

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

FURTHER LEGAL SUBMISSIONS ON BEHALF OF KEVIN AND ANDREA MARSH

Introduction

1. These submissions address the Environment Court decision *Gardon Trust v Auckland Council* [2025] NZEnvC 58.
2. Counsel considers that *Gardon Trust* is relevant to these proceedings as it provides helpful guidance on the interpretation of the term ‘same locality and market’ in clause 3.6(1)(b) of the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**). The question of insufficient development capacity is also discussed.
3. Counsel sets out below the key findings of the Court in *Gardon Trust* on these issues and makes brief comments as to how it relates to the Applicant’s case that Pongakawa is in the same locality and market as Te Puke.

Locality and market

4. Turning to *Gardon Trust*, the Court referred to the definition of “urban environment” in the National Policy Statement for Urban Development (**NPSUD**), and found that it is “therefore clear that the concept of ‘locality and market’ requires interpretation in terms of an area of land or geographical/spatial extent associated with where people

live and work. Furthermore, when making assessments involved with such a 'locality and market', associated assumptions should be made explicit.¹

5. The Court then commented at paragraph [167]:

[167] It is worth noting the use of the phrase 'within the same locality and market', and particularly the use of the word 'within'. To us, this signals clearly that the concept of 'locality' is distinct from that of 'location' in that it implies an explicitly defined spatial extent of an area, as distinct from a point on a map or an undefined area. Defining the spatial extent of a locality is clearly essential to any exercise of assessment of housing demand, housing supply, development capacity and well-functioning urban environment.

6. The Court concluded that the key attributes of the concept of 'locality and market' includes²:

- (a) A clearly defined area/geographical extent most relevant to the assessment of capacity and demand;
- (b) Identification of related dwelling typologies with respect to market preferences and affordability, across the range of densities – from urban zoning to rural zoning – associated with the clearly-defined area; and
- (c) With respect to areas of urban zoning, consideration of well-functioning urban form (Live-Work-Play connections) associated with the clearly defined area.

7. The Court went on to say (emphasis added):³

[172] We have taken the view that the concepts of 'locality' and 'market' need to be considered as distinct but complementary concepts, rather than a single concept, where:

- (a) *'locality' refers to a range of attributes such as **social and community identity**; infrastructure provision; community amenities provision*

¹ *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [155].

² *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [171].

³ *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [172].

(theatre, library, recreation ground, public reserves, ...); social services provision (health, education, ...); while

- (b) *‘market’ is related to buyer preferences and affordability of housing in that locality, as well as to developer preferences and profitability.*

8. The Court concluded at [222] that:⁴

- (a) *The Council’s approach to defining the appropriate interpretation of the phrase ‘same locality and market’ and particularly the corresponding spatial or geographic extent appears to be driven by considerations of assessment methodology (economic) and data availability (particularly population and property data) while the Appellant’s approach appears to be founded on multi-disciplinary and ‘real world’ considerations;*
- (b) *Dr Fairgray provides a very helpful discussion for thinking about the concept of ‘same locality and market’ and the implications of such an interpretation for assessing sufficiency of development capacity;*
- (c) *The Court disagrees strongly with the spatial extent adopted by Dr Fairgray and Ms Trenouth of the ‘same locality and market’ being the West Franklin area, principally because it seems to be totally blind to the important requirement that any urban growth promoted under the NPSUD should provide for a well-functioning urban environment. Therefore, if it is to provide for urban growth to meet demand for Waiuku, it needs to be contiguous with Waiuku’s existing urban zoning;*
- (d) *Put another way, if we focus carefully on the wording in NPS-HPL clause 3.6(1)(b) “sufficient development capacity within the same locality and market while achieving a well functioning urban environment”, the clause refers to ‘a well-functioning urban environment’ (singular) and therefore it is illogical that the Council would consider including fragments of development capacity from elsewhere in West Franklin in its assessment calculations in order to imply that sufficient development capacity does potentially exist. And there are only two ‘urban environments’ in West Franklin – Pukekohe and Waiuku. As Dr Fairgray has helpfully explained, the more extensive the spatial extent of the defined ‘locality and market’, the less likely that any insufficiency will be identified;*
- (e) *The Court is concerned that some of Dr Fairgray’s assumptions, based on data averaging (both spatially and temporally) and a lack of adequate focus on the distinction between market responses to greenfield and infill development opportunities, do not provide*

⁴ *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [222].

sufficient confidence in the relevance of his quantitative estimates with respect to the NPS HPL clause 3.6(1) exception tests;

- (f) *We find the collective evidence of the Appellant’s experts, drawing on multiple disciplines (environmental, social, cultural, and economic), addresses more effectively the various dimensions that require consideration in the statutory context for this assessment, particularly the NPS-UD. Indeed, we find Mr King’s arguments about ‘locality and market’ are most compelling. He has brought together insights and information from a variety of different expert disciplines to produce a most coherent basis for interpreting the most relevant ‘locality and market’; and*
- (g) *In the Court’s opinion, the appropriate conceptualisation of the relevant ‘locality and market’ goes right to Part 2 of the RMA – “enabling people and communities to provide ...”.*

Application to Plan Change 95

9. The reply legal submissions for the Applicant at paragraph 16-19 and 39(f)-(g) traverse the issue of ‘locality and market’ under clause 3.6(1)(b) of the NPS-HPL and the related issue of a housing and labour market in detail.
10. I do not repeat the submissions in full, but note that Applicant’s approach to the assessment of the locality and market for the PC 95 site has taken a ‘real-world’ approach informed by the environmental, social, cultural, and economic factors. This aligns with the approach confirmed by the Court in *Gardon Trust*. This is evidenced by:
- (a) The clear, consistent and genuine views of the Pongakawa and Te Puke community that speaking to the connectedness of Pongakawa to Te Puke and that “Pongakawa people have historically seen Te Puke as their town.”⁵
- (b) The economic evidence of Mr Counsell regarding geographic proximity; access to amenities; access to employment and education opportunities; and relationship between house prices, between Te Puke township and the Arawa Road Pongakawa settlement. In summary, his evidence was that the PC95 site

⁵ Update of Submission by Paul Hickson dated 4 November 2024.

and Te Puke are sufficiently substitutable, with residents employed in common employment opportunities, and are within the same market.⁶

- (c) Evidence from Mark Boyle, the Managing Director of the Te Puke Economic Development Group regarding the economic contribution of Pongakawa to the larger Te Puke area – particularly in respect of the kiwifruit industry, and the extremely strong links of smaller settlements and communities with Te Puke township and vice-versa.⁷
 - (d) The many submitters who spoke at the hearing about the desire for more housing in Pongakawa and the national-level property developers who supported increased housing in Pongakawa. Similar to Mr Boyle, lay submitters from Pongakawa also emphasised Te Puke as ‘their town’ or as strongly linked to Te Puke.⁸
11. Counsel submits that the *Gardon Trust* can be relied upon to support the Applicant’s case that Pongakawa is in the same locality and market as Te Puke under clause 3.6(1)(b) of the NPS-HPL, and by extension the same housing and labour market as Te Puke (which includes the Rangiuru Business Park) in respect of the definition of ‘urban environment’ under the NPS-UD.
 12. Accordingly, Counsel further submits that the Applicant’s assessment against other aspects of Clause 3.6(1)(b) – being that there are no other reasonably practicable and feasible options for providing at least sufficient development capacity (refer paragraph 39-44 opening submissions and paragraph 40 reply submissions) and that it will achieve a well-functioning urban environment (refer paragraph 60-62 opening submissions and paragraph 29 reply submissions) are also appropriate and should be preferred by the Commissioners as it has focused on the correct locality and market.

⁶ Statement of Evidence of Kevin Counsell at paragraphs 37 and 38.

⁷ As evidenced by the vide Mr Boyle showed: www.tpedg.co.nz

⁸ For example, Craig Haggio at 4 hours 48 minutes: <https://www.youtube.com/watch?v=Hj6SA1Cw00I>

13. It is noted finally that in *Gardon Trust* the Court considered Waiuku to be its own urban environment. In *Gardon Trust*, Waiuku had a population of nearly 10,000 people and the alternative proposal for urban environment was a much broader area (the wider West Franklin market). On the facts of that case, the Court's conclusion that Waiuku is its own urban environment is logical given the expanse of West Franklin. In this case, the plan change proposal meets the definition of "urban environment" in the NPSUD as discussed in the reply legal submissions.

Sufficiency of Development Capacity

14. Counsel further submits that the decision is helpful in illustrating the consideration of the test of sufficiency of (housing) development capacity. The planners in preparing the joint witness statement following the hearing for Plan Change 95 focused on numbers of dwellings to be provided in the short, medium and long terms, and exact planned infrastructure provision. This exercise drawing on the particular wording of the definition of sufficient development capacity for housing within the NPSUD. The *Gardon Trust* decision introduces some more lateral planning considerations to this test which are of relevance to Plan Change 95, such as:⁹
- (a) Large local industrial areas being approved or developed bringing business to the area – this circumstance is common to Plan Change 95 with the very close proximity to the 148-ha Rangiuuru Business Park which is now partly open; and
 - (b) Integrated communities being of elevated importance as transport costs increase, and people seek to locate closer to places of work – this consideration is driving the composition of the plan change (residential close to two prominent and growing employment opportunities – horticultural expansion east from Te Puke, and Rangiuuru Business Park, and the inclusion of Commercial zone for complementary local amenities); and

⁹ *Gardon Trust v Auckland Council* [2025] NZEnvC 58 at [222].

- (c) Limited opportunities elsewhere and quick uptake where available – the appropriateness of alternative locations in the same locality and market has been well traversed, and the quick development and uptake of the Penelope Place subdivision speaks to the demand in the area.

DATED this 28th day of March 2025



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