivity impacts, the loss of 9.9 ha of the classified highly productive land (when considering its particular constraints in terms of soil and land fragmentation, existing division and residential interfaces of the site, and inability to amalgamate with highly productive land in certain directions) out of 44,000 ha of the districts highly productive land is considered insignificant.
68. In that context, I say that the loss of highly productive land, when balanced against the constraints to the Site and the benefits that PC95 will bring, will be acceptable.
69. Mr Murphy's assessment demonstrates that the benefits outweigh the costs across all categories. Notably, there will be an environmental benefit through the surrendering of dairy

land and ecological enhancements. The overall financial benefit is quantified as \$8M over a 20 year period, in contrast to the cost of 10.03ha of land removed from productive use as \$513,000. While there will be a change to the character of the area, the social benefit of increased housing and the related community/commercial developments will outweigh any social costs.

Conclusion on planning pathway

70. My submission is that the evidence establishes that there is a planning pathway for PC95 as it meets the definition of urban environment and can satisfy the tests in clause 3.6(1) NPS-HPL.

Statutory framework

71. The question for the Commissioners is whether granting or declining PC95 will better give effect to the planning framework.
72. My submission is that the NPS-UD and the BOP-RPS are best given effect to by granting the plan change. I set out the reasons for this below.

NPS-UD – A responsive approach to development

73. I begin by focusing on the fundamental objectives of the NPS-UD. The NPS-UD has the objective that New Zealand’s urban environment “change over time in response to the diverse and changing needs of people, communities and future generations”⁵⁵ and requires local authorities to be “responsive to plan changes that would add significantly to development capacity and contribute to well- functioning urban environments, even where the development capacity is unanticipated by RMA planning documents, or out of sequence with planned land release.”⁵⁶
74. The NPS-UD does not attempt to constrain urban growth to specified areas. It recognises that circumstances can change over time and requires local authorities to respond to plan changes in light of those changes.

⁵⁵ NPS-UD Objective 4.

⁵⁶ NPS-UD Policy 8.

75. Mr Murphy has assessed PC95 against the objectives and policies of NPS-UD and confirms that it is consistent with these provisions, particularly due to:⁵⁷
- (a) The delivery of a well-functioning urban environment, a range of housing choices, improved access to the job market and social infrastructure (Objectives 1, 3 and Policy 1);
 - (b) Introduction of further housing supply, options and competition in a market that is considerably under-supplied (Objective 2, Policy 2); and
 - (c) Being responsive to that under supply by providing significant development capacity (Objective 6 and Policy 8).
76. Mr Coles also considers that PC95 satisfies NPS-UD clause 3.8 regarding responsive planning for unanticipated or out of sequence developments for many of the same reasons canvassed above and for its consistency with BOP-RPS Policy UG 7A.⁵⁸

BOP-RPS – Recognition of unanticipated or out of sequence urban development

77. Mr Murphy has provided a comprehensive assessment of PC95 against the relevant objectives and policies of the BOP-RPS⁵⁹ and concludes that the proposal is consistent with the overall strategic direction of the BOP-RPS, particularly in the context of unplanned urban development.
78. In that respect, the key policy is Policy UG 7A which provides for unanticipated or out of sequence urban growth. Mr Murphy considers that PC95 meets Policy UG 7A as⁶⁰:
- (a) It will contribute to alleviating a shortage that exists right now in the district and to meet demand in Pongakawa alone over the next 5-10 years (137-266 dwellings as per the evidence of Mr Counsell);

⁵⁷ Statement of Evidence of Vincent Murphy at paragraph 84.

⁵⁸ Statement of Evidence of Richard Coles at paragraphs 61-65.

⁵⁹ Statement of Evidence of Vincent Murphy at paragraph 74 and Appendix C.

⁶⁰ Statement of Evidence of Vincent Murphy at paragraph 77.

- (b) Over 5ha of land will be delivered which can in turn deliver 120-130 dwellings;
- (c) The residential land is located close to employment, transport links and improved community and recreation services;
- (d) The housing supply and associated infrastructure would be fully funded without affecting any investments into development elsewhere.

SmartGrowth (Future Development Strategy)

79. Mr Murphy has considered PC95 against the SmartGrowth FDS and considers it is consistent with its intent to enable unanticipated housing stock to come to market in accordance with the Connected Centres principles and the BOP-RPS criteria.⁶¹

Effects

80. I now turn to the effects of PC95. A comprehensive assessment of potential effects of the plan change has been presented in the PC95 report and further information responses to date.⁶² I focus on the key issues still in contention as raised in the s 42A report, being:

- (a) Wastewater;
- (b) Traffic;
- (c) Stormwater and flooding; and
- (d) Loss of highly productive land.

Wastewater

81. The evidence of Ms Kirstin Brown is that the proposed wastewater disposal field has considered appropriate design irrigation rates for the soils likely to be encountered within the wastewater field location. Ms Brown also considers that the field is suitably separated from

⁶¹ Statement of Evidence of Vincent Murphy at paragraphs 86-92.

⁶² Contamination exposure, archaeological, heritage and cultural effects, rural productivity and reverse sensitivity effects, ecological and hydrological effects, Infrastructure servicing and capacity effects, geotechnical stability effects and site suitability, natural hazard risks and effects, rural and residential character and amenity, and recreation effects, traffic, earthworks and construction effects.

the standing groundwater table and Puanene Stream. Mr Brown also confirms that groundwater monitoring will be undertaken as part of those works as required by the BOPRC OSET Plan.⁶³

82. The s 42A report states that further information is needed on certain aspects for wastewater to determine the suitability of the wastewater system.⁶⁴
83. My submission is that it does not require the level of detail sought by Council at this stage. The evidence of Ms Brown is sufficient to give you confidence that the wastewater system can appropriately service the Site. The further detail for the wastewater system will be subject to the BOPRC OSET Plan and the level of effects will be appropriately addressed during the resource consent process.

Stormwater

84. Mr Daniel Hight has provided evidence on the flooding and natural hazard effects. Mr Hight confirms⁶⁵ that as a result of the design of the stormwater treatment, attenuation and disposal system and overland flow paths through the site, there are no expected increases to the flood hazard exposure of any properties. Further the stormwater system will ensure that there are no adverse effects on the Puanene Stream immediately adjacent to the site.
85. Numerous submissions have raised the concern of the susceptibility of the site to flooding and the potential for increased flooding effects on other properties. Mr Hight confirms that the development will have no perceivable effect on the exposure of other properties to flood hazard including those in the upstream Arawa Road settlement.⁶⁶ Mr Hight also addresses the submitters' concerns regarding the quality of stormwater discharge to confirm that there will be a compliant level of run off treatment and a reduction of erosion and scour of the downstream environment.⁶⁷ Finally, the development will not have any adverse effects on the existing water pressure and will improve it to the status quo to meet firefighting requirements.⁶⁸

⁶³ Statement of Evidence of Kristin Brown at paragraphs 26-27.

⁶⁴ S42A report at paragraph 14.58.

⁶⁵ Statement of Evidence of Daniel Hight at paragraph 20.

⁶⁶ Statement of Evidence of Daniel Hight at paragraph 24.

⁶⁷ Statement of Evidence of Daniel Hight at paragraph 26.

⁶⁸ Statement of Evidence of Daniel Hight at paragraph 28.

86. In the s 42A report, the reporting officer says that further information is needed regarding stormwater⁶⁹. Mr Hight's evidence is that all of these issues have been addressed or are explained.⁷⁰ Mr Hight concludes that:

- (a) The site can be readily served with infrastructure sufficient to meet Council's development code.
- (b) earthworks will not create any offside effects that would give rise to increased flooding; and
- (c) that overall the plan change is appropriate from an engineering perspective.⁷¹

87. Mr Hight has also considered the evidence filed by the Bay of Plenty Regional Council and has confirmed that:

- (a) Stormwater discharged from the development will be treated for water quality, attenuated so as to prevent erosion and flooding downstream, and discharge points specifically will be protected against erosion;⁷²
- (b) Ms Holden's suggested changes to the stormwater provisions are acceptable;⁷³
- (c) The stormwater solution proposed can address all of the concerns raised by Ms Southerwood regarding soakage design rates,⁷⁴ groundwater depth assumptions⁷⁵ and the secondary run off rate.⁷⁶

88. In light of Mr Hight's reply evidence, I submit that stormwater and flooding issues have been adequately resolved and will be appropriately managed by PC95.

⁶⁹ Statement of Evidence of Daniel Hight at paragraph 37, s 42A Report paragraph 15.57.

⁷⁰ Statement of Evidence of Daniel Hight at paragraphs 38-46.

⁷¹ Statement of Evidence of Daniel Hight at paragraph 48.

⁷² Reply Evidence of Daniel Hight at paragraph 3, in response to Hamish Dean's Statement of Evidence at paragraphs 42-43.

⁷³ Reply Evidence of Daniel Hight at paragraph 4.

⁷⁴ Reply Evidence of Daniel Hight at paragraph 5(a).

⁷⁵ Reply Evidence of Daniel Hight at paragraph 5(b).

⁷⁶ Reply Evidence of Daniel Hight at paragraph 5(c).

Traffic

89. Turning to traffic effects, Mr Harrison concludes that the widening of Arawa Road between State Highway 2 and the site will act as a threshold to reduce vehicle speeds and is appropriate⁷⁷. Mr Harrison considers that the expected increase in traffic on State Highway 2 is able to be accommodated on the existing carriageway with minimal effects⁷⁸. The intersection of State Highway 2 and Arawa Road was proposed to be upgraded with the provision of an off-set auxiliary left turn lane,⁷⁹ however NZTA have now provided evidence that this is not required.
90. Mr Harrison considers that with the inclusion of the small commercial centre providing local services and the proximity of the site to rural employment opportunities in Pongakawa and other nearby places, an overall reduction in vehicle kilometres travelled is likely⁸⁰.
91. Mr Harrison agrees that the design recommendation in the evidence of NZTA is appropriate⁸¹ and that consideration should be given to increasing the width of the right turn lane to 3.5 m.⁸²
92. I submit that traffic effects can be appropriately managed by PC95.

Positive effects

93. My submission is that PC95 will generate notable positive effects, including:⁸³
- (a) Provision of dwellings to a market suffering from insufficient supply, at a range of price points, centred on an existing urban area servicing the surrounding rural community;
 - (b) Increasing housing proximity close to the state highway transport corridor and providing higher accessibility to horticultural/industrial employment opportunities nearby, being supply not otherwise going to be delivered in the short-medium terms.

⁷⁷ Statement of Evidence of Bruce Harrison at paragraph 61.

⁷⁸ Statement of Evidence of Bruce Harrison at paragraph 62.

⁷⁹ Statement of Evidence of Bruce Harrison at paragraph 63.

⁸⁰ Statement of Evidence of Bruce Harrison at paragraph 47.

⁸¹ Reply Evidence of Bruce Harrison at paragraph 4.

⁸² Reply Evidence of Bruce Harrison at paragraph 9.

⁸³ Statement of Evidence of Vincent Murphy at paragraphs 119-121.

- (c) Improved social infrastructure (recreation routes and reserves, convenience/shop facilities, much safer bus stop, potentially medical or similar community facilities);
- (d) Improved safety of SH2/Arawa Road intersection and the operation of Arawa Road itself;
- (e) Improved resilience of water supply to Arawa Road;
- (f) Potential for improved quality and resilience of a new reticulated wastewater management scheme that could service the entire Arawa Road area instead of just the PC95 development;
- (g) Net improvements in terms of downstream flood risk, and stormwater quality being discharged from the site;
- (h) Considerable additions of native terrestrial and aquatic habitat to the site and Puanene Stream, including riparia improvements and public access.

Overall conclusion on effects

94. I submit that overall, the provisions of the PC95 will appropriately address any effects on the environment. Further, the positive effects are significant.

That the proposed objectives and policies and methods are the most appropriate way to achieve the purpose of the RMA (section 32(3)(a))

95. In my submission, PC95 is the most appropriate way to achieve the purpose of the RMA for the reasons set out in the Applicant's s 32 report, which are summarised below as being:

- (a) It will have the least impactful loss of HPL, thereby retaining the higher productive capacity land to continue to be used to support the economic and social well-being of the area; whilst
- (b) Providing much needed housing supply in a range of price points in an area of demand; and

- (c) Providing for the social, cultural and economic well-being of the Pongakawa and Western Bay community.

96. I reiterate Mr Murphy's conclusion that the objective reflected by PC95 is the most appropriate way to achieve the purpose of the RMA in responding to demand for housing in the area and is the appropriate location and practicable option for enabling supply quickly. The proposed provisions are suitably efficient and effective to achieve this objective.⁸⁴

Other matters

97. The submission of Mike Maassen raises a number of matters / personal matters about the applicants. To the extent that these comments are largely within and at the end of a 'second' expanded submission received by the Council it is unclear whether this forms part of the record given that Mr Maassen lodged a submission, and has now prepared evidence.

98. The Marsh's do not accept these comments as true and correct, or that they are appropriate to be raised in this forum. They strongly refute statements about them personally and are prepared to give evidence in response including calling independent evidence.

99. However, I do not propose to respond to these in detail given they are irrelevant to the plan change before you. I invite Mr Maassen to withdraw the comments, and otherwise submit that they are irrelevant to this plan change and should be accorded no weight by the Commissioners (if indeed the second submission is accepted onto the record).

Conclusion

100. As I have said earlier, the decision before you is one governed by complex planning policy and strategy, however it is also one where you must not lose sight of common sense. The Western Bay is facing a housing shortage – that is without question – and it will continue to face such a shortage for many years to come as there is not sufficient supply in the pipeline to meet the need.

⁸⁴ Statement of Evidence of Vincent Murphy at paragraph 54.

101. This Plan Change is a very real and achievable way to ensure more housing is provided on land that will have the least impact overall and will support the existing growth for the area. A Plan Change of this kind is anticipated and expected by the NPS-UD and BOP-RPS. It is not a proposal which is unusual or hostile to any of the planning framework. I submit that PC95 is responsive planning in action and should be seen as a welcome addition to the planned urban growth for the Western Bay.

102. I submit that overall granting the Plan Change will be a sound resource management decision and will achieve the purpose of the RMA.

DATED this 12th day of November 2024



Vanessa Hamm / Bridget Bailey

Counsel for Kevin and Andrea Marsh