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

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REPLY LEGAL SUBMISSIONS ON BEHALF OF KEVIN AND ANDREA MARSH

Introduction

1. These submissions address the key outstanding issues at the conclusion of the hearing. These are:

   (a) Whether there is a planning pathway through the National Policy Statement on Urban Development (**NPSUD**), and whether the plan change gives effect to the NPSUD including a well-functioning urban environment;

   (b) Whether there is a planning pathway through the National Policy Statement for Highly Productive Land (**NPSHPL**), and whether the plan change gives effect to the NPSHPL;

   (c) Whether the Commissioners have adequate information on wastewater and stormwater to enable the plan change to be confirmed;

   (d) Amendments required to the plan change provisions;

   (e) The submission of Mike Maassen.

2. With respect to the issues raised by the Commissioners prior to Christmas, we also submit briefly on the following:

   (a) Rural character and the relevance of that to the Commissioners' deliberations;

   (b) Relevant iwi planning instruments, and whether PC95 appropriately reflects outcomes from those.

3. Mr and Mrs Marsh have noted the departing words of the CEO of the Western Bay of Plenty District Council (**WBOPDC**) in January 2025 that:[1]

   "For me, there can never be enough good housing outcomes."

   "Being hard on myself, I would have liked to think we could have done a bit more in that space, but the practicalities of it is that we just don't have those land holdings or opportunities ourselves, so then it becomes all about trying to influence that change."

4. This plan change presents an opportunity to deliver a good housing outcome centred on an existing urban area in close proximity to an important transport corridor, on land that is available, whilst giving effect to the national and regional planning documents that a district plan change must give effect to. There is a planning pathway to enable the delivery of PC95 based on the applicants' evidence and that of supporting submitters.

NPSUD

5. This topic addresses the following issues:

   (a) The definition of "urban environment" including what is meant by "intended";

[1] https://www.nzherald.co.nz/bay-of-plenty-times/news/why-western-bay-council-chief-executive-john-holyoake-resigned/TJBFBCZOQVGPVMFFXLX2AW7W2U/

(b) Responsive planning;

(c) Whether PC95 gives effect to the NPSUD; and

(d) The SmartGrowth Strategy 2024-2074 (**SGS**).

6. Whilst the NPSUD has much further reach than that, in terms of the obligations it places on local authorities with respect to (for example) providing sufficient development capacity,[2] those are addressed under the NPSHPL topic where the relevant NPSUD provisions are brought through into clause 3.6 of the NPSUD.

Definition of "urban environment" including what is meant by "intended"

7. The NPS definition of "urban environment" is:

> ***urban environment*** *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*

8. There are two outstanding issues in respect of this definition:

(a) What is meant by "intended"?

(b) How the "housing and labour market of at least 10,000 people" is determined in this case.

[2] NPSUD, clause 3.2.

What is meant by "intended"?

9. With respect to the question of what is intended, the submission for the Bay of Plenty Regional Council (**BOPRC**) is that intention has to be capable of being objectively ascertained – therefore it would be set out within a planning document of some sort. Mr Murphy's evidence in response to questions is that the urban environment is intended by the Future Development Strategy (**FDS**) because the FDS identifies that there may be opportunities that are outside the mapped growth areas, as illustrated by the following statements:

> *Development that falls outside of the planned connected centres programme as outlined in Map 12 and in Part 4, would need to meet the unanticipated or out-of-sequence criteria set out in Policy UG7A, of the Bay of Plenty Regional Policy Statement.*[3]
>
> *An indicative centres strategy has been established based on outcomes of the UFTI and to reflect the requirements of the National Planning Standards. At a strategic level, key centres include the Regional and City Centre and Town Centres. These may be subject to change following the outcomes of plan changes to the Tauranga City Plan and Western Bay of Plenty District Plan.*[4]
>
> *The FDS relates to urban development only and does not consider rural development. Further housing opportunities are a matter for the councils through plan changes or resource consents.*[5]
>
> *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.*[6]

[3] FDS, page 111, last paragraph.
[4] FDS, page 112.
[5] FDS, page 155.
[6] FDS, page 163.

10. The word "intended" is not defined, and the NPSUD does not require it to be intended by a document. The Regional Council's argument is that because Policy 8 refers to plan changes being unanticipated by RMA planning documents, this means unanticipated is a reference to plan changes which have been identified in non-RMA planning documents (e.g. a future development strategy).

11. Again however, the NPSUD does not say this.

12. The implementation guide produced when the responsive planning policies were introduced sheds some light on this issue.[7] With respect to the submission as to the meaning of the word unanticipated in existing plans or other strategies, it notes that a proposed development may be "unanticipated in existing plans or other strategies (e.g., locations outside of areas identified for urban development, or areas currently zoned for urban uses but with less development capacity)". It states as an expected outcome that the responsive planning policy "limits a local authority's ability to refuse certain private plan change requests without considering evidence" and that the responsive planning policy will "reassure the development sector that local authorities will consider opportunities consistently and transparently". It further states:[8]

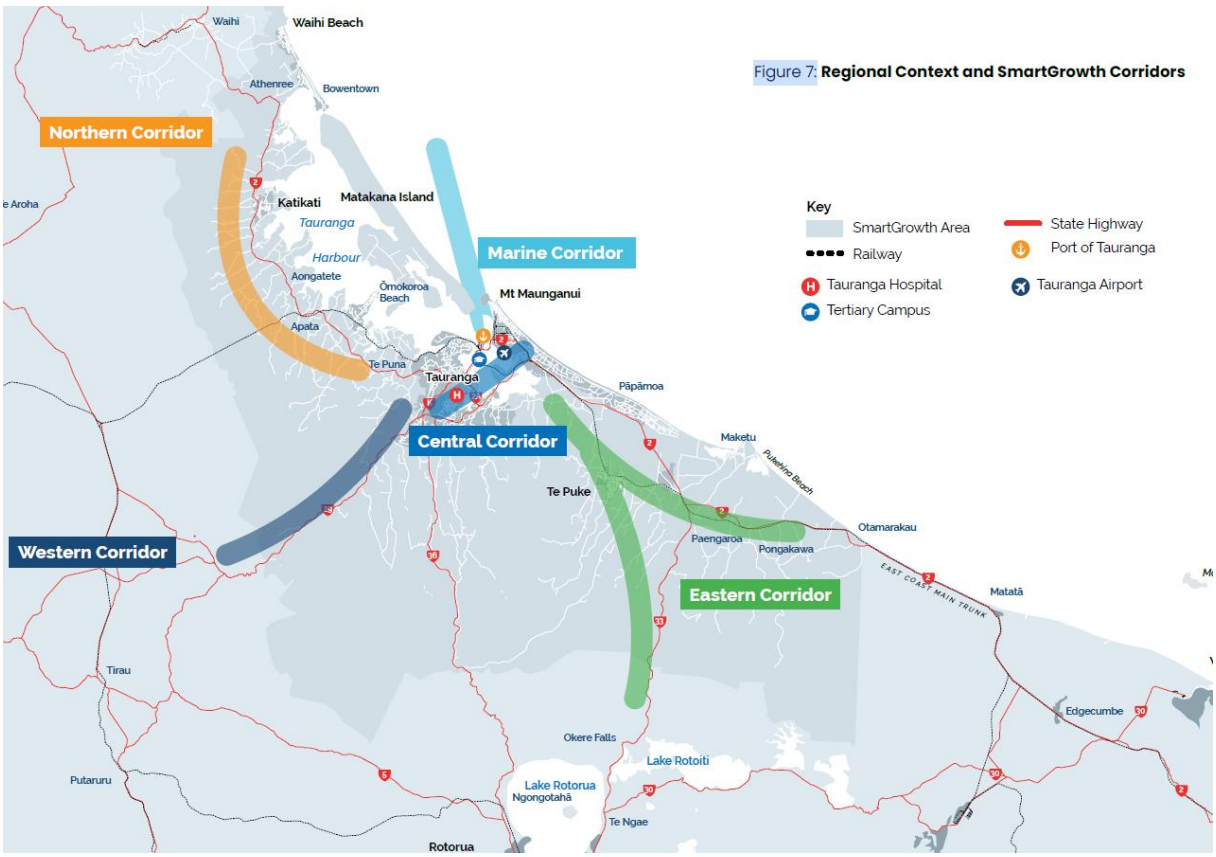
> *Local authorities may choose to identify in RMA plans and future development strategies where they intend:*
>
> - *Development to occur*
> - *Urban services and infrastructure to be provided.*
>
> *The identified areas must give effect to the responsive planning policies in the NPS-UD* ***and therefore should not represent an immovable line****.*

13. An implementation guide produced by the government cannot alter the words of a national policy statement. However there is nothing in the implementation guide which was produced when the NPSUD was amended in 2020, to suggest that the

[7] Understanding and implementing the responsive planning policies (Ministry for the Environment, September 2020).
[8] Page 3.

BOPRC's interpretation of 'intended' (that it must be shown in some sort of council document) has any basis.

14. If that were the case, then no private plan change could ever be initiated unless the land owner / developer had already obtained the council's agreement to identify the area in a council document or the future development strategy. In any event, in accordance with Mr Murphy's evidence, the Commissioners can find that urban environments outside those identified in the FDS are intended by the FDS (if not mapped). Furthermore, mapping within the SGS clearly illustrates growth in the Eastern Corridor, including in a clear direction towards and including Paengaroa and Pongakawa:[9]



15. Finally, it is noted that the local authorities' argument that urban growth must only occur in urban environments that are "intended" (i.e. identified in some way) by a

[9] SGS, Figure 7, page 27.

document does not hold up, based on the FDS. The FDS identifies Waihī Beach – Bowentown/Athenree as having a residential growth allocation despite it being largely residential, very small (with a shop at Bowentown observed to be not trading full time).[10] In other words, it is possible the FDS can indicate a location for growth, which is not actually an urban environment. This shows the fragility of relying on the absolute/detailed scope of the FDS as being the determining authority (outside of RMA or other Council documents) as to what is 'anticipated' in urban environments.

How is the "housing and labour market of at least 10,000 people" determined?

16. The second outstanding matter in respect of the definition of "urban environment" relates to the housing and labour market. The term "housing and labour market" is not defined in the NPSUD (in contrast to the words "within the same locality in market" in clause 3.6(3) of the NPSHPL). However, Mr Counsell's assessment of the housing market for the applicant is relevant to the NPSUD term "housing and labour market" as is the evidence provided by submitters including notably that of Mr Boyle for Te Puke EDG. That evidence confirms that the settlement at Arawa Road, Pongakawa, is, or is intended to be, part of a housing and labour market of at least 10,000 people as follows:

(a) Mr Counsell considers the settlement at Arawa Road, Pongakawa, and Te Puke to be within the same housing market, as articulated in detail in his evidence and supporting memoranda. This is based on geographic proximity; access to amenities; access to employment opportunities; and relationship between house prices. In summary, his evidence was that the PC95 site and Te Puke are sufficiently substitutable, based on four pieces of analysis:

(i) At 15km between them, they are within the distance typically considered to establish the boundaries of a housing market, which is around 15-20km.

[10] Joint Witness Statement Planning, page 14.

(ii) Home buyers in both areas can access similar amenities, including the amenities at Te Puke and new amenities being provided by the PC95 development.

(iii) There is similar accessibility to employment opportunities, including the Rangiuru Business Park, nearby horticultural farms, and employment in Te Puke and Tauranga.

(iv) House prices in the two areas show a strong and meaningful correlation, which is indicative of home buyers switching between these two areas in response to relative price movements.

(b) It is not in contention that Te Puke contains at least 10,000 people.[11] Accordingly, on the basis of Mr Counsell's evidence, the settlement at Arawa Road, Pongakawa, is, or is intended to be, part of a housing and labour market of at least 10,000 people.

(c) Evidence from Mark Boyle, the Managing Director of the Te Puke Economic Development Group, confirms this. His evidence confirmed that:

(i) Te Puke is defined as the geographic region from the Papamoa Hills east to Otamarakau;[12]

[11] See commentary at paragraph 3.30-3.33, 'Recommendation Report of the Independent Hearing Panel: Plan Change 92, Western Bay of Plenty District Council', dated 25th January 2024; see also discussion at page 4 'Plan Change 92 – Section 42A Report - Omokoroa and Te Puke, Enabling Housing Supply and Other Supporting – General Matters', dated 11th August 2023. This has not been disputed by WBOPDC.

[12] Paragraph 3. Mr Boyle also presented the following slide:

(ii) Pongakawa is a key contributor to the economic activity of the Te Puke region;[13] and

(iii) Approximately 20000 people reside in the Te Puke region including 3000 approximately in Pongakawa.

The geographic region that Mr Boyle spoke to, and the economic activity (including particularly the growth in kiwifruit that was illustrated by the maps produced by Mr Murphy at the hearing),[14] align with the experience of the submitters who live in Paengaraoa, Pukehina and Pongakawa, who gave evidence at the hearing.

17. WBOPDC's reason for arguing that the settlement at Arawa Road Pongakawa is not, or is not intended to be, part of a housing and labour market of at least 10,000 people, is based on the notion that Pongakawa is not part of Te Puke, with support from Fraser Colegrave. Respectfully, the Commissioners should prefer the evidence of Kevin Counsell and the submitters on this topic for the following reasons:

(a) Mr Counsell's evidence is clear and objective, and clearly articulates where and why he disagrees with Insight Economics/Mr Colegrave. For housing demand in Pongakawa he ran further analysis using the Census data which Mr Colegrave opined should have been done.[15]

[13] Paragraph 4.
[14] Orchard Conversion Plan, 12 November 2024.
[15] Addendum to evidence of Kevin Counsell dated 13 November 2024.

(b) In contrast Mr Colegrave's evidence is immoderate in tone – for example he states that "according to my calculations, the $8 million benefit estimated for new housing on the PPC95 site **seems** to **implicitly assume** that the proposal **will tank local house prices** by nearly $200,000".[16] Such statements are alarmist and lack context available from published data which Mr Colegrave should be well appraised of. In particular, as Mr Counsell said at the hearing, this is a large drop, but it reflects PC95 providing a material increase in the number of dwellings in Pongakawa. For context, house prices in Pongakawa decreased by nearly $400,000 from a peak in March 2022 to March 2023, and then increased back by $200,000 through to December 2023. So these sort of swings are not uncommon.[17]

(c) Mr Counsell also noted that Mr Colegrave mischaracterized his evidence where he said that Mr Counsell thought house prices around NZ are not strongly influenced by the same macroeconomic factors.[18] Mr Counsell stated that he has never made that claim. He agrees that house prices do follow the same macroeconomic factors, but this doesn't mean they are meaningfully correlated. It is exactly as the ice cream and drownings example Mr Counsell gave in his evidence – two series can have a common factor influencing them, and this gives a strong correlation. His point is that when you can show they are cointegrated, which Te Puke and Pongakawa house prices are, then the correlation is both strong and meaningful, and this is because there is evidence of substitution across the two price series.[19]

(d) Finally, Mr Colegrave's evidence belies the strong evidence of submitters who are amply well qualified to speak to their lived experience in Pongakawa/the 'Te Puke region'. In addition to Mr Boyle's evidence, the evidence of Mr Hickson was persuasive on these issues. By way of example:

[16] Summary Statement of Evidence of Fraser Colegrave, paragraph 53.
[17] Kevin Counsell, verbal evidence.
[18] Summary Statement of Evidence of Fraser Colegrave, paragraph 35.
[19] Kevin Counsell, verbal evidence.

(i) These submitters clearly see Pongakawa and Te Puke as "connected" (Mr Colegrave's word). By Mr Colegrave's own acknowledgment, he hadn't been in Pongakawa for "many many years" yet felt emboldened to say that Pongakawa was a 'blink and you'd miss it' place.[20]

(ii) Mr Colegrave's evidence that the homes proposed are unlikely to be affordable for most seasonal horticulture workers, but newly released employment data shows that the Pongakawa workforce has shrunk recently, including within the agricultural/horticulture sector,[21] is at odds with the experience of Mr Boyle and Mr Hickson with respect to the industries that support horticulture. It is also at odds with reported growth in the horticultural industry - Apata is (based on building consents issued in 2024) investing nearly $2 million into post-harvest facilities in Pongakawa to service the growing kiwifruit industry, this being in addition to and complementing $12.5m of development of similar facilities by EastPack and DMS within Te Puke township.[22] This reflects the growth in the horticultural industry in this area that the plan change is responding to.

(e) The Commissioners would need a strong basis for preferring the evidence of an expert who hasn't been to the area for "many many years" over people with lived experiences that are consistent with Mr Counsell's evidence, which, it is submitted, is absent. Rather, Mr Colegrave's supporting evidence to the s.42A report highlights strong labour connections between Te Puke township and Pongakawa, which is the lived experience of this market as spoken to by Mr Boyle and Mr Hickson in addition to the economic expertise further supporting this by Mr Counsell.

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[20] Day 2 video recording at approximately 5:31 hours.

[21] Summary Statement of Evidence of Fraser Colegrave, paragraph 25.

[22] https://www.1news.co.nz/2025/01/30/massive-revitalisation-the-new-builds-changing-the-face-of-tauranga/ This reports the following as 4 of WBOPDC's top five commercial building consents in 2024:

- Washer Road, Te Puke — EastPack controlled atmosphere store — $6.5m
- Te Matai Road, Te Puke — DMS Progrowers four cool stores — $6m
- Wilson Road South, Paengaroa — seasonal workers accommodation — $4.9m
- Old Coach Road, Pongakawa — Apata Group two cool stores — $1.8m.

18. Accordingly, the Commissioners should find that based on the evidence for the applicant (from Mr Counsell and Mr Murphy) and submitters (particularly Mr Boyle and Mr Hickson), Pongakawa is, or is intended to be, part of a housing and labour market of at least 10,000 people.

19. In summary, for the reasons set out in opening legal submissions, the Commissioners can and should find that either the Arawa Road settlement including Penelope Place is already urban in character, or that it will be once PC95 is confirmed. The Pongakawa residential settlement centred on Arawa Road sufficiently meets all relevant definitions including the definition in the SGS which the local authority cases in this matter fundamentally rest on. In these circumstances there is no basis for reading in additional requirements that must be met.

Responsive planning

20. Clause 3.8 of the NPSUD applies to a plan change that provides significant development capacity not otherwise enabled in a plan *or* not in sequence with planned land release (clause 3.8(1) NPSUD). For clarity, it is noted that PC95 meets "significant development capacity" as the Bay of Plenty Regional Policy Statement (**BOPRPS**) requires that any such developments are "large scale" which is defined in the BOPRPS as being 5 hectares or more.[23]

21. The planners agree that Policy UG 7A of the BOPRPS sets out the considerations that apply in such circumstances, but Ms Mark and Ms Holden's view is that Policy UG 7A is not applicable because they "do not agree that the site is part of an urban environment".[24] Respectfully, this is not what Policy UG 7A requires. It states that:

[23] Defined in the BOPRPS, Appendix A (Definitions), as follows:
Large-scale: In the context of land-use change involving the proposed development of land for urban purposes including proposed changes in zoning, refers to an area greater than or equal to 5 ha.

[24] Joint Witness Statement Planning, page 10.

> *Private plan changes, submissions on plan changes, or submissions on plan reviews* ***providing for development of urban environments and urban growth that forms part of an urban environment****, that is unanticipated or out-of-sequence, will add significantly to development capacity based on the extent to which the proposed development achieves the following criteria:*

22. It is clear from the text that it can relate to the *development of an* urban environment, or urban growth that forms *part of* an urban environment. As discussed, the Commissioners are able to find either that the Pongakawa residential settlement centred on Arawa Road and Penelope Place is urban in character, or that it will be once PC95 is confirmed, and that it is within a housing and labour market of at least 10,000 people. Therefore meets either terminology used by Policy UG 7A.

23. It is also highly arguable that for Tauranga City and the Western Bay of Plenty district, Policy UG 7A considers "urban environment" at a district scale, because clause (b) of that policy is:

> *(b)* ***For Tauranga City and Western Bay of Plenty District urban environments****, the development is large scale or, if not, will provide a housing supply of at least 50 dwelling units, and in either case the proposal:*
>
> *i. is able to support multi modal transport options; and*
>
> *ii. includes a structure plan for the land use change.*

24. The primary function of Policy UG 7A is to set out the criteria for determining what plan changes will be treated, for the purposes of implementing Policy 8 NPSUD, as adding significantly to development capacity. This is:

(a) An area greater than or equal to 5 ha, or a housing supply of at least 50 dwelling units;

(b) The ability ("is able") to support multi modal transport options; and

(c) Inclusion of a structure plan for the land use change.

25. The first and third criteria are amply met,[25] and the ability to support multi modal transport options is addressed for the following reasons:[26]

(a) The proposed structure plan includes additional footpaths on Arawa Road adjacent to the commercial site, as well as a mid-block footpath connection to Arawa Road, and internal footpaths within the subdivision will be required. The footpaths will accommodate the movement of pedestrians within the site, including to and from the proposed commercial area, which will reduce the need for external vehicle trips.

(b) The school bus stop is proposed to be provided within the commercial site (to a safer location), which will *also* allow for possible future additional bus services.

(c) PC 95 integrates with the recently provided footpath on the eastern side of Arawa Road, together with the use of the north-eastern, paper road section of Arawa Road as a walking and cycling connection to Wharere Road. As the Commissioners heard from submitters,[27] there are also plans to link Arawa Road through to Pukehina, and aspirations to link the Arawa Road settlement through to Paengaroa via cycleway

26. In these circumstances the settlement at Arawa Road, Pongakawa, is demonstrably able to support multi modal transport options.

27. For completeness, it is submitted that the other sub-paragraphs of Policy UG 7A which are also relevant to PC 95 are addressed:

[25] The plan change area exceeds 5 ha, and will deliver more than 50 dwellings; and PC95 includes a structure plan.
[26] Statement of Evidence of Bruce Harrison, paragraphs 37-40.
[27] Kirsty Garrett.

(a) Policy UG 7A (d): The development is located with good accessibility between housing, employment, community and other services and open space. This is similar to Policy 1 of the NPSUD as to WFUE which is addressed by the applicant.

(b) Policy UG 7A (e): The development is likely to be completed earlier than the anticipated urban development and/or land release sequence. This is clear given the stormwater and transport infrastructure hold ups in Te Puke identified by Mr Murphy in his post-hearing reply evidence (supported by Mr Coles[28]), and given that the Eastern Centre is decades away.

(c) Policy UG 7A(f): Required development infrastructure can be provided efficiently, including the delivery, funding and financing of infrastructure while considering impacts on other existing, planned or undermining or committed development infrastructure investments. The applicants' submission is that required development infrastructure can be provided efficiently, because the applicants are paying for it. This is not a case where providing infrastructure will undermine committed local authority infrastructure investments - no evidence was produced as to how this would materialise either within Pongakawa or Te Puke. Rather the reverse is true. As discussed in the evidence of Ms Brown[29] and Mr Murphy[30], PC95 may enable the remainder of the settlement at Arawa Road, Pongakawa to have reticulated wastewater.

PC95 gives effect to the NPSUD

28. Policy 1 of the NPSUD is that planning decisions *contribute to* well-functioning urban environments (**WFUE**), which are then set out in the sub-paragraphs to Policy 1.

[28] Joint Witness Statement Planning, pages 12-13.
[29] Statement of Evidence of Kirsten Brown, paragraphs 25 and 29
[30] Statement of Evidence of Vincent Murphy, paragraph 113

29. The applicant has addressed these matters in evidence.[31] To that evidence, the following additional points are made:

(a) Policy 1(a)(ii) is that the WFUE have or enable a variety of homes that enable Māori to express their cultural traditions and norms. Given that the applicant engaged with relevant iwi on PC95 and that feedback from Ngāti Pikiao was incorporated into PC95, it is submitted that this is met. There was opportunity afforded for any feedback as to expression of cultural traditions and norms, and this came in the form of commentary on natural resources and access to them rather than the homes per se.[32] In the context of this plan change which is reasonably small in scale, it is submitted that this is appropriate.

(b) Policy 1(c) is good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport. There was some commentary that Pongakawa School was not located in Arawa Road but on the other side of the state highway. It is submitted that the policy does not require that all these matters are located *within* the urban environment, but that there must be 'good accessibility'.

(c) Directly within Pongakawa at Arawa Road, as modified by the plan change, there would be housing, commercial space where community services can locate (and jobs be created), multiple new recreational open spaces, an improved bus stop for local bus services, and footpaths to Arawa Road connecting to the planned cycleway at that location. As per the evidence of Mr Murphy in response to questions at the hearing, this urban environment is in relatively close proximity (short driving/bus transport distance) and therefore with good accessibility to the school and numerous community facilities at the school. This is in addition to good accessibility to emerging/growing

[31] Statement of Evidence of Richard Coles, paragraphs 49-55.
[32] For example, restoring of natural margins of Puanene Stream; greater public access to the stream; increased dwelling availability in the area.

employment opportunities in horticulture and the Rangiuru Business Park which is currently being delivered.

(d) Given the evidence the Commissioners heard from submitters in support of PC95, who spoke to the connections between Arawa Road and Pongakawa School, Pukehina, Pongakawa and Te Puke, the test of good accessibility to various requirements is amply demonstrated.[33]

The SGS

30. The local authorities elevate the importance of the SGS including the relevance of the FDS. Under the RMA itself, the requirement to "have regard to" these documents is significantly weaker than the requirement to "give effect to" the RPS.[34] This is important, because although the FDS is a requirement of the NPSUD, the effect of which is to inform local authority RMA planning documents and other strategies and plans,[35] it is not in itself an RMA planning document, and nor is it a document which the Commissioners' decision must give effect to.

31. There is no threshold prescribed in the RPS requiring that a private plan change must be identified/mapped in the FDS before applicants such as the Marshes are able to use the RMA First Schedule planning process to seek a private plan change. The Commissioners should be wary of imposing this as an additional hurdle as this would hinder any responsive development proposal that is unanticipated.

32. The local authorities in this case seek to read down the availability of responsive planning with reference to the FDS. The NPSUD does not limit responsive planning in this way. The RPS and specifically Policy UG 7A does not limit responsive planning in this way either.

[33] Mark Boyle, Paul Hickson, Robyne Cooper, Sue Matthews, Kirsty Garrett.
[34] RMA, s 74(2).
[35] NPSUD, clause 3.17.

33. Neither does the FDS limit itself so severely. Mr Murphy has pointed out where the FDS does have agility and flexibility built-in to respond to private plan changes such as PC95 where the Connected Centres principles are being delivered.[36]

34. When the RMA planning documents, and even the FDS itself, are not read in such a limited way, the local authorities' argument that growth should only occur where it is identified/mapped in its FDS loses considerable force.

35. The same issue arises with respect to the 'connected centres' approach which had its genesis in a prior non-statutory document.[37] The local authorities advocate rigid adherence to this, even though it is also absent from the RPS. The planners are agreed on what the 'connected centres' approach entails.[38] It is defined in the SGS as "The preferred spatial scenario that underpins the SmartGrowth Strategy. This is set out in detail in the UFTI Final Report and supporting documents."[39] But as with the FDS, the connected centres approach is not articulated in the RPS. Nevertheless, the applicant has assessed this.

36. The SGS states that there are two core concepts critical to the connected centres 'programme':[40]

    (a) Increasing the number of dwellings by intensifying existing urban and new growth areas;

    (b) Being able to access local social and economic opportunities within a 15-minute journey time (walking or cycling), and sub-regional social and economic opportunities within 30–45 minutes.

[36] Namely pages 153 and 155 of the FDS, supported by information on pages 111 and 112 of the Smartgrowth Strategy 2024-2074; Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning), paragraph 33.
[37] UFTI – the Urban Form and Transport Initiative, July 2020.
[38] Joint Witness Statement Planning, page 11: *The Connected Centres approach involves specific considerations regarding density, transport infrastructure, and access to amenities. Unanticipated growth that does not adequately address these factors might not be deemed consistent with the Connected Centres principles, even if it is geographically located within the designated corridor.*
[39] SGS, page 179.
[40] SGS, page 155.

37. Providing for PC95 comfortably meets these de facto requirements (many submitters in support spoke to the accessibility to sub-regional social and economic opportunities including Te Puke and the Rangiuru Business Park that are within 15 and 10 minutes respectively, and the plan change demonstrably increases the number of dwellings). In circumstances where Policy UG 7A of the RPS does not embed the connected centres 'programme' in the RPS it is inappropriate for the applicants to be held to a standard which is higher than that set out in the RPS. Policy UG 7A is the means by which BOPRC has included criteria for determining what plan changes will be treated as adding significantly to development capacity.[41] Those changes have now been affirmed by the Environment Court.[42] That is where the criteria for assessing whether PC 95 should be treated as adding significantly to development capacity sit, and on which the Commissioners should focus.

NPSHPL

38. The *key* areas of contention with respect to the NPSHPL relate to sufficient development capacity, and the approach to "locality and market".

39. That is not to say that the local authorities do not take differing views on all aspects of the NPSHPL, but in respect of those two key matters, it is submitted that:

Insufficient development capacity

(a) All planners agree there is a housing shortage (this being distinct from insufficient development capacity) now and through the short and medium terms, with long-term supply appearing "to have the potential to address housing shortfall and future expected demand".[43]

[41] As required by the NPSUD, clause 3.8(3).
[42] Change 6 to the RPS (the consent documents as filed with the Environment Court having been provided to the Commissioners).
[43] Joint Witness Statement Planning, page 11.

(b) The planners further agree that "it would appear that a shortage relative to capacity persists through the short and medium terms. With considerable supply between 2034 and 2054, the FDS appears to provide for the capacity to address the estimated shortage in that time period (i.e. by the end of the long term 2054)".[44]

(c) This clearly supports a finding that there is insufficient development capacity given that clause 3.2(1)(c) of the NPSUD requires sufficient development capacity for the short term, medium term, and long term.

(d) However, when infrastructure readiness is also considered, the Commissioners are unable to find that development capacity is infrastructure ready in either the short term or the long term:

(i) In the short term, the Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning) carefully addresses the infrastructure readiness of the plan enabled residentially zoned land in Te Puke. Ms Mark's response to that appears to be that infrastructure will be made available 'just in time' but as set out in the Joint Witness Statement Planning this will not account for stormwater ponds and transport infrastructure.[45]

(ii) In any event, long term development capacity is not infrastructure ready because the development infrastructure to support WBOPDC's long term development capacity (Te Kainga) is in neither the WBOPDC long-term plan or infrastructure strategy as required by clause 3.4(3) of the NPSUD.

(e) The Commissioners are unable to find, based on the Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning) and the Joint Witness Statement

[44] Joint Witness Statement Planning, page 12.
[45] Joint Witness Statement Planning, pages 12-13.

Planning, that sufficient development capacity for housing has been provided in accordance with clause 3.2 of the NPSUD.

Locality and market

(f) For the reasons traversed at paragraphs 16-19 above in relation to the term "housing and labour market" in the NPSUD, the Commissioners should prefer the evidence of the applicant on this issue (Messrs Counsell and Murphy), and of the submitters (particularly Messrs Boyle and Hickson, where they speak to the connectedness of Pongakawa to Te Puke). As Mr Hickson said "Pongakawa people have historically seen Te Puke as their town".[46]

(g) On this point, it is also noted that:

(i) The first limb of the defined term is that the land "is in or close to a location where a demand for additional development capacity has been identified through a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020". The Housing and Business Capacity Assessment 2022 (**HBA**) addresses development capacity at a district scale but breaks that down to Te Puke.[47] The HBA identifies insufficient development capacity in Te Puke in the medium and long term,[48] so on that basis alone clause 3.6(3)(a) of the NPSHPL is met.

(ii) The second limb of the defined term is that it "is for a market for **the types** of dwellings or business land that is in demand (as determined by a Housing and Business Assessment (or some equivalent document) in accordance with the National Policy Statement on Urban Development 2020". All planners agree that there is a housing shortage. Accordingly

[46] Update of Submission by Paul Hickson dated 4 November 2024.
[47] HBA, pages 97-100.
[48] HBA, page 105.

residential land which delivers houses in Pongakawa is within a market for the *types of dwellings* that are in demand.[49]

40. Clause 3.6 of the NPSHPL is now addressed in detail.

NPSHPL provision	**Submissions**
Clause 3.6(1)(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	"Development capacity" is defined in the NPSUD, and "sufficient" is defined in clause 3.2(2) of the NPSUD. Given that this clause of the NPSHPL refers to providing *sufficient development capacity* to meet demand for housing or business land to give effect to the NPSUD, clause 3.2 and the 'sufficiency' tests in clause 3.2(2) of the NPSUD are also relevant. Clause 3.2 of the NPSUD requires (in summary) Tier 1 local authorities to provide at least sufficient development capacity in its district to meet expected demand for housing in (amongst other matters) the "short term, medium term and long term". Clause 3.2(1) does not segregate these terms for separate assessment. WBOPDC acknowledges that there is not sufficient development capacity in its district for the medium or long term,[50] so on this basis alone any urban rezoning would meet clause 3.6(1)(a) of the NPSHPL. This is because the urban rezoning proposed by PC95 is required to provide sufficient development capacity across all relevant timescales. If the Commissioners nevertheless considered that *only* the short term could/should be interrogated for these purposes (which is not the applicant's position), then clause 3.6(1)(a) does not specify the scale at which this should be addressed. WBOPDC may have assessed this at a district scale. In my submission the correct approach is to address it at the scale being considered. This would be consistent with *Drinnan v Selwyn District Council* [2023] NZEnvC 180 which assessed

[49] For completeness, on this topic the Guide to Implementation, March 2023, states on this topic at page 50:

> *It is not necessary to apply each component of demand rigidly, particularly when there are substitution effects between different elements of demand (eg, between different types of dwellings, such as a three-bedroom terraced house being a substitute, or partial substitute, for a three-bedroom, stand-alone house). It may also be appropriate to provide some capacity for development types for which there is low or no demand, if this is necessary to service the proposed area for rezoning and important to achieving a well-functioning urban environment (eg, a neighbourhood centre zone associated with a predominantly residential development, or open space and active recreation zones).*

[50] HBA, page 105.

NPSHPL provision	Submissions
	development capacity for Prebbleton (not the entire Selwyn District). In this case there are two available scales for assessing this: • Te Puke (the locality and market assessed by Mr Counsell); • Pongakawa (also assessed by Mr Counsell). The applicant's evidence confirms that short-term development capacity in Te Puke is not infrastructure-ready,[51] and this evidence is more compelling than the suggestion that infrastructure will be made available 'just in time'.[52] In any event, the Joint Witness Statement Planning now confirms that a housing "shortage relative to capacity persists through the short and medium terms" and that at the very least long-term development capacity is not infrastructure-ready. In these circumstances it is difficult to envisage any robust finding that WBOPDC has provided sufficient development capacity in accordance with clause 3.2 of the NPSUD.
Clause 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	<u>No other reasonably practicable and feasible options</u> Clause 3.6(1)(b) is that there are no other reasonably practicable and feasible options – i.e. options must be both reasonably practicable, and feasible. This has been addressed by the applicant's evidence, including the Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning).[53] A question raised at the hearing was whether it was reasonable for land that is subject to flood mapping to be discounted by the applicant. It is submitted that any suggestion that this assumption is not reasonable is highly optimistic and fanciful, as illustrated by the example Mr Murphy provides.[54] Indeed, the extent to which the WBOPDC officer Mr Abraham raised issues with the floodable area identified on the proposed disposal field, despite the evidence provided by Mr Hight, is illustrative of the difficulties faced by applicants seeking to develop land with published flood mapping.

[51] Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning) – paragraph 25 and Appendix A.
[52] Joint Witness Statement Planning, pages 12-13.
[53] Paragraphs 40 – 52.
[54] Post Hearing Statement of Reply Evidence of Vincent Murphy (Planning), paragraph 42.

NPSHPL provision	Submissions
	<u>Same locality and market</u> Addressed at paragraphs 16-19, and 39(f)(-(g) above. <u>Well-functioning urban environment</u> Addressed at paragraph 29 above.
Clause 3.6(2) related to 3.6(1)(b) In order to meet the requirements of subclause (1)(b), the territorial authority must 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 (c) rezoning different highly productive land that has a relatively lower productive capacity.	WBOPDC cannot stymie or block responsive planning proposals by saying that it is not doing or will not do this. Policy 8 and clause 3.8 of the NPSUD are clear on this. Clause 3.8 states that every local authority *must* have regard to the development capacity provided by a plan change if it meets the matters in clause 3.8(2). In relation to (a), the s 42A report states that "It is not possible to say that intensification of Te Puke is completely plan enabled" (para 10.40)". In relation to (b), this did not receive much focus at the hearing. This option which must be considered is rezoning of land that is not highly productive land as urban. Virtually all land surrounding Te Puke is highly productive land. The Land Vision report identifies the parcels of land south near Te Puke and Pongakawa which are not highly productive land, but discounts these options on the basis that they are already in kiwifruit orchard, are subject to flood mapping, or have unsuitable contours, or that these areas of land still hold higher productive capacity in the opinion of Mr Perry.[55] These options have not been demonstrably counted in as reasonably practicable by any other evidence before the Commissioners. In relation to (c), Mr Ford for WBOPDC contended that Mr Perry's analysis must be done using the New Zealand Land Resource Inventory LUC classes, and Mr Ford approaches this analysis at a macro level, saying for example that the Te Puke comparison site has 38% of its area which is of a lower LUC status and hence has a lower productive capacity than Pencarrow Estate with 21% not being classified as HPL.[56]

[55] Land Productivity Assessment for Proposed Private Plan Change, August 2024, page 40. See also Statement of Evidence of Joel Perry at paragraph 63.
[56] Summary Statement of Evidence of Stuart Ford, paragraph 13.

NPSHPL provision	Submissions
	There is no basis for Mr Ford's approach in the NPSHPL, and in fact Mr Perry has appropriately assessed "productive capacity" (the word used in sub-clause (c) and defined in the NPSHPL) in accordance with its definition, being much wider than LUC class alone. Mr Perry's evidence provides a comprehensive analysis of the option which must be considered, being rezoning different highly productive land that has a relatively lower productive capacity. His evidence should be preferred on this topic given its coverage, and given also that he is a specialist pedologist in comparison to Mr Ford who is an agricultural and resources economist. In summary, the Commissioners can be satisfied that in considering the particular options listed in clause 3.6(2) of the NPSHPL, there are no other reasonably practicable options for providing at least sufficient development capacity within the same locality and market. In response to Ms Boyte's submission, that the fact there has not been a full assessment of intensification for Te Puke does not sit well against *Save the Maitai*,[57] this should not be given considerable weight by the Commissioners as suggested. In *Save the Maitai* the Environment Court noted that the matters in clause 3.6(1) are "strategic matters that should be assessed by the Council, likely (although not necessarily) as part of a Schedule 1 process signalled in cl 4.1(2) of the NPS-HPL".[58] Firstly, it is an optimistic statement of what councils should do, not a binding directive. Secondly, it cannot be correct that no plan changes can be considered against clause 3.6 of the NPSHPL pending the plan change which territorial authorities must notify once maps of highly productive land in the relevant regional policy statement become operative. BOPRC's plan change to insert maps of highly productive land into the RPS has not yet been notified.[59] Nothing will happen for years. The housing shortage in the Western Bay of Plenty district speaks for itself in that regard – i.e. it cannot wait.
Clause 3.6(1)(c)	Mr Murphy has addressed clause 3.6(1)(c) in his evidence with a matrix that assesses environmental, social, cultural and

[57] *Save the Maitai Incorporated v Nelson City Council* [2024] NZEnvC 155.
[58] Appendix I, paragraph [100].
[59] Proposed Change 8 (NPS-HPL) – "likely be notified for submission in mid-2025".

NPSHPL provision	Submissions
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.	economic benefits. No evidence engages with this assessment holistically. Mr Colegrave is relied on by WBOPDC to say that Mr Counsell's evidence "does not **conclusively** demonstrate that PPC95 will deliver net economic benefits over and above rural production".[60] Mr Counsell has responded to Mr Colegrave's evidence on this point. Ms Mark does not take the assessment wider than economic matters; she also says that it appears to be a consolidation of matters provided.[61] It is a consolidation in the sense that environmental, social, cultural and economic must be assessed. BOPRC assert that what the applicant provided is not sufficiently detailed. The only evidence before the Commissioners which considers environmental, social, cultural *and* economic matters against this clause of the NPSHPL is from the applicant. It is my submission that this evidence demonstrates that clause 3.6(1)(c) is met.
Clause 3.6(5) Territorial authorities must take measures to ensure that the spatial extent of any urban zone covering highly productive land is the minimum necessary to provide the required development capacity while achieving a well-functioning urban environment.	Ms Stubbing said this was not addressed. This is not correct. PC95 does not propose to re-zone the wastewater disposal field which is proposed to remain Rural. Accordingly, if the plan change is confirmed, then highly productive land is rezoned to the minimum necessary to provide the required development capacity.

41. In summary, the applicant has gone to great lengths to establish that the matters in clause 3.6 of the NPSHPL have been satisfied. It has produced evidence substantiating

[60] Legal submissions for WBOPDC, paragraph 4.13.
[61] Statement of Evidence in Reply of Abigail Louise Mark, paragraphs 45-47.

this. This case is not akin to *Save the Maitai* where, as the Environment Court said, "the evidence before the court has not made an assessment of these matters in the way set out in cl 3.6. Likewise, the evidence before the IHP did not directly address cl 3.6 because at the time of the IHP hearing the NPS-HPL was not in effect".[62] There, the Environment Court was tasked with backfilling clause 3.6 with the evidence it had before it but not specifically directed at clause 3.6 matters. Here, the Commissioners have evidence which addresses and demonstrates that clause 3.6 matters (the 'high bar') are met. The Commissioners have an evidential basis on which to conclude that the NPSHPL is given effect to by PC95.

Wastewater and stormwater

42. BOPRC raised technical issues with respect to stormwater management, and WBOPDC raised technical issues with respect to both stormwater and wastewater.

Wastewater

43. BOPRC is the consent authority to which the grant of resource consent for the wastewater treatment system will fall. It has provided evidence that the wastewater treatment system design-related concerns have either been resolved or are matters that could be resolved at the resource consent stage.[63]

44. WBOPDC raised various issues about the wastewater treatment system in relation to disposal field viability, site conditions and environmental risk. I submit that the water quality issues raised by Mr Abraham[64] are for BOPRC in its function as consent authority and are not a matter which should concern the Commissioners on this plan change (absent similar concerns being articulated and substantiated by BOPRC). That issue aside, the expert conferencing directed by the Commissioners has honed in on the key issues of contention (size and characteristics of disposal field).

[62] At Appendix I, paragraph [91].
[63] Primary Statement of Evidence of Lucy Holden at paragraph 31.
[64] Notes of reply comments by James Abraham 14 Nov 2024.

45. Through conferencing the experts have agreed that:[65]

(a) The sizes of both the wastewater disposal/irrigation field and the reserve area shown on the structure plan are appropriate to cater for the expected density of development within the site, and flexibility needs to be included in the Plan Change rules to allow for the shape of both the disposal/irrigation field and reserve area to change to accommodate potential constraints (as listed in paragraph 15 of the Joint Witness Statement), and/or any other unforeseen limitations. The planners have now agreed that this can be accommodated by a note added to relevant Structure Plan drawings clearly enabling some flexibility on precise wastewater field shape (whilst always maintaining a 20m separation distance to the Puanene Stream).[66]

(b) The overland flowpath can flow through the planned disposal/irrigation field, and doesn't necessarily need to be redirected from the alignment shown on the Structure Plan. The precise alignment of the overland flowpath can be confirmed as part of a subsequent design phase (for example, as part of the resource consent process), as it is not critical to the functionality of the disposal/irrigation field.

(c) The disposal/irrigation field can be installed in a modular and irregular manner, and it would be simple to design an arrangement that allowed the overland flowpath to pass through it. The appropriate setback of irrigation drippers (or similar) from the overland flowpath can be confirmed as part of a subsequent design phase (for example, as part of the resource consent process).

46. The applicants are grateful to the Commissioners for directing conferencing which has resulted in resolution of these issues.

[65] Joint Witness Statement Stormwater / Wastewater dated 5 December 2024 at paragraphs 11-13, and 15-18.
[66] Joint Witness Statement Planning, page 15. See now at Appendix 1, Drawings 001 (Note 4) and 005 (Note at bottom). Also Dwg 005 - all SW OLFP's to be delivered in Stage 1.

Stormwater

47. The key issue raised by both Ms Southerwood and Mr Abraham at the hearing related to the appropriate size of a soakage area for each residential lot, with Mr Abraham suggesting this could be as much as 75m^2 if the 50% reduction factor is not applied or 140m^2 if the reduction factor is applied as noted by Ms Southerwood.[67] In reply to questions, Mr Abrahams calculated that soakage per property would therefore take up 32-37% of site area.[68]

48. The Lysaght Servicing Report explained that an assumed design soakage rate of 100mm/hr was used to demonstrate that a soakage disposal device was appropriate for the private lots within the Plan Change area.[69] In response to Ms Southerwood and Mr Abraham, Mr Hight prepared a new design using a design soakage rate of 7mm/hr, as suggested by Ms Southerwood notwithstanding that he considered 100mm/hr more appropriate. That showed that a soakage device remains feasible (and would occupy 24m²).[70]

49. Further to the conferencing directed by the Commissioners, the experts are now agreed that suitably sized soakage systems can be sited within small lots (and that there is no need to set a maximum development density based on soakage constraints). In particular:[71]

    (a) If a conservatively slow design soakage rate was used (3.5mm/hour), a system of approximately 30m² in footprint is sufficient to store two consecutive design storms (10-year, 60-minute storm, as per the New Zealand Building Code) without surcharge. This approach isn't in strict compliance with the requirements discussed in paragraph 6 of the Joint Witness Statement, in that

[67] Notes of reply comments by James Abraham 14 Nov 2024 at paragraph 13.
[68] Statement Of Evidence Of James Abraham On Behalf Of Western Bay Of Plenty District Council In Response To Questions From Hearing Commissioners (Wastewater And Stormwater), Q1 at paragraph 6.
[69] Engineering Servicing Report, Revision 7 (22/08/24), at pages 9-11.
[70] Post-hearing Reply Evidence of Daniel Hight at paragraph 11.
[71] Joint Witness Statement Stormwater / Wastewater dated 5 December 2024 at paragraphs 6-10.

such a system would take between four and five days to completely drain. However, such a system can receive two design consecutive storms without surcharge and was therefore considered a suitable solution.

(b) If the design soakage rate was increased to approximately 30mm/hour (noting that the surrounding sites used rates in the order of 60mm/hour, according to Mr Abraham's research), then a system measuring approximately 17m² in footprint could drain the design storm within 24 hours, complying with the requirements set out in paragraph 6 of the Joint Witness Statement.

50. The experts are further agreed that the soakage testing needed to more accurately size the soakage systems can be deferred to the subsequent resource consent phases, given that it was also agreed that even with conservative soil parameters a suitably sized soakage system can be sited within the proposed lots.[72]

51. The applicants are grateful to the Commissioners for directing conferencing which has resulted in resolution of this issue.

Summary

52. In summary, the applicants have produced sufficient evidence to demonstrate that stormwater and wastewater management can be addressed, and that any details to be refined can be appropriately dealt with during the resource consent process.

53. Further, to the extent that WBOPDC has raised issues regarding water quality then these fall under the jurisdiction of BOPRC which did not raise any technical issues at the hearing with respect to the wastewater treatment system.

[72] Joint Witness Statement Stormwater / Wastewater dated 5 December 2024 at paragraph 14.

Plan change plans and provisions

54. A final set of proposed PC 95 plans and provisions, taking into account the planners' agreement,[73] is attached as Appendix 1.

Submission from Mr Maassen

55. Mr Maassen provided a detailed submission on PC95, and evidence which addressed by way of reply, the expert evidence called on behalf of the applicants. There were a number of matters canvassed by Mr Maassen which should be disregarded and / or accorded no weight by the Commissioners. In particular, Mr Maassen:

(a) Gave hearsay evidence;

(b) Provided opinion on expert matters when he is not an expert himself; and

(c) Made statements that are simply not correct.

Hearsay

56. With respect to hearsay evidence, Mr Maassen gave evidence on behalf of other residents within Pongakawa. Those other residents were not themselves giving evidence and to that extent, what Mr Maassen said is hearsay and is inadmissible.

57. In fact, Mr Maassen was the only individual submitter in opposition who appeared at the hearing who is resident in the Arawa Road settlement.[74]

[73] Joint Witness Statement Planning, page 15.
[74] The other individual submitters in opposition were from Otamarakau.

Matters of expert opinion

58. Mr Maassen responded to the expert evidence from the applicants, sometimes with reference to personal observations (which are matters of fact on which he is entitled to give evidence). However, he also gave many opinions in relation to the expert evidence. As Mr Maassen is not an identified expert in any particular area, he is not qualified to provide opinion evidence, and that evidence should be disregarded by the Commissioners.

Incorrect statements

59. Lastly, Mr Maassen made statements that were simply not correct. For example, he said that certain matters were "not examined by any of the documents" when those matters are clearly examined by the documents.[75] He also said that all local businesses are located in or closer to Te Puke – this is not correct as will have been evident from the Commissioners' site visit. Perhaps the most far reaching example was his statement that Mr and Mrs Marsh run a highly productive farm which is directly contrary to their evidence that the dairy farm has been a marginal operation.

60. In my submission, when the Commissioners filter out the statements which are hearsay, matters of unqualified expert opinion, or factually incorrect, there is very little left in Mr Maassen's case of relevance.

[75] For example, he said in his statement of evidence at the hearing that the impact of future sea level rise and the impact this may have on the viability of a development at this location has not been examined; however the flood data sourced from WBOPDC, is modelled for a 1% flood event, adjusted for climate change. See discussion of the WBOPDC flood maps at the s 42A report, paragraphs 11.2 and 11.3.
1.25m sea level rise.

Further information sought by the Commissioners

Rural character

61. In relation to the rural character questions asked by the Commissioners,[76] the planners have no disagreement on their answers to these questions (with some nuanced variation between the applicant and WBOPDC planners as to the extent of those effects).[77] In summary, there is agreement that effects upon existing rural character are a reasonably anticipated effect to be considered,[78] with reliance on planning and landscape expertise. The plan change site is considered to be a typical lowland dairy farm, with recognition to be given to the fact the farm and plan change site is adjacent to a residential settlement.[79]

62. The nuanced difference between the applicant and WBOPDC planners as to the extent of those effects is whether they are acceptable in the context of a plan change (applicant), versus that there is mitigation which manages the loss of existing amenity and character (sic) only some extent, cannot avoid the fact it is (sic) fundamental change from rural to residential.[80]

63. Notably the RPS does not provide strong direction / has limited direction on rural character.[81] In this context, it is submitted that the loss of rural character is not a strong consideration in the context of this plan change.

64. PC95 necessarily anticipates the fundamental change from rural to residential that Ms Mark records. As the planners say at the outset, the relevance of this is inherently tied to the s 32 analysis. If the Commissioners consider that the plan change is appropriate having regard to relevant statutory considerations, then the fundamental change is appropriate.

[76] Minute 4 dated 3 December 2024.
[77] Joint Witness Statement Planning, pages 2-5.
[78] Joint Witness Statement Planning, page 2.
[79] Joint Witness Statement Planning, page 3.
[80] Joint Witness Statement Planning, page 4.
[81] Joint Witness Statement Planning, page 4 and page 5.

Iwi planning instruments

65. In relation to the iwi planning instrument questions asked by the Commissioners,[82] there are notably few areas of disagreement here also. Ms Holden and Ms Mark query whether the plan change is consistent with one Ngāti Rangitihi objective and policy. It is submitted firstly that in circumstances where Ngāti Rangitihi have not pursued involvement in the PC95 process, this should not be accorded weight by the Commissioners, and that secondly the plan change is not inconsistent with the Ngāti Rangitihi objective and policy identified. This is because PC95 does not represent "sprawl" across the landscape, and that as a result of this *thorough* First Schedule process, the proposal is appropriate.

66. Importantly, Ms Mark agrees that engagement efforts reflecting the iwi planning instrument directions on the matters the planner identify appear to have been made, and that the structure plan provisions also do seek to address important matters raised through engagement.[83] On this basis the Commissioners can be satisfied that iwi planning instruments have been appropriately taken into account in the PC95 process and its outcomes, to the extent that their content has a bearing on the resource management issues of the district.[84]

Conclusion

67. The evidence produced by the applicants in support of PC95 is at an appropriate level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal. For the NPSHPL in particular, evidence has been produced that addresses the matters in clause 3.6 of the NPSHPL.

[82] Minute 4 dated 3 December 2024.
[83] Joint Witness Statement Planning, page 7.
[84] RMA, s 74(2A).

68. The level of support for Plan Change 95 from the community is remarkable. Evidence given at the hearing in support included:

(a) Local residents Robyne Cooper and Paul Hickson;
(b) Craig Haggo, in his capacity as principal of Pongakawa School;
(c) Part-time Pukehina resident and cycleway advocate Kirsty Garrett;
(d) Sue Matthews in her capacity as Chair of the Paengaroa Community Association;
(e) Mark Boyle, Managing Director of the Te Puke Economic Development Group.

69. Additionally, seasoned developers Scott Adams and Peter Cooney took time to support the proposal from a development perspective, as did David Hamilton who carried out some of the development at Penelope Place. Representatives of Ngāti Whakahemo (which provided a submission in support) also delivered karakia and remained present throughout the hearing.

70. This level of support for a private plan change is unique. While submitter evidence doesn't displace the statutory considerations which the Commissioners must address (or the boxes that must be 'ticked', in Robyne Cooper's words), in this case it goes to the heart of some of the matters in contention:

(a) The connectedness of Pongakawa to Te Puke – clearly articulated by Mark Boyle and Paul Hickson;
(b) The demand for housing in Pongakawa specifically – Craig Haggo in particular spoke to this with regard to Pongakawa School;
(c) The housing shortage, lack of development capacity, and feasibility of developing elsewhere – not one but three developers, including the region's leading land developer (Scott Adams, of Carrus Corporation), and one of New Zealand's most prolific housing companies (Peter Cooney, of Classic Builders and Classic Developments) spoke from personal experience of development within the Bay of Plenty;

(d) Multi modal transport – Craig Haggo and Kirsty Garrett spoke specifically of a safer bus stop, and plans for the cycleway connection to Pukehina.

71. The very considered, consistent, clear, and genuine evidence from the diverse range of submitters supporting PC 95 goes to many of the matters at the heart of this case and should be accorded considerable weight by the Commissioners.

72. The suite of expert evidence from the applicant, and convincing evidence from submitters in support of PC95, weighs in favour of confirming PC95.

73. The Commissioners are able to be satisfied on the evidence that the planning pathways in the NPSUD and NPSHPL for Plan Change 95 are available. A decision confirming the plan change is sought.

DATED this 7th day of February 2025

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Vanessa Hamm / Bridget Bailey

Counsel for Kevin and Andrea Marsh