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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POST HEARING STATEMENT OF REPLY EVIDENCE OF VINCENT MURPHY (PLANNING) ON BEHALF OF KEVIN AND ANDREA MARSH

Introduction

1. My name is Vincent John Murphy. I confirm my qualifications and experience as set out in my statement of evidence dated 24 October 2024.

2. I also confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses, as contained in the Environment Court's Practice Note 2023. I confirm that this evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

3. This reply evidence is provided pursuant to Item 4 of Hearing Direction 3 dated 18th November 2024. This evidence responds to evidence presented or introduced by the following expert witnesses during the hearing proceedings[1]:

[1] Item 4 of Hearing Direction 3 seeks any reply evidence to the evidence called by WBOPDC on the 14th of November 2024, with the exception of the evidence of Mr Abraham which is subject to separate treatment. Responses to the amended brief, and evidence of, James Abraham of WBOPDC was directed in Item 1 of Hearing Direction 3 to be provided by 5pm 27th November 2024, and as such response to that evidence was provided separately on that date. This evidence responds to other evidence called by WBOPDC on the 14th November 2024.

(a) James Crummer, WBOPDC (reserves/recreation/cycling)[2];

(b) Stuart Ford, WBOPDC (highly productive land)[3]; and

(c) Abi Mark, WBOPDC (planning)[4].

4. I address points made in the evidence referred to above, thematically and grouped into the following topics:

(a) Housing shortfall affecting Te Puke;

(b) Sufficiency of development capacity;

(c) Settlement pattern;

(d) Urban environment and well-functioning urban environment;

(e) Section 3.6 of the NPS HPL including reasonably practicable and feasible options for supplying sufficient development capacity; and

(f) Plan provisions.

5. For completeness, I note my post-hearing reply evidence to the evidence of Mr Abraham for WBOPDC dated 27th November 2024 covers the scope of filling activities; stormwater management and relationship to groundwater; and wastewater field sizing and location.

Housing Shortfall Affecting Te Puke and the Sub Region

6. Ms Mark opined at the start of spoken evidence, that my opinion that there is a housing shortfall affecting Te Puke is inaccurate. Ms Mark's position was premised on the HBA data from 2022. To clarify, the reason for my opinion that Te Puke is subject to a *housing shortfall*, as distinct from adequacy of development capacity, is based on:

(a) The 2024 HBA data incorporated into the FDS showing a shortage of housing in WBOPDC urban areas in the Tauranga/Western Bay sub-

[2] Summary Statement of Evidence – Jason Crummer, dated 13th November 2024.
[3] Summary Statement of Evidence – Stuart Ford, dated 13th November 2024.
[4] Evidence presented or introduced during hearing – 14th November 2024; Statement of Evidence in Reply of Abigail Louise Mark, dated 22nd November 2024.

region. This totals 2590 dwellings now, growing to 2700 once growth allocations over 30 years are exhausted. See table extract below from the FDS[5]. If the interpretation of Ms Mark is taken, that the FDS responding to the HBA is only seeking to meet demand in the urban environments of Te Puke and Omokoroa[6], then without a housing shortage in Te Puke this shortfall would be restricted to Omokoroa. Given that the same 2022 HBA referred to by Ms Mark resulted in a recommendation of an "*urgent need to investigate future growth areas in Te Puke and the Eastern Corridor to assist an addressing medium and longer-term shortfall that will arise from 2025 onwards*"[7], it is my opinion that some of this pent demand is accruing in Te Puke.

Existing Housing Shortfall – Tauranga City	HOUSING SHORTAGE / SURPLUS WITHIN EACH PERIOD	CUMULATIVE HOUSING SHORTAGE
Existing	-4,950 to -5,950	-4,950 to -5,950
Dwellings Short Term (2024-2027)	-1,150	-6,100 to -7,100
Dwellings Medium Term (2027-2034)	-1,800	-7,900 to -8,900
Dwellings Long Term (2034-2054)	1,300	-6,600 to -7,600
Total (2024-2054)	**-6,600 to -7,600**	

Existing Housing Shortfall – Western Bay of Plenty District	HOUSING SHORTAGE / SURPLUS WITHIN EACH PERIOD	CUMULATIVE HOUSING SHORTAGE
Existing 2024	-2,590	-2,590
Dwellings Short Term (2024-2027)	40	-2,550
Dwellings Medium Term (2027-2034)	240	-2,310
Dwellings Long Term (2034-2054)	-390	-2,700
Total (2024-2054)	**-2,700**	

(b) The evidence of Mr Counsell, that the settlement at Arawa Road Pongakawa is in the same market as Te Puke, combined with demand estimated by Mr Counsell to accrue distinct to Pongakawa, which does not appear likely to be met by the pace of subdivision occurring

[5] Page 153, Smartgrowth Strategy 2024-2074 (FDS component).
[6] See paragraph 10.21, s.42A report.
[7] See summary document 'Smartgrowth Housing and Business Capacity Assessment Summary 2022' summarising the HBA referred to by Ms Mark, page 25.

otherwise in surrounding rural Pongakawa. This has been traversed in my evidence in chief and as such is not repeated here[8].

7. Of over-arching relevance, Ms Mark referred to the table on page 157 of the FDS, which illustrates an expected supply within the sub-region over 30 years of between 35,843 and 43,959 dwellings (8,116 dwellings including papakainga dwellings), against a forecast demand of between 37,000-43,000 dwellings over the same time period[9], concluding that whilst there is a housing shortfall identified, there is not a shortfall in development capacity.

8. I would respectfully question this conclusion as to the test of sufficient development capacity being met, noting the close relationship with dwelling numbers as per Clause 3.25 of the NPS-UD. Firstly, because the forecast supply varies to the tune of over 8,000 dwellings. In the worst-case scenario (i.e. lowest delivery of supply), using these numbers (i.e. only 35,843 dwellings are realised), then insufficient development capacity exists as the minimum estimated required (including accounting for competitiveness margins) is 37,000. This is a potential shortfall in development capacity, over the long term, of 1157 dwellings. I would further note that the total numbers of housing estimated to come online come with some significant caveats, such as assuming 40% of total Tauranga City growth in nominated intensification areas including brownfield Te Papa and Mount Maunganui, and [referring to dwelling numbers in nominated growth areas of Upper Belk Road, Merrick Road, Joyce Road and the Eastern Centre at Te Kainga] "*the feasibility, timing, number of dwellings, mix of uses and spatial extent of these areas is still subject to investigation*[10]".

[8] See paragraph 68 of my evidence dated 24th October 2024.
[9] Page 152 – Smartgrowth Strategy 2024-2074 FDS.
[10] See footnotes to table on page 157, Smartgrowth Strategy 2024-2074 FDS.

Sufficiency of Development Capacity

9. In spoken evidence, Ms Mark elaborated on her professional opinion that there is sufficient development capacity, particularly in the short term, with specific reference to pages of the HBA.

10. In responding, I think it appropriate to draw focus to the differing definitions and important clauses of the NPS-UD relevant to development capacity.

11. 'Development capacity' is defined as follows:

> ***development capacity*** *means the capacity of land to be developed for housing or for business use, based on:*
>
> (a) *the zoning, objectives, policies, rules, and overlays that apply in the relevant proposed and operative RMA planning documents; and*
>
> (b) *the provision of adequate development infrastructure to support the development of land for housing or business use*[11]

12. Considering this definition alone, I can agree a housing shortfall, or insufficiency of housing supply, is not the same as insufficiency of capacity of land to be developed for housing. I accept they are two different measures.

13. However, this definition does not exist in a strict vacuum. It is utilised and substantiated elsewhere in the NPS-UD.

14. Policy 2 directs a Tier 1 authority such as WBOPDC *to provide <u>at least</u> <u>sufficient development capacity</u> to meet* expected demand for housing and business land over the <u>short</u>*, <u>medium and long terms</u>* (with emphasis <u>added</u>).

15. *Sufficient* development capacity is then defined through clause 3.2 of the NPS-UD as follows (with emphasis <u>added</u>):

[11] Clause 1.4 – Interpretation, NPS-UD.

3.2 Sufficient development capacity for housing

(1) Every tier 1, 2, and 3 local authority must provide at least sufficient development capacity in its region or district to meet expected demand for housing:

(a) in existing and new urban areas; and

(b) for both standalone dwellings and attached dwellings; and

(c) in the short term, medium term, and long term.

(2) In order to be sufficient to meet expected demand for housing, the development capacity must be:

(a) plan-enabled (see clause 3.4(1)); and

(b) infrastructure-ready (see clause 3.4(3)); and

(c) feasible and reasonably expected to be realised (see clause 3.26); and

(d) for tier 1 and 2 local authorities only, meet the expected demand plus the appropriate competitiveness margin (see clause 3.22).

16. Housing development capacity is further governed by Clause 3.25(2) of the NPS-UD which states that "*development capacity must be quantified as numbers of dwellings in different locations, including in existing and new urban areas, and of different types, including standalone dwellings and attached dwellings*". I cite this quantification direction to shed light on why the clear information as to a housing numbers shortfall affecting Western Bay urban areas has been considered as highly relevant to this plan change.

17. Turning to the qualifiers of plan-enabled, infrastructure ready, and feasible and ready to be realised, it is important to note these qualifiers have to be met across the short, medium and long terms to satisfy the NPS-UD of providing at least sufficient development capacity across those time periods. Below, I address these qualifiers individually.

Plan-Enabled

18. The s.42A report itself at paragraph 10.40 acknowledges that it is not possible to say that intensification of Te Puke (which contributes to housing supply projections in the FDS[12]) is completely plan enabled. This is further echoed in the 2022 HBA Ms Mark referred to[13]. As such, there appears to be clear grounds that bring into question whether or not growth being considered as contributing to meeting the test of sufficient development capacity is plan-enabled as required.

Infrastructure-Ready

19. The qualifier of development capacity being infrastructure-ready is governed by Clause 3.4(3) of the NPS-UD, which states:

*Development capacity is **infrastructure-ready** if:*

(a) *in relation to the short term, there is adequate existing development infrastructure to support the development of the land*

(b) *in relation to the medium term, either paragraph (a) applies, or funding for adequate development infrastructure to support development of the land is identified in a long-term plan*

(c) *in relation to the long term, either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).*

[12] Table on page 157.

[13] Page 105 – discusses a shortfall in capacity in the medium and long-terms starting from 2025. Also states "*Some of the Generation 4 areas in Te Puke….are identified but not plan enabled*". See also executive summary, page 11.

20. Development infrastructure is further defined in the NPS-UD as:

> ***development infrastructure*** *means the following, to the extent they are controlled by a local authority or council controlled organisation (as defined in section 6 of the Local Government Act 2002):*
>
> (a) *network infrastructure for water supply, wastewater, or stormwater*
>
> (b) *land transport (as defined in section 5 of the Land Transport Management Act 2003)*[14]

21. I note the parts of the 2022 HBA referred to by Ms Mark in spoken evidence (particularly pages 97-99) (reporting as at 2022) suggest short and medium term capacity is met[15] (in turn implying that capacity is infrastructure-ready). However when accounting for competitiveness margins, the same document concludes there is insufficiency of capacity in the medium (starting in 2025) and long terms[16], and notes a lack of complete plan-enablement of capacity as discussed above.

22. The 2022 HBA states that the above infrastructure was as at 2022 either in-place or funded to be in-place through Council's Long Term Plan in the medium term (10 years through to 2032). The Long Term Plan has been revised as at 2024 and as such this infrastructure funding has been re-visited.

23. The table at **Appendix A** to this evidence considers 'infrastructure-ready' to accommodate planned growth in Te Puke in the short and medium terms, with consideration of progress as evidenced in funding changes between the 2021 and 2024 Long Term Plans.

24. The table demonstrates that it is likely that water supply and wastewater infrastructure is either in-place or funded so as to be 'infrastructure ready' across the short and medium terms.

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[14] Ibid.

[15] Pages 97 and 98 state all (planned growth) areas in the short and medium terms are plan-enabled and infrastructure ready, and in the short term, are commercially feasible.

[16] Page 105.

25. Stormwater and transport infrastructure needs do not appear to meet the test of 'infrastructure ready' with respect to the short term. Necessary stormwater and roading infrastructure supporting Structure Plan growth areas within Te Puke is not scheduled to be in-place until 2028-2029.

26. Considering the future Eastern Centre / Te Kainga scheduled supply of development capacity land being 'infrastructure ready', to meet the test of infrastructure ready the necessary infrastructure must be identified in the Infrastructure Strategy component of the Long Term Plan. This does not appear to be the case. The only reference in the 2024 LTP to 'Eastern Centre' or 'Te Kainga' is an allocation for Business Case Development across 2025-2026. There is no consideration of infrastructure for this land yet. This demonstrates just how early and uncertain precise yield to come from this future centre is, which is reflected in caveats to estimated supply in the FDS that has been referred to by Ms Mark.

27. I further note that the 'Economic Assessment of Te Puke and Surrounding Areas' prepared to support the Te Puke Spatial Plan project referred to by Ms Mark, cites as a key challenge to supporting expected high growth "*in Te Puke and the Eastern Corridor requires adequate and appropriately zoned land for homes and businesses, alongside new infrastructure*"[17]. As discussed above, the infrastructure component will lag some years to enable expected growth to be realised, contributing to insufficiency of development capacity in the short term (against the existing 2590-dwelling shortfall affecting WBOPDC urban areas). It also discusses the sensitivity or fragility of the long-term supply picture if Te Tumu is subject to delays or under-supply of housing and the need to further rely on the future Eastern Centre[18]. This has already been subject to delay – the 2022 HBA predicted Te Tumu housing to commence development

[17] Page 4, Economic Assessment of Te Puke and Surrounding Areas, prepared by Benje Patterson March 2024.
[18] See section 2.2, above report.

from 2030, this has now been pushed back the longer term post-2034[19]. I also note that the report assumes the Eastern Centre will provide 18000-20000 dwellings[20], when this has been reduced to 8000 in the FDS.

28. For these reasons, it is my opinion that necessary development capacity in the Te Puke market as defined by Mr Counsell is not infrastructure ready (or plan enabled), across all short, medium and long-terms as required by the NPS-UD.

Feasible and Reasonably Expected to Be Realised

29. As discussed above, it appears there will be a lag of 4-5 years before stormwater and transport infrastructure is delivered to enable further housing to come online in the Te Puke Generation 3 area. Considering also the evidence of Mr Cooney and Mr Adams presented at the hearing, it is my opinion that this threshold cannot be met in the short term (until the supply of the necessary infrastructure, which is not scheduled to happen in the next three years).

Conclusion – Sufficiency of Development Capacity

30. For the reasons discussed above, it is my opinion that:

    (a) The 2022 HBA referred to by Ms Mark concludes there is an insufficiency of development capacity in the medium and long-terms[21]. On this basis alone, given clause 3.2 of the NPSUD, sufficient development capacity has not been provided for.

    (b) The FDS does not conclusively and certainly provide sufficient development capacity across WBOPDC's urban areas across the short-

[19] Page 8, 2022 HBA – Te Tumu stated as "expected to commence development from around 2030 as opposed to the previous assumption of 2025". The 2024 FDS shifts back further any supply from Te Tumu to the long-term period of 2034-2054.
[20] Ibid.
[21] Page 105, 2022 HBA.

long term periods – it relies on a number of caveated assumptions particularly where long-term supply is concerned. In the worst-case scenario following these assumptions (i.e. lowest supply of dwellings is delivered), development capacity enabled will result in a dwelling yield short 1157 dwellings of estimated demand across the short-long terms.

(c) Growth expected in Te Puke as discussed in the evidence of Ms Mark is not completely plan-enabled.

(d) Growth expected in Te Puke is not infrastructure-ready in the short term, with respect to roading and transport, and stormwater infrastructure.

(e) It follows, and with due regard to the expert developer evidence of Mr Cooney and Mr Adams, that in the short-term the development capacity in question is not feasible and reasonably expected to be realised (with dwellings).

(f) Infrastructure identification for the future Eastern Centre is not identified in the long-term plan infrastructure strategy so as to meet the threshold of 'infrastructure ready' in respect of that development capacity.

31. It is therefore my professional opinion that insufficient development capacity has been determined to be the case in the full 2022 HBA referred to in spoken evidence by Ms Mark in the medium and long-terms. For the reasons discussed above, the condition of sufficient development capacity is not conclusively met by the FDS, and is certainly not met in the short-term in Te Puke, in my opinion. Therefore, I maintain my opinion from evidence in-chief that the planning decision would be one affecting a market suffering from insufficient development capacity as defined by the NPS-UD.

Settlement Pattern, Urban Area, Well-Functioning Urban Environments

32. In oral evidence Ms Mark identified text and images from the Smartgrowth Strategy document and FDS. In discussing Map 18 of the FDS, Ms Mark pointed out that the PC95 site/Arawa Road settlement is not nominated for growth, and opined that simply being outside of a 'No Go' area does not mean it is a location for growth. I don't disagree with either of these sentiments, however maintain it has relevance to understanding how the FDS settlement pattern has been devised.

33. I maintain my opinion as expressed in my written and spoken evidence that nonetheless, 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 on[22]. The same can be said of whether or not the Arawa Road settlement, which the PC95 site would expand and consolidate, is 'urban' or not. I would note that no land starts out as urban, and the test for an 'urban environment' uses the term 'predominantly urban' (regardless of size). Ms Mark's position of inconsistency with RPS Policy UG 7A is premised on the site not being part of an urban environment which we disagree on, so there is no change to my assessment of that matter.

34. For completeness, I maintain my opinion that there is scope or intention in the FDS to enable development such as that PC95 to contribute to growth requirements. This is relevant to meeting the definition of an 'urban environment'. Again, for completeness, there is no change in my consideration of the competing evidence of Mr Counsell and Mr Colegraves, and I adopt the expert evidence of Mr Counsell that the PC95 site and adjoining Arawa Road settlement, is within the same housing market.

35. I do believe there is a genuine mis-understanding from Ms Mark about my comments about a lack of recognition of the FDS incorporating responsive

[22] Namely pages 155 and 153 of the FDS, supported by information on pages 111 and 112 of the Smartgrowth Strategy 2024-2074.

planning and agility into the FDS settlement pattern, at paragraph 146 of my evidence in-chief. To clarify, paragraph 146(d) should have read "there is no recognition *by Ms Mark* of the FDS…" incorporating responsive planning and agility of the FDS settlement pattern.

36. I note Ms Mark opined that I have misunderstood her consideration of development 'from afar' as discussed in my evidence in chief, by conflating that into the discussion of the extent of 'the market'. I disagree, insofar as by forming this position Ms Mark does appear to be inherently excluding the potential for one urban environment to exist across two (or more) discrete locations if in the same market contrary to the scope of the definition of 'urban environment'.

37. I do wish to respond further to the concept of a well-functioning urban environment, as Ms Mark and Mr Crummer discussed progress on cycling infrastructure. Ms Mark and Mr Crummer are correct that resource consent is held, by Pukehina Residents and Ratepayers Association, for part of the cycleway proposed from Pukehina to Arawa Road. The financial challenges mentioned by Mr Crummer are noted however this is not considered unusual. The relevant point to my mind is that the group responsible for leading the cycleway is intending to deliver the cycleway along Arawa Road[23], and the PC95 development enabled would provide a destination complementing this planned investment. This further complementing planned cycleways as discussed in the hearing, which would only improve the accessibility to educational and recreational infrastructure nearby at Pongakawa School.

NPS-HPL and Reasonably Practicable and Feasible Options

38. I wish to respond to Ms Mark's spoken evidence concerning dissatisfaction of the three pertinent tests within 3.6(1) of the NPS-HPL to be satisfied in order for a territorial authority to allow urban re-zoning of highly productive land.

[23] As per the evidence of Kirsty Garrett, see also https://www.pukehinabeach.co.nz/walkway-cycleway/

3.6.1(a) – Sufficiency of Development Capacity

39. The first test at 3.6(1)(a) requires that urban re-zoning of highly productive land is required to provide sufficient development capacity for housing or business land to give effect to the NPS-UD 2020. This must be met across the short, medium and long terms. The assessment above concerning sufficiency of housing capacity makes clear, in my opinion, that this condition is met in that insufficient development capacity (in the relevant market and indeed District-wide) when considering all requisite time periods exists.

3.6.1(b) – Reasonably Practicable and Feasible Options

40. The second test at 3.6(1)(b) (with further quantification through clause 3.6(2)) requires that there be no "other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market", with infill rezoning, or rezoning of less productive land to be explored (through compliance with clause 3.6(2)). This was also the subject of questions to Mr Perry, Ms Mark and myself during the hearing. Ms Mark concludes that she is not satisfied this test is met overall.

41. To summarise, pedologist Mr Perry has provided comparison information as to the productive capacity of land at the site, and adjoining Paengaroa and Te Puke. As a planner I have led (whilst nonetheless working closely with Mr Perry) further consideration of the likes of reverse sensitivity and flooding constraints in further considering the feasibility and practicability of expansion options (of those areas), and infilling potential of those areas.

42. Ms Mark specifically commented on the potential for developing land subject to the Flood Hazard overlay in WBOPDC, citing its activity status as Restricted Discretionary and focus on freeboard levels. Such land adjoins both Te Puke and Paengaroa. I respectfully contend this is significantly (perhaps inadvertently) misleading as to, and understating, the complexity and difficulty

of developing land in WBOPDC that is subject to this mapped constraint. I make this comment from first-hand experience of dealing with the same hazard constraint in WBOPDC's area, at another site north of Tauranga, seeking to develop a 12ha site (in accordance with its zoned purpose). No less than eight stormwater engineers and flood modellers, over a course exceeding two years, are yet to reach professional comfort and consensus as to an acceptable outcome in respect of stormwater management as impacted by elevated flood risk. In such floodable areas, BOPRC consents are also inherently required and that introduces materially greater complexity and consenting risk to such options. The example I mention above does not have a downstream floodwater management scheme to consider – in the Te Puke context, there are Kaituna and Little Waihi drainage/floodwater management schemes in place creating further sensitivity when displacing floodwater.

43. In short, I consider the presence of flooding constraints to be of materially greater risk to feasibility than that as suggested or alluded to by Ms Mark in spoken evidence.

44. I note Mr Perry[24] has provided further reply evidence in response to the evidence of Mr Ford called by WBOPDC.

45. To summarise the consideration of reasonably practicable and feasible options (considering the direction of Clause 3.6(2)), in the same market as determined by Mr Counsell, responding to the evidence of Mr Ford and with regard to the reply evidence of Mr Perry:

Infilling to Te Puke or Paengaroa

46. Infilling potential to Paengaroa remains unchanged from my evidence in-chief. Infilling to Te Puke also essentially remains unchanged from my evidence in-chief, except to say that in responding to the sufficiency of housing capacity

[24] Post-Hearing Reply Evidence of Joel Perry dated 29th November 2024.

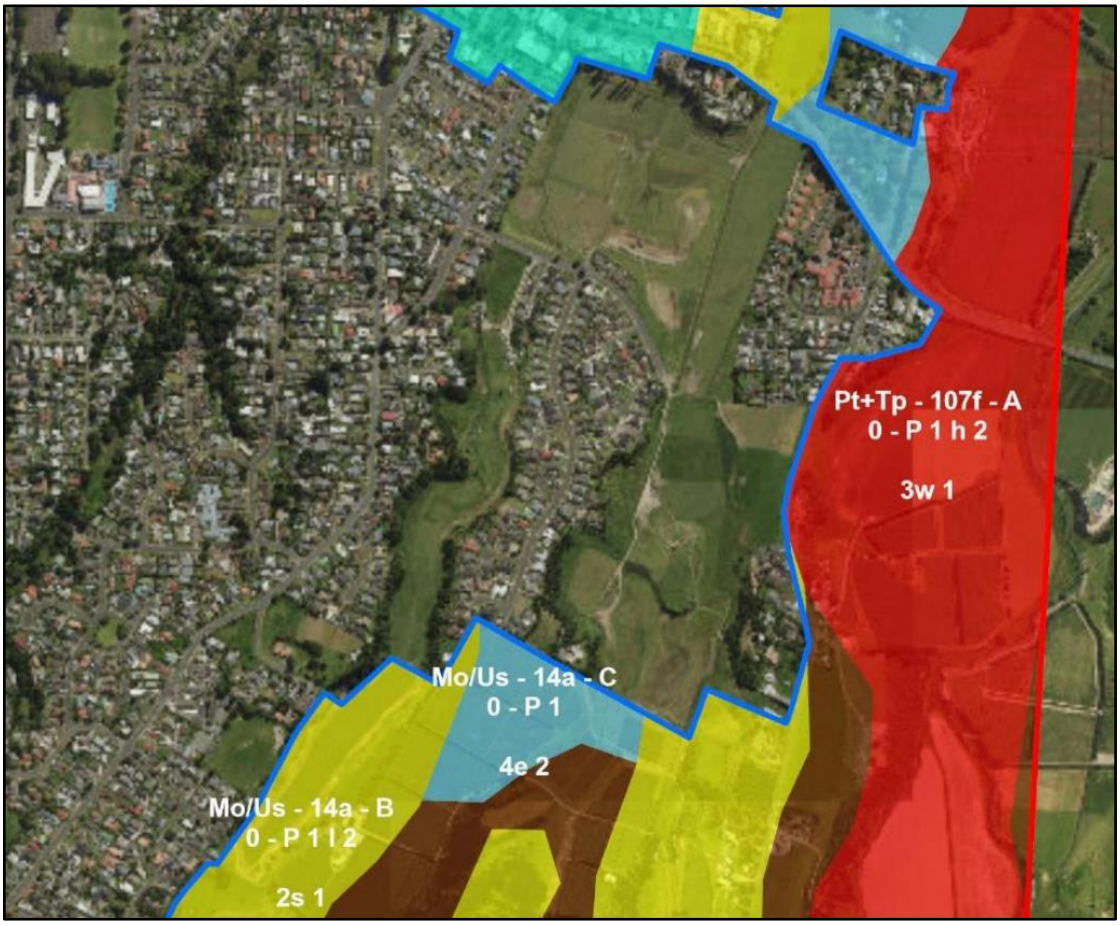
point of Ms Mark, it is clear that there will be a lag of infill of four-five years with stormwater and roading infrastructure to enable growth in the under-development Generation 3 south-west growth area of Te Puke (partly zoned Medium Density residential, partly zoned Future Urban).

Expanding Te Puke

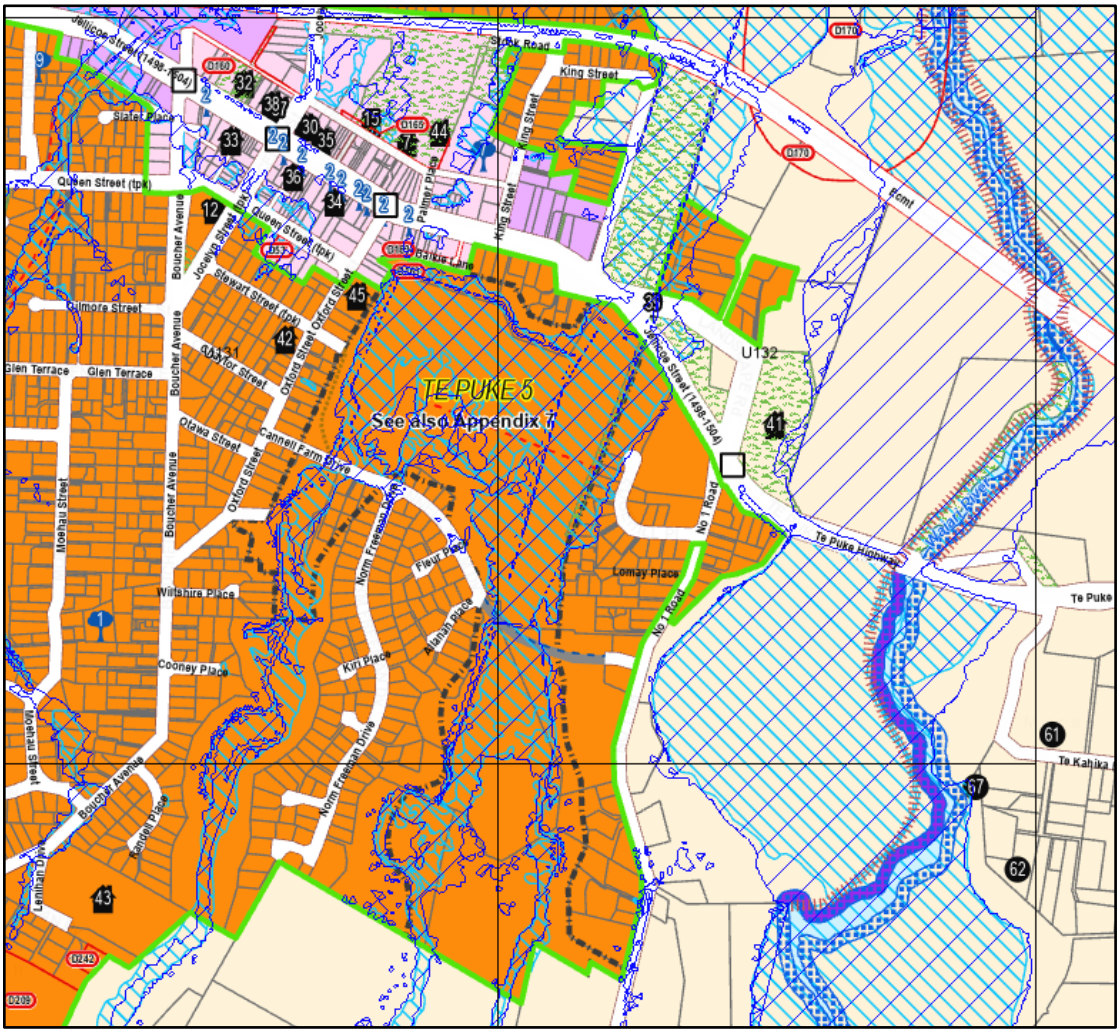
47. Regarding the potential to expand Te Puke further. The land immediately adjoining Te Puke, in all directions (except for east), is overwhelmingly soil class 2s1 soil[25]. My understanding of Mr Perry's evidence in chief[26] and reply evidence to Mr Ford[27] is that this soil has greater productive capacity than the PC95 soil (largely 2w1) which is subject to wetness limitations. This is perhaps reflected by the fact the vast majority of said land surrounding Te Puke is in-use supporting operating kiwifruit orchards.

48. There is a band of soil class 3w1 land to the east of Te Puke. This land however is overwhelmingly subject to the operative Floodable Area hazard overlay, which has been recently subject to updated modelling. See images below to assist. I refer to the reasons discussed above regarding the complexity of developing in Floodable Hazard and flood-prone areas, particularly in this context with consents to be required from WBOPDC and BOPRC and the additional downstream sensitivity of the Kaituna Catchment Control Scheme. Such a design exercise would include ensuring stormwater management can function against a range of probability combinations of pluvial and coastal flooding events out to 100-year model events, to meet BOPRC hydraulic and hydrology guidelines, based on recent consenting experience. It is not my opinion that such an option is 'reasonably practicable and feasible' to develop this land at scale for housing.

[25] See page 34, evidence in chief of Joel Perry dated 24th October 2024.
[26] For example, see table at paragraph 53 comparing potential land uses of 2s1 soil with 2w1 or 3w1 soil; see paragraph 93 in the context of the direct comparison of NZLRI data sought by Mr Ford.
[27] See paragraph 15, post-hearing reply evidence of Joel Perry dated 29th November 2024.



Note Class 3w1 soil to east of Te Puke. Source: Evidence in-chief of Joel Perry, dated 24th October 2024, page 34.



The Class 3w1 soil to east of Te Puke is subject to the operative Floodable Area hazard overlay (light blue hatch), which in places is enlarged to cover additional areas in the same location by the most recent modelling (dark blue hatch). Source: WBOPDC Eplan.

49. I note the evidence of Mr Ford, an agricultural and resources economist[28], presented at the hearing regarding land productivity on behalf of WBOPDC is centred on Land Use Capability (LUC) data and inferring from that data, productive capacity conclusions. In response, Mr Perry, a pedologist on behalf of the applicant, considers this approach further concluding that LUC alone should not be used to determine soil versatility as seems to have been employed by Mr Ford. Clause 3.6(1)(b), as quantified by Clause 3.6(2) of the NPS-HPL, requires consideration of options in existing urban areas, or re-zoning of land not highly productive, or different highly productive land that has a lower productive capacity (emphasis added).

[28] Paragraph 2, Summary Statement of Evidence of Stuart Ford.

50. What is called for, in my opinion, is a consideration of the comparative productive capacity of locations of any potential options for substituting the same or greater development capacity to be added (if all options affect highly productive land). Mr Perry, accounting for the comments of Mr Ford, and considering the type and mix of soils surrounding Te Puke and Paengaroa, maintains in his reply evidence that the PC95 site is inferior in productive capacity to land adjoining Te Puke (and Paengaroa) were those settlements to be expanded further than what is already zoned for residential purposes.

Expanding Paengaroa

51. The land surrounding Paengaroa is either soil class 2s1[29], relatively the highest productive capacity soil present in the locality and market based on the advice of Mr Perry, or class 3e5. In relation to the latter soil, the strictly lower versatility is acknowledged in the evidence of Mr Perry, however when considering the broader factors of productive capacity, Mr Perry maintains that this land does hold higher productive capacity in comparison to the PC95 site.

52. I therefore maintain my opinion, relying on pedologist Mr Perry regarding comparative productive capacity, that there are no other reasonably practicable and feasible options for delivering the same development capacity enabled by PC95 in the same locality and market whilst having a less adverse effect on the productive capacity of land.

Plan Provisions

53. I have reviewed the amended rules proposed to Chapter 12 of the District Plan as most-recently updated by Ms Mark in reply evidence dated 22nd November 2024. These also address the substance of comments of Ms Holden for BOPRC.

[29] Evidence in-chief of Joel Perry, dated 24th October 2024, page 35.

54. The 'All Stages' stormwater rules, as amended by Ms Mark in reply evidence dated 22nd November 2024 in relation to climate-change requirements, testing requirements, and precise coverage of rules, are not accepted in their entirety due to the potentially onerous and illogical outcomes that may be enforced upon future development. Two alternative versions addressing the substance of stormwater management are proposed at **Appendix B**.

55. I further note Ms Mark has provided examples of District Plan provisions relating to tangata whenua values. The proposed District Plan provisions, reflected in the latest drafting by Ms Mark, seek to enhance the enforceability of delivering on agreed outcomes of engagement with tangata whenua at this plan change stage. This would then be subject to checks and balances, and by extension further engagement, through regional and district consenting to progress the planned development.

Summary

56. In response to the evidence presented by WBOPDC during the hearing, for the reasons discussed above I conclude:

    (a) Te Puke suffers from a housing shortfall, which would appear correlated with issues in providing land and infrastructure to deliver sufficient development capacity;

    (b) Sufficient development capacity, as distinct from a housing shortfall, is acknowledged as not being met in the 2022 HBA in the medium and long terms;

    (c) This is due to not meeting the tests of plan-enabled, infrastructure-ready, and feasible and reasonably expected to be realised, within required time periods;

(d) Policy 2 of the NPS-UD is therefore not being met now and may not be met for another 10 years through the medium-term once Council-led infrastructure supply is scheduled to be in-place;

(e) PC95 could positively respond to this issue, on an albeit small scale, providing housing within the Te Puke market adjoining an existing urban settlement and SH2, complete with developer-funded necessary infrastructure;

(f) The first test of 3.6(1) the NPS-HPL relevant to re-zoning highly productive land is inherently met as sufficient development capacity as defined in the NPS-UD does not exist;

(g) The second test concerning determining any other reasonably practicable alternatives (infill intensification rezoning, or rezoning land of lower productive capacity) do not exist without generating greater adverse effects upon the productive capacity of land as determined by pedologist Mr Perry for the applicant;

(h) I maintain my opinion from my evidence in-chief that the benefits of the loss of less than 10ha of highly productive land outweigh the costs, to satisfy the third test.

Vincent Murphy

29th November 2024

Appendix A

Te Puke Growth Areas – Infrastructure Ready Assessment

To note:

1. Te Puke has three growth areas provided for (called Generation 3 and 4[15] areas). Infrastructure requirements for these areas in LTP's appears to be by reference to 'Te Puke Structure Plan' items, there is not necessarily further distinction in infrastructure funding. All relevant infrastructure funding has been sought to be considered in considering whether these areas are 'infrastructure ready' as required by the NPS-UD.

Te Puke – Generation 3 and 4 Structure Plan Growth Areas				
Infrastructure Needs	**2021 LTP Provision**	**2024 LTP Provision**	**Delivery/Funding Comment**	**Conclusion**
2022 HBA identified[1]: • Wastewater trunk main extension • Water supply bore, reservoir and main extension • Stormwater ponds **Not clearly scoped in 2022 HBA, but is relevant development infrastructure under NPS-UD:** • Roading and transport	<u>Wastewater:</u> $23.5 million on Te Puke Wastewater Plant upgrade scheduled 2022-2031[2]. $588K for Te Puke Structure Plan infrastructure[3]. $3.29 million – Te Puke Network Upgrades[4]. <u>Water Supply:</u> $146K – Te Puke Structure Plan Fund[5] $568K – Eastern Structure Plan Implementation (through to 2025 – addition 76K allocated to 2030)[6]. <u>Stormwater:</u> $3.84 million - Area 3 (corresponds to Generation 3) Structure Plan stormwater infrastructure, spread across 2022-2030[7]. $410K – Seddon, Raymond, Dunlop, Bishoprick upgrades. Dunlop Road component may service part of Generation 3 yield[8]. <u>Roading and Transport:</u> A total of 11 roading and transport projects totalling 9.57 million were allocated funding for Te Puke Structure Plan areas in the 2021 LTP[9]. These were all Generation 3 area projects.	<u>Wastewater:</u> $77.6 million on Te Puke Wastewater Plant upgrade, scheduled 2025-2034[10] $2.7 million for Te Puke Structure Plan infrastructure scheduled 2025-2034. $2.4 million – Te Puke Network Upgrades[11] <u>Water Supply:</u> $368K of the 2021 LTP projects remains, scheduled spend 2026. <u>Stormwater:</u> A further $5.92 million in stormwater infrastructure is now provided for in the 2024 LTP for the Te Puke Growth and Area 3 Structure Plan area[12]. <u>Roading and Transport:</u> 8 of the same projects remain funded and to be delivered, due to be expended across to 2029[13].	<u>Wastewater:</u> • Assuming the trunk extension project is reflected in either the plant upgrade, or Te Puke Structure Plan costs, costs have increased and are spread through to 2028 (plant upgrade) or 2034 (structure plan infrastructure). Therefore unclear if pent demand for short-term dwellings in this growth area can be serviced in next three years. • Public wastewater infrastructure to Dunlop Road has occurred in 2022, nothing to Macloughlin Drive, No. 3 Road or Whitehead Avenue since the 2022 HBA was published[14]. <u>Water Supply:</u> • Appears to have been largely expended, assumed delivered, rest to be delivered 2026. <u>Stormwater:</u> • No stormwater infrastructure appears to have been brought online in the Generation 3 growth area. It is therefore concluded the LTP allocation from the 2021 has rolled to the 2024 LTP with increased costs reflected. These costs are scheduled to be expended through 2028 therefore will not deliver infrastructure-ready land in the short-term of three years. • This is likely due to the LTP allocating some responsibility for stormwater infrastructure to private developers to deliver (to then vest with Council), and some responsibility direct with Council. <u>Roading and Transport:</u> • New connector roads, walkways, and Macloughlin Road urbanisation remains to be complete as necessary roading upgrades to service this growth area. These will not be all complete until 2029.	<u>Wastewater:</u> Unclear if short-term capability is provided for the entire Generation 3 area. Due to LTP funding, Te Puke Generation 3 capacity is likely 'infrastructure ready' with respect to wastewater for the medium term and long terms. <u>Water Supply:</u> Likely 'infrastructure ready' <u>Stormwater:</u> Not 'infrastructure ready' in the short term. Not ready until 2028. <u>Roading and transport:</u> Not 'infrastructure ready' in the short term. Not ready until 2029.

[1] Refer page 98, 2022 HBA
[2] Project 225632, WBOPDC LTP 2021 (wastewater)
[3] Project 295703, WBOPDC LTP 2021 (wastewater)
[4] Project 353502, WBOPDC LTP 2021 (wastewater)
[5] Project 287119, WBOPDC LTP 2021 (water supply)
[6] Project 287118, WBOPDC LTP 2021 (water supply)
[7] Project 226602, WBOPDC LTP 2021 (stormwater)
[8] Project 226638, WBOPDC LTP 2021 (stormwater)
[9] Page 382 – Structure Plan: Te Puke Transportation (Schedule), WBOPDC LTP 2021
[10] Project 225632, WBOPDC LTP 2024 (wastewater)
[11] Project 353502, WBOPDC LTP 2024 (wastewater)
[12] Projects 226602 and 226620, WBOPDC LTP 2024 (stormwater)
[13] Page 305 – Structure Plan: Te Puke Transportation (Schedule), WBOPDC LTP 2024
[14] Based on BOPDC utility/asset mapping data at https://map.westernbay.govt.nz/Html5Viewer/?viewer=Public
[15] Generation 3: Medium Density/Future Urban Zone, western fringes of Te Puke bounded by Macloughlin Drive, Dunlop Road, Whitehead Avenue, and No. 3 Road. As informed by Figure 4-6, page 96, 2022 HBA. Generation 4 areas are north and west of Norm Freeman Drive, and south of Tynam Street. It should be noted the Generation 4 area south of Tynam Road is 'fully developed', with 'no significant activity' occurring in the Norm Freeman Drive area as at 2024 – see section 8, Te Puke Spatial Plan Baseline Report 2024. The 2024 LTP appears more targeted towards Generation 3 Structure Plan infrastructure provision for Te Puke.

Appendix B

Chapter 12 – Subdivision and Development - Proposed Amendments

The below are proposed as new rules to be added to Chapter 12, below the most recent Structure Plan introduced to the District Plan (Rule 12.4.23 – Washer Road Business Park Structure Plan). This would therefore be a new section, Rule 12.4.24 – Pencarrow Estate Pongakawa Structure Plan.

- Below is a clean copy of the rules as updated with Section 42A, Mr Murphys proposed updates 14.11.2024 and Abi Mark updates 22.11.24

12.4.24 Pencarrow Estate Pongakawa Structure Plan

12.4.24.1 General

a. Any subdivision or development (including delivery of stage pre-requisites) of land zoned Residential or Commercial within the Pencarrow Estate Pongakawa Structure Plan shall be undertaken in general accordance with that structure plan (including notes about specific requirements) as set out in Appendix 7 – Structure Plans and in the Pencarrow Estate Pongakawa Structure Plan Stage Prerequisites below.

b. All roofs of buildings constructed in the Pencarrow Estate Pongakawa Structure Plan Area within lots adjoining a Rural Zoned site, or above one storey in height, shall be of a finish with a reflectivity (Light Reflectance Value) of no greater than 37%, measured and determined in accordance with AS/NZ Standard 1580.

12.4.24.2 Staging Details

a. Subdivision or development of land within the Pencarrow Estate Pongakawa Structure Plan shall occur sequentially in that Stage 1 shall be completed prior to, or at the same time, as Stages 2 and 3.

b. Subdivision to create separate lots that reflect the boundaries of the Pencarrow Estate Pongakawa Structure Plan area (in its entirety or individual stages), including prior to the delivery of any stage pre-requisites, is a Controlled Activity.

   Council shall exercise control over the following:

   i) The new lot(s) to be established shall be generally consistent with the boundaries of the structure plan area or individual stages.

   ii) Provision of legal and physical access to all proposed lots.

12.4.24.3 Pencarrow Estate Pongakawa Structure Plan – Stage Prerequisites

Stage	Prerequisites to subdivision 224 certificate being granted or to land use or building consent activity being established
	The pre-requisites below in part correspond to details on Pencarrow Estate Pongakawa Structure Plan drawings, see Appendix 7 – Structure Plans, Section 13 – Residential of the District Plan.
All Stages	**Stormwater**

[ALTERNATIVE – REFLECTS BOPRC SW MANAGEMENT GUIDELINES]

(a) In events up to the 10-year storm event (climate change adjusted), through a combination of ground soakage (subject to groundwater testing) and stormwater attenuation, the total runoff discharged from the developed site shall be no greater than that of the pre-development site.
(b) In events up to the 100-year storm event (climate change adjusted), through a combination of ground soakage (subject to groundwater testing) and stormwater attenuation, the total runoff discharged from the developed site shall be no greater than 80% of that of the pre-development site.

[IF REJECTED, AMENDS TO DRAFTING OF MS MARK 22/11/24]

An engineering design report, prepared by a suitably qualified chartered civil engineer, shall be provided to Council to demonstrate compliance with:

a. In events up to the 10-year storm event (climate change adjusted), all site stormwater, subject to ~~post earthworks~~ groundwater testing, except stormwater from grassed yards, berms and roads, will discharge via reticulation to ground soakage.
b. In events up to the 10-year storm event (climate change adjusted), stormwater from grassed yards, berms and roads will be conveyed to the stormwater treatment wetland.
c. Beyond the 10-year storm event and up to the 100-year storm event (climate change adjusted), stormwater from roads and private property will pipe to a vegetated swale, which will discharge to the stormwater treatment wetland, or otherwise as provided for in the engineering design report.

d. Relevant stormwater sizing details
e. Detailed engineering design drawings

Stage 1 **Roading and Access**

- Intersection of Arawa Road and State Highway 2, and Arawa Road carriageway to the vehicle entrance to the plan change site, to be upgraded to the satisfaction of Waka Kotahi for the State Highway, and to the satisfaction of Council for the balance of Arawa Road.
- Footpaths and roads formed within Stage 1, in accordance with the Council's Development Code and as approved by Council.
- Footpath to frontage of Commercial Zone to be provided.
- Pedestrian and vehicular access to, the Bus stop established within, the Commercial Zone meeting design requirements of Council's Development Code or alternative design approved by Council.

Stormwater, Wastewater and Water Infrastructure

- Stormwater wetland installed in identified reserve location, formed and planted.
- Stormwater conveyance infrastructure within Stage 1 installed.
- Construction of overland flowpaths within Stage 1 formed and planted.
- Installation and preparation of wastewater disposal field and supporting infrastructure to a design approved by Council to service the number of lots within Stage 1.
- Water mains of sufficient pressure capacity to service all lots within Stage 1 inclusive of firefighting requirements. This requires upgrading the 100mm ID main connecting the Arawa Road development to Maniatutu Road (a 2.1km long length of watermain) to a 250mm OD MDPE main.

Deviation from these requirements shall be in accordance with an engineering design report prepared by a suitably qualified chartered civil engineer, and as approved by Council.

Landscaping and Reserves

- Landscaping mitigation measures within and at the boundary of Stage 1, including in Reserve to Vest, established in general accordance with the structure plan landscaping plan.
- There shall be no buildings or structures within the 8m Riparian Reserve and Landscape Buffer

Reverse sensitivity

Prior to Stage 1 being completed, all effluent pond and storage infrastructure within the Pencarrow Estate Pongakawa Structure Plan area shall be relocated so as to be west of the north-western boundary of the structure plan area, and north of the existing milking shed and stock pad.

Commercial Land
The commercially-zoned land shall be established and available for future commercial and community service activities.

Stage 2

Roading and Access

- New roads and footpaths within Stage 2 constructed, in accordance with the Council's Development Code and as approved by Council.
- Footpath connection between Arawa Road to internal roads through to 'Village Green' established

Stormwater, Wastewater and Water Infrastructure

- Stormwater conveyance infrastructure within Stage 2 installed.
- Construction of overland flowpaths within Stage 2, formed and planted.
- Installation and preparation of wastewater disposal field and infrastructure to a design approved by Council to service the number of lots within Stage 2.
- Water mains of sufficient pressure and capacity to service all lots within Stage 2 inclusive of firefighting requirements. This requires upgrading the 100mm ID main connecting the Arawa Road development to Maniatutu Road (a 2.1km long length of watermain) to a 250mm OD MDPE main.

Deviation from these requirements shall be in accordance with an engineering design report prepared by a suitably-qualified chartered civil engineer, and as approved by Council.

Landscaping and Reserves

- Formation of reserve around stormwater treatment wetland and adjacent overland flowpath, including 'Village Green' seating area.

- Landscaping mitigation, including planting in Reserve to Vest, within Stage 2 boundaries established in general accordance with the structure plan landscaping plan.
- There shall be no buildings or structures within the 8m Riparian Reserve and Landscape Buffer

Reverse sensitivity

Dairy cow milking shall cease to occur at the existing milking shed.

Stage 3

Roading and Access

- New roads or privateways within Stage 3 constructed, in accordance with the Council's Development Code and as approved by Council.

Stormwater, Wastewater and Water Infrastructure

- Construction of overland flowpath within Stage 3, formed and planted.
- Stormwater conveyance infrastructure within Stage 3 installed.
- Installation and preparation of wastewater disposal field and infrastructure to a design approved by Council to service the number of lots within Stage 3.
- Water mains of sufficient pressure and capacity to service all lots within Stage 3 inclusive of firefighting requirements. This requires upgrading the 100mm ID main connecting the Arawa Road development to Maniatutu Road (a 2.1km long length of watermain) to a 250mm OD MDPE main.

Deviation from these requirements shall be in accordance with an engineering design report prepared by a suitably-qualified chartered civil engineer, and as approved by Council.

Landscaping and Reserves

- Formation of the private playground reserve within the Commercial Area as shown on the structure plan.
- Landscaping within Stage 3 boundaries established in general accordance with the structure plan landscaping plan.