

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**I MUA I TE KOTI TAIAO O AOTEAROA  
TAMAKI MAKAUROA ROHE**

**IN THE MATTER:** of the Resource Management Act 1991  
(Act)

**AND**

**IN THE MATTER:** of appeals pursuant to clause 14 of  
Schedule 1 to the Act

**BETWEEN**

**Bluehaven Investment Limited**  
(ENV-2024-AKL-000044)

**Bell Road Partnership Limited**  
(ENV-2024-AKL-000045)

**Urban Taskforce for Tauranga Inc**  
(ENV-2024-AKL-000048)

**KiwiRail Holdings Limited**  
(ENV-2024-AKL-000049)  
Appellants

**AND**

**Various S274 Parties**  
S274 Parties

**AND**

**Bay of Plenty Regional Council**  
Respondent

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**JOINT MEMORANDUM OF COUNSEL  
IN SUPPORT OF DRAFT CONSENT ORDER**

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## **MAY IT PLEASE THE COURT:**

### **INTRODUCTION**

1. These appeals relate to the decisions of the Bay of Plenty Regional Council (**Regional Council**) on Proposed Change 6 (NPS-Urban Development) to the Bay of Plenty Regional Policy Statement (**PC 6**).
2. This memorandum is filed jointly on behalf of the parties in support of a consent order to resolve the appeals. This joint memorandum:
  - a. summarises background to the appeals, including an overview of PC6, Regional Council's decision and reasons for the appeals;
  - b. outlines the amendments to PC6 agreed between the parties to resolve the appeals; and
  - c. outlines the orders sought by consent.

### **PROPOSED CHANGE 6 (NPS-UD)**

3. PC 6 implements key directions in the National Policy Statement-Urban Development (2020) (**NPS-UD**). The NPS-UD introduced requirements for regional councils to amend their Regional Policy Statements to be more responsive to urban development proposals and provide support to intensification of urban areas. The purpose is to enable additional development capacity, regardless of whether it is planned in existing planning documents, and to contribute to well-functioning urban environments.
4. The NPS-UD also requires local authorities to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in planning decisions relating to urban environments.

### **REGIONAL COUNCIL DECISION**

5. PC 6 was notified on 9 August 2022. Submissions on PC 6 were heard by a Hearing Panel comprising two Independent Hearing Commissioners and two Regional Councillors on Tuesday 18 and Wednesday 19 June 2023. The Hearing Panel issued a recommendations

report on 19 October 2023, and all recommendations were adopted by the Regional Council at its meeting on 14 December 2023. Council's decisions were publicly notified on 12 February 2024.

## **APPEALS**

6. Appeals were lodged by:
  - a. Bell Road Partnership Limited (**Bell Road**)
  - b. KiwiRail Holdings Limited (**KiwiRail**)
  - c. Urban Taskforce for Tauranga Incorporated (**Urban Taskforce**); and
  - d. Bluehaven Investments Limited (**Bluehaven**)

### **Bell Road Appeal**

7. The Bell Road appeal sought amendments to the criteria for unanticipated or out of sequence development proposals in Policy UG 7A relating to reduction in benefits of planned development infrastructure and the Future Development Strategy, and to Policy UG 13B to recognise both existing commercial centres and those proposed in other spatial planning documents.
8. Tauranga City Council, Western Bay of Plenty District Council, Ngā Pōtiki a Tamapāhore Trust, and Urban Taskforce joined the Bell Road appeal as interested parties.

### **KiwiRail**

9. The KiwiRail appeal sought amendments to various provisions of PC 6 to provide further recognition of potential reverse sensitivity effects, require urban development to respond to network utility provider growth plans, and to remove reference to local and central government financial resources as a matter to consider for land rezoning.
10. Tauranga City Council, Western Bay of Plenty District Council, Urban Taskforce, and Fonterra Limited joined the KiwiRail appeal as interested parties.

## **Urban Taskforce**

11. The Urban Taskforce appeal sought the removal of the reference to '*5 hectares or more*' in Policy UG 7A (b) on the basis that it considered this would arbitrarily exclude sites under 5 hectares in size that could still add significantly to development capacity, and any other relief to address the concerns raised by the appeal.
12. Tauranga City Council, Western Bay of Plenty District Council and Ngā Pōtiki a Tamapāhore Trust joined the Urban Taskforce appeal as interested parties.

## **Bluehaven**

13. The Bluehaven appeal sought amendments to PC 6 to delete out of date references and replace them with references to other strategic documents, and to amend the criteria in Policy UG 7A relating to reduction in benefits of planned development infrastructure.
14. Bluehaven also appealed Appendix E – Management and Growth areas for the Western Bay of Plenty and key related policies. Bluehaven's concerns with the appendix were resolved upon the Future Development Strategy being approved.
15. Tauranga City Council, Western Bay of Plenty District Council, Ngā Pōtiki a Tamapāhore Trust, and Urban Taskforce joined the Bluehaven appeal as interested parties.

## **MEDIATION AND AGREEMENT**

16. A series of communications and meetings occurred with various parties in the months preceding formal mediation. The purpose of these was to explore options for amendments to resolve appeal points and refine the scope of issues requiring mediation.
17. The KiwiRail appeal was settled between the parties in advance of the mediation, meaning KiwiRail and Fonterra (an interest attached being that of KiwiRail) did not need to attend the mediation.
18. The parties to the remaining appeals attended Court-assisted mediation in Tauranga on Tuesday 17 September 2024. Legal counsel for Ngā Pōtiki ā Tamapāhore Trust advised in advance by email to the Court that, while no longer able to attend the mediation, they would abide its outcome.

19. Following narrowing of the issues during advance discussions between the parties, the key outstanding issues remaining to be discussed at mediation were:
  - a. The criteria in, and supporting explanatory text for, Policy UG 7A '*Providing for unanticipated or out-of-sequence urban growth – urban environments*'; and
  - b. The Bell Road relief relating to 'existing and proposed commercial centres' in Policy UG 13B.

#### **OUTLINE OF AGREEMENT REACHED BETWEEN THE PARTIES**

20. The parties have agreed that, subject to the Court's approval, the appeals can be disposed of by way of consent. In particular, the parties have agreed to the amendments scheduled in the draft consent order.
21. The agreed amendments are summarised as follows:
  - a. To replace the last paragraph in *Introduction Section 2.8 'Urban and rural growth management'* with three new paragraphs. This involves removal of references to the SmartGrowth Strategy and Implementation Plan 2013 which is now superseded as well as to urban growth strategies undertaken by the region's other territorial authorities which is also no longer accurate. The replacement paragraphs set out more broadly what sub-regional growth management strategies and spatial planning involves and recognise the importance of urban corridors across local authority boundaries.
  - b. To expand regionally significant urban and rural growth management issue 2.8.1.2 '*Land supply and inefficient patterns of land use*' to recognise that unplanned growth and efficient land use has the potential to create land use conflicts and reverse sensitivity effects.
  - c. To expand regionally significant urban and rural growth management issue 2.8.1.9 '*Intensive urban development*' to recognise that more intensive urban development has the potential to create unforeseen reverse sensitivity effects, and that more intensive urban development also has the potential to increase

road congestion which can compromise the safe and efficient operation of the transport network.

- d. To expand Objective 25 to recognise the need for location and staging of development to integrate with the growth plans of network utility providers and operators.
- e. To amend Policy UG 7A to:
  - i. Clarify that an assessment is required of the extent to which the various relevant criteria are “achieved” and that it is not intended that all criteria must be fully achieved for an urban development proposal to be assessed as adding significant development capacity. This recognises that there may be urban development proposals that significantly contribute to capacity that do not meet the listed criteria, to ensure that councils are able to remain responsive to such proposals in the future.
  - ii. Delete the wording ‘(5 hectares or more)’ from (b) on the basis that “large-scale” is already defined in the RPS as being at least 5 hectares, and to add an alternative that if the development is not “large-scale” per the RPS, it will provide a housing supply of at least 50 dwelling units. Consequential amendments are made to refer to the need for a structure plan for land use change and to the explanatory text to clarify that this must address the matters in Method 18 of the RPS.
  - iii. Amend (f) to remove the wording relating to a material reduction in benefits and undermining of other existing or planned development infrastructure and including as a consideration of impacts on other existing, planned or committed development infrastructure. A consequential amendment to the explanatory text has been agreed to clarify that for the purposes of clause (f), development infrastructure investments which are existing, planned or committed include development infrastructure which has been constructed, planned or committed to support growth in other parts of the urban environment.

- iv. Other consequential amendments have been agreed to the explanatory text, including reference to the need to have regard to Future Development Strategies and to clarify that out of sequence development is development that is not consistent with the anticipated development sequence set out in the Future Development Strategy, growth strategy, RMA plan, Long Term Plan or 30-year infrastructure strategy.
  
- f. To insert additional explanatory text to Policy UG 10B *'Rezoning and development of urban land – investment and infrastructure considerations'* to acknowledge there are other matters to consider, in addition to broad investment and infrastructure considerations, when rezoning and developing urban land.
  
- g. To amend Policy UG 13B to:
  - i. Include as a matter to be had regard to the proximity to “existing and/or planned” commercial centres, places of employment, community services and areas of high amenity and to consequentially amend the explanation to clarify what “planned” means for the purpose of the policy and for readability / clarity.
  
  - ii. Correct a grammatical error in (f); and
  
  - iii. Include the interface between land use and transportation activities, including potential reverse sensitivity effects on transport corridors as a further matter to have regard to; and
  
  - iv. Add a statement to the explanatory text to clarify that the defining and protecting of existing and future transport corridors in plans will assist in promoting their safe and efficient operation.
  
- h. To insert additional text to the final sentence of the Policy UG 14B explanation to also recognise that potential for reverse sensitivity effects may make a particular location unsuitable for urban land use change.

**PROPOSED CONSENT ORDER**

- 22. The parties have agreed that, subject to the Court’s approval, the appeals can be disposed of by way of consent. The amendments proposed for the Court’s approval are identified in the draft consent order in underline (for additions) and ~~strike through~~ (for deletions).
- 23. A section 32AA evaluation is required for changes that are proposed to the decisions version of PC 6, undertaken at a level of detail that corresponds to the scale and significance of the changes. The parties agree that the proposed changes will enhance the efficiency and effectiveness of the PC 6 provisions. Because the changes do not include any significant policy shifts from the decisions version, the parties consider that further and more detailed evaluation is not required under s 32AA of the Act.

**ORDERS SOUGHT**

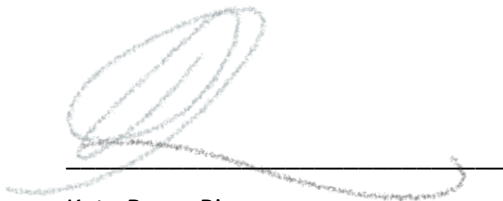
- 24. The parties respectfully request that:
  - a. The Environment Court dispose of the appeals by amending PC 6 (NPS-UD) as set out in Appendix 1 to the draft consent order and by otherwise dismissing the appeals; and
  - b. There be no order as to costs in relation to this order.

**DATED** this 30<sup>th</sup> day of *October* 2024



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Vanessa Hamm / Cory Lipinski  
Counsel for Urban Taskforce



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Kate Barry-Piceno  
Counsel for Bluehaven and Bell Road





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Lauren Rapley / Sian Kilgour  
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Andrew Mead  
Counsel for Tauranga City Council



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Kate Stubbing  
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Daniel Minhinnick  
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