

**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 Private Plan Change
95 to the Western Bay of Plenty
District Plan: Pencarrow Estate
Pongakawa

**LEGAL SUBMISSIONS ON BEHALF OF
WESTERN BAY OF PLENTY DISTRICT COUNCIL**

Dated: 12 November 2024

CooneyLeesMorgan

ANZ Centre
Level 3, 247 Cameron Road
PO Box 143
TAURANGA 3140
Tel: (07) 578 2099
Partner: Mary Hill
Lawyer: Kate Stubbing
kstubbing@clmlaw.co.nz

MAY IT PLEASE THE PANEL**1. INTRODUCTION**

- 1.1 Private Plan Change 95 (**PPC95**) proposes to rezone approximately 10ha of land at Pongakawa for residential use, along with commercial land and reserve areas. The expected residential yield is 120-130 dwellings. The land is currently zoned Rural under the Western Bay of Plenty District Plan (the **District Plan**) and is Land Use Capability Class 2 (**LUC2**).
- 1.2 The PPC95 land is not identified for future urban growth or urban development in any relevant policy documents, including the most recent Housing and Business Capacity Assessment 2022 (**HBA**) and the SmartGrowth Strategy 2024-2074. Further, it is not consistent with the connected centres approach which underpins the SmartGrowth Strategy (and the Future Development Strategy (**FDS**) within that document).
- 1.3 The Arawa Road settlement is neither “predominantly urban in character” nor intended to be “part of a housing and labour market of at least 10,000 people” including the housing and labour market of Te Puke. The existing settlement is predominantly rural in character. The National Policy Statement for Urban Development (**NPS-UD**) is not relevant to PPC95 because the land is not within or affecting an urban environment.
- 1.4 Similar to a number of other private plan changes around the country, PPC95 has been affected by the introduction of the National Policy Statement for Highly Productive Land (**NPS-HPL**) which came into effect on 17 October 2022 (when preparation of PPC95 was underway¹). In a recent Environment Court decision relating to a private plan change near Nelson, Judges Hassan and Reid described Objective 1 and Policy 5 of the NPS-HPL as provisions that “*set a very high bar to meet the statutory obligation...to give effect to the NPS-HPL*”.²
- 1.5 The test, under the current statutory framework, is whether PPC95 gives effect to the NPS-HPL. It is not just whether the loss of highly productive

¹ See Statement of Evidence of Richard Coles dated 24 October 2024 which refers at paragraph 13 to being instructed to prepare a private plan change application in 2021.

² *Save the Maitai Incorporated v Nelson City Council* [2024] NZEnvC155 at paragraph 103 of Appendix 1.

land is outweighed by the benefits associated with this Plan Change (which reflects the conclusion from Mr Coles' evidence³).

1.6 These legal submissions will address:

- (a) Relevant statutory framework (section 2);
- (b) The relevance of the NPS-UD (section 3);
- (c) Requirement to "give effect to" the NPS-HPL (section 4);
- (d) RPS (section 5);
- (e) SmartGrowth, FDS, HBA (section 6);
- (f) Wastewater, stormwater and other matters (section 7); and
- (g) Council's evidence (section 8).

1.7 Further matters that are raised in the legal submissions on behalf of the applicant and submitters, or during the hearing, may also be addressed during the presentation of legal submissions on behalf of Council.

2. **STATUTORY FRAMEWORK**

2.1 The RMA sets out requirements for the preparation of plans and changes to them. The relevant statutory framework for the Panel's consideration of PPC95 raises the following issues:⁴

- (a) Whether PPC95 is designed to accord with and assist the Council to carry out its functions to achieve the purpose of the Act;⁵
- (b) Whether PPC95 gives effect to any national policy statement, the New Zealand Coastal Policy Statement and the regional policy statement;⁶
- (c) Whether PPC95 is consistent with any regional plan;⁷

³ Statement of Evidence of Richard Coles dated 24 October 2024 at paragraph 18.

⁴ From the often-cited *Long Bay* decision and updated in *Colonial Vineyard Ltd v Marlborough District Council* [2014].

⁵ Sections 31, 72 and 74(1).

⁶ Section 75(3).

⁷ Section 75(4)(b).

- (d) Whether PPC95 is in accordance with any regulations (including national environmental standards);⁸
- (e) Whether PPC95 has regard to any emissions reduction plan and national adaptation plan;⁹
- (f) Whether PPC95 takes into account any relevant planning document recognised by an iwi authority;¹⁰
- (g) A district plan assessment of the extent to which each objective is the most appropriate way to achieve the purpose of the RMA;¹¹
- (h) Whether the provisions in PPC95 are the most appropriate way to achieve the objectives by:¹²
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions for achieving the objectives.
- (i) Whether the proposed rules have regard to the actual or potential effects on the environment.¹³

2.2 The higher order planning documents and strategic plans that are relevant to PPC95 have been assessed in the Section 42A Report. These legal submissions do not address all the factors above but instead focus on the key matters that are understood from the applicant's evidence to be areas where there are different legal (and planning) interpretations of the NPS-UD and NPS-HPL.

3. THE RELEVANCE OF THE NPS-UD

3.1 A key issue for the Panel's determination is whether the NPS-UD is relevant to PPC95.

3.2 All local authorities with territories that contain all or part of an "urban environment" were required to implement the relevant intensification

⁸ Section 74(1).

⁹ Section 74(2)(d) and (e).

¹⁰ Section 74(2A).

¹¹ Section 32(1)(a).

¹² Section 32(1)(b).

¹³ Section 76(3).

provisions under the NPS-UD. The RMA Amendment Act¹⁴ in 2021 was designed to increase housing supply by speeding up implementation of the NPS-UD and enabling more medium-density homes.

3.3 Clause 1.3(1)(b) of the NPS-UD states that the NPS applies to planning decisions that affect an “urban environment”.

3.4 “Urban environment” is defined in the NPS-UD as:

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

3.5 Both parts of the definition are required to be met in order for an area of land to be considered part of the “urban environment”.

3.6 The term “urban area” is also relevant to the requirements of the NPS-UD. Clause 3.2(1)(a) requires local authorities to provide at least sufficient development housing capacity in existing and new urban areas. The HBA and FDS respond to this requirement.

3.7 The applicant’s position has evolved:

(a) In the Plan Change Application it stated:

The proposal is therefore considered to provide significant development capacity, contributing to a well-functioning urban environment at Pongakawa, as well as being well-connected to transport corridors.¹⁵

(b) In the further information provided on 30 August 2024 it states:

...the Arawa Road Pongakawa settlement (particularly as intended to be modified by the proposal) is predominantly urban in character, satisfying clause (a) of the definition of urban environment.

...the Arawa Road residential settlement is in the same locality and housing market as Te Puke township (as is the settlement at Paengaroa). Based on the assessment that the land in question will be urban and is in the same housing and labour market as Te Puke township, it is assessed that the land is part of an urban environment and the planning decision to be determined is one that affects an urban environment.¹⁶

¹⁴ Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

¹⁵ Application for Plan Change, November 2023, page 48.

¹⁶ Momentum letter dated 30 August 2024 on page 2.

- (c) The applicant's expert evidence provides the following opinions:

Pongakawa has been identified by Mr Counsell as being in the same locality and market as Te Puke and is also within proximity of the Rangiuru Business Park (4000 employees) which combined have a population exceeding 10,000 people. This is the 'urban environment'.¹⁷

I therefore remain of the opinion that the land is intended to be predominantly urban in character (expanding, consolidating and enhancing the existing Arawa Road residential settlement), and is part of a housing and labour market of over 10,000 people. It is therefore my assessment that the planning decision to be determined is one that affects an urban environment which in turn is subject to the NPS-UD.¹⁸

- 3.8 As set out in Council's Section 42A Report the Arawa Road settlement is not considered to be an urban environment that is intended to be subject to the urban development requirements in the NPS-UD.
- 3.9 There are two urban environments within the Western Bay of Plenty District, which are the settlements of Te Puke and Ōmokoroa. Both are plan-enabled to grow to populations of 13,000 people.
- 3.10 With reference to the first test under the definition of "urban environment" in the NPS-UD and whether the Arawa Road settlement "*is, or is intended to be, predominantly urban in character*", this is addressed in the Section 42A Report under Topic 2 – Settlement Pattern and for the reasons set out in that report the evidence does not support this. The existing settlement is not predominantly "urban" in character.
- 3.11 The existing rural settlement at Arawa Road has 85 lots zoned Residential and a small number of rural-residential sized lots (zoned Rural) directly adjoining the PPC95 site. It is within the wider Pongakawa rural area and is in the eastern end of the District. There is no commercial zoning within the existing settlement. The wider rural area is characterised by horticulture and agricultural land. Evidence on behalf of the applicant refers to the lack of amenities in Pongakawa that are usually associated with small settlements.¹⁹
- 3.12 In the Section 42A Report the reporting planner Ms Mark has carefully considered the nature and character of the existing settlement and the surrounding area, including in relation to other relevant definitions in

¹⁷ Statement of evidence of Richard Coles dated 24 October 2024, at paragraph 50

¹⁸ Statement of evidence of Vincent Murphy dated 24 October 2024, at paragraph 65.

¹⁹ See for example Statement of evidence of Richard Coles dated 24 October 2024 at paragraph 82 and Statement of evidence of David Hamilton dated 24 October 2024 at paragraph 3.

documents such as the District Plan, Statistics NZ, the SmartGrowth Strategy 2024-2034, the RPS and the Regional Natural Resources Plan (**RNRP**). None of these documents support an argument that the Arawa Road settlement “*is, or is intended to be, predominantly urban in character*”. In my submission Pongakawa does not meet the first part of the definition of “urban environment”.

- 3.13 The second part of the definition (and both parts are required to be met) is whether the Arawa Road settlement “*is or is intended to be, part of a housing and labour market of at least 10,000 people*”. The PPC95 site is approximately 15km from Te Puke.
- 3.14 The Environment Court has considered whether urbanisation of rural areas to support urban environments from “afar” is consistent with earlier national direction on urban development. In *Endsleigh Cottages Ltd v Hastings District Council*,²⁰ the Court did not accept that subdivision of rural zoned land at Haumoana to service the Hastings / Napier urban environment was consistent with the NPS-UDC (the previous version of the NPS-UD). The site was approximately 12km south of Napier and 10km east of Hastings. In finding the NPS-UDC was not relevant to the subdivision consent appeal, the Court commented that:

We do not consider that an ‘area of land’ includes the entire territorial administrative area of the Council, as that does not comprise a concentrated settlement. We had no evidence to suggest that a population of 10,000-plus persons is intended for Haumoana/Te Awanga.²¹

- 3.15 While this finding was made under the 2016 version of the NPS-UD, and a different definition of urban environment, in our opinion the Court’s comments are still useful in this case. “Area of land” is also used in the current definition of “urban environment”.
- 3.16 Mr Fraser Colegrave will respond to the further arguments raised in the evidence on behalf of the applicant on the question of whether the Arawa Road settlement is (or is intended to be) part of the same housing and labour market as Te Puke. In his Technical Memo (attached to the Section 42A Report) he describes the site as being located “*in a*

²⁰ *Endsleigh Cottages Ltd v Hastings District Council* [2020] NZEnvC 64.

²¹ *Ibid* at paragraph [249].

relatively rural context, away from the sub-region's existing urban areas".²²

- 3.17 In my opinion to interpret Policies 1 and 8 of the NPS-UD as potentially supporting the rezoning of rural land to residential would not be consistent with the purpose and context of the NPS-UD. This is on the basis of Council's evidence, and the supporting legal analysis above, that PPC95 is not within or affecting an urban environment. The NPS-UD provisions are discussed in further detail in the Section 42A Report should the Panel reach a different view on the relevance of the NPS-UD.
- 3.18 In my submission, the NPS-UD is not relevant to PPC95. It does not apply because the land is not within or affecting an urban environment.

4. **REQUIREMENT TO "GIVE EFFECT TO" THE NPS-HPL**

- 4.1 It is understood that there is no issue between the parties that the entire PPC95 area is highly productive land under the interim definition of highly productive land in clause 3.5(7) of the NPS-HPL. That is because on 17 October 2022, the land was zoned general rural under the District Plan, and mapped as LUC2 by the New Zealand Land Resource Inventory.
- 4.2 The Environment Court has determined that it is not possible to undertake a site-specific assessment for the purposes of the interim definition because such an assessment would occur after the commencement date of 17 October 2022. In my opinion the Court's reasons for reaching this interpretation are useful context to the transitional period under the NPS-HPL. The Court said:

In my view, this interpretation:

- (a) accords with the intention of the NPS-HPL to protect HPL for primary production (particularly during the transitional period);
- (b) is also in accordance with the intention of the NPS-HPL that the proper process for determining what land will ultimately be mapped as HPL is the Schedule 1 RMA process, and not an ad-hoc process undertaken by private landowners as suggested by the appellants;
- (c) does not, in my opinion, introduce retrospectivity. The NPS-HPL applies from its commencement date. Whether the land is considered HPL for the purposes of the transitional period is also to be ascertained

²² Attachment 7 - Insight Economics Peer Review of NERA Assessment (dated 10 May 2024) at page 2.

at the commencement date. There is instead an element of retrospectivity in the appellants' arguments — if the 'state of the land' is to be ascertained as at the commencement date, but by assessments occurring after that date, that means that the status as HPL would be retrospectively amended;

(d) does not 'freeze' or 'sterilise' the land: it means that, during the transitional period, the relevant land will be treated as HPL. The appellants are not prevented from obtaining more detailed assessments of the land during that period. Those assessments can be fed into the mapping process that regional councils must undertake;

(e) does not introduce 'nonsensical' outcomes. The evidence presented is that the LUC classification in the NZLRI can be ascertained as at the commencement date. In contrast, if it was open to landowners to obtain more detailed LUC classifications of their land at any time (but assessed as it existed at the commencement date) then the status of the land as HPL could change and change repeatedly throughout the transitional period in an ad-hoc manner. There are no mechanics in the NPS-HPL to show how a site-specific assessment is then received and the manner in which it changes the transitional status;

(f) does not render the words 'or by any more detailed mapping' otiose. The definition of LUC 1, 2 or 3 land in cl 1.3 of the NPS-HPL applies to all references to LUC 1, 2 or 3 land in the NPS-HPL. It does not apply only to the transitional period meaning of HPL in cl 3.5(7). 'More detailed mapping' after the commencement date might reveal that the land is or is not LUC 1, 2 or 3 land. However, the purpose of the NPS-HPL and in particular the transitional period, is that any new information concerning LUC classification is to be fed into the Schedule 1 mapping process to be undertaken by regional councils. Clause 3.4(5) (for example) anticipates that a regional council might accept any more detailed mapping (that uses the LUC classification).²³

- 4.3 The Court's statement above that the intention of the NPS-HPL is to protect HPL for primary production (particularly during the transitional period) is reflected in the one objective in the NPS:

Objective: Highly productive land is **protected** for use in land-based primary production, both now and for future generations.

(emphasis added)

- 4.4 Policy 5 is relevant to this rezoning proposal and states:

Policy 5: The urban rezoning of highly productive land is **avoided**, except as provided in this National Policy Statement.

(emphasis added)

²³ *Blue Grass Limited & Ors v Dunedin City Council* [2024] NZEnvC 83 at paragraph 51.

4.5 The Environment Court in the recent *Save the Maitai* decision²⁴ describes these “*relevant provisions in the NPS-HPL as highly directive*”. Further, it states:

These provisions set a very high bar to meet the statutory obligation in ss75(3) and 67(3) for the NRMP to give effect to the NPS-HPL.

4.6 Clause 3.6 is titled “Restricting urban rezoning of highly productive land”. Clause 3.6(1) states:

(1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:

- (a) 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; and
- (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.

4.7 Each of the three tests is required to be satisfied for urban rezoning to be allowed. For the reasons outlined in the Section 42A Report and supporting reports, including the economic peer reviews by Fraser Colegrave and the peer review by Stuart Ford, it is not considered these tests are met. Council experts intend to respond to the further arguments raised in the evidence on behalf of the applicant on these matters at the hearing, focusing on those areas of disagreement.

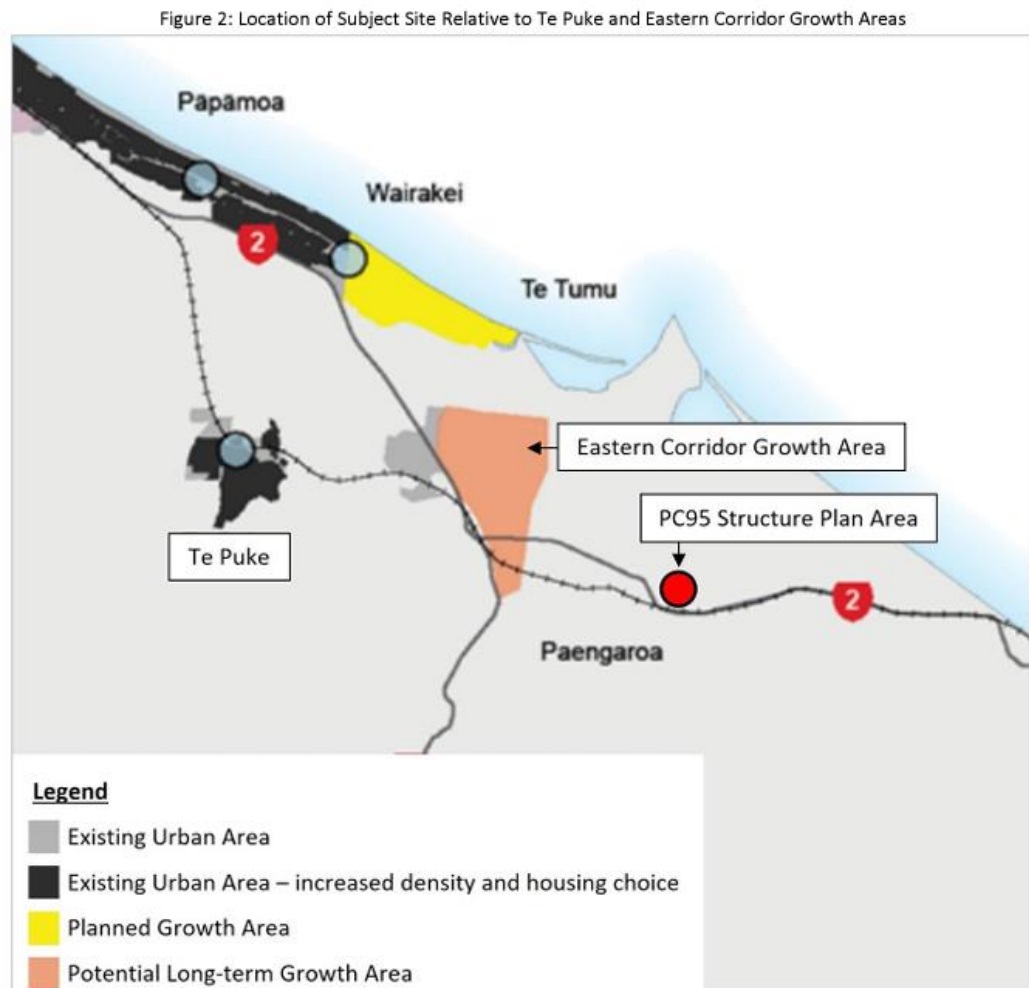
4.8 In relation to (a) the question is whether PPC95 is required to provide sufficient development capacity to meet demand for housing. Council acknowledges that the HBA identifies a shortfall in housing demand in the District (as a whole) but this is only in the medium and long term. Further, the HBA says this demand can be met by unlocking other planned areas. There is no shortfall in the short term.

4.9 It is Council’s view that the evidence provided by the applicant does not establish that PPC95 is required. Expansion of the Pongakawa settlement is not required for delivering sufficient development capacity.

²⁴ *Save the Maitai Incorporated v Nelson City Council* [2024] NZEnvC 155.

Mr Colegrave will respond to the evidence from Mr Counsell on behalf of the applicant and highlight his concerns with the assumptions and data used to seek to justify the proposal.

- 4.10 Relevantly, the PPC95 site is located within the eastern corridor of the SmartGrowth Strategy 2024-2074. The agreed staged growth areas through SmartGrowth in the eastern corridor are Te Puke, Te Tumu, Rangiuru Business Park and the future Te Kāinga. Figure 2 in Mr Colegrave’s memorandum shows these areas relative to the PPC95 location and is reproduced here for ease of reference:



- 4.11 In relation to (b) urban rezoning of highly productive land is allowed only if there are no other reasonably practicable and feasible options within the same locality and market. Development capacity “within the same locality and market” is defined in clause 3.6(3). In his earlier report Mr Colegrave concluded that Pongakawa and Te Puke comprise different localities and markets for the purposes of the NPS-HPL. Further, based on the evidence of Mr Colegrave, Council remains of the view that on a

robust analysis the applicant's evidence does not establish that there are no other reasonably feasible and practicable options for providing the same development capacity as the proposal (even if the urban rezoning was required to provide sufficient development capacity which is not accepted).

- 4.12 In response to the applicant's evidence on land productivity, Mr Ford has reviewed this and is available to respond to the further assessment undertaken by Mr Perry, which continues to seek to argue that the current site has a lower overall productive capacity than alternative sites. Mr Ford does not consider is a robust assessment on the evidence available.
- 4.13 In relation to (c) the question is whether the benefits of rezoning outweigh the long-term costs associated with the loss of highly productive land for land-based primary production. While the applicant has provided further information and assessment in its evidence in relation to (c), Mr Colegrave will respond to the evidence of Mr Counsell and confirm his view that this does not conclusively demonstrate that PPC95 will deliver net economic benefits over and above rural production.
- 4.14 In the Auckland Council decision in relation to Plan Change 73, which was declined on the basis that the threshold criteria in clause 3.6(1) of the NPS-HPL had not been sufficiently met, the Panel described its view of the purpose and likely outcome of the NPS-HPL as "*that it requires a refocus away from greenfield development as the primary method of enabling growth and a fresh look at existing urban areas*". This decision is subject to Environment Court appeals but I consider this statement reflects the objectives and policies of the NPS-HPL and it would be open to the Panel to reach the same conclusion.
- 4.15 There is clear direction in the NPS-HPL that the burden of proof necessary to meet the requirements of clause 3.6(1) to rezone highly productive land is high. On the basis of the Section 32 Report, Section 42A Report and evidence filed on behalf of the applicant, in my submission this threshold has not been met and PPC95 does not *give effect to* the NPS-HPL as required by the Act.

5. REGIONAL POLICY STATEMENT

- 5.1 PPC95 must also “give effect to” the RPS. Proposed Change 6 to the RPS is also a matter for the Panel to have regard to (section 74(2)(a)(i)). Change 6 proposes to remove the urban limits around key urban areas while still being responsive to proposals within or supporting urban environments. Council has assessed PPC95 against Policy UG14B (under Change 6) which seeks to “restrict” urban activities outside urban environments. To assist the Panel, Council has also assessed PPC95 against Policy UG7A (under Change 6) despite not being considered applicable as it relates to urban environments.
- 5.2 Generally, the issue of what weight to give to the Change 6 provisions would need to be considered on a case-by-case basis. In my submission, while the appeals have not yet been formally resolved, because Change 6 has been subject to independent decision-making, the limited nature of the appeals, and because parties have reached agreement on the appeals (subject to the Court’s approval), Change 6 can be given significant weight.
- 5.3 Policy UG14B and other RPS provisions have been discussed in the Section 42A Report. Any further matters arising from the applicant’s and submitter’s evidence will be addressed when Ms Mark provides an update at the hearing.

6. SMARTGROWTH, FDS, HBA

- 6.1 In addition to the RPS, strategic future growth planning for the western Bay of Plenty sub-region has been ongoing and considered through a number of strategic planning documents including:
- (a) SmartGrowth Strategy 2024-2074, which includes the Future Development Strategy (the FDS is required under the NPS-UD); and
 - (b) The Housing and Business Capacity Assessment 2022 (also required under the NPS-UD).
- 6.2 For the reasons outlined in the Section 42A Report, Council does not consider PPC95 to be consistent with, or contemplated by, any of these documents.

- 6.3 The HBA assesses housing sufficiency across the Western Bay of Plenty District as a whole. It identifies that there is sufficient housing capacity over the short term. It only identifies a housing insufficiency over the medium and long terms.²⁵
- 6.4 The FDS identifies the locations of the staged growth areas that will provide housing capacity over the short, medium and long terms. The FDS does not identify any short, medium or long term greenfield residential development as being required in the Pongakawa/PPC95 vicinity. It does not identify the proposed site or Pongakawa as being an existing urban area or staged growth area planned for future growth.²⁶
- 6.5 While the FDS does not identify the PPC95 area as a “No Go” area, this term is only used to describe areas that are not subject to constraints such as ecological, cultural, heritage and natural hazards, It does not infer that the land is a suitable location for urban growth. For this purpose, there are staged growth areas in the eastern area (including Te Puke and Te Kāinga) which will provide required capacity.
- 6.6 SmartGrowth identifies urban intensification and “access to opportunity” as central to its Connected Centres programme.²⁷ Growth is intended to occur through increasing the number of dwellings by intensifying existing urban areas, and through efficient access to local social and economic opportunities. The FDS is underpinned by the Connected Centres spatial scenario outlined in SmartGrowth.²⁸
- 6.7 For the reasons set out in the Section 42A Report and supported by the planning evidence on behalf of the Regional Council, PPC95 is not supported and does not align with these strategic planning documents.

7. **WASTEWATER, STORMWATER AND OTHER MATTERS**

- 7.1 Council’s concerns in relation to wastewater and stormwater have focused on whether the proposed wastewater system and overland flow paths shown on the structure plan will be viable. Council’s experts in relation to these matters can provide an update to the Panel at the

²⁵ See HBA at page 105.

²⁶ See for example Map 18 on page 163.

²⁷ See SmartGrowth Strategy at page 44.

²⁸ See FDS at page 151.

hearing on outstanding matters in response to the applicant's and submitters' evidence on these issues.

- 7.2 Council's concerns in relation to natural hazards have related to overland flow paths and proposed evacuation routes. These matters will also be addressed at the hearing.
- 7.3 Council witnesses intend to respond to the applicant's and submitter's evidence in relation to transport, riparian margins, cycleways and water supply at the hearing.

8. **COUNCIL'S EVIDENCE**

- 8.1 In addition to the author of the Section 42A Report, Ms Abigail Mark (Senior Environmental Planner, WBOPDC), the following experts will be available to give evidence for Council or respond to the Panel's questions in relation to PPC95:

- (a) Fraser Colegrave* (Insight Economics) – Economic assessment
- (b) Stuart Ford* (Agri Business Group) – Pedology and Land Productivity
- (c) James Abraham (Asset Management Team Leader WBOPDC) - Wastewater, Stormwater, Water Supply
- (d) Samantha Prendergast (Project Engineer Transportation WBOPDC) – Transportation
- (e) Jason Crummer (Senior Recreation Planner WBOPDC) - Reserves/Recreation/Cycleways

(* joining online)

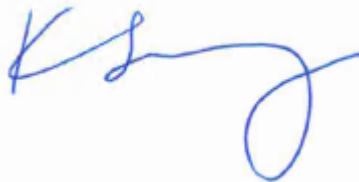
- 8.2 Where the opinions of these witnesses have been relied on by Ms Mark in the Section 42A Report and where there are any changes to the opinions these witnesses expressed (in response to the evidence filed on behalf of the applicant and submitters), the witnesses will be available to discuss these and provide further explanation as required.
- 8.3 Tony Clow (Principal Policy Lead Environmental Planning WBOPDC) – Planning, Georgina Dean (Senior Environmental Planner, Urban Design

WBOPDC) – Planning and Tracey Miller (Resource Management Strategic Advisor WBOPDC) – SmartGrowth/Planning will also be in attendance as required.

9. **CONCLUSION**

- 9.1 PPC95 must be considered under the statutory framework applying today (or more accurately at the time of the Panel's decision). It is acknowledged that there are a number of changes that have been signalled to both the RMA and the current package of national direction including the NPS-UD and NPS-HPL. However, any future changes are not relevant to the Panel's decisions in relation to PPC95.
- 9.2 The existing Arawa Road settlement is not predominantly urban in character. It is not an "urban environment" to which the NPS-UD relates.
- 9.3 There is clear direction in the NPS-HPL that the threshold necessary to meet the requirements of clause 3.6(1) to rezone highly productive land is high. On the basis of the section 32 report and evidence filed on behalf of the applicant, in my submission this threshold has not been met and PPC95 does not *give effect to* the NPS-HPL.
- 9.4 Until the Regional Council has mapped the highly productive land in the Bay of Plenty, and the maps in the RPS have been made operative, the transitional definition of HPL applies and is intended to protect highly productive land for use in land-based primary production, both now and in future generations.

Dated: 12 November 2024



Kate Stubbing

Counsel for the Western Bay of Plenty District Council