Ministry for the Environment
Manatū Mō Te Taiao

PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	**Portfolio**	RMA Reform
Name of package	BRF-4440: Referral of Western Bay of Plenty District Council's rejected recommendations on its intensification planning instrument	**Date to be published**	16 September 2024

List of documents that have been proactively released		
Date	***Title***	***Author***
22 April 2024	BRF-4440: Referral of Western Bay of Plenty District Council's rejected recommendations on its intensification planning instrument	Ministry for the Environment
2 May 2024	Signed letter to Mayor Denyer	Hon Chris Bishop, Minister for RMA Reform

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld from *BRF-4440* under Section 9(2)(h) of the Official Information Act 1982 for the reason of maintaining legal professional privilege.

Ministry for the Environment
Manatū Mō Te Taiao

Referral of Western Bay of Plenty District Council's rejected recommendations on its intensification planning instrument

Date submitted: 22 April 2024
Tracking number: BRF-4440
Security level: In Confidence
MfE priority: Urgent

Actions sought from Ministers		
Name and position	***Action sought***	***Response by***
To Hon Chris BISHOP **Minister Responsible for RMA Reform**	Please **record** your decisions on the recommendations in Appendix 1. Please **review** and **sign** the letter in Appendix 2.	29 April 2024
CC Hon Penny SIMMONDS **Minister for the Environment**	No action required.	N/A
CC Hon Chris BISHOP **Minister of Housing**		

Actions for Minister's office staff
Return the signed briefing to the Ministry for the Environment (ministerials@mfe.govt.nz and RM.Reform@mfe.govt.nz).

Appendices and attachments
Appendix 1: Detailed analysis and recommendations for decision under clause 105 of Schedule 1 of the Resource Management Act 1991
Appendix 2: Draft letter to the Western Bay of Plenty District Council on your statutory decision
Appendix 3: Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, including submission points referenced in Council referral letter
Appendix 4: Maps of intensification plan change extent and details relevant to the referred recommendations
Appendix 5: Recommendation Report of the Independent Hearing Panel
Appendix 6: Western Bay of Plenty District Council Planning Reply
Appendix 7: Western Bay of Plenty District Council Planning Reply Regarding Noise Rule
Appendix 8: Legal Submission on behalf of KiwiRail Holdings Limited
Appendix 9: Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration)

Appendix 10: Joint Memorandum of Counsel Regarding Noise Rule

Appendix 11: Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited

Appendix 12: Section 42A Report excerpts referred to in Appendix 1

Appendix 13: Relevant pages of Independent Hearing Panel Report Attachment C – District Plan Provisions

Appendix 14: Documents produced in an Intensification Streamlined Planning Process

Key contacts at Ministry for the Environment			
Position	***Name***	***Cell phone***	***First contact***
Programme Director	Rebecca Scannell	022 013 6139	✓
Responsible General Manager	Liz Moncrieff	022 048 2314	

Minister's comments

Referral of Western Bay of Plenty District Council's rejected recommendations on its intensification planning instrument

Key messages

1. This briefing seeks your decisions on recommendations on Western Bay of Plenty District Council's (the Council) Intensification Planning Instrument (IPI) called Plan Change 92 - Ōmokoroa and Te Puke Enabling Housing Supply and other Supporting Matters.

2. On 22 March 2024, the Council referred four rejected Independent Hearing Panel (IHP) recommendations and its alternative recommendations to you for a final decision. The recommendations relate to railway noise and vibration, as well as two zoning changes in Ōmokoroa and Te Puke.

3. As required by clause 105 of Schedule 1 of the Resource Management Act 1991 (RMA) the Minister for the Environment (or a relevant Minister with appropriate delegations or transfer of powers under section 7 of the Constitution Act 1986) must decide to accept or reject the referred IHP recommendations. As that Minister, if you reject an IHP recommendation you must decide whether to accept the council's alternative recommendation.

4. Officials recommend you:

    - accept IHP recommendations B and C to maintain a Future Urban Zone in two areas where an Industrial Zone (recommendation B) and a Natural Open Space Zone (recommendation C) were recommended by the Council

    - reject IHP recommendations A and D to introduce new rules relating to railway noise and vibration, and accept the Council's alternative recommendations to not introduce a new rule on vibration (recommendation A) and introduce a rule on noise with a reduced spatial application (recommendation D).

5. s 9(2)(h) [redacted]

6. We have provided a full description of each IHP recommendation and the Council's alternatives in **Appendix 1** along with our analysis and recommendations. s 9(2)(h) [redacted]

7. If you agree to the recommendations in this briefing, we recommend you send Mayor Denyer the letter in **Appendix 2** to notify the Council of your decisions and reasons for your decisions.

Recommendations

8. The Ministry recommends that you:

   a. **note** each recommendation referred to you by Western Bay of Plenty District Council and space for your decisions is included in **Appendix 1**

   b. **note** the nature of the decisions you need to make on referred recommendations means some decisions are conditional on others. Officials have therefore grouped the recommendations. If you wish to make different decisions to those recommended, please agree to discuss with officials

   c. **note** officials can provide additional material relevant to your decisions (such as submissions and further submissions) on request

   d. **note** the Western Bay of Plenty District Council did not meet the timeframe or report on progress as frequently as required by the direction made under section 80L of the Resource Management Act 1991, but officials do not consider this to be material

   e. **sign** the letter to the Mayor of Western Bay of Plenty District Council included in **Appendix 2** notifying the Council of your decisions and reasons for your decisions

      Yes | No

   f. **meet** with officials for further discussion if you would like to make different decisions from those recommended

      Yes | No

   a. **agree** that this briefing and appendices will be released proactively on the Ministry for the Environment's website within the next eight weeks

      Yes | No

Signatures

Rebecca Scannell
Programme Director
Urban and Infrastructure **22 April 2024**

Hon Chris BISHOP
Minister Responsible for RMA Reform **Date**

Referral of Western Bay of Plenty District Council's rejected recommendations on its intensification planning instrument

Purpose

1. This briefing seeks your decisions on recommendations on Western Bay of Plenty District Council's (the Council) Intensification Planning Instrument (IPI), called Plan Change 92 - Ōmokoroa and Te Puke Enabling Housing Supply and other Supporting Matters.

2. You must decide to accept or reject each of the four Independent Hearings Panel (IHP) recommendations that have been rejected by the Council and subsequently referred to you. For any of the IHP's recommendations that you reject, you must decide whether to accept the alternative recommendation proposed by the Council.

Background

Intensification planning instruments and Ministerial statutory functions

3. Specified territorial authorities[1] must prepare an IPI and use the Intensification Streamlined Planning Process (ISPP) to give effect to the intensification requirements of the National Policy Statement on Urban Development 2020 (NPS-UD) and implement the Medium Density Residential Standards (MDRS).

4. An Independent Hearings Panel (IHP) hears submissions and makes recommendations on the IPI. If a council accepts an IHP's recommendations, they become operative. If a council rejects one or more of the recommendations, it must refer these, along with reasons for rejecting them to the Minister for the Environment (or a relevant Minister with appropriate delegations or transfer of powers under section 7 of the Constitution Act 1986). The council may also refer alternative recommendations to the Minister.

5. Clause 105(2) of Schedule 1 of the Resource Management Act 1991 (RMA) sets out the matters the Minister may take into account when making a decision on referred recommendations.[2] This limits the Minister's discretion to:

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[1] *Specified territorial authority* means any of the following:

(a) every tier 1 territorial authority (Auckland Council, Christchurch City Council, Hamilton City Council, Hutt City Council, Kāpiti Coast District Council, Porirua City Council, Selwyn District Council, Tauranga City Council, Upper Hutt City Council, Waikato District Council, Waimakariri District Council, Waipā District Council, Wellington City Council, Western Bay of Plenty District Council).

(b) a tier 2 or 3 territorial authority required by regulations to prepare and notify an intensification planning instrument (currently Rotorua Lakes Council).

[2] 105(2) In making a decision under subclause (1), the Minister—

(a) may take into account only those considerations that the independent hearings panel could have taken into account when making its recommendation; but

(b) may have regard to—

- considerations the IHP could have taken into account when making its decision, including the submissions and evidence before it
- the council's compliance with procedural requirements
- how the council had regard to any statement of expectations.

6. The relevant powers to make decisions under clause 105 of Schedule 1 of the RMA have been delegated or transferred to you. You must decide whether to accept or reject each IHP recommendation referred to you. If you decide to reject an IHP's recommendation, you must decide whether to accept or reject the council's alternative recommendation. As per clause 105(4) of Schedule 1 of the RMA you may only make changes to a recommendation where it has a minor effect or corrects a minor error.
7. We recently provided you with advice (BRF-4113 refers) on ministerial statutory functions as they relate to urban and infrastructure under the RMA.

Scope of the IPI and matters related to intensification

8. As per section 80E of the RMA an IPI is a change to a district plan that incorporates the MDRS; and gives effect to the intensification policies in the NPS-UD.

9. An IPI can also amend, or include new related provisions or zones, that support, or are consequential on the MDRS or the intensification requirements in the NPS-UD. "Related provisions" can include objectives, policies, rules, standards, and zones that relate to things like earthworks, fencing, infrastructure, district-wide matters, qualifying matters, stormwater management, or subdivision.

Qualifying matters – reasons for modifying intensification requirements

10. The RMA allows councils to modify the intensification requirements to make them less enabling of development only to the extent necessary to accommodate a qualifying matter. A qualifying matter is something that makes higher densities inappropriate in an area. Sections 77I(a-i) and 77O(a-i) of the RMA include a list of specific qualifying matters. These include RMA section 6 matters of national importance, any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure and matters necessary to implement or ensure consistency with iwi participation legislation.[3]

(i) whether the specified territorial authority has complied with the procedural requirements, including time frames, required by the direction made under section 80L; and
(ii) whether and, if so, how the independent hearings panel has had regard to that direction; and
(iii) whether and, if so, how the specified territorial authority and the independent hearings panel have had regard to the statement of expectations (if any) included in that direction.

[3] The qualifying matters listed in RMA sections 77I and 77O are:

(a) a matter of national importance that decision makers are required to recognise and provide for under section 6:
(b) a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:
(c) a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:

11. The list of qualifying matters includes a catch-all for "any other matter that makes higher density, as provided for by the MDRS or policy 3 inappropriate in an area." Additional evidence must be provided to justify why any non-listed qualifying matter makes the intensification requirements inappropriate. This evidence must consider the appropriateness of the qualifying matter in light of the national significance of urban development and the objectives of the NPS-UD.

12. IPIs can therefore include provisions which modify the MDRS and the relevant building height or density requirements under policy 3 of the NPS-UD to accommodate qualifying matters which have been identified by the council and/or by submitters. One of the recommendations rejected by the Council relates modifying the MDRS to accommodate a qualifying matter – in this case, additional standards that have been proposed to manage the effects of vibration caused by rail activity. When considering those recommendations, the key question is whether the controls modify the MDRS and relevant heights or density requirements only to the extent necessary to accommodate the qualifying matter in question.

Background to Plan Change 92

13. On 16 August 2023, the previous Minister for the Environment extended the period of time the Council had to notify decisions on Plan Change 92 from 20 August 2023 to 1 March 2024 (New Zealand Gazette, 16 August 2023, Notice 2023-sl3776).

14. On 6 March 2024, the Council voted to accept the majority of the IHP's recommendations. The council rejected four recommendations. The rejected recommendations relate to railway noise and vibration, as well as two zoning changes (the relevant zones are shown in **Appendix 6**).

15. All IHP recommendations accepted by the Council were incorporated into the District Plan on 13 March 2024 and became operative on 20 March 2024.

16. The Council wrote to you on 22 March 2024 to refer the rejected recommendations along with their reasoning for doing so and provided its alternative recommendations (**Appendix 3**).

Analysis and advice

17. Clause 105(2) of Schedule 1 of the RMA states that when making your decisions you may take into account only those considerations that the IHP could have taken into account

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(d) a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:
(e) a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:
(f) open space provided for public use, but only in relation to land that is open space:
(g) the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order:
(h) a matter necessary to implement, or to ensure consistency with, iwi participation legislation:
(i) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:
(j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.

when making its recommendations. You may also take into account the council's compliance with procedural requirements and how the council had regard to any statement of expectations.

18. Officials consider the following documents from the Council's IPI process likely to be the most relevant to your decision making. These documents have been included with this advice to support your decision making:

    a. Council referral letter to the Minister on rejected Independent Hearing Panel recommendations (**Appendix 3**)

    b. Maps of intensification plan change extent and details relevant to the referred recommendations (**Appendix 4**)

    c. Recommendation Report of the Independent Hearing Panel (**Appendix 5**)

    d. Western Bay of Plenty District Council Planning Reply (**Appendix 6**)

    e. Western Bay of Plenty District Council Planning Reply Regarding Noise Rule (**Appendix 7**)

    f. Legal Submission on behalf of KiwiRail Holdings Limited (**Appendix 8**)

    g. Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration) (**Appendix 9**)

    h. Joint Memorandum of Counsel Regarding Noise Rule – KiwiRail and Kāinga Ora (**Appendix 10**)

    i. Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited (**Appendix 11**)

    j. Section 42A Report excerpts referred to in Appendix 1 (**Appendix 12**)

    k. Relevant pages of Independent Hearing Panel Report Attachment C – District Plan Provisions (**Appendix 13**)

19. **Appendix 14** provides a diagram showing at which stages of the ISPP the different documents are produced.

20. If you wish to see other specific evidence or submissions / further submissions considered by the IHP, officials can provide you with these. Full copies of the section 42A (Council officer) report (provided before a hearing to support the IHP) and section 32 (evaluation) report can also be provided.

21. In making our assessment, we have considered the information and recommendations before the IHP against the statutory criteria outlined in clause 105(2) of Schedule 1 of the RMA Our analysis and advice are provided in **Appendix 1**.

22. The Council and the IHP largely met the procedural requirements of the ISPP. However, the Council did not provide the Ministry with regular reports on its progress to complete its IPI and exceeded the date for notification of its decisions set in the direction made under section 80L of the RMA. Council staff did inform officials that the Council would exceed its deadline and the delay was not substantial. Ultimately, officials consider these matters are unlikely to impede the implementation of the MDRS and NPS-UD and do not impact the substantive recommendations.

23. The IHP and the Council were not required to have regard to a statement of expectations because no statement was issued.

24. Officials recommend you:

    - accept IHP recommendations B and C to maintain a Future Urban Zone in two areas where an Industrial Zone (recommendation B) and a Natural Open Space Zone (recommendation C) was recommended by the Council

    - reject IHP recommendations A and D to introduce new rules relating to railway noise and vibration, and accept the Council's alternative recommendations to not introduce a new rule on vibration (recommendation A) and introduce a rule on noise with a reduced spatial application (recommendation D).

25. Clause 105(4) of Schedule 1 of the RMA allows you to alter recommendations you accept to correct minor errors. Officials have checked the recommendations in question with Council staff and consider three minor amendments to the recommendations are required:

    - two to recommendation B to delete a number left in by mistake and to ensure the text of the recommendation aligns with the area mapped as being subject to the recommendation

    - one to recommendation D to delete an additional word.

26. s 9(2)(h) [redacted]

27. You must notify the Council of the reasons for your decisions. We have included suggested reasons (alongside the corresponding recommendations) in **Appendix 1** and seek your agreement to these.

28. A summary of the IHP's recommendations rejected by the Council, the corresponding alternative recommendations and officials' suggested reasons for your decisions are included in **Table 2** on the following page.

29. If you agree to the recommendations and the reasons for your decisions both will be sent to the Council in your response letter (**Appendix 2**) for the Council to publish.

30. The Council will incorporate your accepted recommendations into its District Plan and publicly notify those changes, including your reasons for your decisions. When this is carried out the provisions become operative (clause 106 of Schedule 1 of the RMA).

Table 1: Summary of IHP and the Council recommendations and reasoning behind officials' recommendations

Summary of the Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Suggested reasons for decisions to accept the recommendations
A1 Introduce new vibration rules (for Ōmokoroa and Te Puke) in the District Plan requiring buildings containing sensitive activities to be designed and constructed to protect against vibration within 60m of a railway corridor.	**A2** No new vibration rules are introduced. (**Officials' recommendation**).	I am not satisfied that there is sufficient evidence to support the introduction of the proposed vibration controls.
B1 Keep a 10 hectare area to the west of the Francis Road intersection with State Highway 2 at Ōmokoroa as Future Urban zone. (**Officials' recommendation**).	**B2** Rezone the land as Industrial Zone but with rules for the Ōmokoroa Light Industrial Zone applying.	I consider the IHP's recommendation is the most appropriate option to ensure the potential effects of the interface between the adjacent residential zones and the land being rezoned as industrial are appropriately considered. While the application of Light Industrial Zone provisions may address the IHP's concerns regarding potential adverse effects on adjacent residents, those provisions would not necessarily enable a sufficient range of industrial activities within Ōmokoroa. Therefore, I cannot accept the Western Bay of Plenty District Council's alternative recommendation.
C1 Part of the property at Lot 3 DP 28670 and 467E Ōmokoroa Road (to the east of Ōmokoroa Road which adjoins State Highway 2) instead of being made Natural Open Space Zone is retained as Future Urban Zone. (**Officials' recommendation**).	**C2** Zone the land Natural Open Space.	The IHP's recommendation to retain the land in question as a Future Urban Zone involves the least change from the operative zoning. This is appropriate given the complexity of the planning issues associated with this site.
D1 Introduce new rules requiring buildings containing sensitive activities located within 100m of a railway designation boundary to be designed and constructed to ensure indoor areas can meet allowable levels of indoor noise.	**D2** Introduce new rules requiring buildings containing sensitive activities located within 50m of a railway designation boundary to be designed and constructed to ensure indoor areas can meet allowable levels of indoor noise. (**Officials' recommendation**).	The Council's alternative recommendation is more appropriate as there is some uncertainty regarding the costs of introducing new rules and the size of the area to which the rules should apply. The Council's alternative is less likely to impose unnecessary costs on development as it is applicable to a smaller area.

s 9(2)(h)

[redacted]

Financial, regulatory and legislative implications

36. No financial, regulatory, or legislative implications are associated with the proposals in this briefing.

Next steps

37. If you agree to the recommendations in this briefing, we recommend you send Mayor Denyer the letter in **Appendix 2** to notify the Council of your decision.

38. We will continue to work with relevant councils on their IPIs and brief you on any referred recommendations as they arise.

39. If you would like to make a different decision to those recommended in this briefing, officials suggest a meeting for discussion.

[4] *Waikanae Land Company Ltd v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 56.

Appendix 1: Detailed analysis and recommendations for decisions under clause 105 of Schedule 1 of the Resource Management Act 1991

[Attached to cover email.]

Appendix 1: Detailed analysis and recommendations for decisions under clause 105 of Schedule 1 of the Resource Management Act 1991

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
A1 Introduce new vibration rules (for Ōmokoroa and Te Puke) in the district plan requiring buildings containing sensitive activities to be designed and constructed to protect against vibration within 60m of a railway corridor.	**A2** No new vibration rules are introduced.	**Context** The Western Bay of Plenty District Council's (the Council) operative district plan does not contain provisions relating to vibration. The plan instead relies on provisions relating to noise management or deals with noise as a nuisance under the Health Act 1956. Plan Change 92 - Ōmokoroa and Te Puke Enabling Housing Supply and other Supporting Matters, the Council's Intensification Planning Instrument (IPI) as notified did not introduce new provisions relating to vibration. There was one submission from KiwiRail on indoor railway noise and vibration and twelve further submission points. Please note these submissions are also relevant to referred recommendation D below. **Key submission points** KiwiRail provided expert evidence demonstrating health and amenity effects will occur because of noise and vibration from the rail corridor.[1] KiwiRail were concerned that increasing intensification near the railway corridor could constrain increased rail operations in the future due to more people and sensitive activities being next to the rail corridor. The relief sought by KiwiRail includes retaining the rail corridor as a qualifying matter and introducing a district wide standard to manage reverse sensitivity effects[2].[3] Kāinga Ora, New Zealand Housing Foundation, Classic Group, Retirement Villages Association, and Ryman Healthcare, opposed or opposed in part the initial submission from KiwiRail for reasons including reduced affordability due to increased insulation and foundation requirements.[4] Some of those submitters originally argued that the acoustic and vibration controls sought by KiwiRail should not be considered to be a qualifying matter, however those submitters who did participate in the hearing did not pursue that point further, instead focusing on arguments that KiwiRail did not establish the actual and likely effects of rail vibration and the extent of the controls sought by KiwiRail were not necessary. It was also noted that vibration could be managed by KiwiRail altering the way it operates. KiwiRail and Kāinga Ora agreed that an "alert layer" which is an information layer only (ie, has no rules or standards attached to it) for properties adjacent to the railway corridor would be an appropriate alternative.[5] **Independent Hearing Panel's recommendation** The Independent Hearing Panel (IHP) agreed with KiwiRail's assessment of efficiency and effectiveness, the costs and benefits, and the risk of not acting to introduce vibration provisions.[6] To respond to relief sought by KiwiRail, the IHP recommended including a new standard for buildings or additions to existing buildings within 60 meters of a railway designation boundary. The standard includes the requirement for the new buildings or additions to be a single storey.[7]	**Agree to either:** 1. **officials' recommended suite of recommendations:** a. **reject** the Independent Hearing Panel's recommendation to introduce new vibration rules b. **accept** Western Bay of Plenty District Council's alternative recommendation to delete Rule 4C.1.3.6 (indoor railway vibration standards) and Rule 4C.1.4.4 (matters of discretion for indoor railway vibration) from Plan Change 92 c. **agree** to reason for decision: *I am not satisfied that there is sufficient evidence to support the introduction of the proposed vibration controls* **Yes | No** **Or** 2. **alternate suite of recommendations:** a. **accept** the Independent Hearing Panel's recommendation to introduce new indoor railway vibration rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically, Rule 4C.1.3.6 (indoor railway vibration standards) and Rule 4C.1.4.4 (matters of discretion for indoor railway vibration) b. **meet** with officials for further discussion.

[1] Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited, 25 August 2023, para 9.1.

[2] *Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity.* See Ngatarawa Development Trust Limited v The Hastings District Council W017/2008 [2008] NZEnvC 100, 14 April 2008.

[3] Legal Submission on Behalf of KiwiRail Holdings Limited, 7 September 2023, para 1.5.

[4] Section 42A Report – Section 4C Amenity, 11 August 2023, p 5.

[5] Legal Submission on Behalf of KiwiRail Holdings Limited, 7 September 2023, para 3.26.

[6] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.144.

[7] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.145.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		The IHP also recommended a change to the definition of qualifying matter in the plan. **Western Bay of Plenty District Council's alternative recommendation** The Reporting Planner expressed concern around how the proposed vibration controls could be implemented from a practical perspective. The Council considered proposed vibration rules are overly onerous and time-consuming to implement and present a significant or even unbearable cost to landowners (approximately $100,000 over and above usual building costs, according to the Kāinga Ora submission).[8] **Advice** Officials are not satisfied that there is sufficient evidence to support the introduction of the proposed vibration rules. Neither the IHP nor the WBOPDC has included the provision of a vibration alert layer in their recommendations, which means you cannot consider this as an option. We recommend you reject the IHP's recommendation and instead, accept the Council's alternative recommendation to not introduce any new vibration rules.	**Yes | No**
B1 Keep a 10 hectare area to the west of the Francis Road intersection with State Highway 2 at Ōmokoroa as Future Urban zone.	**B2** Rezone the land as Industrial Zone but with rules for the Ōmokoroa Light Industrial Zone applying.	**Context** In the operative district plan, the area in question (the 10 hectare area to the west of the Francis Road intersection with State Highway 2 at Ōmokoroa) is zoned Future Urban. The Future Urban Zone in the operative district plan provides for the longer-term development of land for urban purposes, including social, residential, commercial and industrial activities. This means areas zoned Future Urban must be rezoned via a plan change to enable urban land use (potentially, but not necessarily for housing). The eastern side of Francis Road is zoned residential. The IPI as notified proposed the area to be rezoned from Future Urban to Industrial. Ten submissions were received on this topic. **Key submission points** Some submitters opposed the proposed Industrial Zone due to potential noise and traffic effects, and effects on the natural environment. A number cited poor planning practice to locate the Industrial Zone opposite the Medium Density Residential Zone and making specific reference to the issue of conflicting land uses.[9] Other submitters with nearby landholdings supported rezoning the land to Industrial Zone. These submitters cited well-functioning urban environments and suggested rezoning to Industrial would make more land available for industrial business sectors, promote good accessibility between housing, jobs, community services and open space, and promote market flexibility and resilience to the effects of climate change through compact and efficient urban form.[10] **Section 42A report and Western Bay of Plenty District Council Planning Reply** The section 42A report does not recommend any changes to the proposed Industrial Zone boundaries as notified.[11] The section 42A report noted that while adding new industrial land would support a well-functioning urban environment, it could also have negative effects on existing employment opportunities provided by orchard operations and existing related commercial/industrial activities (as noted by submitters). However, at a sub-	**Agree to either:** 3. **officials' recommended suite of recommendations:** a. **accept** the Independent Hearing Panel's recommendation for the proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 over the following lots below, being retained as Future Urban. 51 Francis Rd (Lot 2 DPS 76152) (limited to the part that was proposed as industrial zone) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073) b. **agree** to the following reason for your decision: *I consider the Independent Hearing Panel's recommendation is the most appropriate option to ensure the potential effects of the interface between the adjacent residential zones and the land being rezoned as industrial are appropriately considered. While the application of Light Industrial Zone provisions may address the Independent Hearing Panel's*

[8] Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration), 6 September 2023, pp 15-16.
[9] Recommendation Report of the Independent Hearing Panel, 25 January 2024, paras 3.295-3.299.
[10] Recommendation Report of the Independent Hearing Panel, 25 January 2024, paras 3.293 and 3.305.
[11] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.304.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		regional level there is a shortfall of industrial land and an increase in land being converted to horticultural use. There is currently a SmartGrowth project further assessing the sub-regional industrial land requirements with an aim to identify future industrial areas.[12] The Council concluded that the proposed Industrial Zone for the land in question should remain, but before any industrial development occurs controls need to be added and some pre-requisites satisfied.[13] After the hearing and in response to a request from the IHP, the Council proposed a suite of proposed road access options to address the separation of industrial and residential traffic.[14] The Council also noted the operative Industrial Zone activity list[15] is appropriate in the proposed location, particularly given there is a shortage of industrial land within the sub-region and to provide more residential opportunities in Ōmokoroa.[16] **Independent Hearing Panel's recommendation** The IHP recommended keeping the area in question as a Future Urban Zone as it was not convinced the proposed Industrial Zone on Francis Road was appropriate at this time. The IHP found the existing standards (from the Industrial Zone and general sections of the district plan) inadequate to control the noise, pollution and traffic effects associated with zoning the land for industrial use.[17] The IHP noted that while the section 42A recommended additional parameters to address interface issues between the zones, the location specific issue of incompatible land uses (having Industrial Zone opposite Medium Density Residential Zone) was still outstanding.[18] The IHP noted there is not a demonstrated demand or drive for industrial activity within Ōmokoroa, this is consistent with the view of many submitters (particularly on Francis Road). The IHP considered there is significant potential for conflict between the industrial and residential land uses, and was not satisfied those conflicts could be adequately mitigated.[19] **Western Bay of Plenty District Council's alternative recommendation** The Council's alternative recommendation is to rezone the land as Industrial with "Light Industrial Zone" rules applying. In the Council's view, the additional areas west of the Francis Road intersection with State Highway 2 at Ōmokoroa are needed to provide sufficient industrial zoning and employment opportunities. The land in question is also required because an existing Industrial Zone further north on Ōmokoroa Road has been developed for housing under the Housing Accords and Special Housing Areas Act 2013 and is no longer available for industrial use.[20] It notes the existing district plan provisions and proposed setbacks which apply in industrial zones appropriately manage adverse effects (ie, noise, setbacks, screenings, design etc).[21]	*concerns regarding potential adverse effects on adjacent residents, those provisions would not necessarily enable a sufficient range of industrial activities within Ōmokoroa. Therefore, I cannot accept the Western Bay of Plenty District Council's alternative recommendation.* **Yes | No** **Or** 4. **alternate suite of recommendations:** a. **reject** the Independent Hearing Panel's recommendation for the proposed industrial zone b. **accept** Western Bay of Plenty District Council's alternative recommendation to: Rezone the land to Industrial Zone as proposed by Plan Change 92. As a consequential change amend the proposed Ōmokoroa Structure Plan Stage 3 Road and Walkway/Cycleway map in Appendix 7 - Structure Plans of the District Plan as recommended in Council's right of reply (29 September 2023). This includes deleting the industrial zone access and roundabout from the far western end of this land and changing it to a right hand turn only and adding a new east to west structure plan road. As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 map in Appendix 7 - Structure Plans of the District Plan to show that the "Francis Road structure plan area typical 25m cross section"

[12] Section 42A Report – Planning Maps – Ōmokoroa Zoning p 23.
[13] Section 42A Report – Planning Maps – Ōmokoroa Zoning p 27.
[14] Western Bay of Plenty District Council Planning Reply, 29 September 2023, paras 110-117.
[15] Specific amenity performance standards contained in Section 4C – Amenity of the Operative District Plan include noise and vibration, storage and disposal of solid waste, lighting and welding, offensive odours, effluent aerosols and spray drift, and screening (includes specific provisions for the Ōmokoroa industrial area adjacent to Ōmokoroa, Hamurana and Francis Road).
[16] Western Bay of Plenty District Council Planning Reply, 29 September 2023, paras 118-121.
[17] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.214 and 3.291.
[18] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.311.
[19] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.312-3.314.
[20] Section 42A Report – Section 21 – Industrial, p 1, and Section 42A Report – Planning Maps – Ōmokoroa Zoning p 20.
[21] Appendix 3: Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, pp 2-3.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		The Council notes that adding "Light Industrial" over the proposed Industrial Zone on the district plan maps would allow existing rules for the Ōmokoroa Light Industrial Zone to apply. These rules prevent "industry"[22] and "storage, warehousing, coolstores and packhouses" from being permitted and make them non-complying along with waste management activities. The Light Industrial rules would: • only permit activities such as commercial services (eg, banks, post offices and laundromats etc), takeaway outlets, service stations, medical facilities, veterinary clinics and emergency services etc. • reduce the height limit from 20 metres to 9 metres and provide stricter noise requirements than the general Industrial Zone. [23] This zoning and rules are already used in the district plan in response to similar issues. In the Council's view, this resolves the remaining concern of the IHP regarding potential adverse effects on adjacent residents. **Advice** Officials consider Light Industrial provisions, while enabling some industrial activities and potential employment opportunities would not necessarily provide sufficient industrial land and enable the range of industrial activities needed. Retaining the land as a Future Urban Zone, does not prevent the Council from undertaking a future plan change to appropriately rezone the area for industrial purposes. Further, demand for industrial land will likely be addressed through SmartGrowth's ongoing work to identify future industrial areas.[24] Officials consider the IHP's recommendation is the most appropriate option at this time to ensure the potential effects of the interface between the adjacent residential zones and the land being rezoned as Industrial are appropriately considered. We note the ongoing responsibility for the Council to provide sufficient development capacity for both housing and business land (including industrial activities), as required by the NPS-UD. The IHP's recommendation requires two alterations to correct a minor error and ensure the text of the recommendation aligns with the area mapped as being subject to the recommendation. The original text of the IHP recommendation in the Council's letter to you reads: "Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban2 . 51 Francis Rd (Lot 2 DPS 76152) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)" Council staff have confirmed that the IHPs recommendation text should read: "Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban. 51 Francis Rd (Lot 2 DPS 76152) (limited to the part that was proposed as industrial zone) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073)	shall also apply to the existing Francis Road where it adjoins the land Plan Change 92 proposed to be rezoned as Industrial. This is the cross section recommended to be added as part 4.8 of Appendix 7 - Structure Plans. Also make associated changes in proposed Rule 12.4.11.8 (b). As a consequential change delete the following wording from proposed Rule 12.4.11.8 which was recommended by the IHP in support of their recommendation: ~~Alternatively, prior to this intersection being closed, access into the Industrial Zone from Francis Road at or beyond its intersection with State Highway 2 shall be prevented by way of an appropriate legal mechanism to Council's satisfaction~~ Add the words "Light Industrial" over the proposed Industrial Zone on the District Plan Maps so that this land becomes subject to existing rules for the Ōmokoroa Light Industrial Zone in Section 21 - Industrial of the District Plan. c. **meet** with officials for further discussion. **Yes | No**

[22] Including manufacturing, processing, packaging, dismantling activities and engineering workshops.
[23] Appendix 3: Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, p 3.
[24] Section 42A Report – Planning Maps – Ōmokoroa Zoning p 23.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		1 Francis Rd (Lot 2 DPS 5073)" Officials consider these changes to the recommendation to be changes to correct minor errors as per RMA Schedule 1, clause 105(4) and have amended the text of the recommendation accordingly.	
C1 Part of the property at Lot 3 DP 28670 (to the east of Ōmokoroa Road and adjoining State Highway 2) instead of being made Natural Open Space Zone is retained as Future Urban Zone.	**C2** Zone the land Natural Open Space.	**Context** This recommendation relates to part of a property at Lot 3 DP 28670 owned by N and M Bruning. It is to the east of Ōmokoroa Road and adjoins State Highway 2. The area has a gully running through it and is currently Future Urban Zone. Part of the property is subject to a designation held by Waka Kotahi | the New Zealand Transport Agency (Waka Kotahi), for transport infrastructure (a grade-separated interchange)[25]. The Council holds a designation on the same property for stormwater management purposes[26]. In the operative district plan, the part of the property in question is Future Urban Zone. As notified, the IPI proposed making part of the property (including that encompassing the Waka Kotahi designation) Natural Open Space Zone[27] because one or more of the physical characteristics of the site align with the purpose of the Natural Open Space Zone, which includes areas appropriate for stormwater management. Three submissions and three further submissions were received on this topic. **Key submission points** Waka Kotahi considered the Natural Open Space Zone would be incompatible with the development of the interchange and sought the removal of the Natural Open Space Zone from the land in its designation.[28] The Bay of Plenty Regional Council (the Regional Council) sought for the land to be retained as Natural Open Space Zone to protect the values and extent of the streams and wetlands within Ōmokoroa.[29] Pirirākau, who hold mana whenua over the area, state the gullies, or Awatere, have an important stormwater function and Pirirākau seeks protection of the gully system.[30] The section 42A report recommended modifying the area to which the Natural Open Space Zone applied; reducing the area near the Industrial Zone to the west and extending the Natural Open Space Zone into the operative Rural-Residential Zone further east.[31] Submissions on this matter from the landowners and their representatives raised questions about whether the Natural Open Space Zone changes could be lawfully included in the scope of the IPI.[32] The Council and the	**Agree to either:** 5. **officials' recommended suite of recommendations:** a. **accept** the Independent Hearing Panel's recommendation as follows: Proposed Natural Open Space Zone (as modified by Council officer recommendations) on Bruning land (Lot 3 DPS 28670) to the east of Ōmokoroa Road and adjoining State Highway 2 being retained as a Future Urban b. **agree** to the following reason for your decision: *The IHP's recommendation to retain the land in question as a Future Urban Zone involves the least change from the operative zoning. This is appropriate given the complexity of the planning issues associated with this site.* **Yes | No** **Or** 6. **alternate suite of recommendations:** a. **reject** the Independent Hearing Panel's recommendation

[25] Waka Kotahi's designation D181 is for the purpose of "Road purposes – State Highway 2 (Four Laning)", as noted in Appendix 5 of the Western Bay of Plenty Operative District Plan.
[26] The Council's designation D234 is for the purpose of "Ōmokoroa Stormwater Management Reserves", as noted in Appendix 5 of the Western Bay of Plenty Operative District Plan.
[27] The Natural Open Space chapter of the operative district plan notes the Natural Open Space Zone applies to land that is generally unsuitable for urban development due to steep terrain and natural hazards. The chapter also includes a policy to avoid subdivision and development that is not complementary to the purpose of the zone.
[28] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.335.
[29] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.336.
[30] Recommendation Report of the Independent Hearing Panel, 25 January 2024, paras 3.339-3.340.
[31] Section 42A Report – Planning Maps – Ōmokoroa Zoning p 38.
[32] The legal submissions refer to the Environment Court's decision in Waikanae Land Company Limited v Heritage New Zealand Pouhere Taonga I [2023] NZ EnvC 056 (under appeal). The main issue for this case was whether the Kāpiti Coast District Council had statutory power to amend Schedule 9 of its district plan by way of the Intensification Streamlined Planning Process by including a piece of land owned by the Waikanae Land Company in Schedule 9 as a site of significance. The Environment Court held that amending the district plan in this manner was *ultra vires.* It was argued the same general principles of interpretation of an IPI should be applied by the IHP in regard to the proposed new zoning including on the Bruning Land.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		IHP both concluded that the zone changes were lawfully included, though the IHP does note the question of scope in its final decision.[33] **Western Bay of Plenty District Council Planning Reply** Waka Kotahi is recorded as stating in the Planning Reply (provided after the hearing) that the agency has engaged extensively with the Regional Council about changes to the designation. The Planning Reply recommended either retaining the zoning as recommended in the section 42A report (Natural Open Space Zone) or reassessing any potential zoning changes to the land once the planned alterations to the Waka Kotahi designation has been completed.[34] **Independent Hearing Panel's recommendation** The IHP recommended retaining the Future Urban Zone citing the unique circumstances of the site, including it being intended for transport infrastructure.[35] **Western Bay of Plenty District Council's alternative recommendation** The Council rejected the IHPs recommendation because it said it agreed with the Regional Council and considered the area has characteristics making it most suitable to be zoned Natural Open Space. The Council reiterated the land is not suitable for urban purposes (residential, industrial and commercial) and should not be a Future Urban Zone.[36] **Advice** Due to the complex nature of the planning issues associated with this site, officials recommend taking the approach which involves the least change from the operative zoning. We consider this to be accepting the recommendation of the IHP; to retain the land as Future Urban Zone. This recommendation does not preclude a bespoke approach in the future to address interactions between ongoing transport infrastructure work and the gully system. As noted above in reference to recommendation B, the Future Urban Zone in the Council's district plan provides for the longer-term development of land for urban purposes. A plan change is required to enable urban or another type of land use in Future Urban Zone areas. Officials also note that any proposed development/use of the land in question while it remains Future Urban Zone would go through a resource consent process to address any potential adverse effects on the existing gully system.	b. **accept** the Western Bay of Plenty District Council's alternative recommendation as follows: Rezone the land to Natural Open Space Zone on the District Plan Maps, as proposed by Plan Change 92 and as modified by Council officer recommendations. For clarity, this is the part of the property shown as Future Urban on the following map: IHP Recommendations Report Attachment D – District Plan Maps – "Ōmokoroa Plan Change 92 Zoning Map – January 2024)". As a consequential amendment, show a landscape strip on the Industrial Zoned land where it adjoins the land requested to be rezoned to Natural Open Space. c. **meet** with officials for further discussion. **Yes | No**
D1 Introduce new rules requiring buildings containing sensitive activities located within 100m of a railway designation boundary to be	**D2** Introduce new rules requiring buildings containing sensitive activities located within 50m of a railway designation boundary to be	**Context** The operative district plan includes a performance standard for potentially noise sensitive activities in the Ōmokoroa Mixed Use Residential Precinct. The proposed IPI included minor changes to ensure noise provisions were relevant to the new Medium Density Residential Zone. **Key submission points relating to noise and vibration**	**Agree to either:** 7. **officials recommended suite of recommendations:** a. **reject** the Independent Hearing Panel's recommendation b. **accept** Western Bay of Plenty's alternative recommendation: Amend Rule 4C.1.3.2.c.iii

[33] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.363.
[34] Western Bay of Plenty District Council Planning Reply, 29 September 2023, Attachment A, p 16.
[35] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.363.
[36] Appendix 3: Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, p 4.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
designed and constructed to ensure indoor areas can meet allowable levels of indoor noise.	designed and constructed to ensure indoor areas can meet allowable levels of indoor noise.	The key submission points relating to noise are described above for recommendations A1 and A2 in relation to vibration. There was one submission from KiwiRail and twelve further submission points (including from Kāinga Ora) opposing or opposing in part KiwiRail's initial submission on indoor railway noise and vibration. The relief sought by KiwiRail in relation to noise includes retaining the rail corridor as a qualifying matter and introducing a district wide standard to manage reverse sensitivity effects and introducing a new definition of noise sensitive activity.[37] KiwiRail proposes including new rules requiring buildings containing sensitive activities located within 100 metres of a railway designation boundary to be designed and constructed to ensure indoor areas can meet allowable levels of indoor noise. **Section 42A report and material provided after the hearing** The section 42A report considers the existing rules sufficient[38], but KiwiRail argues the provisions it proposes will provide a more certain approach to ensuring health effects are managed in locations where increased intensity is proposed and growth is likely.[39] Acoustic evidence from Kāinga Ora considers the 100-metre setback likely to be inefficient because it ignores factors that would shield development from noise or reduce noise such as railway cuttings, train speed limits, topography, screening from buildings and the effects of tunnels and other structures. Kāinga Ora recommended defining the extent of rail noise controls using computer sound modelling.[40] Kainga Ora considered this would be relatively straightforward given the easily accessible and reliable LIDAR terrain and other digital spatial data.[41] Representatives of KiwiRail and Kāinga Ora met following the hearing to draft an agreed rule in relation to rail noise. They agreed on amendments to the draft rule with the condition that a 100-metre mapped (and not modelled) contour would be applied.[42] The Council's Planning reply: • considers the noise rule agreed to by KiwiRail and Kāinga Ora would still unnecessarily control land use[43] • considers the setback should be measured from the source of the noise (the rail track) instead of the edge of the designation boundary • put forward the option of a blanket 50-metre setback. [44] **Independent Hearing Panel's recommendation** The IHP was comfortable the new noise rule agreed to by KiwiRail and Kāinga Ora would provide greater direction to ensure rail noise is effectively mitigated. The IHP recommended introducing new rules to require new buildings or additions to existing buildings within 100 meters of the railway designation boundary to achieve allowable levels of indoor noise.	(noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m and make a minor alteration to remove the word "track" as follows: "In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m ~~100m~~ of the railway ~~track~~ designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall meet the following requirements:". c. **agree** to reason for decision: *The Council's alternative recommendation is more appropriate as there is some uncertainty regarding the costs of introducing new rules and the size of the area to which the rules should apply. The Council's alternative is less likely to impose unnecessary costs on development as it is applicable to a smaller area.* **Yes | No** **Or** 8. **Alternative suite of recommendations:** a. **accept** Independent Hearing Panel's recommendation as follows: Introduction of new indoor noise level rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically, Rule 4C.1.3.2.c.iii (indoor railway noise standards)). b. **meet** with officials for further discussion. **Yes | No**

[37] Legal Submission on Behalf of KiwiRail Holdings Limited, 7 September 2023, para 1.5.
[38] Section 42A Report – Section 4C Amenity, 11 August 2023, page 7.
[39] Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited regarding Plan Change 92 on the Western Bay of Plenty District Plan, 25 August 2023, para 10.12.
[40] Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration), 6 September 2023, paras 3.13 – 3.14.
[41] Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration), 6 September 2023, paras 3.22.
[42] Joint Memorandum of Counsel Regarding Noise Rule, 11 October 2023, page 1.
[43] Western Bay of Plenty District Council Planning Reply Regarding Noise Rule, 12 October 2023, para 5.
[44] Western Bay of Plenty District Council Planning Reply Regarding Noise Rule, 12 October 2023, para 6.

Summary of Independent Hearing Panel's recommendation	Summary of the Council's alternative recommendation	Ministry for the Environment advice	Ministry for the Environment recommendations and reasons for decisions
		The IHP stated introducing the new noise rules was "particularly important as the higher density provisions will create a great deal of housing that may be subject to adverse noise levels without the appropriate mitigation".[45] **Western Bay of Plenty District Council's alternative recommendation** The Council considers the area of the noise rules proposed by the IHP to be potentially much wider than required to manage the actual effects of railway noise. The Council cites the acoustic evidence from Kāinga Ora, acknowledges modelling was recommended to reduce the spatial extent of controls, but states that it is not practicable to do that computer modelling now.[46] To avoid the need for landowners to pay for acoustic assessments unnecessarily, the Council recommends the applicable area for noise controls in relation to rail be reduced in size from 100 metres to 50 metres.[47] **Advice** Officials recommend accepting the Council's alternative option due to there being some uncertainty regarding the costs of introducing new rules and the size of the area to which the rules should apply. The Council's alternative is less likely to impose unnecessary costs on development as it is applicable to a smaller area. This decision does not prevent the Council undertaking a future plan change to incorporate more accurate modelling of the effects of rail noise. There is a typographical error (confirmed via email with Council staff) in the Council's alternative recommendation. The original text in the letter reads: "Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: "In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m~~100m~~ of the railway track designation boundary, which contains a dwelling…" The Council staff have confirmed that the reference to "railway track designation boundary" should instead read: "railway designation boundary". Officials consider the change to the recommendation to delete the word "track" to be a change to correct a minor error as per RMA Schedule 1, clause 105(4) and have amended the text of the recommendation accordingly.	

[45] Recommendation Report of the Independent Hearing Panel, 25 January 2024, para 3.135.
[46] Appendix 3 – Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, p 4.
[47] Appendix 3 – Council referral letter to the Minister on rejected Independent Hearing Panel recommendations, p 4.

Appendix 2: Draft letter to the Western Bay of Plenty District Council on your statutory decision

Hon Chris Bishop

Minister of Housing
Minister for Infrastructure
Minister Responsible for RMA Reform
Minister for Sport and Recreation
Leader of the House
Associate Minister of Finance

02 MAY 2024

James Denyer
Mayor
Western Bay of Plenty District Council

c/- Natalie Rutland
Environmental Planning Manager
Western Bay of Plenty District Council
Natalie.rutland@westernbay.govt.nz

Dear James,

On 25 March 2024 I received a letter from you on behalf of the Western Bay of Plenty District Council (the Council) referring four rejected Independent Hearing Panel (IHP) recommendations and the Council's alternative recommendations to me for a final decision. The recommendations relate to railway noise and vibration, as well as two zoning changes,

Under clause 105 of Schedule 1 under the Resource Management Act 1991 (RMA), I have decided to:

- accept IHP recommendations B and C to retain Future Urban zoning in two areas, thereby rejecting the Council's corresponding alternative recommendations
- reject IHP recommendations A and D to introduce new rules relating to railway noise and vibration, and accept the Council's alternative recommendations to not introduce a new rule on vibration (recommendation A) and introduce a rule on noise with a reduced spatial application (recommendation D).

I have made alterations as per clause 105(4) of Schedule 1 of the RMA to two of the recommendations I have accepted. These alterations are of a minor effect and to correct minor errors. My officials' have confirmed with Council staff that the alterations correctly reflect the intent of the recommendations from the IHP and the Council.

The recommendations I have accepted, my reasons for accepting the recommendations and the alterations I have made are set out in Attachment A.

I want to thank the Councillors, IHP and Council staff for the work you have undertaken to complete the Intensification Streamlined Planning Process.

I note that my officials have contacted Council staff to inform them of my decisions.

Yours sincerely

Hon Chris Bishop
Minister Responsible for RMA Reform

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Attachment A: Accepted recommendations with reasons and alterations

Accepted recommendation	Reasons for accepting	Alterations
Council's alternative recommendation: Delete Rules 4C.1.3.6 (indoor railway vibration standards) and 4C.1.4.4 (matters of discretion for indoor railway vibration)	I am not satisfied that there is sufficient evidence to support the introduction of the proposed vibration controls.	Accepted without alteration.
Independent Hearing Panel's recommendation: Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban. 51 Francis Rd (Lot 2 DPS 76152) (limited to the part that was proposed as industrial zone) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)	I consider the IHP's recommendation is the most appropriate option to ensure the potential effects of the interface between the adjacent residential zones and the land being rezoned as industrial are appropriately considered. While the application of Light Industrial Zone provisions may address the IHP's concerns regarding potential adverse effects on adjacent residents, those provisions would not necessarily enable a sufficient range of industrial activities within Ōmokoroa. Therefore, I cannot accept the Western Bay of Plenty District Council's alternative recommendation.	I have made two minor alterations to this recommendation. A deletion to correct a copying error and an addition to ensure the text of the recommendation accurately describes the area of 51 Francis Road subject to the recommendation. Deletions are struck through and additions underlined the text of the recommendation below: Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban~~2~~. 51 Francis Rd (Lot 2 DPS 76152) <u>(limited to the part that was proposed as industrial zone)</u> 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)
Independent Hearing Panel's recommendation: Proposed Natural Open Space Zone (as modified by Council officer recommendations) on Bruning land (Lot 3 DPS 28670) being retained as Future Urban.	The IHP's recommendation to retain the land in question as a Future Urban Zone involves the least change from the operative zoning. This is appropriate given the complexity of the planning issues associated with this site.	Accepted without alteration.
Council's alternative recommendation: Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: "In Ōmokoroa and Te Puke, any new building or addition to an existing building located within <u>50m</u> ~~100m~~ of the railway track designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall meet the following requirements:".	The Council's alternative recommendation is more appropriate as there is some uncertainty regarding the costs of introducing new rules and the size of the area to which the rules should apply. The Council's alternative is less likely to impose unnecessary costs on development as it is applicable to a smaller area.	I have made one alteration to correct a copying error in this recommendation. The alteration is shown as struck through with a double line in the text below: Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: "In Ōmokoroa and Te Puke, any new building or addition to an existing building located within <u>50m</u>~~100m~~ of the railway ~~track~~ designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall meet the following requirements:

Appendix 3: Council referral letter to the Minister on rejected Independent Hearing Panel recommendations

[Attached to cover email.]

Western Bay of Plenty District Council
1484 Cameron Road,
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E info@westernbay.govt.nz
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22 March 2024

Hon. Chris Bishop
Private Bag 18041
Parliament Buildings
Wellington 6160

Email c.bishop@ministers.govt.nz

Dear Minister,

Referral of Plan Change 92 Ōmokoroa and Te Puke Enabling Housing Supply and Other Matters

On 6 March 2024, Western Bay of Plenty District Council made its decision on the Intensification Planning Instrument (IPI) Plan Change 92 to accept the recommendations of the Independent Hearing Panels (IHP) with some exceptions.

In accordance with Schedule 1 Clause 101(2)(a) of the RMA, each of the Council's rejected recommendations are referred below for a Ministerial decision, in accordance with Schedule 1, Clause 105 of the RMA.

The Council's IPI was publicly notified for submissions on 19 August 2022. The IPI progressed through to hearings in September 2023, after taking additional time to appoint an experienced IHP and resolve key issues ahead of the hearing. An amendment to the direction was made by the Minister requiring decisions to be notified by 1 March 2024.

On receiving the IHP recommendations on 25 January 2024, Council has taken slightly longer than originally planned to reach a decision. The notification of decision was made on 13 March 2024 and those recommendations Council has accepted, will make the relevant provisions of the plan operative on 21 March 2024.

Referred recommendations

Description of IHP provisions/recommendation rejected by WBOPDC	Alternative recommendation	Reasons why the council does not support the IHP recommendation and prefers an alternative recommendation
Introduction of new indoor railway vibration rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.6 (indoor railway vibration standards) and Rule 4C.1.4.4 (matters of discretion for indoor railway vibration)	Delete Rules 4C.1.3.6 (indoor railway vibration standards) and 4C.1.4.4 (matters of discretion for indoor railway vibration)	The vibration rules are overly onerous and time-consuming to implement and present a significant or even unbearable cost to landowners. Based on KiwiRail's own evidence, this includes for a single dwelling, the need for a vibration expert to carry out an assessment ($3-4k), the likelihood of needing to find an expert outside of the region due to the limited number of experts, a railway vibration assessment ($5-8k), the possibility of needing to isolate the building from the ground vibration ($100k + GST) or a heavy masonry construction ("high risk" and "high cost") or for landowners to abandon a project due to cost. These are over and above the normal building costs. These measures seem unreasonable to impose on individual landowners simply to avoid KiwiRail's perceived concerns regarding possible reserve sensitivity. Council is not aware of any complaints about vibration from those already living within 60m of rail corridors in the District nor was evidence of complaints provided by KiwiRail.
Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban2 . 51 Francis Rd (Lot 2 DPS 76152) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)	Rezone the land to Industrial Zone on the District Plan Maps, as proposed by Plan Change 92. As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 Road and Walkway/Cycleway map in Appendix 7 – Structure Plans of the District Plan as recommended in Council's right of reply (29 September 2023). This includes deleting the industrial zone access and roundabout from the far western end of this land and changing it to a right hand turn only, and adding a new east to west structure plan road. As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 map in Appendix 7 – Structure Plans of the District Plan to show that the "Francis Road structure plan area typical 25m cross section" shall also apply to the existing	Ōmokoroa has approximately 18ha of existing Industrial Zoned land on the south-eastern side of Ōmokoroa Rd (the only land currently available for industrial use). Plan Change 92 proposed to rezone a further 10ha of Industrial land (from its current Future Urban Zoning) on the south-eastern side of Ōmokoroa Rd and to the west and east of the existing Francis Rd intersection with State Highway 2. These additional areas are required to meet the demand for Industrial land in the western part of the District and to provide employment for those living in the area. This meets SmartGrowth's objective to provide employment opportunities within growth areas and aligns with its vision for the Western Bay sub-region to be a great place to live, learn, work and play. These additional areas are also required because an existing Industrial Zone further north on Ōmokoroa Rd has been developed for housing under the Housing Accords and Special Housing Areas Act 2013 and is therefore no longer available for industrial use. Further, the location of the additional areas would provide a buffer between the Stage Highway and properties being rezoned to Medium Density. A number of submitters living in the Francis Road area opposed the Industrial Zone at Francis Rd due to concerns such as noise, traffic and effects on the natural environment. There are existing provisions in the District Plan in Sections 4C – Amenity and Section 21 – Industrial

	Francis Road where it adjoins the land Plan Change 92 proposed to be rezoned as Industrial. This is the cross section recommended to be added as part 4.8 of Appendix 7 – Structure Plans. Also make associated changes in proposed Rule 12.4.11.8 (b). As a consequential change, delete the following wording from proposed Rule 12.4.11.8 which was recommended by the IHP in support of their recommendation: ~~Alternatively, prior to this intersection being closed, access into the Industrial Zone from Francis Road at or beyond it's intersection with State Highway 2 shall be prevented by way of an appropriate legal mechanism to Council's satisfaction.~~ Add the words "Light Industrial" over the proposed Industrial Zone on the District Plan Maps so that this land becomes subject to existing rules for the Ōmokoroa Light Industrial Zone in Section 21 – Industrial of the District Plan.	which manage effects relating to noise, setbacks, screening and urban design e.g. avoiding large blank walls through use of glazing, varied materials and use of vegetation. In response to submissions, Council reporting officers also recommended a rule to ensure that Francis Road would need to be closed before industrial development could occur, and a 25m Francis Road reserve (including noise bund) be completed between the proposed Industrial Zones and Medium Density Zones. Despite these measures, the IHP recommended that the proposed Industrial Zone to the west of the existing Francis Radd intersection with State Highway 2 be retained as Future Urban. The IHP's remaining concern being that the definition of "industry" in the District Plan is "very coarse" and "effectively allows for a range of industrial use from heavy industrial through to activities that are likely to be compatible with the Ōmokoroa community. As an alternative, proceeding with rezoning the land to Industrial but marking it as "Light Industrial" on the District Plan Maps would allow existing Light Industrial rules to apply. These rules prevent "industry" (manufacturing, processing, packaging, dismantling activities and engineering workshops) and "storage, warehousing, coolstores and packhouses" from being permitted and make them non-complying along with waste management activities specifically. The rules would only permit activities such as commercial services (e.g. banks, post offices and laundromats etc), takeaway outlets, service stations, medical facilities, veterinary clinics and emergency services etc. The rules would also reduce the height limit from 20m to 9m and provide stricter noise requirements than the general Industrial Zone. This is an existing method within the District Plan in response to similar issues and is considered to resolve the remaining concern of the IHP.
Proposed Natural Open Space Zone (as modified by Council officer recommendations) on Bruning land (Lot 3 DPS 28670) being retained as Future Urban.	Rezone the land to Natural Open Space Zone on the District Plan Maps, as proposed by Plan Change 92 and as modified by Council officer recommendations. For clarity, this is the part of the property shown as Future Urban on the following map: IHP Recommendations Report Attachment D – District Plan Maps – "Ōmokoroa Plan Change 92 Zoning Map – January 2024)". As a consequential amendment, show a landscape strip on the	Plan Change 92 proposed for an area of this property to be rezoned from Future Urban to Natural Open Space due to having one or more characteristics that aligned with the purpose of such a zoning. The purpose of the zone being to identify land generally unsuitable for development which instead has ecological, cultural, recreation or amenity values and provides for the likes of open space, maintenance and restoration of natural character, green corridor links and visual separation between areas planned to be urbanised. The Council officer (in a Section 42A Report) recommended changes to the proposed boundary of the Natural Open Space Zone on this property following an additional site visit. The Council officer then confirmed their view (in

	Industrial Zoned land where it adjoins the land requested to be rezoned to Natural Open Space.	rebuttal evidence) that a Natural Open Space Zoning was most appropriate for this particular property "from a planning perspective". However, the Council officer also offered the IHP an alternative option of retaining this part of the land as Future Urban given "unique and exceptional circumstances" relating to the property. This being an existing State Highway designation (D181) over part of the property and plans by Waka Kotahi to alter this designation and expand it further into the property. The reason given for this option was "for simplicity the option to retain the operative zoning could be followed with consequential rezoning as may be appropriate once the designation process is complete and there is more certainty around residual property boundaries and the like". Waka Kotahi's submission sought for the proposed Natural Open Space Zone within the footprint of designation D181 be removed (and revert to Rural Zone) as Natural Open Space Zoning is incompatible with the urban infrastructure of a grade-separated interchange and may hinder Waka Kotahi in its ability to construct the intersection. Bay of Plenty Regional Council sought for the land to be retained for Natural Open Space due to the need to protect streams, wetlands and freshwater ecosystems for the purpose of the Plan Change and the National Policy Statement for Freshwater Management. Council agree that the land in question, being a wetland, has characteristics which make it most suitable for a Natural Open Space Zoning. The land is not suitable for urban purposes (residential, industrial and commercial) and should not be a Future Urban Zone.
Introduction of new indoor noise level rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.2.c.iii (indoor railway noise standards).	Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: "In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m ~~100m~~ of the railway track designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical	The applicable area of the noise rules (100m from a railway designation boundary) is potentially much wider than required to manage the actual effects of railway noise on buildings (holding noise sensitive activities). The acoustic evidence from Kainga Ora considers that the 100m area is too large, will apply controls to land that is not affected by noise to the degree that rules are necessary, and ignores a range of factors that may lead to a smaller applicable area such as railway cuttings, train speed and screening by topography and buildings. Kainga Ora recommended using computer noise modelling now to significantly reduce the spatial extent of the controls overall, which would have been especially likely where there is more complex topography and screening effects. In Kainga Ora's view, such modelling would have been relatively straightforward

	or scientific facility, shall meet the following requirements:".	given the easily accessed and reliable LIDAR terrain and other digital spatial data. The IHP did not accept this option and retained the applicable area as 100m. We recognise that it would not be practicable to revisit the option of doing computer modelling now to spatially identify the applicable area before the rule becomes operative. However, it seems clear from Kainga Ora's evidence that the 100m area is over-conservative, would create an unnecessary burden on many landowners and should be reduced in size. On that basis, we request that the applicable area be reduced in size from 100m to 50m. This will avoid the need for landowners to pay for acoustic assessments unnecessarily

Relevant information to support alternative recommendations

Council has taken additional time reaching a decision on the IHP's recommendations after giving careful consideration to the impact of increased density in our urban towns of Ōmokoroa and Te Puke. The complexity of these planning processes and impacts they have on existing neighbourhoods and infrastructure demand is significant for our communities. The funding implications for major roading infrastructure improvements in Ōmokoroa was an important factor in the decision to approve the plan change. In light of more recent government housing policy and a changed government there were questions raised about whether this was still the right response to put into place for the two towns.

All the relevant information the IHP and Council considered when deciding these recommendations is publicly available on Council's website.

The relevant and particular information on the rejected recommendations is contained within these documents and sections:

Indoor Railway Vibration

- IHP Recommendations Report - paragraphs 3.140 – 3.145 (pages 46 to 48).
- IHP Recommendations Report Attachment A – Summary of Recommendations – Section 4C – Amenity – Topic 2 (page 15).
- IHP Recommendations Report Attachment C – District Plan Provisions (pages 20 & 61-62).
- KiwiRail submission points: 30.4 & 30.5 (pages 58 to 67).

Future Urban – Light Industrial

- IHP Recommendations Report - paragraphs 3.214 (page 60) and 3.289 – 3.321. (pages 75 to 80)
- IHP Recommendations Report Attachment A – Summary of Recommendations –

Ōmokoroa Zoning Maps – Topic 5 (page 10).
- IHP Recommendations Report Attachment B – District Plan Maps – "Ōmokoroa Plan Change 92 Zoning Map – January 2024)". See area of land shown as "Future Urban" at Francis Rd.
- IHP Recommendations Report Attachment C – District Plan Provisions – pages 168, 342 and 346.

Future Urban – Natural Open Space
- IHP Recommendations Report - paragraphs 3.334 – 3.363 (pages 83 to 87).
- IHP Recommendations Report Attachment A – Summary of Recommendations – Ōmokoroa Zoning Maps – Topic 6 (page 11).
- IHP Recommendations Report Attachment B – District Plan Maps – "Ōmokoroa Plan Change 92 Zoning Map – January 2024)". See area of land shown as "Future Urban" on the eastern side of Ōmokoroa Road and adjoining State Highway 2.
- Bruning submission point: 31.3 (pages 71 & 72).

Indoor Railway Noise
- IHP Recommendations Report - paragraphs 3.129 – 3.139 (pages 43 to 46).
- IHP Recommendations Report Attachment A – Summary of Recommendations – Section 4C – Amenity – Topic 2 (page 15).
- IHP Recommendations Report Attachment C – District Plan Provisions – pages 20 and 55-56.
- KiwiRail submission points: 30.4 (pages 58 to 67).

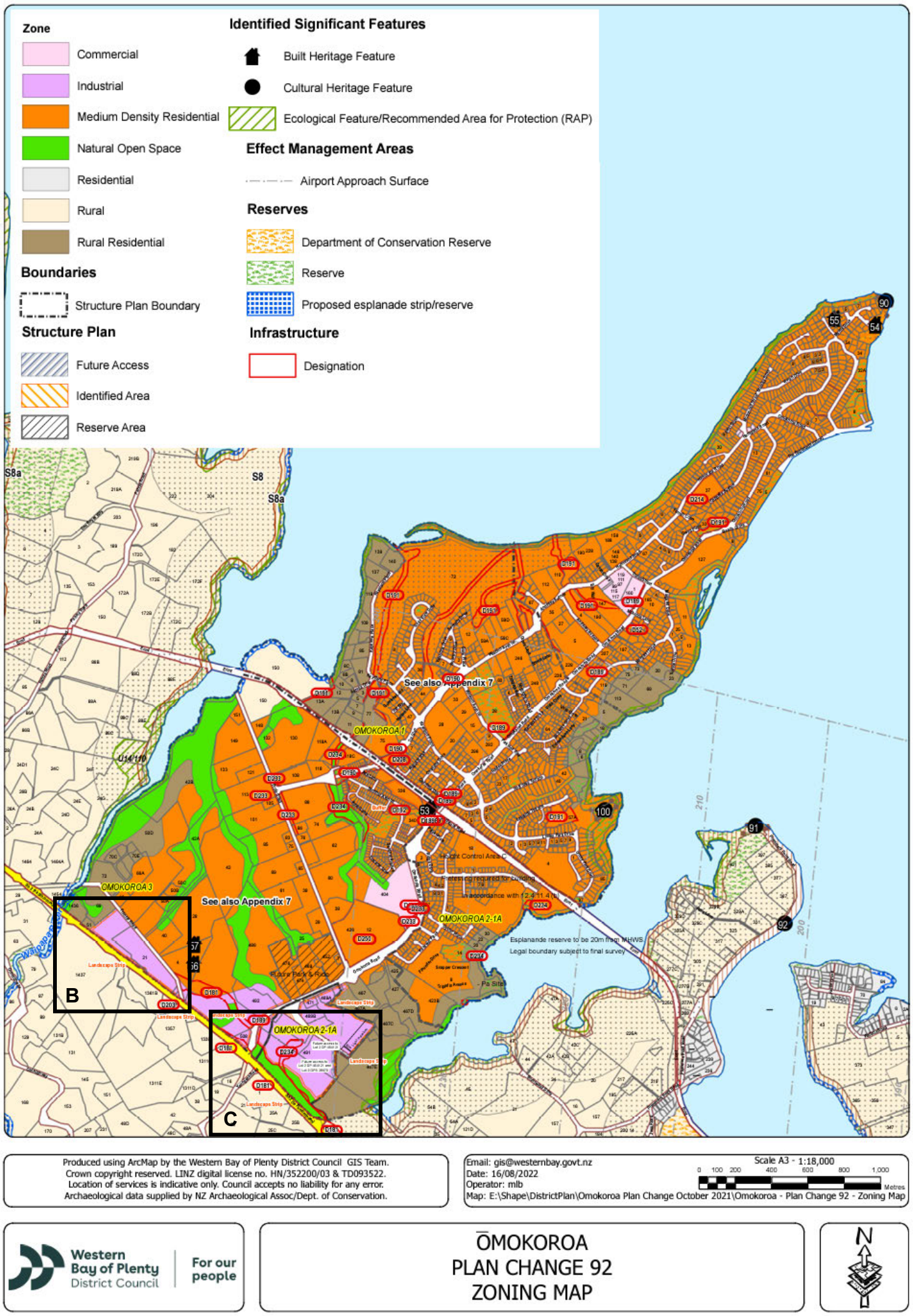
We look forward to hearing from you and receiving confirmation of the decisions made on these matters. Should you require any further information on any of the matters raised in this correspondence, please contact Natalie Rutland, Environmental Planning Manager by email natalie.rutland@westernbay.govt.nz

Yours sincerely

James Denyer
Mayor
Western Bay of Plenty District Council

Appendix 4: Maps of intensification plan change extent and details relevant to the referred recommendations

Figure 1: Map of Plan Change 92 as notified[5].



Officials' notes to support Figure 1:

- Officials' added black squares and lettering (B, C) which show the zoning <u>as notified</u> of the areas subject to recommendations B and C as outlined in **Table 1** of this briefing.

I

[5] Source: Appendix 2 of notification documents for Proposed Plan Change 92, p.377. Web link: www.westernbay.govt.nz/repository/libraries/id:25p4fe6mo17q9stw0v5w/hierarchy/property-rates-building/district-plan/district-plan-changes/Plan%20Change%2092/Combined%20Sections%20and%20Maps%20for%20APP%202.pdf.

Figure 3: Map of IHP's recommendations for recommendation B.[6]

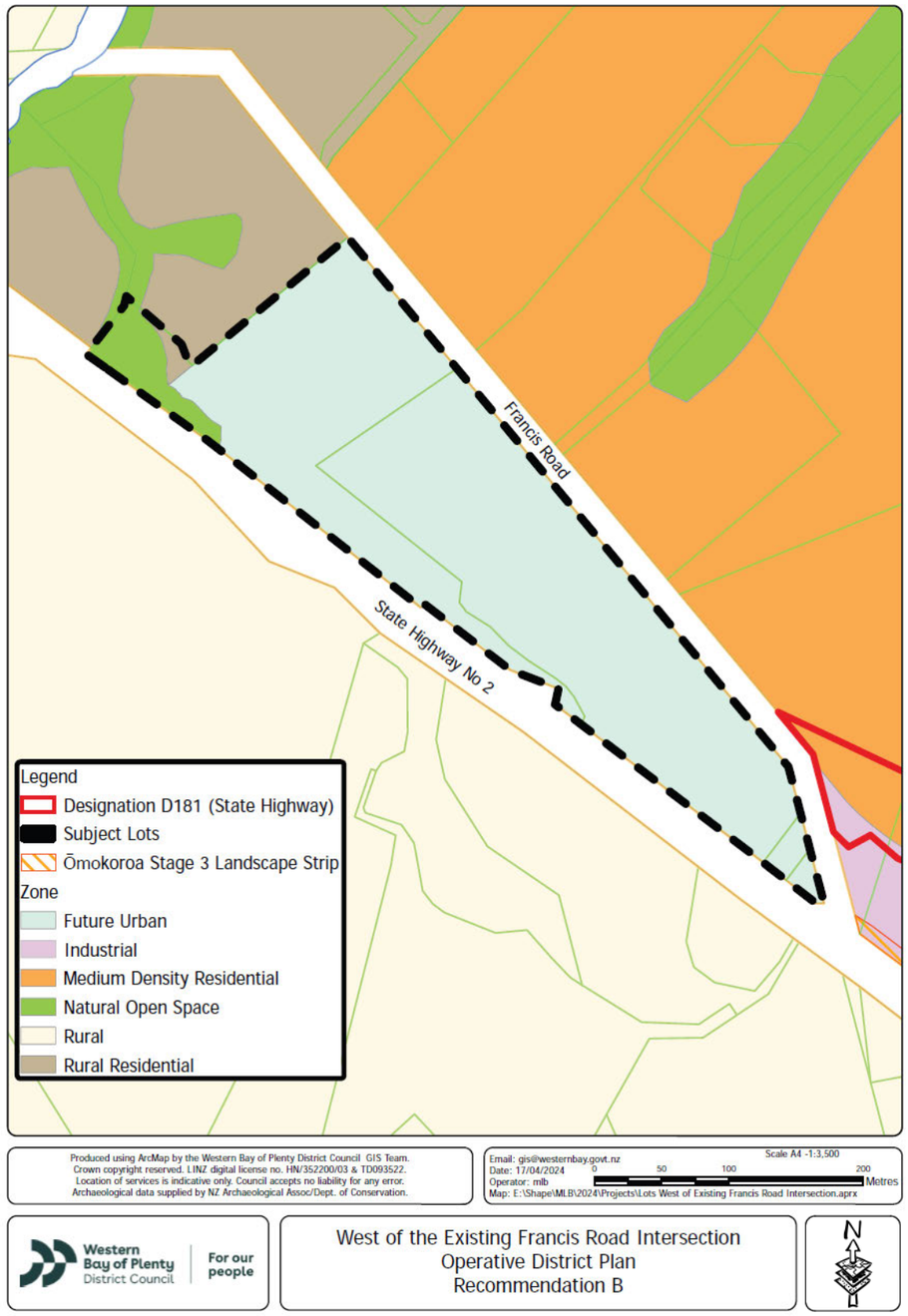
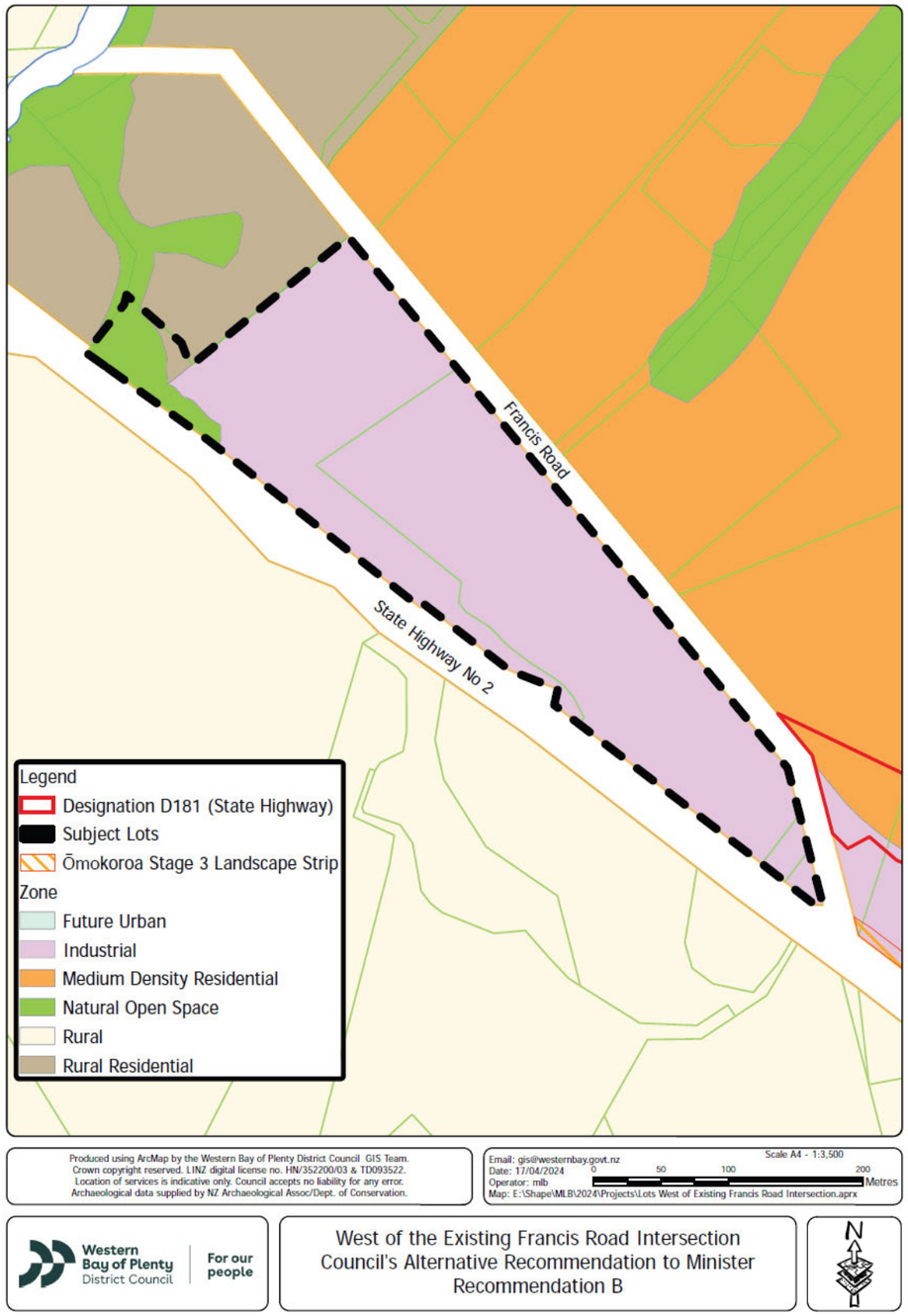


Figure 4: Map of the Council's alternative recommendations for recommendation B.



[6] Source: Maps in Figures 3 and 4 were produced by the Council as requested by Ministry officials. The versions of Figures 3 and 4 did not include North arrows. For clarity, Ministry officials added a North arrow.

Figure 5: Map of IHP's recommendations for recommendation C.[7]

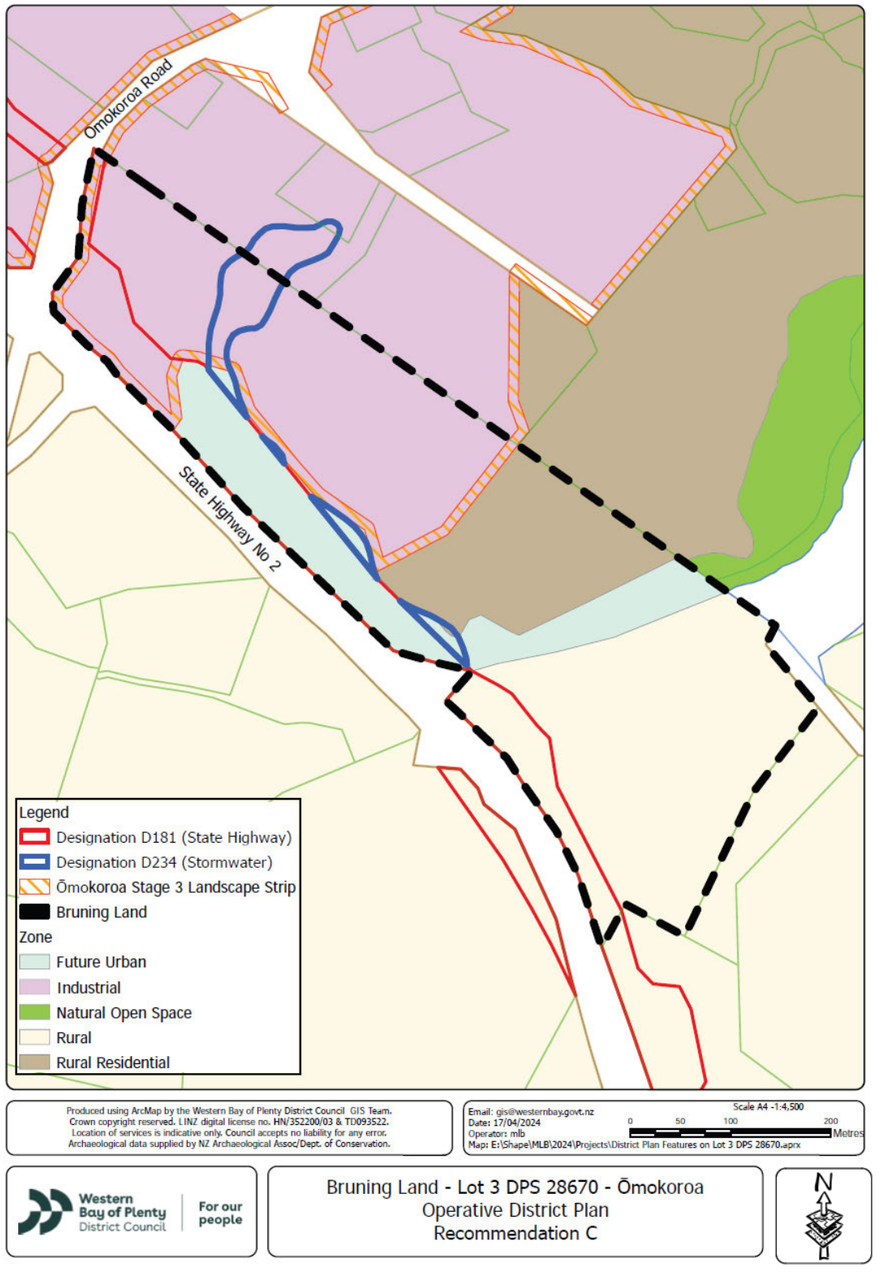
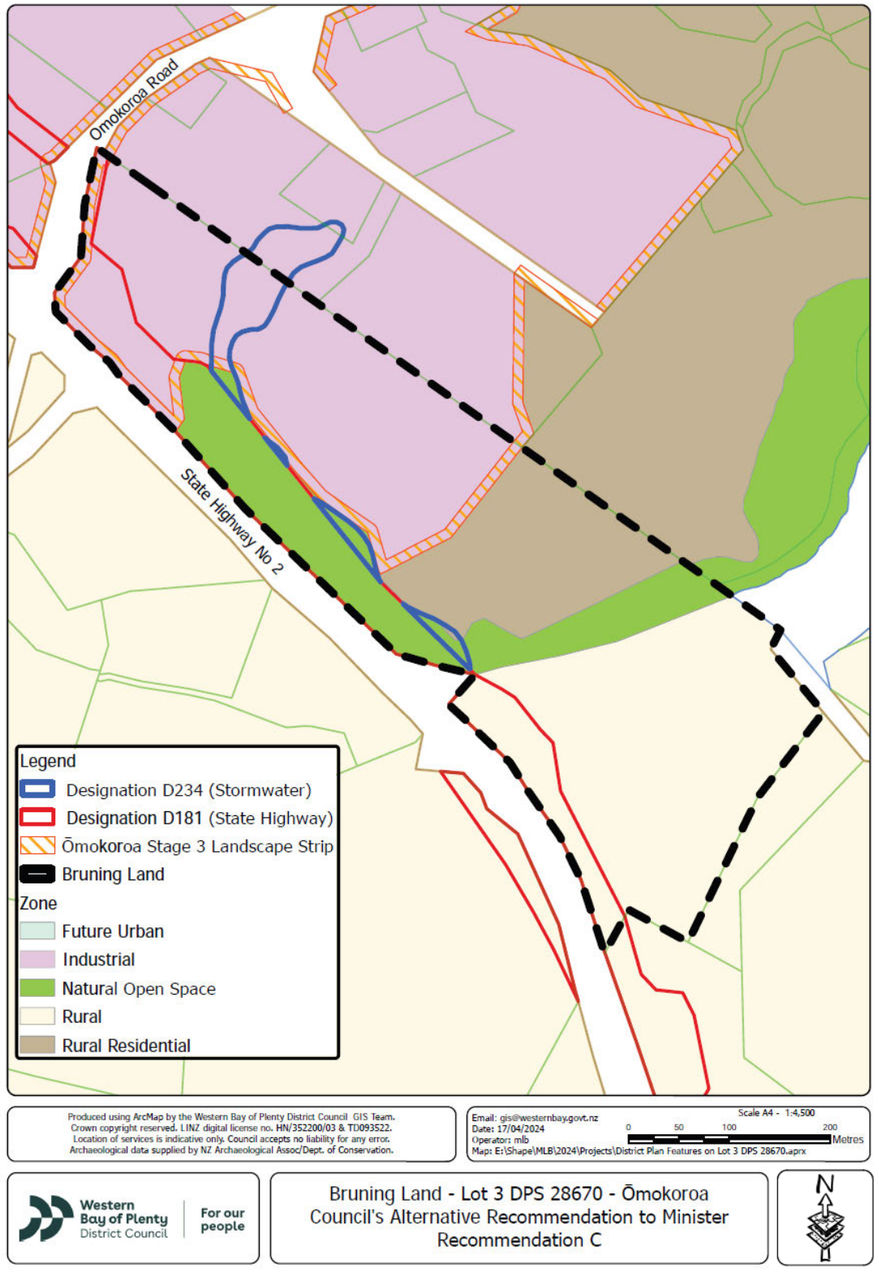


Figure 6: Map of the Council's alternative recommendations for recommendation C.



[7] Source: Maps in Figures 3 and 4 were produced by WBOPDC as requested by Ministry officials. The versions of Figures 5 and 6 did not include North arrows. For clarity, Ministry officials added a North arrow.

Appendix 5: Recommendation Report of the Independent Hearing Panel

[Attached to cover email.]

RECOMMENDATION REPORT OF THE INDEPENDENT HEARING PANEL (IHP)

PLAN CHANGE 92 (IPI)
WESTERN BAY OF PLENTY DISTRICT COUNCIL
Enabling housing supply and other supporting matters

25 JANUARY 2024

TABLE OF CONTENTS

INDEX OF ABBREVIATIONS

The following list of abbreviations and acronyms are used in this report. This glossary is provided as a key to those unfamiliar with the references.

Abbreviation	Meaning
"BOPRC"	Bay of Plenty Regional Council
"CZ"	Commercial Zone
"DP"	District Plan
"EQM"	Existing Qualifying Matter
"FENZ"	Fire and Emergency New Zealand
"FINCOs"	Financial contributions
"HMP"	Hapū Management Plan
"HUE"	Housing Unit Equivalents
"IHP"	Independent Hearing Panel
"IPI"	Intensification Planning Instrument
"ISPP"	Intensification Streamlined Planning Process
"IZ"	Industrial Zone
"LGA"	Local Govt Act
"MDRS"	Medium Density Residential Standards
"Minister"	Minister for the Environment
"MRZ"	Medium-Density Residential Zone
"NoR"	Notice of Requirement
"NOSZ"	Natural Open Space Zone
"NPS"	National Planning Standards
"NPS-ET"	National Policy Statement – Electricity Transmission
"NPS-REG"	National Policy Statement – Renewal Energy Generation
"NPS-UD"	National Policy Statement on Urban Development
"PC92"	Plan Change 92
"QM"	Qualifying Matter
"RMA"	Resource Management Act 1991
"RMAA"	Resource Management Amendment Act 2021
"RVA"	Retirement Village Association
"the Act"	The Resource Management Act 1991
"the Council"	Western Bay of Plenty District Council
"TTOW"	Te Tiriti o Waitangi
"WBOP"	Western Bay of Plenty

RECOMMENDATION REPORT OF THE INDEPENDENT HEARING PANEL TO WESTERN BAY OF PLENTY DISTRICT COUNCIL IN RELATION TO PLAN CHANGE 92 INTENSIFICATION PLANNING INSTRUMENT

Proposal Description:

Proposed Plan Change 92 to the Western Bay of Plenty District Plan: Intensification Planning Instrument

Independent Hearing Panel:

Mr Greg Carlyon – Independent Hearing Commissioner, Chair
Ms Pia Bennett – Independent Hearing Commissioner
Ms Lisa Mein – Independent Hearing Commissioner
Mr Alan Withy – Independent Hearing Commissioner

Date of Hearing:

11th – 15th September 2023

Hearing officially closed:

3rd November 2023

INTRODUCTION

REPORT OUTLINE

1.1 The content of this report is intended to satisfy the Council's obligations related to decision-making and reporting under s32AA of the RMA.

1.2 To that end, the report is organised into the following key sections:

(a) Section 2 - Context and factual background to the plan change

The section summarises the factual basis of the plan change, including an outline of the need for the IPI, the reason for applying it only to Te Puke and Ōmokoroa and the context and background of those two urban areas. It also outlines the main components of the plan change as notified. The context is important to understand the issues raised in submissions. The main themes of submissions are also described in this section, as well as a summary account of the hearing process and subsequent deliberations.

(b) Section 3 - Evaluation of the issues and recommendations

The second part of the report contains an assessment of the issues raised in submissions, along with references to evidence and/or statements from those submissions where relevant.

(c) Section 4 - Summary

1.3 The final section of the report highlights the key areas of contention and explains the next step in the decision on PC92.

IHP COMMENTS TO THE PARTIES TO THE PROCEEDINGS

1.4 Before setting out the context of the plan change, the IHP would like to acknowledge and record our appreciation to all of the parties that took part in the proceedings, be they Council officers, lay submitters, representatives of larger organisations or expert witnesses.

1.5 Those who submitted on the plan change and those who attended the hearings enabled a clearer understanding of the tensions, synergies and practical issues at play in this plan change. All of the material greatly assisted us in assessing the issues and determining the recommended response. We acknowledge and appreciate the time, thought and effort that went into preparing them.

REPORT PURPOSE

1.6 This report sets out our recommendation to the Council as a basis for their decision on Plan Change 92 ("PC92") to the operative District Plan.

1.7 The Independent Hearing Panel ("IHP") was appointed by the Council to hear and consider the officers' recommendations, as well as submissions and further submissions on PC92. The IHP was appointed under s34 of the Act and makes the recommendation as to whether and which parts of PC92 should be declined, approved or approved with amendments.

1.8 The plan change (as notified) seeks to:

(a) Introduce further medium-density residential areas into the district plan, in both Te Puke and Ōmokoroa;

(b) Change the zoning in parts of those urban areas in line with producing well-functioning urban environments, as directed in the National Policy Statement for Urban Development ("NPS-UD").

1.9 Before attending to the substantive material of the plan change, there are some procedural matters to cover, as well as an explanation as to how the report is set out.

The role of the IHP

1.10 As noted above, the role of the IHP is to make a recommendation to the Council as to decisions relating to the notified version and matters raised in submissions, further submissions and the Council hearings.

1.11 The authority delegated to the IHP includes all the powers necessary under the RMA to hear and make a recommendation to the Council, who then either accept the recommendation or refer it to the Minister.

The Intensification Planning Instrument

1.12 Because parts of Western Bay of Plenty are considered to constitute part of the Tauranga urban environment, the Council has been classed as a Tier 1 territorial authority and was required to notify this plan change by August 2022.

1.13 The plan change differs from a standard plan change to the district plan, in that it is an Intensification Planning Instrument ("IPI"). The purpose of the IPI plan change is to allow greater intensification and an increased housing supply in a manner that produces well-functioning urban environments.

1.14 The scope of the plan change is limited to the implementation of the NPS-UD and the Medium Density Residential Standards ("MDRS"), which were brought in by the Resource Management Amendment Act 2021 ("RMAA").

1.15 This means the plan change process will only address changes to residential zone rules, zoning changes, issues such as financial contributions and subdivision, as well as related and consequential changes in other chapters, for example infrastructure, earthworks and industrial zone provisions. Further explanation of the requirements and scope of the IPI is given in Section 2.

1.16 Some of the provisions had immediate legal effect from the time they were publicly notified. Where those provisions differ from the final decision, those provisions fall away upon release of the decision from the Council.

1.17 Provisions that implement the density standards inserted by the new the RMAA include allowing up to three dwellings on a site of up to three storeys. More restrictive standards are only possible where qualifying matters ("QMs") are introduced. Because those standards are set by national legislation, they apply across the country and must be implemented.

1.18 In addition to those differences, there is no recourse provided to appeal the decision of the Council, except on points of law. The reason for the lack of appeal rights is to provide certainty and to allow the urgent implementation of the MDRS, which is aimed at delivering more housing (and better housing affordability) to the market.

1.19 However, as with all other plan changes, the IHP has carefully considered what is within scope, weighed up the relevant matters, considered the position of Council as well as all of the submissions, and made their recommendations based on the matters set out in the Resource Management Act.

1.20 Alongside the notification of the plan change, Council also issued a Notice of Requirement ("NoR") for land at Ōmokoroa to create an Active Recreation Reserve at the corner of Ōmokoroa Road and Prole Road. The IHP heard evidence on both PC92 and the NoR.

1.21 This report only addresses PC92. The IHP will issue a separate recommendation in relation to the NoR, and Council may accept or vary that recommendation.

First test - scope of an IPI

1.22 The Council is required to notify an IPI under s80F of the Act. The IPI must contain the following mandatory elements:

(a) Incorporate the medium density residential standards (MDRS) into all relevant residential zones; and

(b) Give effect to Policies 3 and 4 of the National Policy Statement on Urban Development (NPS-UD) in respect of urban environments.

1.23 The Act also authorises Council to include any of the following discretionary elements into its IPI:

(c) Financial contributions;

(d) Provisions to enable papakāinga housing in the district;

(e) Creation of new residential zones;

(f) Provisions that are more lenient than the MDRS;

(g) Provisions that are less enabling than the MDRS where qualifying matters apply; and

(h) Related provisions that support or are consequential on the MDRS or Policies 3 and 4 of the NPS-UD

1.24 For matters which fall within the mandatory or discretionary elements of an IPI identified in above at (a) - (h), the RMA provides for an Intensification Streamlined Planning Process (ISPP) which enables a more expeditious planning process than the usual Schedule 1 process, including the absence of appeals to the Environment Court. However, section 80G makes it clear that only those matters listed at (a) - (h) may be the subject of the ISPP process, and that only one IPI may be notified by the Council. Accordingly, an early question for the IHP is whether the sought relief falls within, or outside of, the mandatory or discretionary elements of an IPI.

Determining "on" the Plan Change (Clearwater)

1.25 Submissions on an IPI are made under clause 6 of Schedule 1 of the Act which provides[1]:

> *Once a proposed… plan is publicly notified under clause 5, the persons described in subclauses (2) and (4) may make a submission on it to the relevant local authority.*

1.26 There was broad consensus that the key caselaw on whether a submission is "on" a plan change (or not) is Clearwater Resorts Limited v Christchurch City Council (Clearwater) and Palmerston North City Council v Motor Machinists (Motor Machinists)[2].

[1] Clause 6 applies to an IPI under clause 95(2)(i) of Schedule 1 of the Act.

[2] Clearwater Resorts Limited v Christchurch City Council, HC Christchurch AP34/02, 14 March 2003, and more recently upheld in Palmerston North City Council v Motor Machinists [2013] NZHC 1290.

1.27 Clearwater, involves a two-limb test:

(a) Whether the submission addresses the changes to the pre-existing status quo advanced by the proposed plan change; and

(b) Whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.

1.28 The accepted ways of determining whether a submission meets the first Clearwater test is to:

(a) consider the section 32 report and whether the submission raises matters that ought to be addressed in that report; or

(b) consider whether the management regime for a particular resource is altered by the variation.

1.29 In considering the first arm of the bipartite Clearwater test, the Court has referred to matters which are assessed, or should have been assessed, in the section 32 report. The legal views on this were varied. In particular, whether it is relevant only to the mandatory aspects of IPIs or whether it equally applied to the discretionary matters listed above at (c) - (h) were not agreed between counsel.

1.30 In the situation where no submissions were received, but information from mana whenua seeks to incorporate mandatory elements of an IPI, it is not possible to treat the information as though it were not "on" the plan change, nor would it be possible to determine that information seeking inclusion of any mandatory elements was out of scope as it had not been publicly notified as part of the IPI.

1.31 In our view the following principles apply to determining whether a submission is “on” a plan change:

(a) A determination as to scope is context dependent and must be analysed in a way that is not unduly narrow. In considering whether a submission reasonably falls within the ambit of a plan change, two things must be considered: the breadth of alteration to the status quo proposed in the plan change; and whether the submission addresses that alteration.

(b) For relatively discrete plan changes, the ambit of the plan change (and therefore the scope for submissions to be “on” the plan change) is limited, compared to a full plan review which will have very wide ambit given the extent of change to the status quo proposed.

(c) The purpose of a plan change must be apprehended from its provisions (which are derived from the section 32 evaluation), and not the content of its public notification.

1.32 We do not consider that PC92 is a plan change of narrow scope or limited reach. Rather our view is that it proposes extensive changes to the status quo of two of the district's growth areas. Its purpose (as statutorily required by the RMA) is to:

(a) Incorporate the Medium Density Residential Standards (MDRS) into relevant residential zones and to give effect to Policies 3 and 4 of the NPS-UD.5

(b) With regard to the NPS-UD:

(i) Policies 3 and 4 refer to: city centre zones; metropolitan centre zones; areas within a walkable catchment of rapid transit stops, city centre zones and metropolitan centre zones; and neighbourhood centre zones, local centre zones and town centre zones (or equivalent). That list applies to all of the land in Ōmokoroa and Te Puke and areas in the immediate vicinity of those centres and of rapid transit stops.

(ii) The RMA requires the DP to "give effect to" any NPS including the NPS-UD.

(c) The obligation to "incorporate the MDRS into relevant residential zones" requires consideration of all urban residential areas within the DP.

1.33 From our analysis of the purpose of PC92 and our study of the changes it proposes to the DP, we consider that PC92 is not a narrow plan change. It encompasses two of the growth areas within the WBOP sub-region and it alters the status quo for land use intensification in both residential and commercial areas.

1.34 Furthermore, with regard to b (ii) above, while the RMA requires the IPI to give effect to Policies 3 and 4 NPS-UD, we note that section 75(3) of the RMA also applies, such that PC92 must also be assessed and implemented in a way that gives effect to the balance of the NPS-UD (subject to scope). This is an important finding that, for reasons that follow, means a wider rather than narrower interpretation of the IPI needs to be applied.

1.35 For the purposes of our preliminary views on scope and the first limb assessment to be undertaken, it also means that the ambit of PC92 is wide and that submissions that fairly and reasonably raise matters that go to its broad purpose have a strong likelihood of satisfying this threshold and being "on" the plan change.

SECTION 2 - CONTEXT

THE OPERATIVE DISTRICT PLAN

2.1 The current Western Bay of Plenty District Plan became fully operative in 2012 (with the exception of provisions relating to Matakana Island, which became operative in 2015).

Background

2.2 Western Bay of Plenty District Council have identified two areas of their district where the medium density residential standards are appropriate: Te Puke and Ōmokoroa. Te Puke is very close to a population of 10,000 and though Ōmokoroa has far fewer people, it has been identified as an area for growth for many years.

2.3 Both Ōmokoroa and Te Puke could, and in the opinion of the IHP should, be considered part of the Tauranga urban environment. Indeed, it is undoubtedly due to the proximity to the high-growth city of Tauranga that WBOPDC was indicated by the Ministry for the Environment to be a Tier 1 Council. Since both settlements are within commuting distance of Tauranga (Te Puke is around 25 minutes to Tauranga in clear traffic and Ōmokoroa is around 20 minutes), it is considered likely that at least a proportion of current and future residents will travel to Tauranga for work and to access goods and services.

Contextual difference between Ōmokoroa and Te Puke

2.4 As stated above in section 1 of this recommendation, within Western Bay of Plenty District, the implementation of the Amendment Act and Policy 3 is limited to Ōmokoroa and Te Puke, as these are the only settlements within the district that meet the definition of urban environment within the NPS-UD[3].

2.5 Council anticipates that the future population of each town will be over 10,000 and for that reason they are considered "urban environments" under the RMAA 2021. However, the Act also points out that "urban environments" are areas of land, irrespective of territorial authority or statistical boundaries that are, or are intended to be, part of a housing and labour market of at least 10,000 people.

2.6 However, as the IHP heard, there are distinct differences between these two settlements and the manner in which they have been planned for in the past and approached through PC92. These differences were evident in the site visit the IHP undertook on 12 September 2023. The two settlements are discussed below.

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[3] Ministry for the Environment, National Policy Statement on Urban Development 2020, Definition of "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.

Geo-cultural context

2.7 In regard to the Ōmokoroa aspects of PC92, it is acknowledged that within Tauranga Moana, the political landscape is centred around hapū having the mana - authority to deal with matters that affect them, such as this plan change.

2.8 In relation to the Te Puke area and proposals under PC92, the IHP understand that mana - authority to input into planning instruments is primarily exercised at an iwi authority level. We have dealt with each geographic tribal area separately.

Ōmokoroa

2.9 The IHP heard through the s42A reports and evidence presented by and on behalf of the Council, that Ōmokoroa has long been recognised as a growth area in the Western Bay of Plenty sub-region[4]. Ōmokoroa is projected to be fully developed by 2050, with a resident population of approximately 13,000.

2.10 A large part of the Ōmokoroa peninsula was zoned Future Urban in 2010. The IHP understands that since that time, planning for the growth of Ōmokoroa was well underway, and that the Council had formally applied to the Minister for the Environment in 2021 to undertake a plan change under the Streamlined Planning Process (SPP), in order to fast-track the residential expansion of the Stage 3 Structure Plan area of Ōmokoroa.

2.11 The Council had already prepared a draft Ōmokoroa Plan Change for the Stage 3 area. However, due to introduction of the Amendment Act, that plan change was not able to progress. The new legislation required for Ōmokoroa the redrafting to apply the MDRS across the whole of the current and proposed residential zones and ensuring other provisions supported the provision of housing in accordance with the Act and NPS-UD. The SPP application was formally withdrawn in May 2022 prior to the notification of PC92 in August.

2.12 Through the site visit, the IHP witnessed the recent and widespread growth of Ōmokoroa, including large areas of residential expansion together with development of the main commercial centre.

Te Puke

2.13 With a population of approximately 10,000, and projections to grow to 13,000 within the next 10 years[5], Te Puke is the largest settlement within Western Bay of Plenty sub-region. As stated in the s42A report, Te Puke developed in the late 19th/early 20th centuries as a service town for the surrounding rural area. It is a horticultural hub within the Bay of Plenty,

[4] PC92 Legal submissions on behalf of Council pp 3.6

[5] Te Puke Have Your Say Summary Report 2022

particularly known for its kiwifruit orchards. The IHP's observation is that of a vibrant township serving its existing population and likely the rural hinterland.

2.14 While acknowledged as a major settlement within WBOP, in contrast to Ōmokoroa, Te Puke has experienced incremental growth. It only has relatively discrete pockets of land zoned Future Urban in the Operative District Plan, most of which are either already under construction, or have secured resource consent. The IHP observed that the new developments are primarily for medium density residential developments of predominantly single storey dwellings on compact lots.

MAIN THEMES OF THE NOTIFIED PLAN CHANGES

2.15 Since the plan change is an intensification planning instrument, all of the proposed amendments to the plan either:

(a) enable intensification of residential development in the two urban environments; or

(b) were considered necessary to creating well-functioning urban environments as a consequence of the increasing intensification.

2.16 The majority of the revised Ōmokoroa urban area was proposed to be rezoned to medium-density residential zone ("MRZ"), including the area southwest of the rail line in the area zoned "Future Urban" in the operative plan.

2.17 The gully systems in the southwestern part of Ōmokoroa were rezoned to Natural Open Space Zone ("NOSZ"), in order to protect those gullies from erosion and to protect the marine environment from the effects of sedimentation. The gully system is also proposed to provide for a network for pedestrians and cycling activity through the base of the peninsula.

2.18 An area to the west of the curve on Ōmokoroa Road was proposed to be rezoned to Commercial zone ("CZ") and was also connected to the gully system network.

2.19 To the south in Ōmokoroa, areas close to the state highway were proposed to be rezoned to Industrial zone ("IZ"), with some areas around the fringes to be OSRZ.

2.20 In Te Puke, with the exception of areas around the state highway and railway line, the majority of the existing urban area was proposed to be rezoned to MRZ.

SUBMISSIONS

2.21 A summary of all submissions and further submissions has been provided by the Council reporting officer at Summary of Submissions and Further Submissions by District Plan Provision for Website updated June 2023.pdf (westernbay.govt.nz) with records of full submissions at District Plan Changes - Western Bay of Plenty District Council, Under Current: Plan Change 92 - Submissions

2.22 Council received 62 submissions and 13 further submissions on PC92 from the follows [6] [7]:

1	Richard Hewison
2	Lesley Blincoe
4	Robert Hicks
6	Tim Laing
7	David Marshall
8	Armadale Properties Limited
10	Blair Reeve
11	Elles Pearse-Danker
12	Vortac New Zealand Limited
13	Matthew Hardy
14	Peter Musk
15	Western Bay of Plenty District Council
16	Penny Hicks
17	John Wade
18	Fire and Emergency New Zealand
19	Pete Linde
21	Joshua Marshall
22	Heritage New Zealand Pouhere Taonga
23	Frank and Sandra Hodgson
24	Ara Poutama Aotearoa - Dept of Corrections
25	Bay of Plenty Regional Council (FS67)

37	Sylvia Oemcke
38	TDD Limited
39	Urban Taskforce for Tauranga
40	Vercoe Holdings Limited
41	Waka Kotahi, NZTA (FS79)
42	Brian Goldstone
43	Jacqueline Field
44	Ken and Raewyn Keyte
45	Ian Yule
46	Summerset Group Holdings Limited
47	The North Twelve Limited Partnership (FS78)
48	Warren Dohnt
49	Paul and Julie Prior
50	Mike and Sandra Smith
51	Torrey Hilton
52	Maxine Morris
53	Liz Gore
54	Christine Prout
55	Zealandia Trust
56	Ōmokoroa Country Club Ltd (FS74)
57	Kirsty Mortensen

[6] List of submitters shows 66 submitters as 4 reference numbers were generated but unassigned.

[7] The IHP chose to identify the key affected mana whenua parties in the list of submitters in recognition of the unique status that tangata whenua hold.

26	Classic Group (FS68)
27	David and Diana Bagley
28	Foodstuffs North Island Limited
29	Kāinga Ora - Homes and Communities (FS70)
30	KiwiRail Holdings Limited (FS71)
31	N and M Bruning
32	New Zealand Housing Foundation (FS73)
33	Powerco (FS75)
34	Retirement Villages Association of New Zealand Incorporated (FS76)
35	Ryman Healthcare Limited (FS77)
36	Susan Phinn

58	Jace Investments & Kiwi Green New Zealand Limited (FS69)
59	Jace Orchards Limited & Kiwi Green New Zealand Limited
60	David Crawford
61	Paul and Maria van Veen
62	Angela Yule
63	Dawn Mends
64	Ross List
65	Russel Prout
66	Steve Chalmers
MW	Pirirākau Hapū
MW	Te Kapu o Waitaha
MW	Tapuika Iwi Authority

HEARING

2.23 Twenty-four of the submitters wished to be heard in the hearing in relation to the plan change, with another four wanting to be heard on the Notice of Requirement for the Active Reserve. Council also received one body of tabled evidence for each (from Fire and Emergency NZ in relation to the plan change and from Heritage NZ in relation to the Notice of Requirement).

2.24 The IHP notes that further evidence and outcomes of caucusing were presented following the adjournment of the formal hearing. This material is referred to throughout this document.

2.25 The key themes to arise from the public process (submissions, further submissions and hearings) were the following:

(a) Cultural and other matters of concern to mana whenua including qualifying matters and the reliance on future structure plan processes for addressing cultural effects.

(b) Effects on amenity – principally a request by KiwiRail to include a buffer from the railway line within which development would be subject to a qualifying matter, requiring acoustic insulation of any noise sensitive activities.

(c) Submissions on the proposed natural hazards provisions.

(d) Submissions favouring changes to the financial contributions calculations.

(e) A number of matters from Fire and Emergency New Zealand ("FENZ") on providing for firefighting in the medium-density residential areas.

(f) Submissions on stormwater management, with submissions, in support, supporting in part or opposed.

(g) Many submissions on the medium density residential zone provisions, including on their consistency with the MDRS and NPS-UD, amendments sought to better accommodate retirement villages, and both opposition to and support for the greater intensity introduced by the plan change.

(h) Submissions with amendments sought to the Ōmokoroa Structure plan in relation to stormwater and transport connections.

(i) Zoning changes.

RECOGNISING TANGATA WHENUA

2.26 Throughout this report, the IHP has used the terms "tangata whenua" and "mana whenua" to distinguish between broad matters as they relate to Māori more generally, from people at place matters which is where the IHP recognises particular mana whenua groups more specifically.

2.27 The IHP received no submissions from tangata whenua generally or mana whenua specifically on PC92 prompting cause for concern early in the process. In light of this, and in the absence of any other material having been produced by tangata whenua/mana whenua groups, the IHP had fundamental concerns about whether it was going to be able to adequately perform its duties and functions under the Act.

2.28 The IHP had established the principles it deemed appropriate to underpin the process. They included a commitment to:

- a hearing procedure that is appropriate and fair.
- avoiding unnecessary formality; and
- recognising tikanga Māori.

2.29 In addition, the IHP was committed to:

- being inclusive and acknowledging the broad range of interests, capability and capacity represented in submissions.

- where practicable, using collaborative and active participation processes to enhance and/or complement the formal hearings process.
- acting in a fair and transparent manner in proceedings, which included acting in accordance with the principles of Te Tiriti o Waitangi.
- conducting an efficient process which minimised the costs and time to all parties involved in the hearing.
- providing submitters with an adequate opportunity to be heard.
- giving effect to Te Ture mō Te Reo Māori 2016/the Māori Language Act 1987, and receiving evidence written or spoken in Te Reo Māori, and
- recognising New Zealand sign language where appropriate and receive evidence in sign language if required.

2.30 The IHP did not want to neglect its obligations, specifically those that relate to the rights, interests and obligations afforded to tangata whenua, and the duty to give effect those considerations in a way that respects tikanga Māori and is compliant with the basic tenets of te tiriti principles of partnership, participation, and active protection. The pre-eminence of the strong directives in McGuire v Hastings District Council[8] therefore occupied the minds of the IHP early in the process.

Request for advice

2.31 In response to the concerns held, the IHP sought early legal advice on its options in regard to re-engagement with mana whenua and/or options to hear from mana whenua in relation to the plan change. The IHP wanted to explore if there was scope to receive relevant mana whenua submissions (either at the hearing or pre-hearing via re-engagement with Council staff) and/or other ways to hear from mana whenua within the plan change process. To be clear, it was not the intention of the IHP to initiate and/or undertake engagement directly with any tangata whenua or mana whenua groups, but rather, the IHP needed to better understand how (if at all) it could ensure that the perspectives of mana whenua could be recognised within the PC92 hearing process and provided for within the architectural fabric and operative outcomes that PC92 is expected to achieve.

[8] McGuire v Hastings District Council [2000] UKPC 43, [2002] 2 NZLR 577 at [21].

2.32 From the legal advice, the IHP pulled what it considered the key enabling points, as follows:

- As an inquisitorial body, opportunity for the IHP to receive information from tangata whenua is available, but that best practice and natural justice considerations would necessitate that clear, open, and transparent processes were adopted
- The IHP has the power to regulate its own proceedings (Clause 98, Schedule 1)
- No explicit provision exists that precludes seeking to receive, or receiving information from tangata whenua
- Re-engagement with tangata whenua by Council staff is an appropriate option that might lead to tangata whenua lodging a late submission which the IHP could then accept using s37 powers to extend time-limits for submissions.

2.33 The advice that could be considered as preventing the receiving information and/or the perspectives of tangata whenua, from tangata whenua themselves, is provided as follows:

- Where no submissions have been made, no formal engagement opportunity exists for the IHP
- No explicit role or powers are conferred upon the IHP to undertake 'engagement'
- Engagement with tangata whenua is the role of Council, not an IHP

2.34 Further discussion in relation to scope considerations and providing for the voice of mana whenua is provided in Section 3.

CONCLUDING COMMENTS ON CONTEXTUAL ISSUES

2.35 The IHP has been particularly informed by the context within which the plan change is to be applied. It notes the following:

(a) The primary intention of the plan change is to provide for growth and intensification in line with the statutory direction.

(b) The plan change is limited in scope to Ōmokoroa and Te Puke. The community context for these urban communities is markedly different. They are subject to existing high levels of development (against which the plan change is somewhat retrospective) and critically there is a connection to the broader Tauranga/ Western Bay environment, which cannot be ignored.

(c) Within Te Puke, Council has a conceptual programme for a broader spatial plan, which may see substantial commercial/industrial growth and a significant increase in population. It is problematic to address the intensification issues associated with PC92 when Council

is planning a relatively immediate parallel process. While this is unsatisfactory on a number of fronts, the IHP acknowledges that the timing of the plan change was set by national direction.

(d) Ōmokoroa is subject to current high levels of urbanisation and land development for other outcomes. This is occurring in the context of the recognition that natural resources are under significant pressure and that Māori values on the peninsula are very high. In this context, it is important that those values are maintained, protected and restored where relevant.

SECTION 3 - THE ISSUES

IHP APPROACH TO RECOMMENDATIONS

3.1 For the purposes of this section of the report, where possible, we maintain the Council approach of grouping the discussion according to the corresponding chapter of the district plan.

3.2 Summaries of the key issues for each section are provided, including legal submissions where relevant, and points raised in submissions and at the hearing. The discussion includes the IHP's recommendation on those issues, along with the reasons for our recommendation to accept, reject or accept in part particular submissions.

3.3 The intention is to address all of the issues raised in submissions and orally during the hearings, rather than to address points on a submitter-by-submitter basis. This approach is not to downplay the importance of those submissions. Input from all submitters has been extremely valuable in informing the IHP's deliberations.

3.4 Unsurprisingly given the focused nature of the plan change, there was a large degree of overlap between different submissions. We therefore consider it to be most effective for our recommendations to be centred on resolving the contentious issues, rather than addressing each submission point in turn.

3.5 Many of the matters raised in submissions resulted in a simple and straightforward recommendation from the Council reporting officer. Not wishing to repeat the material from the Council s42a report, evidence or right-of-reply, the IHP are comfortable accepting the recommendations as set out in these reports, except where directed otherwise in the discussion below. Submission points are only addressed where the IHP felt that there were still matters that needed to be resolved or where the matters required some further discussion.

3.6 The IHP has not addressed matters where the Council officer's discussion and recommendation needs no further elaboration, either because there were no submissions in opposition, officers adopted the proposed relief or the reasons for the officers' position in rejecting a submission were clear and unequivocal. For completeness, the following documents are provided to show the IHP's recommendations in full including all responses to submissions and changes to the Operative District Plan:

- Attachment A – Summary of Recommendations on All Topics and Submission Points.
- Attachment B – Recommended Changes to the District Plan Maps.
- Attachment C - Recommended Changes to the District Plan Provisions.

SCOPE CONSIDERATIONS

Providing for the voice of mana whenua

3.7 In Section 2, we briefly set out some of the considerations around scope of the Intensification Planning Instrument. Below, we turn to address scope in relation to the specific considerations confronting the IHP in relation to including input from mana whenua.

3.8 Under clause 98 of Schedule 1, the IHP has power to regulate its own proceedings. The duties of the IHP on an IPI process (as set out under clause 99 of schedule 1 RMA) are to make recommendations to the territorial authority, such recommendations must be:

(a) related to a matter identified by the IHP or any other person during the hearing, but

(b) are not limited to being within the scope of submissions made on the IPI.

3.9 Our reading of clause 99 of schedule 1 RMA, lends the IHP to consider that there is sufficient latitude for it to consider information concerning mana whenua, whether that information exists in the form of a submission, presentation (as we were provided by Pirirākau on day 1 of the hearing), or other form of information. While this latitude may seem fairly wide-reaching, we take onboard Councils legal submissions on the point:

> *… care should be taken in terms of natural justice considerations where the IHP is making recommendations under clause 99(2)(b). While some submitters sought to describe this as a very broad power, in our submission it is not unfettered and needs to be exercised with care*[9].

3.10 With this in mind, other than the information presented by Pirirākau on Day 1 of the hearing, and the records contained in the s32 & s42A reports, we have decided that consideration of any additional information shall be limited to information that only exists on public record.

3.11 Section 74 RMA sets out the matters that are to be considered by territorial authorities when making changes to the district plan. S.74(2A) RMA explicitly provides that when preparing or changing a district plan, a territorial authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

[9] Legal submissions in reply - WBOPDC at [17], Page 5

3.12 Clause 95(2) of Part 6 of Schedule 1 to the RMA confirms that clause 6 of Schedule 1 applies to the IPI. Clause 6 entitles the persons described in sub-clauses (2) to (4) to make a submission "on" a proposed policy statement or plan (change).

3.13 The meaning of that simple word "on" has been the subject of considerable judicial consideration (which we turn to below), but for present purposes we record that no party contended that submissions on PC92 did not have to satisfy this initial jurisdictional threshold to be considered. Rather, the issue was whether the established "on" jurisprudence was apt for the IPI by which PC92 was being processed.

3.14 Ms Stubbing, counsel for WBOPDC, provided opening submissions. Her general advice regarding "scope" was as follows:

> *There was a list of submission points in the section 42A report that were identified as being potentially out of scope. From the written evidence received from submitters, we are aware that some of those points are no longer being pursued. However, we comment briefly on each of the submission points that we understand are being pursued and, in our opinion, are not "on" PC92 with reference to the Clearwater tests above.*

3.15 The approach by the Council witnesses has been to note where submission points are potentially out of scope but then to assist submitters and the IHP by addressing the relief sought on its merits .

3.16 Counsel for BOPRC, Ms Wooler, argued for a wide interpretation and says our recommendations must be related to a matter identified by the IHP or any other person during the hearing. The amendments have been identified as required .

3.17 The IHP accepts and embraces that interpretation (which is consistent in principle with those of Ms Stubbing on behalf of WBOPDC) and proceeds to consider all the submissions and evidence on that presumption.

CONSULTATION

General

3.18 In relation to consultation on the plan change, three submissions (Robert Hicks, Penny Hicks and Russel Prout) suggested that it was inadequate and that more should have been done to communicate the plan change to affected residents.

3.19 Council pointed out that, in order to meet the deadline for notification set out in the RMAA, they had limited time to run community meetings on the plan change. They did have a period of public engagement, however except where we note that consultation with mana whenua has been inadequate, the IHP is satisfied that they have fulfilled the requirements of Schedule 1 of the Act.

Consultation with tangata whenua

3.20 From the record of consultation[10] prior to notification, the key issues as expressed by Pirirākau are summarised as:

(a) original area proposed for MDRZ had increased.

(b) proposed height limits and the potential significant adverse effects on cultural viewshafts.

(c) capacity of existing wastewater line.

(d) lack of greenspace proposed.

(e) co-management of reserve areas.

(f) cultural sites and the need for avoidance of inappropriate use and activities.

(g) visual impacts and changes to the character.

3.21 The S.32 evaluation reports consultation as being widespread yet fails to reflect a consultative process (or include any evidence of such) that recognised the unique status of tangata whenua in the context of the minimum obligations for consultation in accordance with Schedule 1 RMA.

3.22 The consultation provisions of Schedule 1 RMA are not discretionary, rather they are expressed as an instruction to the local authority concerned to consult the parties listed at clause 3(1)(a) - (e).

3.23 For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

(a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and

(b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and

(c) consults with those iwi authorities; and

(d) enables those iwi authorities to identify resource management issues of concern to them; and

[10] Section 42a Report - Attachment C - Tangata Whenua Engagement Record. Pages 5 & 6

(e) indicates how those issues have been or are to be addressed.

3.24 Despite the express statement in its s32 report[11] that recognises Pirirākau as mana whenua of Ōmokoroa, and the significance of Ōmokoroa to the hapū, PC92 fails to adequately indicate how the issues of Pirirākau have or will be addressed. In this vein, the Council has relied on the Structure Plan process.

3.25 PC92 does not adequately demonstrate (e) how the issues that Pirirākau have articulated (through engagement and in their HMP) have been or are to be addressed. We have seen no evidence that points to any agreements reached between Council and Pirirākau on the identified treatment options. The Council evidence is that the structure planning process will provide for Pirirākau.

3.26 The IHP has carefully considered the rights and interests of tangata whenua in the context of this plan change. Without having the status of a submitter, the IHP had to first determine its ability to consider Pirirākau with all the usual rights that go with being a submitter, or as a party with an interest greater than the general public.

3.27 The IHP's response to the points raised by Ms Shepherd are discussed in more detail in other areas of this report, in particular where the IHP address FINCOs and natural open space. The IHP also saw the need to address section 6(e) matters in the context of section 77I of the RMA. We have attempted to do this in Section 2 under Qualifying Matters.

DISCRETE MATTERS

General support for the plan

3.28 The s42a report for the "General Matters" in the plan noted a number of submitters (Urban Taskforce for Tauranga, Retirement Villages Association, Ōmokoroa Country Club, Waka Kotahi, Kāinga Ora & KiwiRail) supported the plan change generally, subject to changes sought in particular sections of the plan. Those matters will be addressed in the relevant sections. It is also noted that the RVA submission was supported in further submissions by Ryman and Somerset.

Application of 'Urban Environment' to other areas of the district

3.29 Another submission, from Joshua Marshall, opposes Council's interpretation that only Ōmokoroa and Te Puke are 'urban environments' in the district and requests that Council also apply the MDRS to other urban areas of the district, and there should be more widespread enabling of intensification across the district.

Paragraph 5.2.6 - Plan Change 92 Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters - s32 Evaluation Report (August 2022)

3.30 Council put forward its position that urban areas in the district were treated as being 'subject to their own housing and labour markets', and therefore only Te Puke and Ōmokoroa have or are likely to have markets of at least 10,000 people within the scope of the plan change.

3.31 The IHP takes a different view to both parties on this question. It is our view that urban areas within a commuting distance of Tauranga are effectively part of the 'urban environment' of Tauranga. Indeed, the reason for which WBOPDC was judged to be a Tier 1 Council was that it lies at the periphery of Tauranga, which is growing rapidly.

3.32 The direction of the NPS-UD and MDRS is to provide for intensification so that urban growth is provided for less through peripheral greenfield expansion and more through development within the existing urban area, ensuring the infrastructure is used efficiently and realising the benefits of 'well-functioning urban environments'.

3.33 It is noted that the townships of Katikati and Waihi Beach are a considerable distance beyond Ōmokoroa and are unlikely to attract a large number of commuters to Tauranga. The IHP do not consider them to be part of the 'housing and job market' of Tauranga and for that reason, agrees that the only areas of the district that should be subject to the MDRS and NPS-UD are Te Puke and Ōmokoroa.

Carbon Emissions

3.34 One other matter generally in relation to the plan is the issue of carbon emissions. It is disappointing that neither the Council nor Waka Kotahi have given serious attention to the impact on carbon emissions resulting from development of a large volume of additional housing, in particular in Ōmokoroa. Waka Kotahi raised it as a matter of concern in their submission and the Council view was that no action was required.

3.35 The NZ government is now legally bound to deliver on its carbon reduction commitments. In the NPS-UD, one of the characteristics of "well-functioning urban environments" is a reduction in carbon emissions resulting from planning decisions around urban form and development.

3.36 The location of Ōmokoroa, 20km from Tauranga, means that large numbers of residents will commute to the larger city. The analysis of Waka Kotahi in terms of traffic generation implies this, and the submission by Kāinga Ora acknowledges that Ōmokoroa could be seen as a part of the Tauranga urban environment. Experience from the development of a satellite town on the periphery of other big cities, in NZ and abroad, would also support that conclusion.

3.37 The Beca traffic model suggests that projected traffic movements to and from Ōmokoroa (not including through movements on SH2) would be around 3,700 vehicles per day. They did not supply observed traffic data currently, but since the population of the peninsula is

expected to almost triple, and there are no indications that future residents would be any less inclined to travel to Tauranga, we could conservatively estimate that at least half of the projected trips are resulting from intensification brought in by this plan change.

3.38 Since the majority of trips can be assumed to be to Tauranga (the distance being 20km), and that other trips will be shorter, and some longer, 1,850 additional trips x 20km (distance to Tauranga) means approximately 37,000km/day increase to VKT, in excess of 10 million additional kilometres per annum.

3.39 We also note that a cursory glance at the state highway between Ōmokoroa and Tauranga reveals a number of locations that would not be considered satisfactory for safe cycling, and especially not the perception of safe cycling, to enable residents of Ōmokoroa to make the trip by cycle. However, it is noted that a cycleway between Ōmokoroa and Tauranga is part implemented and being pursued.

3.40 In any case, the distance means that journey by cycle would likely take around an hour each way. Active transport connections between these two connected areas is therefore not considered practical.

3.41 There are currently 6 buses per day each way between Ōmokoroa and Tauranga, with a bus roughly every 1h 45m in each direction between 7am and 4.20pm towards Tauranga and between 7.55am and 5.10pm towards Ōmokoroa.

3.42 The provision of a location to be used as a Park-and-Ride is insufficient to offset the increase of thousands of VKTs per day that will result from the settlement. Therefore, charging of development contributions, targeted rates, congestion charging, subsidisation of the bus service and other economic instruments are considered appropriate to drive more economic use of private vehicles.

3.43 It is suggested that Council policy staff investigate, and where possible implement, actions to offset the additional emissions that this plan change will enable.

Planning Maps: Te Puke Zoning

3.44 The approach the Council has adopted for Te Puke, as set out in the reports accompanying PC92 and presented at the hearing, was to confine the rezoning to MDR only. The MDR zone applies primarily to existing zoned Residential areas and to pockets of Future Urban or Rural zoned land that either has an existing resource consent for residential development or is currently subject to a private plan change lodged prior to the Amendment Act. The additional areas were previously identified for residential expansion within the urban limits of Te Puke. In its site visit, the IHP gained an appreciation for the existing settlement and the relationship of those additional areas proposed for zoning to both the existing township and the natural landform.

3.45 The rationale the Council reporting officers have given for the conservative approach to intensification of Te Puke, is that the timeframes restricted its ability to carry out thorough consultation with the Te Puke community. The extent of proposed MDR within Te Puke represents only what is required to instate the MDRS provisions within the urban extent of the township.

3.46 At the hearing the IHP heard that Council intends to embark on a more fulsome review of the spatial extent and provisions of Te Puke through the district-wide plan review process, commencing with a spatial plan for Te Puke that will enable a more thorough analysis and understanding of the social and economic infrastructure requirements. The IHP understands the Council intends to embark on early engagement and option identification and analysis for Te Puke with targeted engagement and release of a draft Spatial Plan in the middle of 2024.

MANA WHENUA SPECIFIC CONSIDERATIONS

3.47 The conspicuous lack of participation of mana whenua, and Pirirākau in particular, was an issue for the IHP. In this respect the missing voice of mana whenua and the action that was taken to remedy that is later discussed in this section.

3.48 The IHP notes that the engagement with mana whenua expected for the scale of impact generated by the plan change has not concluded satisfactorily. It is expected that Council will ensure mana whenua are fully engaged in the implementation of the plan change as a whole and including the associated spatial planning processes underway.

The relationship of Pirirākau with Ōmokoroa

3.49 Pirirākau, a hapū with affiliations to Ngāti Ranginui, one of the three iwi of Tauranga Moana, have longstanding associations with their tribal estate with four operating marae - Tawhitinui, Poututerangi, Tutereinga and Paparoa.

3.50 The Ōmokoroa peninsula area is located in the heart of the rohe of Pirirākau, It is identified in the Pirirakau Hapu Management Plan (HMP) as a significant landscape for the hapu[12]. The HMP includes specific mention of Ōmokoroa and explains that the relationship of Pirirākau with their rohe is expressed "by maintaining marae, retaining remnant reserves, protecting our natural environment, and keeping the identity, the customary rights, and practices of Pirirākau alive" [13].

[12] Pirirākau Hapū Management Plan [2017] at page 23

[13] Pirirākau HMP [2017] page 12

3.51 The HMP for Pirirākau was useful to the IHP in respect to the historical and current context for mana whenua. We recommend users of the plan and the Council to actively reference the plan in implementation and future decision-making.

3.52 The aspirations of Pirirākau are recorded in the HMP in the following way:

> *Pirirākau seek to encourage its hapū members to retain our cultural baselines. Strengthening our traditional worldviews and respecting our past navigators. Remembering the ancestral teachings of our people so we retain our mana and fulfil our aspirations. Pirirākau are the legacy and future of a powerful whakapapa.*

3.53 As kaitiaki, we are the receivers of an inherent responsibility to protect manage and nurture our taonga for present and future generations in the same ways our forebears have. Equally we desire to maintain our relationship with our ancestral lands and waters. We affirm our tikanga within our rohe and within forums that affect the interests of our people.[14]

3.54 In relation to land use & development, the HMP describes the experiences of Pirirākau detailing the lack of confidence that Pirirākau have in relation to the way their values and territories are managed in this context, and specifically in relation to plan change processes.

Pirirākau cultural values and potential cultural amenity treatments.

3.55 Ultimately, Pirirākau seek restoration of people and place. The Ōmokoroa Structure Plan Urban Design Cultural Overlay report prepared by Pirirākau helpfully identifies several overlay treatments to appropriately give expression to Pirirākau values and to assist the re-establishment of Pirirākau presence within the landscape.

Pirirākau involvement in the Structure Planning process

3.56 The loss of cultural landscape is experienced by Pirirākau as a physical and spiritual severance of their relationship with this part of their tribal estate and as a form of disenfranchisement. As part of the Structure Plan process and the collection of information for the development of the cultural overlay for Ōmokoroa, a site visit excursion involving Pirirākau kaumātua took place. It was reported that the kaumatua were overwhelmed and disorientated by the rapid change and transformation of Ōmokoroa and that they felt emotionally and culturally disconnected from an environment they were traditionally familiar with.

3.57 They contend that through engagement on PC92 and earlier processes, that they have continuously reiterated the position that Pirirākau would support the full urbanisation of Ōmokoroa on the condition that further urbanisation not occur in other parts of the Pirirākau rohe, specifically, at Huharua, Whakamarama, Te Rangituanehu and Te Puna. The

[14] Pirirākau HMP [2017] page 16

rationale given was multi-layered but appears to be centred around a ki uta ki tai philosophy and aspirations to maintain and protect an important cultural (and ecological) corridor between the coast and inland.

3.58 The Council assert that PC92 provides for Pirirākau through the structure plan process. This assertion seems at odds with the definition of structure plan in the operative district plan which has the following definition:

> *Structure Plan means a plan for an area that identifies new areas for growth, and which may also include an existing developed or zoned area. Such a plan shows proposals for infrastructure (roading, water supply, wastewater disposal, stormwater and recreation) that may be used as the basis for assessing the costs of development and any associated financial contributions.*

3.59 The explanatory statement for the new MDRS section of the district plan, although seemingly not as focussed on infrastructure, unfortunately does not greatly assist our understanding further:

> *Structure plans exist for 'greenfield' medium density development areas in Ōmokoroa (Stage 3) and Te Puke (Macloughlin Drive South and Seddon Street East) to provide further guidance for subdivision and development in these areas. These structure plans ensure appropriate scale infrastructure is provided including roads, walkways, cycleways, three waters infrastructure and reserves.*

3.60 A definition devoid of any specific reference to anything cultural is problematic given the apparent reliance of the Council on the structure plan process to satisfy their obligations to Pirirākau.

3.61 The IHP note that the area specific overlays for Ōmokoroa do not include the Pirirākau cultural overlay. With this in mind, the way the current definition is framed and the explanatory statement in relation to structure plans, implies that structure plans are explicitly intended to address key infrastructure needs and cost.

Pirirākau presentation

3.62 On behalf of Pirirākau, Ms Julie Shepherd appeared before the IHP on Day 1 of the hearing to deliver an oral presentation. It was submitted that Pirirākau has, for some 30 years, expressed the issue of urbanisation. Pirirākau acknowledge that long-term planning for growth in Ōmokoroa has occurred since the late 1970s.

3.63 The IHP heard that Pirirākau seeks the following:

- Ecological corridor protection, in particular for the flightpath of the kaka.
- A cultural plan that provides for resourced Pirirākau kaitiakitanga.

- A comprehensive stormwater management plan that protects and enshrines mahinga kai as a compulsory value of the NPS-FM.

3.64 Pirirākau also testified to changes in the landscape through progressive development over time and the effects that this development has had on their ability to remain connected to their ancestral landscapes and other taonga. Notably, the s32 Report recognises the potential for this outcome to occur as a result of urban development.

Urban development will result in a significant modification of the environment and landscape which could further alienate Māori and particularly Tangata Whenua from their association with the land[15].

Mana whenua relationships with Te Puke

3.65 Waitaha is an iwi based in the heart of the Te Puke area, with their primary marae, Hei, located at Manoeka. The people of Waitaha are descendants of the ancestor Hei, who was a prominent member onboard the Arawa waka when it sailed to Aotearoa. Tapuika is the other primary iwi connected to the Te Puke area. The eponymous tupuna of Tapuika was Tia. Tia and Hei were twin brothers. The main marae of Tapuika located close to Te Puke township are Moko marae at Waitangi, and Makahae marae on the immediate outskirts of the Te Puke township.

3.66 Both iwi have achieved comprehensive settlements with the crown and as such are supported by post settlement governance entities - Te Kapu o Waitaha and Tapuika Iwi Authority. The settlements of each iwi included cultural redress which recognises the traditional, historical, cultural and spiritual associations that both iwi has with places and sites within their area of interests. Both settlements include statutory acknowledgements for specific areas and waterways of particular significance to each iwi. Included in the statutory acknowledgements and/or deeds of recognition for waterways is the Waiari stream, Kaituna river, Raparapahoe Stream, Ohineangaanga stream which are all located in close proximity to Te Puke town area.

3.67 Both iwi have also prepared and formally lodged iwi management plans[16]. The Waitaha Plan, Ko Waitaha Ahau, was lodged in 2014 and the Tapuika Environmental Management Plan 2014 - 2024. Both plans set out clear expectations in regards to when engagement by Councils is triggered. No submission was received from either iwi, but notes from engagement suggested that Tapuika and Waitaha representatives were comfortable with the direction of the plan change, and saw benefits for their iwi members as a result – mainly around the possibility of building a second and third dwelling on residential sections. It

[15] Section 32 Report - Efficiency & Effectiveness of the Provisions in Achieving the Objectives. Page 18, Row 1, Column 2 et al

[16] The IHP understand the Waitaha IMP was lodged with the Bay of Plenty Regional Council

should also be noted that the changes introduced by the plan change were much narrower in relation to Te Puke compared with Ōmokoroa.

QUALIFYING MATTERS

3.68 Because QMs are an important consideration in an IPI, and there are very limited appeal rights to the decision, they are addressed and considered here, rather than in Section 14A. Further discussion of submissions and Council officers' recommendations can be found in the s42A reports for Section 14A.

3.69 Two submissions addressed qualifying matters, both requesting an additional qualifying matter be added to the plan. In addition, the IHP considered the provision for s6(e) as a qualifying matter.

Power transmission lines as a qualifying matter

3.70 In relation to power transmission, Powerco has submitted that the implementation of the Medium density residential standards (MDRS) conflicts with the Electrical Code of Practice for Electrical Safe Distances (ECP34) as the power supply in Ōmokoroa is via overhead power supply.

3.71 The conflict may result in housing development that does not comply with ECP34, which would be a safety risk for future residents as well as a risk to continuity of power across the local network.

3.72 Powerco seek the inclusion of the overhead power lines to the Council maps, and the compliance with ECP34 as a performance standard. Because that would be less enabling of the densities set out in the Medium density residential standards, that additional setback would need to be recognised as a qualifying matter (QM).

3.73 In its submission, Powerco argues that the Enabling Housing Act, in introducing s77I, provides for electrical distribution as a QM in several ways:

- 77I(b), as a matter required to give effect to a national policy statement;
- 77I(e), as a matter required for the purpose of ensuring the safe and efficient operation of nationally significant infrastructure; and
- 77I(j), as a matter that makes higher density residential development, as provided for by the MDRS or Policy 3 of the NPSUD, inappropriate in an area, with the satisfaction of s77L.

3.74 To address each in turn, it is Powerco's contention that power distribution to the Ōmokoroa peninsula is provided for in two national policy statements (NPSs), the NPS Renewable Energy Generation (NPSREG) and the NPS Electricity Transmission (NPSET).

3.75 The NPSREG is clearly directed at providing for the harnessing of natural forms of energy (wind, solar etc) to generate electricity. Despite Powerco's contention, there is nothing to suggest that the NPS should apply to transmission or distribution.

3.76 Similarly, the NPSET provides for the transmission network rather than local electricity distribution. As Powerco's submission acknowledges, the national direction does not make specific reference to distribution, but instead recognises and protects the national grid as a matter of national significance. It does recognise the risks posed by third parties, and while that is very relevant to their submission point, the IHP does not accept the assertion that the direction of the NPSET applies to local distribution.

3.77 Powerco also asserts that the entire electrical supply network should be considered nationally significant infrastructure, and therefore be regarded a QM under s77(e).

3.78 Finally, the submission from Powerco argues that s77I(j) applies to the overhead powerlines in Ōmokoroa and acknowledges that this clause is subject to an assessment set out in s77L. Neither the submission nor the evidence presented at the hearing make an assessment directed by s77L.

3.79 S77L directs that a matter is not a QM unless the evaluation report referred to in s32:

(a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and

(b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and

(c) includes a site-specific analysis that—

i identifies the site to which the matter relates; and

ii evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;

iii evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics

3.80 While Powerco present a compelling argument that perhaps satisfies (a) and (b) of s77L (except that the argument was not set out in an assessment under s32 of the Act), no site-specific analysis has been done and no recommended amendments to the plan provided. On that basis, the changes sought and the evidence to support that change, fail to satisfy

the requirements of s77L and the overhead powerlines in the Ōmokoroa are not considered a qualifying matter.

3.81 The IHP agrees that the advice note recommended in the s42A report be added to the plan.

Additional setbacks from the rail corridor for future maintenance

3.82 KiwiRail has submitted on what they perceive as a need for a greater setback from the rail corridor than what is prescribed in the MDRS. In order for that increased setback to be accommodated, because that would be more restrictive that the MDRS, the rail corridor would need to be included in the plan as a qualifying matter.

3.83 KiwiRail argues that the setback is necessary to provide space on those properties to maintain the buildings without the need to encroach on the rail corridor. They have requested a setback of 10m to allow for scaffolding, support structures and to allow for a reasonable distance to ensure that dropped objects do not fall into the rail corridor.

3.84 However, the scope of this plan change is contained to Te Puke and Ōmokoroa. Through Ōmokoroa, the rail corridor is particularly wide, with the adjacent medium density residential zone (MDRZ) at least 20m from the train tracks, and in most places at least 30m. In Te Puke, the majority of the rail line is adjacent to the Industrial Zone or public road, and only Gordon St, Stock Road and King St have an area directly adjacent to the rail corridor.

3.85 As the scope of this plan change is limited in geographic extent, it is not considered practical or appropriate to provide a carve out for a small area of Te Puke. In addition, developers will understand that encroachment onto the rail corridor in future (even if only for maintenance activities) would require KiwiRail approval and there are health and safety regulations to protect against people or objects falling into the rail corridor.

3.86 Even if only the minimum setback is provided on a site adjacent to the rail corridor, scaffolding for future maintenance can be secured to the building with scaffolding wrap on the rail side to prevent items from falling into the rail corridor. This is considered the likely outcome of any health and safety assessment. Therefore we regard the inclusion of a greater setback from the Rail corridor, as per the KiwiRail request, to be unnecessary. We do however agree with the setback being reduced from 10m to 5m.

Section 6(e) Relationship of Māori

3.87 The range of 'Qualifying Matters' are set out at section 77I of the RMA and include section 6 RMA Matters of National Importance.

3.88 Despite the express statement in its s32 report that recognises Pirirākau as mana whenua of Ōmokoroa, and the significance of Ōmokoroa to the hapū, PC92 fails to adequately

indicate how the issues of Pirirākau have or will be addressed. In this vein, the Council has relied on the Structure Plan process.

3.89 In its Addendum Report (Qualifying Matters) to Section 32 Evaluation Report, Council attempts to clarify what matters are considered to be Existing Qualifying Matters ("EQM") provided for within the operative district plan, and that are to be treated as EQM for the purposes of PC92.

3.90 The Addendum Report provides that as a 77I(a) Qualifying Matter:

> *a matter of national importance that decision makers are required to recognise and provide for under section 6(e) being the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and section 6(f) being the protection of historic heritage from inappropriate subdivision, use, and development.*

3.91 As at the close of the hearing, it remained unclear whether s6(e) RMA matters had been treated appropriately by what seems to be a lumping together of s6(e) RMA with s6(f) RMA matters.

3.92 What is clear is that each of the s6 RMA matters are intended to be dealt with separately. This is supported by the fact that the Resource Management Bill was specifically amended before enactment to address concerns that there had previously been a lack of hierarchy and priority between different matters, so the risk of including an unprioritized list of matters was clearly recognised at the time.

3.93 It is against this backdrop that the IHP deemed it necessary to clarify that section 6(e) RMA considerations are not the same as section 6(f) RMA matters and to this end, recommend Council makes it explicit within the DP, including through methods such as provision linkages and referencing.

DISCUSSION ON SUBMISSIONS

EXTENT OF PROPOSED MEDIUM DENSITY ZONE TE PUKE

3.94 One submission was received on the spatial extent of Te Puke, from Armadale Properties (submission #8.1) in relation to 22 Landscape Road, which is currently zoned Rural and adjacent to a small area of residential zoned land. The submitter supports the application of the MDR zone on the residential zoned land and would like that expanded to include 22 Landscape Road. The submitter included a master plan concept for the site.

3.95 The Council's reporting officer considered the submission to be out of scope because PC92 only included land already zoned for residential or anticipated for urban expansion, and the rezoning sought is not an incidental or consequential extension of the proposed plan change zoning. This was confirmed in paragraphs 5.12 and 5.13 of the opening legal submissions by Ms Stubbing and we adopt that advice.

Change to High Density Residential

3.96 Two submission points, one each from Kāinga Ora (submission #29.6) and Waka Kotahi (submission point #41.2) were received seeking the identification and implementation of a 'high density residential zone', based on walkable catchments surrounding the centre of Te Puke. These submission points were supported by further submissions from KiwiRail (FS71.9) and Kāinga Ora (FS70.24) respectively.

3.97 The Council's reporting officer noted that there are no city centres or metropolitan areas and no existing or planned rapid transit stops within the WBOP district, therefore Policy 3(c) of the NPS-UD is not directly relevant to Te Puke. The reporting officer stated that the Council did consider higher density and walkable catchments for Te Puke but considered that the appropriate mechanism for pursuing locations for higher density may be through the upcoming spatial planning process. We agree.

Request to Change to Commercial or Mixed Use Zone

3.98 Vercoe Holdings supported in part the proposed zoning for Te Puke but sought (submission point #40.1) that the area identified for future commercial development within the subdivision resource consent be rezoned to Commercial.

3.99 The Council's reporting officer was of the opinion that there was insufficient justification as to why that would be the most appropriate option for the land, and considered that the types of mixed use activities sought would be better suited to a resource consent process. No representation was provided for this particular submission point at the hearing and we adopt the advice.

SUMMARY OF KEY RECOMMENDATIONS:

Key matters and recommendations

3.100 Notwithstanding that the Council deemed the submission point to be out of scope, submission point 8.1 was considered in the interests of providing information both to the submitter and the IHP. The IHP acknowledges that including the property within the MDRZ could support the ongoing growth of Te Puke as anticipated by the NPS-UD. However, given that the majority of the land at 22 Landscape Road is classified as LUC 3 (highly productive land), the NPS-HPL would also need to be considered with respect to any proposed rezoning. The IHP therefore accepts the recommendation within the s42A report to retain the existing rural zone for this land.

3.101 In relation to a high-density residential zone in Te Puke, subsequent to the drafting of the s42A report, Kāinga Ora advised through evidence of Ms Susannah Tait, that a high-density residential zone in Te Puke is no longer being pursued in favour of greater height within the town centre. The latter is discussed in greater detail in relation to Section 19 - Commercial Zone in paragraphs 3.268-3.278 of this recommendation. Similarly walkable catchments do not appear to be further pursued by Waka Kotahi. In this regard, the IHP defers to the officers' recommendation to retain the proposed MDR as notified.

3.102 With regard to the change of zone request, the IHP accepts that the MDR may enable the types of locally based commercial or mixed use activity, without requiring these sites to be zoned commercial.

3.103 The IHP accepts the Council Officer's position with respect to the extent of MDR in Te Puke, acknowledging that the proposed forthcoming spatial planning process will provide the appropriate vehicle for a considered and thorough review of the opportunities and constraints within and surrounding the township and therefore does not recommend any changes to the extent of MDR zoning as proposed. However, we do consider Council should advance the spatial planning process for Te Puke with some urgency.

Planning Maps: Ōmokoroa Zoning

3.104 In contrast to Te Puke, the growth of Ōmokoroa has been anticipated and planned for over the past two decades. Plan Change 92 includes the rezoning of most of the Ōmokoroa peninsula. The majority of the area subject to Plan Change 92 is currently zoned Future Urban, with the exception of a commercial zone on the northern side of Ōmokoroa Road from the curve opposite Flounder Drive intersection up past the roundabout with Settler Ave and Ridge Drive. There is a light industrial zone to the north of the commercial zone, but south of the rail line. The IHP understands that the area to the south of the rail line has been the subject of previous plan changes to create those zonings.

3.105 The proposed zoning map produced by Council shows the new roundabout at the intersection of Ōmokoroa and SH2, as well as a second roundabout providing access to an extended Francis Road. The intersection of Francis Road would then be closed, with the only access to SH2 from Francis Road being via Ōmokoroa.

3.106 On the zoning map, the area between the current formation of Francis Road and SH2 is shown as a new area of Industrial Zone. In addition to that, most of the area south of the extension of Francis Road to Ōmokoroa Road is also proposed as Industrial Zone, with the exception of a small area of deep gully, which is proposed as a new Natural Open Space.

3.107 South of Ōmokoroa Road from opposite the intersection with Prole Road almost down to the SH2 intersection, there is an area of Light industrial zone. That area is proposed to be expanded slightly to the west and south, and changed to general Industrial Zone. Much of the rest of that area is proposed to be Rural residential, with Open Space zones in two areas at the periphery of the Intensification Plan Change area.

3.108 In evidence supporting the submission of N & M Bruning, Mr Aaron Collier argued that changes to the zoning, particularly rezoning of rural land to industrial, rural residential or open space, were out of scope for the plan change. Ms Barry-Piceno, Counsel for the Brunings, endeavoured to persuade us that her submissions and the evidence on behalf of the Brunings supported removal of the proposed open-space annotation on their land adjoining SH2, on the grounds "it is out-of-scope"[17].

3.109 Ms Stubbing (for WBOPDC) argued the new zonings "support" the MDRS and greater intensification on the Ōmokoroa Peninsula, and therefore fall within the permissible scope of an IPI under section 80E[18] .

3.110 Ms Wooler, Counsel for BOPRC, also counters Ms Barry Piceno and Mr Collier's opposition to Rural Residential and Open Space Zones over part of the Bruning land, saying[19]

> "… power to impose an industrial zone must also include the power to amend its imposition – including by alternative zoning as the case requires [and]… urban non-residential zone means any zone in an urban environment that is not a residential zone"

3.111 She also cites the definition of urban environment as given in Section 1 of this report.

3.112 Ministry for the Environment guidelines make it clear that establishing new industrial or open space zones, consequential to changes to implement the MDRS, are within scope for an intensification planning instrument (IPI).

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[17] Barry-Piceno, s36

[18] Stubbing, s4.16 & s4.18

[19] Wooler, Para 52

3.113 We therefore prefer and adopt Ms Stubbing's argument, which is consistent with that of Ms Wooler. This is discussed in greater detail under the headings of the Industrial and Natural Open Space zones respectively.

ōMOKOROA MDR

Request for High Density Residential

3.114 The MDR includes the identification of areas with specific minimum density requirements. In order to provide for an array of densities in Ōmokoroa, WBOPDC proposed three different overlays within the MDR zone. These range from a minimum of 15 residential units per hectare in overlay area 3A through to a minimum of 30 residential units per hectare in overlay area 3C.

3.115 Two submission points were received in relation to this. Kāinga Ora[20] was generally supportive of the extent of area identified for rezoning in Ōmokoroa, including the additional intensification provisions. However, rather than an overlay within Section 14A, Kāinga Ora are seeking to rezone the areas identified as Ōmokoroa 3C to a new 'High Density Residential Zone' (HRZ). Kāinga Ora included proposed provisions for this new zone. The Waka Kotahi submission point 41.2, discussed above in relation to Te Puke, also sought high-density residential zones within the walkable catchment of Ōmokoroa town centre in order to give effect to the intent of the NPS-UD. These submissions points were supported by further submissions from KiwiRail (FS71.9) and Kāinga Ora (FS70.24) respectively.

3.116 The Council's reporting officer was of the opinion that the overlay provisions for 3C, namely minimum yield requirements and a greater height limit, are appropriate, within the context of Ōmokoroa, for giving effect to Policy 3(d) of the NPS-UD.

Analysis and considerations

3.117 In her evidence on behalf of Kāinga Ora, Ms Susannah Tait, reiterated that she considered the Ōmokoroa 3C areas should be rezoned to HRZ with a consequential 'uplift' in the performance standards; in particular height, height in relation to boundary, and yield provisions. Ms Tait sets this out in detail in paragraphs 10.18 – 10.29 of her evidence in chief, concluding that an HRZ is the most efficient and effective way to give effect to the NPS-UD.

3.118 Mr Hextall, reporting planner, was of the opinion that the inclusion of an additional new High Density Residential Zone, as requested by Kāinga Ora, with a set of plan provisions, would create unnecessary duplication.

[20] Kāinga Ora submission point #29.5

3.119 In light of the location and land uses within Ōmokoroa in relation to the wider district and Tauranga city, the relatively discrete areas for the 3C high density overlay and the overall response of PC92 to Policy 3(d) of the NPS-UD, the IHP accepts the Council Reporting Officer's opinion that application of an overlay is sufficient to achieve the outcomes desired in this location. We therefore reject the submission by Kāinga Ora seeking a new High Density Residential zone.

3.120 In relation to zone boundary changes outside the medium density residential zone, those matters are addressed in this report within the section relating to the relevant chapter in the plan.

SECTION 4B – TRANSPORTATION, ACCESS, PARKING AND LOADING

Vehicle crossings to Ōmokoroa Road

3.121 One submission was received, from Jace Investments, on the proposed non-complying activity status for vehicle crossings to Ōmokoroa Road, where written approval from the Council is not obtained. The activity status if permission is obtained would be controlled if the proposal meets all relevant standards and restricted discretionary if it does not.

3.122 The IHP has some sympathy for the position of the Council and the need to reduce friction on the main road of Ōmokoroa and ensure a safe and efficient transport network for the town. Notwithstanding the view of the IHP to accept Option 1 (status quo), we suggest that Council needs to address the concern associated with a third party influencing activity status for resource consent through a future plan change.

3.123 The other submission on the transport chapter related to on-site manoeuvring. Fire and Emergency NZ (FENZ) have submitted in support of the requirement in s4B.4.6 to provide for onsite manoeuvring where there is direct access off a strategic road for the Medium density residential area. This would align this new, higher density zone with the current rule for the general residential zone. FENZ is also seeking that a matter of discretion be added for non-compliance with that standard, which is a restricted discretionary activity under s4B.6.2.

On-site manoeuvring for emergency vehicles

3.124 FENZ seek the addition of the following matter of discretion:

(h) the ability for emergency vehicles to manoeuvre on-site effectively and safely.

3.125 The purpose of the on-site manoeuvring rule is to ensure that vehicles do not create a hazard by backing out onto a busy road. In this context, "on-site manoeuvring" is understood to be the ability of vehicles to make a three-point turn and exit the property facing forward. As pointed out in further submissions by The North Twelve Limited

Partnership, it is impractical to provide for the turning radii of emergency vehicles within every residential property.

3.126 There are other controls to ensure that emergency vehicles have access to all residential properties. In the s42a report, Mr Taunu Manihera, the reporting officer explains that the Development Code provides minimum design standards to ensure access for emergency vehicles. The Code also requires applicants to provide that access if an alternative design is proposed.

3.127 The IHP agrees with the officer's assessment that the proposed provisions as notified are appropriate.

SECTION 4C – AMENITY

3.128 The only submissions for this section related to the noise provisions and the need to protect sensitive activities from frequent high levels of noise and vibration.

3.129 KiwiRail has made a submission, supported by evidence at the hearing, that a rule should be inserted requiring any application for a noise sensitive activity within 100m of the rail corridor to be accompanied by an acoustic assessment and, based on the recommendations of that assessment, acoustic attenuation. They submit that this is in order to provide an appropriate level of indoor noise for those noise sensitive activities and protect rail operations from reverse sensitivity effects.

3.130 They have also submitted recommended amendments to the content of the plan, including requirements for ventilation and technical guidance relating to noise levels, as well as a definition for noise-sensitive activity, which the operative plan does not provide.

3.131 In their further submission in response, Kāinga Ora, NZ Housing Foundation, RVA and Ryman argued that acoustic and vibration controls should not be a qualifying matter and that acoustic insulation could only be accepted on a case-by-case basis.

3.132 RVA also made a primary submission against the requirement for new noise sensitive activities in the residential zone needing an acoustic design certificate to show that the building will have an appropriate indoor noise environment.

3.133 As the Council reporting officer has pointed out, there already exists in the plan a performance standard (4C.1.3.2(c)) requiring proposals for noise sensitive activities to ensure that internal noise levels are not exceeded, including providing alternative means of ventilation.

3.134 This performance standard applies for any noise sensitive activity across the district. It appears the consents team are known to waive that requirement for areas where there are no recognised noise issues, and not require the acoustic design certificate. This happens

on a case-by-case basis, which appears to be very much in line with what RVA were seeking for the zone. It is not expected to be waived for new dwellings close to known noise emitters, such as the rail corridor.

3.135 Although the district-wide provisions would appear to address noise effects from the rail corridor, attention of noise experts has been focused on whether those provisions are in fact fit-for-purpose and how they might need to be amended to make sure that they are. Expert conferencing has delivered a result that both sides of submissions are comfortable with. The IHP is also comfortable that the draft amendments provide greater direction to ensure that rail noise is effectively mitigated. This is particularly important as the higher density provisions will create a great deal of housing that may be subject to adverse noise levels without the appropriate mitigation.

3.136 The amended provisions from Dr Chiles (on behalf of KiwiRail) and Mr Styles (on behalf of Kāinga Ora) was the following:

(iii) In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 100m of the railway designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility shall meet the following requirements:

(a) The building is to be designed, constructed and maintained to achieve an internal design level of 35 dB LAeq(1h) for bedrooms and 40 dB L Aeq(1h) for all other habitable rooms. Written certification of such compliance from a Suitably Qualified and Experienced Acoustic Consultant suitably qualified and experienced acoustic engineer shall be submitted with the building consent application for the building concerned. The design certificate shall be based on:

(1) A source level for railway noise of 70 LAeq(1h) at a distance of 12 metres from the nearest track; and

(2) The attenuation over distance being:

(i) 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres; or

(ii) As modelled by a Suitably Qualified and Experienced Acoustic Consultant using a recognised computer modelling method for freight trains with diesel locomotives, having regard to factors such as barrier attenuation, the location of the dwelling relative to the orientation of the track, topographical features and any intervening structures. The design certificate shall assume railway noise to be 70 LAeq(1h) at a distance of 12 metres from the track, and must be

deemed to reduce at a rate of 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres.

(b) For habitable rooms for a residential activity, achieves the following requirements:

(i) provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code and that provides at least 1 air change per hour, with relief for equivalent volumes of spill air;

(ii) provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and

(iii) does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser. The noise level must be measured after the system has cooled the rooms to the temperatures in (ii), or after a period of 30 minutes from the commencement of cooling (whichever is the lesser).

(c) For other spaces, a specification as determined by a suitably qualified and experienced person.

(d) A commissioning report must be submitted to the Council prior to occupation of the building demonstrating compliance with all of the mechanical ventilation system performance requirements in subclause (b).

(e) The requirements of (a) to (d) to not apply where the building(s) within 100m of the railway designation boundary:

(i) Is in a location where the exterior façades of the bedroom(s) or habitable room(s) is at least 50m from the formed railway track and there is a solid building, fence, wall or landform that blocks the line of sight from all parts of all windows and doors of those rooms to all points 3.8m directly above the formed railway track; or

(ii) Is in a location where it can be demonstrated by way of prediction or measurement by a Suitably Qualified and Experienced Acoustic Consultant that the rail noise level at all exterior façades of the bedrooms or habitable rooms is no more than 15 dB above the relevant internal noise levels in (a).

(iii) Written certification from a Suitably Qualified and Experienced Acoustics Consultant demonstrating compliance with either (e)(i) or

e(ii) as relevant shall be submitted with the building consent application for the building concerned.

3.137 The IHP agrees that those provisions are appropriate and will successfully address the mitigation of rail noise in the new MRZ.

3.138 The panel also recommends the inclusion of the following standard in the Plan:

4C.1.4.3 Restricted Discretionary Activity – Indoor Railway Noise

Matters of discretion

(a) location of the building;

(b) the effects of any non-compliance with the activity specific standards;

(c) special topographical, building features or ground conditions which will mitigate noise impacts;

(d) the outcome of any consultation with KiwiRail.

3.139 The IHP considered whether it would be useful to provide a definition for noise-sensitive activity, as shown below, but understands that this is not required as the noise rule was drafted to mention specific activities which are sensitive to noise in line with the current definitions of these activities in the District Plan.

"Noise sensitive activity" means any lawfully established:

(a) activity, including activity in visitor accommodation or retirement accommodation, including boarding houses, residential visitor accommodation and papakāinga;

(b) educational activity;

(c) health care activity, including hospitals;

(d) congregation within any place of worship; and

(e) activity at a marae.

3.140 KiwiRail also submitted that dwellings within 60m of the rail designation boundary be required to mitigate vibration effects. In his evidence Dr Chiles cites many assessments of vibration showing a great deal of variability. What that evidence has not done is assess the vibration effects in Ōmokoroa and Te Puke. However, of the assessments listed, only one showed vibration levels below the recommended 0.3mm/s Vw,95 at 60m, and then only marginally.

3.141 Unlike noise, these effects cannot be shielded from other activities by buildings or other above-ground structures, since the vibration travels through the land.

3.142 In his evidence, Dr Chiles suggests that it would be pragmatic and sensible to implement the vibration controls within a standard 60m of the rail corridor, to which the IHP agrees.

3.143 Kāinga Ora and others submitted in opposition to a standard to require mitigation of vibration effects, arguing that it would add unnecessary cost to housing in the area. However, the provision of a safe and health indoor environment is consistent with the direction of s5 of the Act, requiring:

the use, development, and protection of natural and physical resources in a way… which enables people and communities to provide for… their health and safety

3.144 In her evidence, Ms Heppelthwaite has also provided an assessment of the efficiency and effectiveness, the costs and benefits and the risk of not acting, with which the IHP agrees.

3.145 The IHP therefore recommends the inclusion of the following standard in the plan. For clarity, this replaces the need for a vibration alert layer to be added as an information only layer to Council's District Plan.

Indoor railway vibration

(1) In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 60m of the railway designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall be protected from vibration arising from the nearby rail corridor.

(2) Compliance with standard 1 above shall be achieved by a report submitted to the Council demonstrating compliance with the following matters:

(a) the new building or alteration to an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or

(b) the new building or alteration to an existing building is a single storey framed residential building with:

(i) a constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and

(ii) vibration isolation separating the sides of the floor slab from the ground; and

(iii) no rigid connections between the building and the ground.

4C.1.4.4 Restricted Discretionary Activity – Indoor Railway Vibration

Matters of discretion

(a) location of the building;

(b) the effects of any non-compliance with the activity specific standards;

(c) special topographical, building features or ground conditions which will mitigate vibration impacts;

(d) the outcome of any consultation with KiwiRail.

SECTION 8 – NATURAL HAZARDS (INCLUDING MAPPED HAZARD LAYERS)

3.146 In relation to natural hazards mapping, Kāinga Ora submitted that hazards mapping should follow the Tauranga example and locate the planning maps outside the District Plan. As acknowledged by the Council, that approach is currently the subject of an Environment Court case to determine its legality. The IHP agrees with the Council's assessment that the Tauranga approach should not be followed unless or until that uncertainty has been resolved.

Liquefaction mapping

3.147 Submissions from WBOPDC, BOPRC and Kāinga Ora suggested that the liquefaction mapping had not been detailed enough. Submissions from Peter Musk, Jace Investments and North Twelve also opposed the liquefaction provisions. One submission in support was received, from FENZ.

3.148 Council reports that it is currently working on developing those layers further and may introduce them as part of a future plan change. IHP accepts that as the appropriate approach

Explanatory statement

3.149 A number of parties also submitted on changes to the explanatory statement to the natural hazards section. In the s42a report for Natural Hazards, Mr Clow set out the recommended changes to the explanatory statement, in line with most of those submissions, including the removal of the material relating to liquefaction. New Zealand Housing Foundation was in support of the explanatory statement as notified but did not lodge a further submission on the topic.

3.150 No additional matters were raised with regard to the explanatory statement in the hearing.

3.151 The IHP agree with the Council's proposed amendments to the explanatory statement.

Flood mapping

3.152 Two submissions were received in relation to the flood mapping. Pete Linde and Mike & Sandra Smith made submissions to remove areas identified as mapping errors. Those corrections relate to 60 Prole Road and 467B & E Ōmokoroa Road, respectively. Stormwater engineers have reviewed those properties and have recommended the flood overlay be removed from those properties.

3.153 In Te Puke, flood mapping was updated from showing a 2% annual exceedance probability (AEP) to a 1% AEP, meaning that the overlay was substantially larger and covered properties that had previously not been in a flood overlay.

3.154 Twenty submissions in opposition to the Te Puke flood maps were received, along with three further submissions. One of the submissions, by the Council itself, suggested that the flood modelling produced some errors that were still being resolved.

3.155 For that reason, the s42a report recommends that the proposed flood hazard maps for Te Puke be deleted. Given the uncertainty around the level of confidence in the flood maps, the IHP sees no alternative but to agree to its removal. However, it is becoming ever more pressing for Councils to deal with natural hazards in the context of emerging real effects of climate change. We would urge the Council to progress that modelling, along with the liquefaction modelling) and to introduce it via a future plan change as soon as it is available.

3.156 In the interim, the 2% AEP flood maps will continue to be in force for Te Puke, as for the rest of the district, apart from Ōmokoroa, where the 1% AEP will apply.

Other hazard matters

3.157 In relation to the submissions on evacuation points, mapping for Coastal Inundation and erosion for Ōmokoroa, and the submission to exclude land identified as subject to natural hazards from the MRZ, the IHP agrees with the conclusions set out by the Council reporting officer in the s42a report and endorses the recommendation for Option 1 in each of those matters.

SECTION 11 – FINANCIAL CONTRIBUTIONS

3.158 Financial contributions are a fundamental issue for the IHP, and also generated significant discussion during the hearings. For that reason, exploration of the issues in submissions is covered in greater detail for this section.

3.159 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act) recently clarified that Councils may charge financial contributions, even for permitted activities, by inserting the following new sections into the Act:

> Section 77E – Local authority may make rule about financial contributions
>
> ...
>
> (2) A local authority may make a rule requiring a financial contribution for any class of activity other than a prohibited activity.
>
> (3) A rule requiring a financial contribution must specify in the relevant plan or proposed plan—
>
> (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and
>
> (b) how the level of the financial contribution will be determined; and
>
> (c) when the financial contribution will be required.
>
> (4) To avoid doubt, if a rule requiring a financial contribution is incorporated into a specified territorial authority's district plan under section 77G, the rule does not have immediate legal effect under section 86B when an IPI incorporating the standard is notified.
>
> (5) In this section and section 77T, financial contribution has the same meaning as in section 108(9).
>
> Section 77T – Review of financial contributions provisions
>
> Each specified territorial authority may, if it considers it appropriate to do so, include financial contributions provisions, or change its financial contributions provisions (as applicable) in the district plan, and, if it does so, may notify them in the IPI required to be notified in accordance with section 80F.

3.160 The addition of the requirement to identify when the financial contribution will be required (s.77E(3)(c)) reflects that financial contributions can now be imposed in respect of permitted activities and, in these circumstances, cannot be imposed as a condition of a resource consent. This has implications for PC92 which are summarised further below.

3.161 The financial contributions framework is layered and can easily become confusing. In addition to its function as set out in the RMA, the principles of the LGA relating to charges being fair, equitable and proportionate are appropriate guidelines for developing a formula for FINCOs. However, as observed by the Environment Court in Remarkables Park Ltd v Queenstown Lakes District Council , it would be inappropriate for these principles to be reflected in the District Plan.

3.162 Currently the only restrictions around the use of financial contributions under the RMA are that the purpose and level of contribution must be specified in the district plan. Notwithstanding both a financial contribution and development contribution (under the Local Government Act ("LGA")) can be charged for a single development, the purpose for applying both instruments must not be the same. Concerns about Councils' charging under the two regimes, especially when contributions are charged under both regimes for the same development, has been a long-standing issue. Not surprising, this issue was one raised by submitters through the PC92 process.

Submissions on financial contributions

3.163 Mr Gardner-Hopkins, acting as Project Manager for the North Twelve Limited Partnership (North Twelve), raised various legal and evidential arguments that "additional FINCOs burden on developers should not be entertained."

3.164 He argued against the proposals on a 'jurisdictional' and 'logical' basis particularly in relation to Te Puke. He referred to a lesser relief of including Te Puke in the FINCO Table row with Waihi Beach, and Katikati, thus keeping the FINCOs effectively unchanged for Te Puke and not disturbing the balance of WBOPDC's changes, which do not directly impact North Twelve .

3.165 Having carefully considered all the relevant submissions and evidence regarding the proposed financial instruments, the IHP is convinced it is within scope of submissions and addresses this issue in a separate section below, making specific recommendations regarding the existing and proposed regimes.

3.166 The submissions from North12 related in the main to the changes proposed to be applied in the Te Puke area. The submitter expressed particular concern with the proposals for FINCOs, challenging the veracity of the assumptions, inputs, models, and formula underpinning the development of the FINCO proposals.

3.167 North12 presented helpful submissions in respect to the framework for FINCOs, noting the strict directive requirements of section 108(2)(a) and 108(10) RMA concerning conditions of resource consents and the specificity within the provisions that is required for district plan purposes. The submitter stressed the importance of the FINCO framework, emphasising the technical and legal challenges involved in developing and updating FINCOs.

3.168 North12 submitted that FINCO provisions can only occur by the process prescribed in Schedule 1, clause 31 of the RMA and the proposals before the IHP run contrary to that prescribed approach. Instead, the submitter asserts that the approach taken by Council is unlawful, and undemocratic as it steps outside the bounds of the RMA by incorporating material that is not permissible or prescribed by the Act and further that it evades proper procedure and opportunity for examination and scrutiny.

> *North12's concerns as to the lawfulness of the District Plan's FINCO regime is that it effectively incorporates by reference external material in WBOPDC's Long Term and Annual Plans, which goes outside the scope of what is permissible under the Act.*

3.169 The submitter contended that the overarching test for FINCOs was whether the Council was able to evidentially demonstrate that there is additional planned new or improved infrastructure required, over and above what was previously planned when existing FINCOs were determined. If the Council could not satisfy this test, in its submission, North12 argued that the proposed changes to FINCOs had no lawful basis[21]. The submitter's view is that the Council did not meet this test and accordingly the FINCO proposals have no basis.

3.170 North12 considered the proposals were legally flawed and it urged the IHP to be mindful of making a recommendation that further compounded the submitters concerns, stating:

> *While it may be outside the scope of PC92 to resolve these issues, the IHP should be aware of those concerns and, if it shares those concerns, should not compound them. Put another way, the IHP should not make an existing unlawful state of affairs more unlawful [22].*

3.171 The submitter suggested that a forensic examination was needed to fully understand the consequences of the FINCO provisions, and that expert conferencing should follow such examination.

3.172 Ms Stubbing for the Council argued that Council witnesses (Mr Clow on basis and rationale; Mr Manihera on infrastructure schedules; and Mr Barnett on population projections and growth proportion recovery model) established that Western Bay of Plenty District Council

[21] Representations for North12, Page 2, Para 4(a), 4(b) and 4(c) of North12 representations

[22] Representations for North12, Page 3, Para 7

is unique because it is the only Tier 1 authority that relies solely on financial contributions imposed as a condition of consent.

3.173 Financial contributions are collected for the specified purpose and are done in accordance with the assessed changes to both Section 11 and the structure plans. Inputs to the formula are updated annually through the Annual or Long Term Plan processes (and are subject to the consultation requirements of the LGA). Council maintains that it is important to ensure the proposed provisions are most appropriate for the collection of the required financial contributions.

3.174 We accept and adopt that argument and deal with the detail of the PC92 FINCO proposal below.

3.175 The IHP's overarching view is that the opposition to proposals relating to FINCOs was not insurmountable. Submissions received were on the following themes:

1. Purposes of collecting FINCOs;
2. Collection of FINCOs at building consent stage;
3. Calculation of FINCOs and rule structure; and
4. Retirement villages.

These topics are summarised below:

Purpose of FINCOs

3.176 The proposed plan recommended the collection of financial contributions at building consent stage, departing from the operative plan approach, where they are collected as part of the resource consent process.

3.177 The notified plan change included proposed changes to the criteria for the assessment of financial contributions, including amendments to the description of the infrastructure networks and ecological values that the FINCOs would protect.

3.178 Through the presentation at the hearing, the protection of cultural values in the Ōmokoroa peninsula were raised by Pirirākau. The potential for adverse cultural impacts is likely to increase with intensification of residential development on the peninsula and the relief sought relates to the mitigation of those impacts. The IHP therefore deliberated on the inclusion of the protection of cultural values as part of the purpose for which FINCOs are collected.

Collection at building consent stage

3.179 The notified plan change also proposed amending the provisions for the Ōmokoroa and Te Puke area such that FINCOs were collected for specific infrastructure needs (water supply and an intersection upgrade). FENZ and Waka Kotahi submitted in support of that approach.

3.180 As pointed out by the reporting officer in their s42a report, due to the new rules introduced by the MDRS, a second and third dwelling on the same site will no longer require resource consent. It is therefore necessary to collect contributions from those developments as part of the building consent process. This rule would apply only to one or two additional residential units on the same site and not to other activities for which FINCOs are collected.

3.181 Kāinga Ora pointed out in their submission that some of the provisions are effectively duplications of other provisions in the plan. In their view, the note explaining that the first unit does not pay financial contributions (as that contribution is collected as part of the subdivision consent)(11.5.3(a)(i)), as well as the clauses stating that FINCOs are assessed and imposed at building consent stage and payable prior to issue of consent (11.5.3(b)(vii) and(viii), respectively), are unnecessary and may be removed.

3.182 The Council reporting officer has agreed with that view and recommended that those clauses be deleted from the amended plan and we concur.

Calculation of FINCOs and rule structure

3.183 Under the operative plan, FINCOs were charged based on an expected density of around 12 dwellings per hectare. There was concern that development that exceeded 15 dwellings per hectare would put significant pressure on the existing infrastructure, which had not been designed for the higher densities. The plan therefore provided for a 'special assessment' for applications where the density was 16 dwellings/ha or greater. This allowed Council to consider the capacity of the existing infrastructure and whether an upgrade would be necessary to accommodate the increased density and to recuperate that cost through development contributions.

3.184 The proposed plan sought to increase that density to 15 dwellings per hectare, or up to 30 dwellings per hectare in certain parts of the Ōmokoroa Structure Plan. It proposed to also collect financial contributions based on a per hectare rate for development of one or two dwellings on the same site and for larger developments. Council included in the amendments a new calculation for FINCOs based on the new expected residential densities and anticipated requirements for infrastructure to service those areas.

3.185 An additional rule (11.5.4) sought to apply a flat rate of one household equivalent ("HHE") for "One or two additional lots not for the purpose of the construction and use of residential units from sites of less than 1,400m2 in the Ōmokoroa and Te Puke Medium Density Residential Zones".

3.186 A range of submissions was received on the topic. Jace Investments submitted in support of a per hectare application of financial contributions, with Ōmokoroa Country Club, RVA and North Twelve Ltd submitting in opposition. FENZ submitted in support of increased financial contributions where intensification increases above the anticipated level.

3.187 In addition, Kāinga Ora submitted that the structure of the rules relating to financial contributions could be difficult to interpret and should be redrafted to make the rules clearer and simpler.

3.188 A number of submissions were also made on the definition of 'developable area'. These submissions requested that the definition exclude local purpose stormwater, neighbourhood reserves and internal public roading.

3.189 The recommendation from the Reporting Officer, Mr Tony Clow, remains to apply FINCOs based on a per hectare anticipated yield. As discussed in submissions, the IHP agrees with Council's legal position that it has the mandate to vary rules about FINCOs, as they apply to the Ōmokoroa peninsula and Te Puke.

3.190 In response to those submissions, Mr Clow has recommended a change to the rule structure (though not to the thresholds and formulae for calculation of FINCOs). The structure clarifies the suite of rules and removes unnecessary duplication. Mr Clow has recommended retaining the calculation on a per hectare basis, now including subdivision of lots under 1,400m2. A new table shows anticipated yields (the basis for the per hectare FINCO calculation) for the different zones.

3.191 Mr Clow also explained that the thresholds set in the calculation of new site area allow for 25% of the gross area to be allocated for roads, water infrastructure and reserves while still meeting the anticipated densities. Therefore, those areas have already been excluded in the calculation and to exclude them again in the definition of "developable area" would affect densities and total financial contributions and would result in a shortfall in financing of the necessary Council infrastructure.

Retirement Villages

3.192 There were also a number of submissions in relation to the proposed changes to financial contributions relating to retirement villages. RVA and Ōmokoroa Country Club opposed the application of a per hectare rate to retirement villages, arguing that they typically were lower density than 'standard' residential development. In the s42a report, Council argued that retirement villages were still expected to use land efficiently, and that a per hectare

calculation remained could be a valid approach for retirement villages. However, the reporting officer's recommendation was that it would be more appropriate to revert to charging 0.5 of an HHE for 1-2 bedroom units and a specific assessment for other facilities.

3.193 The Ōmokoroa Country Club and RVA, as well as Ryman Healthcare, also submitted against the exclusion in Rule 11.5.7 of that rule applying to retirement villages in the Medium Density Residential Zones. Submitters argued that, due to lower average occupancy of dwellings in retirement villages, there would be a lower demand on Council services and that should be reflected in the financial contributions applied to them, including in the Medium Density Residential Zone.

Analysis and recommendations

Purpose and Formula for FINCOs

3.194 The IHP considers there to be a deficiency within the formula that determines the levels of FINCOs to be charged, specifically the ecological protection FINCO. The current overarching approach to the formula has a strong focus on hard metrics such as yields and lot sizes. This is perhaps partly the reason why FINCOs have been traditionally used as a mechanism to fund infrastructure despite the opportunity to include applying contributions to things such as the protection of ecological values. However, the IHP notes there may be benefit in extending that framework to include Māori values or offsetting the full spectrum of adverse effects. It is noted that scope is not available to address this matter within these recommendations. However, the IHP would suggest consideration of these issues in any future decisions or subsequent plan changes addressing financial or development contributions.

3.195 The deficiency in FINCO provision is that it lacks adequate consideration of ecological values, or the services that a well-functioning environment provides to communities. Authorities have a duty to achieve integrated management. In the context of FINCOs, robust understanding of factors such as ecological deficit and how to quantify such loss, as well as quantifying the cost associated with repairing such outcomes will become more and more urgent.

3.196 The IHP suggests that the ecological FINCO be amended to quantify and account for ecological services impacted by intensification.

3.197 The IHP suggests widening the scope of the "ecological protection" purpose of financial contributions to incorporate the cultural and ecological priorities of mana whenua into the purposes of financial contributions, in order to mitigate the effects of growing urbanisation on the values of mana whenua.

3.198 Though we accept that there is no scope to incorporate Māori or mana whenua values as part of this IPI, we suggest that Council look into including that work in a future plan change. If Council does proceed with this suggestion in the future, the IHP suggests the following wording may assist:

11.4.3 ~~Ecological p~~Protection of ecological values

(a) Financial contributions for protection of ecological values ~~protection~~ shall be charged on;

- *subdivisions in the Rural, Rural Residential, Lifestyle, Future Urban, Residential and Medium Density Residential Zones;*
- *land use consents for additional dwellings or minor dwellings*
- *building consents for one or two additional residential units in the Ōmokoroa and Te Puke Medium Density Residential Zones.*

The proposed change to Rule 11.4.3 (a) has immediate legal effect under Section 86D of the RMA.

This note does not form part of Plan Change 92 and will be removed when Plan Change 92 becomes operative.

(b) Financial contributions for protection and enhancement of ecological values ~~protection and or enhancement~~ shall be a monetary contribution of $501 + GST (2015/16) per lot or dwelling as determined by the circumstances set out hereunder, such contribution to be adjusted annually in accordance with the Consumer Price Index through Council's Annual Plan and Budget:

Except that:

The ecological financial contribution shall be doubled for a subdivision or land use consent within the Park Road East Esplanade in Katikati.

(c) an appropriately qualified independent person acceptable to Council.

Collection at building consent stage

3.199 As pointed out by Mr Clow, there are likely to be many additional dwellings that will no longer require resource consent. In order for the financial contributions to be collected as appropriate, it is necessary to collect them as part of the building consent process. While it is possible that smaller buildings may be built without either resource consent or building consent, it is the IHP's view it is unlikely to be a large number, since building consent is required for any building over 30m2 in floor area and any building that is connected to services. The IHP therefore agrees with Mr Clow's recommendation.

3.200 The IHP supports the view expressed by Kāinga Ora, and agreed to by Mr Clow, that the clauses that they highlighted were unnecessary duplication and could be removed.

Calculation of FINCOs and rule structure

3.201 Having reviewed the revised rule structure for financial contributions as set out in the s42a report, the IHP agrees that the new structure represents an improvement, making the rule suite easier to navigate and easier to understand. Although the rules being amended also relate to other parts of the district, the thresholds and calculations as they relate to those other areas remain unchanged.

3.202 After deliberations, the IHP also agrees with the officer's view that a per hectare application of FINCOs is lawful, efficient and practical. The calculation of appropriate levels of finance for infrastructure were based on the anticipated densities enabled by the plan. The per hectare calculation both reinforces the anticipated densities and ensures that sufficient development contributions have been collected to cover the cost of the necessary infrastructure. Where the anticipated densities are exceeded, the IHP agree that the special assessment is still appropriate, to ensure that there is not a shortfall between the contributions collected at the cost of the upgrade to infrastructure.

3.203 The IHP also agrees with Mr Clow that the thresholds for FINCOs in the plan have allowed for the allocation of space for roads, reserves and other infrastructure. The restructure of the FINCO rules has also removed reference to developable areas in Section 11. The IHP therefore agree that the reference to Section 11 in the definition of 'developable area' can now be removed.

FINCO for Retirement Villages

3.204 Following substantial discussion in the hearings and subsequent discussion, the IHP accepts that it is appropriate for retirement villages, having a lower occupancy rate per dwelling, to pay a lower level of financial contributions. The incentives remain for retirement villages to use space efficiently, in whatever zone they are located in, but the IHP is satisfied that the demand for Council services per dwelling in a retirement village is substantially lower than for a standard dwelling.

3.205 The IHP therefore agrees that the FINCO rate for retirement villages should be set at 0.5 household equivalents (HHE) per dwelling.

SECTION 12 - SUBDIVISION

3.206 In relation to submissions on the subdivision section, the IHP supports and endorses the reporting officer's recommendations, adding only the considerations below.

FENZ submissions

3.207 FENZ made a number of submissions on the subdivision section in favour of providing more generous widths for accessways. While the IHP is sympathetic to the desire by FENZ to have generous widths for access of machines in the event of a fire, applying those increased widths across every property to be developed will result in a large-scale inefficiency in terms of the use of land.

3.208 Furthermore, the IHP support the view of the Council reporting officer that other standards ensure that every house will be accessible to firefighting equipment, though fire appliances may need to remain at the roadside.

3.209 Indeed, FENZ have also submitted supporting the extension of water supply to new developments and the new Natural Open Space zone to ensure that the water supply connections are available to reach all dwellings in the peninsula.

Water supply

3.210 Related to the discussion about water supply, Commissioner Bennett raised concerns in the hearing in relation to secured water supply for Ōmokoroa, highlighting BOPRC evidence that indicated groundwater was 180% overallocated. She sought a response from Council in relation to the strategy it was adopting to ensure future water take and use was sustainable. No response was provided during the hearing. The IHP notes that many of these issues will be addressed via consenting for water takes (administered by the regional Council) and that the risk of restriction sits with WBOPDC.

Stormwater

3.211 Following a considerable number of submissions relating to the proposed performance standard 12.4.5.17 (which relates to stormwater management) for Ōmokoroa and Te Puke, Council officers reviewed and redrafted the provision. The IHP agrees that the redrafted performance standard from the s42a report is clearer and provides better direction, and recommends that the provision be adopted.

3.212 In Ōmokoroa, the stormwater system relies heavily on the gully system. For further discussion of stormwater management, also see Section 24.

Road connections

3.213 As raised in the discussion of road connections in Section 4B, there is a concern from some IHP members that the rule appears to be ultra vires (relying on the decision of a third party to determine the activity status). However, as that is a rule in the operative plan and applies across the district, it is out of scope for the IHP to address that. Therefore, we agree (notwithstanding those reservations) that the recommended approach is pragmatic and workable and will provide the desired benefits in terms of reducing side friction on the main roads.

Ōmokoroa Structure Plan - Francis Road Industrial zone

3.214 As detailed further in the discussion of the Industrial Zone, the IHP has not been convinced that all of the proposed Francis Road Industrial Zone should be zoned and developed at this time. The IHP agrees that the Council officer's recommendations on pp 67 & 68 of the Subdivision s42a report are appropriate, but note that the structure plan that it refers to needs to be amended to reflect a smaller Industrial Zone.

PROVISIONS FOR RETIREMENT VILLAGES

Legal submissions

3.215 Mr Hinchey argued for specific and comprehensive provisions for "retirement villages". There was no direct legal challenge to that request. However, Mr Hextall in rebuttal evidence for WBoPDC identified a 'philosophical difference' between the Council Officers and the RVA and Ryman experts as to whether "specific age-based" provisions are necessary" [23].

3.216 Mr Hinchey opined "The IHP is not tasked with choosing a philosophy. Rather, the IHP is tasked with implementing the NPS-UD and Enabling Housing Act, in light of the evidence presented to it PC92 must provide clear directions to decision-makers, and minimise the issues to be resolved at the consenting stage.

3.217 The RVA and Ryman team have presented extensive evidence on the ageing population, the desperate need for appropriate housing and care for older persons and the consenting challenges that retirement villages face. In that sense, a significant resource management problem affecting a large proportion of the district's older population has been identified that the planning system needs to address.

[23] Legal submission of Mr Hinchey, Counsel for RVA and Ryman, **Para 50**

3.218 The question is what is the appropriate planning response. It is submitted that the amendments sought by Ryman and the RVA directly address the problem. In doing so, they will better achieve the NPSUD objectives, including enabling all people and the community to provide for their social, economic and cultural wellbeing and in particular the health and safety of older people. The IHP must provide specific planning provisions for retirement villages in PC92[24].

3.219 The IHP accepts that specific provision should be made for retirement villages.

3.220 We conclude it is open to us to include the proposed rule in our recommendations on PC92, and deal with this matter (including an appropriate "trigger mechanism") under a specific heading later in this report.

Medium Density Residential section labelling

3.221 The IHP has considered the issue of the duplication of zone names in the proposed plan. The use of two 'Medium-density residential zones' in two separate sections of the plan is potentially confusing and unnecessary, as submitted by Kāinga ora and supported by KiwiRail in further submissions.

3.222 The reason that the issue has arisen is that there is currently a 'Medium-density residential zone' in the plan. This zone applies to land in Ōmokoroa and Te Puke, as well as Katikati and Waihī Beach. The use of this zone in the Western Bay of Plenty predates the MDRS, and the zone provisions therefore do not align with the MDRS and NPS-UD.

3.223 A submission by RVA requests that a single MRZ be adopted and applied across the region, which would apply the rules and standards of the MDRS to Katikati and Waihī Beach as well as Ōmokoroa and Te Puke. That request was opposed by Waka Kotahi in further submissions.

3.224 As pointed out by Mr Hextall in the s42a report[25], applying the new standards to Katikati and Waihī Beach would not be consistent with the principle of natural justice, since residents in those towns would not have anticipated the change applying to them and have not been given a reasonable opportunity to engage in the plan-making process.

3.225 In the 2018 census, Katikati and Waihī Beach had populations of less than 5,000 people. According to MfE guidance, they are therefore not considered to be "relevant residential zones' and there is therefore no compulsion to apply the MDRS to those towns, unless the local authority intends them to become part of an urban environment).

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[24] Legal submission of Mr Hinchey, Counsel for RVA and Ryman, Para 50-51

[25] WBOPDC Section 42A Report, Jeff Hextall, 11 August 2023, Section 14A – Part 1 – Section labelling, Explanatory Statement, Issues, Objectives and Policies, p3

3.226 It is the position of Council that Katikati and Waihī Beach are not considered to be 'urban environments' under the MDRS as they do not constitute current or anticipated housing and labour markets of more than 10,000 people. As discussed elsewhere, the IHP has a slightly different view, but comes to the same conclusion. In our view, those towns cannot be considered to be part of the 'urban environment' of Tauranga in the way that Ōmokoroa and Te Puke can, because they are too far away for considerable proportions of residents to commute to Tauranga regularly.

3.227 In relation to the use of two differing sets of provisions for the MRZ, the IHP agrees with the recommendation from Mr Hextall that the plan should contain two subsections of Chapter 14 Medium Density Residential, but that the names be amended to make the distinction clearer. The provisions of the MDRS are not to apply to Katikati and Waihī Beach.

3.228 This may result in only a minor change to the structure, since the two sets of provisions are completely different. The two sub-sections will both sit below the overarching Chapter 14. Beyond that however, the sub-sections will be separate from one another.

Explanatory Statement

3.229 Seven parties made 13 submissions or further submissions on the explanatory statement to Section 14A. Mr Hextall has made recommended changes based on those submissions. The IHP notes that the changes are minor and consistent with (or mostly consistent with) the changes sought in submissions.

3.230 The IHP accepts Mr Hextall's recommended amendments as provided in the s42A report[26].

Significant issues

3.231 At notification, the position of the Council was that the significant issues for the existing medium density residential zone were equally applicable to the specific medium density residential zones in Ōmokoroa and Te Puke.

3.232 Following submissions from five parties, the recommendation in the s42a report is to include a new set of 'Significant issues' specific to the Ōmokoroa and Te Puke MRZ, with draft issues based on submissions as set out in the report[27].

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[26] WBOPDC Section 42A Report, Jeff Hextall, 11 August 2023, Section 14A – Part 1 – Section labelling, Explanatory Statement, Issues, Objectives and Policies, pp7-8.

[27] WBOPDC Section 42A Report, Jeff Hextall, 11 August 2023, Section 14A – Part 1 – Section labelling, Explanatory Statement, Issues, Objectives and Policies, pp13-14

Objectives

3.233 Council received 24 submissions on the zone objectives. Each of those submitters also made submissions on the proposed policies. Most of the changes involve only minor changes and have either been incorporated into recommended amendments or convincing reasons have been given for not adopting them. However, several of the objectives merit greater discussion, as detailed below.

Urban form (Objective 14A.2.1.4)

3.234 Submissions from RVA and Ryman maintained that the proposed objective: An urban form providing positive private and public amenity outcomes, requires considerations that would influence development in a manner that is inconsistent with the direction of the MDRS. Their submission was that Objective 5, which directs more compact urban form and higher densities, was sufficient.

3.235 The IHP agree with Mr Hextall's assessment that, although the NPS-UD signals that amenity values will change over time, they do not signal abandoning amenity considerations altogether. Mr Hextall refers to the relevant provisions of the RMA, NPS-UD and also to MfE guidance to argue that amenity considerations remain a relevant matter.

3.236 The IHP also point to the standards in the MDRS that specifically provide good public and private amenity outcomes, such as the outdoor living requirements (f.), outlook space (g.), windows to street (h.), and landscaped area (i.). Without some policy support, there would not be a framework to consider the appropriateness of applications that failed to comply with those standards.

3.237 Furthermore, Urban Taskforce for Tauranga and Classic Group submitted that the wording "private and public" was unnecessary in the objective. It is the IHP's judgement that, in the context of this objective, the wording helps to clarify that the plan seeks to provide both private (as in standards (f.) and (g.) above) and public (as in Standards (h.) and (i.)) amenity outcomes.

3.238 The IHP therefore agrees that Objective 14A.2.1.4, as notified, is appropriate.

Earthworks (Objective 14A.2.1.6)

3.239 Kāinga ora (supported in further submissions by RVA and Ryman) oppose in part this objective, because it includes a reference to "amenity values". Four other parties also oppose the objective as notified.

3.240 The submissions in opposition argue that the reference to amenity values in this objective could be interpreted as defending a maintenance of existing amenity over changing

amenity, as indicated in the NPS-UD. They also make the point that limitations on earthworks for the sake of amenity would affect yields and future densities which would be contrary to the goals of the NPS-UD and MDRS.

3.241 The IHP agrees with the recommendation of Council officer Mr Hextall that the removal of "and amenity" values in relation to earthworks was appropriate and no other changes to this provision are necessary.

Policies

3.242 In relation to the submission from Waka Kotahi (41.7) requesting a new policy aiming at reducing vehicle kilometres travelled (VKTs) per capita. We disagree with the assessment of the reporting officer that the matter is already adequately provided for in Section 4B. Although there is policy direction to that effect in Section 4B, it is the IHP's view that part of the rationale for creating greater intensification is the expectation that reliance on private vehicles will reduce and alternative means of transport will become more viable and attractive, in particular to the residents of these higher density neighbourhoods.

3.243 To that end, the IHP agrees with the submission from Waka Kotahi, but in order to align with the policy direction of Section 4B amends the policy to the following:

3.244 Enable greater transport choice and a reduction in per capita vehicle kilometres travelled by encouraging public, active and shared transport facilities and their integration with land use in the zone.

3.245 As with the section objectives, submissions on the policies were largely of a minor nature, with the IHP accepting Mr Hextall's recommendations as set out in his s42a report. The following are submission points that the IHP felt warranted a little further comment here.

Ōmokoroa/ SH2 intersection - overview of transport level of service

3.246 The current give-way intersection of Ōmokoroa with State Highway 2 is understood by all parties to be deficient and unable to support the scale of development envisaged for the peninsula. However, it is understood that all parties now agree that an "imminent" upgrade to roundabouts for that intersection, as well as for the Ōmokoroa/ Francis Road intersection, means that there will very soon be sufficient safe traffic capacity at these key intersections to provide for a moderate level of development.

3.247 Evidence was received from Waka Kotahi and from Beca that determined that a level of 4904 household unit equivalents (HUEs) could be supported on the Ōmokoroa peninsula before an additional upgrade, grade separation across the state highway, would become necessary. This project was noted by Waka Kotahi as being planned, but not yet consented or funded, and does not appear in the draft Government Policy Statement on Land Transport.

3.248 Waka Kotahi has submitted that there is an assumed base 2028 development of 3,344 HEU, which would provide for a nett capacity of 1,361 HEU in the Stage 3 residential.

Activity status

3.249 Waka Kotahi seeks a non-complying activity status for additional development over the threshold of 1,361 HEUs, in order to protect the safe and efficient function of the state highway. The concern is that, above that level, the volume of traffic will cause a long enough delay to result in riskier driver behaviour.

3.250 Waka Kotahi provided some useful maps in this regard, including a proposed future plan for the grade separation at the Ōmokoroa/ SH2 intersection[28].

3.251 Regarding the two gateway tests for non-complying activities, policy direction could be added to say that housing development over the threshold should not go ahead until the grade separation is installed. However, on a site-by-site basis, an argument could still be made that the effect of development a few additional lots would be no more than minor, thus satisfying s104D(1)(a).

3.252 Apart from a perceived higher bar for non-complying activities and a greater evidential demand on applicants, there would seem to be no greater limitation on development as a non-complying activity as there would be for a restricted discretionary activity, since the adverse effects are easily defined and well-understood.

3.253 It is therefore reasonable that the activity status for development above the threshold be a restricted discretionary activity, but with policy direction and matters of discretion that focus on the safe and efficient function of the state highway network and the results of engagement with Waka Kotahi.

3.254 On the evidence of Waka Kotahi, at that point an upgrade to grade separation over State Highway 2 would become necessary to provide wait times short enough that driver frustration did not lead to increased risk taking and a deterioration in safe driver behaviour.

3.255 Kāinga Ora have submitted that discussion has been ongoing with Waka Kotahi and the Council, and that they accept that the safe and efficient function of the state highway is an important concern.

3.256 Mr Matheson argued that Waka Kotahi was inconsistent with case law in seeking non-complying-status for development beyond the "trigger" associated with construction of the intersection improvements. He sought restricted-discretionary-status as being in accord

[28] Waka Kotahi – Submitter 41 – Hearing Summary Statement – Maps 2

with the accepted planning principle that "… an activity should be regulated to the least extent necessary to address the environmental effect of concern" [29].

3.257 We find that argument preferable and recommend "trigger" provisions in the section dealing specifically with this intersection later in this report.

3.258 Ms Stubbing's closing submissions describe discussions which have continued between experts for Waka Kotahi, Kāinga Ora and Council, and makes the following points:

(a) the parties have agreed that it would be appropriate for there to be a rule that requires resource consent once the maximum capacity of the SH2/ Ōmokoroa Road intersection is reached.

(b) The proposed rule raises a potential legal issue in terms of whether the state highway should be considered as a qualifying matter. Waka Kotahi requested the intersection improvements be included as a qualifying matter to address safety concerns.

(c) It is open to the IHP to consider that it has sufficient evidence (as required by section 77J) to provide for the state highway to be a qualifying matter.

(d) It is important that potentially affected parties have the opportunity to address qualifying matters through the IPI process. In addition to the Waka Kotahi submission requesting a new qualifying matter, the relief sought to address traffic safety issues associated with the SH2/ Ōmokoroa Road intersection attracted a number of further submissions which opposed a rule restricting development[30].

3.259 Council's reporting officer submitted that the modelling shows that the Ōmokoroa/ SH2 intersection will operate at an acceptable level of service until around 2048, and that a restriction on residential development in the operative district plan is not necessary, given that it will be reviewed several times before capacity is reached.

3.260 However, as Kāinga Ora point out, there is uncertainty around traffic models and the pattern of development, and we would add uncertainty around the timelines for reviews. Kāinga Ora points out, including through legal submissions, that they are working with Waka Kotahi and Council to develop a policy approach that links development over the threshold with the intersection upgrade. In the event that development will not reach the threshold within the life of the plan, this provision will simply not be triggered, and it is quite possible that the grade separation will happen ahead of the trigger level of development set by the plan.

[29] Legal submission of Mr Matheson, legal counsel for Kāinga Ora, **s15**

[30] Legal submissions of Ms Stubbings, Counsel for WBOPDC, **Paras 26-35**

3.261 The IHP accepts in part the relief sought by Kāinga Ora and recommends that the following provisions be inserted into the plan, based on their submission (purple text indicates changes):

Objective 4B.2.1 (existing)

(a) To provide an integrated, efficient, safe and sustainable transportation network that supports the social and economic wellbeing, and land use pattern of the sub-region as defined in this District Plan and that maintains or enhances the regional strategic linkages.

(b) To provide for more efficient land use, development and subdivision of existing areas in a way that recognises and integrates with the functions of different road types, transport modes and the defined transportation network.

Policy 14A.2.2.19:

Providing for growth within the Ōmokoroa peninsula in sequence with the staged upgrade of the intersection of Ōmokoroa Road and State Highway 2, thereby ensuring that vehicular access to and from the peninsula is safe and efficient, and development in the peninsula is restricted above 4905 constructed or consented residential units until the upgrade is complete, to allow for an acceptable level of service for traffic.

Restricted Discretionary Activity Rule 14A.3.3(g)

Residential subdivisions or developments of 4 or more residential units on a site within the Ōmokoroa Stage 3 Structure Plan Area following establishment of the roundabout at the intersection of State Highway 2 and Ōmokoroa Road, but prior to a total of 2680 new residential units in the Ōmokoroa Stage 3 Structure Plan Area relying solely on the Ōmokoroa/State Highway 2 intersection for connection to the wider network being constructed or granted building consent.

Advice note 1: Every four residential units in a retirement village shall be counted as one residential unit.

Advice note 2: A record of the total number of residential unit building consents that have been granted within the Ōmokoroa Stage 3 Structure Plan area is available from Council.

Advice note 3: This rule applies to residential subdivision IN ADDITION to Rule 14A.3.3(b) and Rule 14A.4.3(a).

Matters of discretion

(a) Evidence of consultation with the entity with statutory responsibility for State Highway 2 and its responses to that consultation.

(b) The safe and efficient operation of the strategic road network.

Advice note 1: This rule applies to residential subdivision IN ADDITION to Rule 14A.3.3(b) and Rule 14A.4.3(a).

Advice note 2: this rule will cease to apply once the grade separation of the intersection is established.

3.262 Wording of Policy 14A.2.2.19 has been suggested by Kāinga Ora. However, this is framed in language that focuses on providing for growth. It should also contain wording that indicates a need for restriction on that growth above the threshold until the grade separation upgrade is operational.

3.263 In the Council right of reply, an additional objective was recommended:

> Objective 4B.2.X [new]
> A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.

3.264 The IHP concurs that the new objective adds clarity and recommends its adoption.

SECTION 16 - RURAL RESIDENTIAL ZONE

Stormwater

3.265 Mr Hicks made a submission opposing a blanket 15% impermeable surfacing for all lots in the Rural residential zone, pointing out that this would be very restrictive for small properties in the zone.

3.266 Council officer has agreed that allowance should be made for small lots and considered using a 30% impermeable area or a fixed 450m2 area for those lots under 3000m2.

3.267 The IHP agrees that the fixed 450m2 is both practical and addresses inequities between properties on either side of the 3000m2 threshold.

Wastewater connection

3.268 In relation to the relief sought by Mr Robert Hicks (4.10) on allowing other wastewater options for dwellings in the Rural Residential Zone, the IHP agrees with the recommendation of the reporting officer. While the intent of the recommended amendment is clear, the IHP recommends the following changes:

16.4.2 - Subdivision and Development (See also Section 12)

c. Ōmokoroa

i. The land to be subdivided shall be served by a Council reticulated sewerage scheme *where a newly created lot is further than* ~~*unless there is no connection available within*~~ *100m from* ~~*of*~~ *an existing Council reticulated sewerage scheme, in which case any on-site effluent treatment must be designed and operated in accordance with the Bay of Plenty On-Site Effluent Treatment Regional Plan****; and…***

SECTIONS 19 & 20 - COMMERCIAL AND COMMERCIAL TRANSITION ZONES

3.269 Kāinga Ora, through the planning evidence of Ms Tait, supported by the economic evidence of Mr Osbourne, sought to increase the height in the Te Puke Commercial Zone from 12.5m to 24.5m. In her opinion this height adjustment will increase the feasibility of development in the centres, which is the most efficient location for development, including residential development, to occur. The IHP notes this request for additional height in the Commercial zone deviates from Kāinga Ora's original submission, which was seeking a High Density Zone for Te Puke. The latter is no longer being pursued for Te Puke.

3.270 Ms Tait elaborated on this in paragraphs 10.2 – 10.7 of her evidence, where she considered that the Ōmokoroa and Te Puke centres are a "NPS Town Centre Zone equivalent". This has not been disputed by Council reporting officers, who consider that Policy 3(d) of the NPS-UD is relevant for Plan Change 92 as there are equivalent town centre zones in Ōmokoroa and Te Puke. While both Kāinga Ora and the Council appear to be in agreement that Policy 3(d) is relevant, in Ms Tait's opinion, the Council has failed to determine the commensurate levels of building heights and densities, as required by the NPS-UD, and apply these to the centre and surrounding land.

3.271 Mr Osbourne, on behalf of Kāinga Ora, appears to consider that PC92 is not enabling enough development opportunity through constraining height, particularly around Te Puke centre, as that has a population of approximately double that of Ōmokoroa. At paragraph 24 of his evidence, he states that the zone height of 12.5m in Te Puke places a significant constraint on the ability for residential activities to be located within the Town Centre. At paragraph 26, he suggests that in order to give effect to Policy 3(d), the heights and building densities within and around commercial centres (including town centres) need to be considered as part of this plan change process. At paragraph 28 he goes on to state that without the increase in height, the Te Puke Town Centre would essentially have the same enablement as the residential zone which is contrary to the objectives and purpose of the NPS-UD.

3.272 Both Ms Price and in particular Mr Hextall, for the Council, address the request for an increase in building height in their rebuttal evidence. Leaving issues of scope aside, at paragraphs 150-151 of his rebuttal evidence, Mr Hextall notes the Council has commenced the Te Puke Spatial Plan project, with a community-led engagement process planned for the last quarter of 2023. It is likely this will result in an additional plan change to the District Plan. While at paragraph 155, Mr Hextall appears to consider there is merit in enabling more intensive development within urban centres, he concludes at paragraph 157 that he does not support the proposed changes for Te Puke, because he considers it more appropriate that this be addressed through the Te Puke Spatial Plan project and any subsequent plan change(s).

3.273 Ms Stubbing, in her opening submissions for the Council, was of the view that PC92 did not alter the status quo for the Commercial Zone as it relates to Te Puke. In her view, the changes sought by Kāinga Ora, if approved, would be to permit a planning instrument to be amended without real opportunity for participation by those potentially affected.

3.274 In her reply submissions, Ms Stubbing reiterated that position, stating that even if Mr Matheson was correct in his view that increase in building heights could be considered "on the plan", natural justice considerations are important. In her view, there are a number of parties Kāinga Ora failed to consider in their request to increase the building heights and those potentially affected parties should be allowed the opportunity to participate in terms of what is appropriate for the town centre.

3.275 Mr Matheson for Kāinga Ora contradicted Ms Stubbing's view that higher height limits and greater intensification in Te Puke's town Centre was out-of-scope. Ms Stubbing argued that because greater density in the town centre was not specifically included within PC92 as notified, they were out-of-scope due to natural justice considerations, the general public not having had the opportunity to consider the greater heights and make submissions. She also pointed out that a spatial plan was being prepared and any changes coming out of that spatial planning process would be introduced later. Mr Matheson argued for a wider interpretation relying on s80 and Clause 99, saying the IHP should recommend greater height and intensification provisions in the town centre[31].

Analysis and Considerations

3.276 The IHP has considered this request in light of:

(i) whether the request is "on the plan" and the IHP has scope to recommend changes;

(ii) the natural justice aspects of the request given it was made through evidence, rather than in a submission;

(iii) whether not increasing the height of the Te Puke Commercial zone would prejudice development potential within the town centre in advance of a spatial plan and subsequent plan change.

3.277 There were no submissions to PC92 seeking additional height to the Commercial Zone in Te Puke prior to the request set out in the evidence of the planning and economic witnesses for Kāinga Ora. Notwithstanding that Mr Matheson, representing Kāinga Ora, argued that the request to increase the height is "on the Plan Change", based on the IPI as defined by s80E. Mr Matheson argued for a wider interpretation relying on s80 and Clause 99, saying the IHP should recommend greater height and intensification provisions in the town centre (Matheson, s2.e). Furthermore, in Mr Matheson's view, s80G(1)(a) makes it

[31] Legal submission of Mr Matheson, legal counsel for Kāinga Ora, **s2.e**

clear that the Council must notify the IPI once and do it properly, as opposed to subsequent plan changes as is the Council's preference.

Conclusion

3.278 The IHP finds it may be within our powers to recommend changes to the Town Centre provisions. However, the IHP therefore accepts and adopts the argument of the Council, with respect to points (i) and (ii) above, concluding that, given there were no submissions seeking that increase in height and therefore no opportunity for submitters to support or oppose Kāinga Ora's request, we have no jurisdiction to recommend such increased height provisions in Te Puke town centre.

3.279 We have considered the argument put forward by Mr Matheson as to whether not increasing the height would prejudice development potential. We find we agree with the Council reporting officers that the operative District Plan height limit offers some flexibility to develop up to 3-4 storeys within the existing centre and that the appropriate instrument to address additional height within Te Puke town centre is the forthcoming Spatial Plan.

Community Corrections activities

3.280 Ara Poutama (Corrections) - requests that "community corrections activities" be inserted into the permitted activity list in the operative Commercial Zone. There were no changes proposed to the permitted activity list within the Commercial Zone as part of PC92, and therefore the plan change did not alter the status quo for activities within the Commercial Zone. However, given that there were some changes proposed within the Commercial Zone as it relates to Ōmokoroa, the status quo was changed to a greater extent for Ōmokoroa than Te Puke.

3.281 This matter was addressed in the section 42A report and the reply evidence of Ms Price, who considers the activity is already provided for within the operative provisions in the Plan and no further changes are required to address this submitter' concerns. (Stubbing, Paras 5.16 – 5.18).

Retirement Villages - Relief sought by RVA/Ryman

3.282 The Council reporting team considers that provision for the ageing population, including by way of retirement villages (but not only), does not necessitate specific age-based objectives and policies. PC92 attempts to provide for a variety of different responses to providing housing, noting that all residential developments containing 4+ units come within the restricted discretionary framework and that this includes retirement villages.

3.283 Retirement villages are a subset of multi-unit residential activity and therefore are provided for within the MDRS as "four or more" residential units. PC92 gives effect to this MDRS directive by providing for retirement villages (with four or more residential units) in this

category. While the submitters may not consider that providing for retirement villages in this way goes far enough toward recognition of the bespoke built form characteristics, way of life for residents and/or features provided by retirement villages and/or aged-care facilities, by itself would achieve compliance with the obligations that exist with respect to the MDRS.

3.284 Council witness Tony Clow explains that the definition of retirement village is a matter that is contemplated by the National Planning Standards for introduction into district plans by 2026. In the IHPs mind, there is some benefit to revisiting this issue with RVA/Ryman closer to that 2026 timeframe. The IHP expand on this further below when we address the retirement village planning framework relief sought by RVA/Ryman.

3.285 The IHP have given careful thought to the specific relief sought by the submitters (R&R) involving an entire planning framework specifically for retirement villages. The inclusion of any planning provision that involves providing a particular group of people, which may be regarded as seeking a form of priority based on the status of that group of people, for instance, elderly people with a preference for retirement village living, requires careful examination. The tests that the IHP applied in our deliberations were: (1). what is the resource management principle that underpins the provision and what is the issue the provision serves to address. (2). does the Act preclude such provision. (3). would accepting the provision result in the creation of a priority for the particular group or end-user. Put another way, does the provision turn off the status of the activity and turn on the status of an applicant, and (4). has the proper procedure been followed for its inclusion (if it were accepted).

3.286 In the end, the IHP take the view that, procedurally, an entire framework is not appropriate to incorporate into the district plan by way of an IPI and therefore it does not form part of the IHP's recommendations to retain or accept such. Underpinning our recommendation is the strong view that the public should have an opportunity to articulate their views on adding what is effectively a whole new framework to the DP and that is best achieved via the next review of the DP. The IHP also found that the provision ought to be subjected to the full ambit of plan making processes and legal tests to ensure the creation of a prioritised right does not inadvertently become a consequential product of any decision, particularly one made in the context of an IPI.

3.287 That said, the IHP sees merit in the concept and has recommended that parts of the RVA/Ryman relief form part of the PC92 provisions and outcomes. As the IHP sees it, recommending some incremental steps towards a framework such as that sought by RVA/Ryman is appropriate to do by way of this IPI and a positive solution to going part-way to tackling a fundamental aspect of the RVA/Ryman relief and wider objective for a national consistent planning approach. RVA/Ryman representatives should not be overly disappointed with this outcome. The IHP wish to make it very clear that it sees significant merit in bespoke frameworks, and in particular where the architecture of such frameworks

is supported by quality evidence-based information such as the RVA/Ryman case was. However, we emphasise that there must also be procedurally robust processes followed and we don't consider the IPI is capable of satisfying those aspects simply due to the intent and purpose that an IPI has which is largely about achieving more expeditious and enabling outcomes. In and of itself, if not done well, an IPI presents planning risk.

SECTION 21 - INDUSTRIAL ZONE

3.289 The Industrial zone is an existing zone in the Operative District Plan that provides for industrial and ancillary activities in a number of settlements throughout WBOP District. In the context of PC92 there is further land proposed to be rezoned to Industrial in Ōmokoroa but no changes proposed for Te Puke.

3.290 The structure plan for Ōmokoroa shows a proposed Industrial zone on the southwestern side of Francis Road with a medium-density residential zone on the northeastern side. In line with the Structure Plan PC92 proposes an extensive area to be zoned Industrial on the south-western side of Francis Road and on some areas of land owned by Norm and Maureen Bruning adjacent to existing Industrial zoned land.

3.291 As notified, there were some limitations put on the industrial zone by way of existing applicable performance standards from the industrial zone and general sections. However, the IHP is of the view that these existing standards were not adequate with respect to matters such as noise, dust or traffic. The structure plan for Ōmokoroa would also allow for development of that industrial zone to access Francis Road along most of its length.

Consultation - Submissions

3.292 A small number of submissions and one further submission were received in relation to the proposed extent of Industrial Zone in addition to specific submission points relating to rules within the zone. Two of the submission points were in support of the application of the zone to their landholdings:

3.293 Foodstuffs North Island Limited (submission #28.1) supports the Industrial zone as it relates to their landholding at 492 Ōmokoroa Road.

3.294 Norm and Maureen Bruning (submission #31.1) also support the retention of Industrial zone over part of their land as shown on the planning maps. The IHP notes that Mr and Mrs Bruning also submitted for removal of the new Natural Open Space zone and replacement with the Industrial zone (submission #31.3).

3.295 Other submissions opposed the industrial zone, many of those making specific reference to the issue of conflicting land uses on Francis Road. These are as follows:

3.296 Robert Hicks (submission #4.8) has pointed out that locating Industrial opposite medium density residential is both uncommon and inconsistent with best practice urban development. In his view, while a physical buffer of plantings has been included in the structure plan, this would not address noise or traffic effects on the residents across the road.

3.297 Penny Hicks (submission #16.2) opposes the Industrial zone adjacent to the MDR zone along Francis Road, citing poor planning practice together with concerns about amenity, traffic, noise, pollution and safety. She suggests relocating the industrial zone or mitigating its impacts through a linear park on the residential side of Francis Road and a single point of entry to the Industrial zone from the Ōmokoroa Road end to minimise conflicts with residential land uses.

3.298 David and Diana Bagley (submission #27.1) and Susan Phinn (submission #36.1), oppose the extent of the Industrial zone on the south-western side of Francis Road. Similar to Ms Hicks, they cite traffic and pollution as key factors. The relief sought is to expand the area of industrial land along the southern side of Ōmokoroa Road to encompass the retail shop and yards developed by ITM. They do not explicitly state what alternative zoning is sought for the land on the southwestern side of Francis Road

3.299 Sylvia Oemcke (submission #37.1) similarly opposes the Industrial zone opposite MDR on Francis Road, specifically on 21 and 51 Francis Road, as this will generate adverse effects on ecological and water quality values as well as create traffic, noise pollution and safety concerns for existing and future residents. She seeks that these 21 and 51 Francis Road retain their Rural Residential zoning, offering instead that 467, 467A and 425 Ōmokoroa Road be rezoned Industrial. This is supported by BOPRC (FS #67.36), who also seek specific setbacks from watercourses or wetlands for buildings within the Industrial zone.

3.300 Ian Yule (submission #45.1) opposes the proposed additional Industrial Zones within Ōmokoroa. It is not explicitly stated what alternative zoning is being sought.

3.301 Angela Yule (submission #62.1) opposes the proposed additional Industrial Zone on the south-western side of Francis Road. Her submission includes a marked up map, which suggests new alternative areas on Ōmokoroa Road located at 476, 474, 468, 454 and 452 Ōmokoroa Road and 7 Prole Road (extrapolated from map provided in support of the submission). It is not explicitly stated what alternative zoning is being sought for the Industrial Zone at the south-western side of Francis Road.

3.302 Christine Prout (54.1) opposes the proposed Industrial Zone on the south-western side of Francis Road. Relief sought is the rezoning to Industrial of new areas on the south east side of Ōmokoroa that is currently "rural land" or additional land on Ōmokoroa Road instead. She also requests that the proposed Francis Road Industrial Zone area is changed to "future commercial" and recreational open space.

3.303 Russell Prout (65.2) opposes the proposed Industrial Zone on the south-western side of Francis Road. It is not explicitly stated what alternative zoning is being sought.

3.304 The section 42A report does not recommend any changes to the proposed Industrial zone boundaries as notified.

3.305 The IHP heard evidence from Mr Matthew Norwell on behalf of Foodstuffs North Island Limited in support of the Industrial zone on their landholding at 492 Ōmokoroa Road, which is located opposite existing industrial zoned land. In his opinion the proposed industrial zone over this site will support a number of components of a well-functioning urban environment including:

- Enabling an increase in land that is available for industrial business sectors;
- Promoting good accessibility between housing, jobs, community services and open spaces by enabling more people to work in accessible locations, which also supports a reduction in greenhouse gas emissions through reduced car dependence;
- Supporting the competitive operation of land and development markets by providing a broad enabling zone framework and providing flexibility for the market to take up those opportunities; and
- Being resilient through the likely current and future effects of climate change through flooding and promoting a compact and efficient urban form.

3.306 There was general agreement between the Council and the submitter that this site retain the proposed Industrial zoning and that was not in dispute by any other parties.

3.307 The section 42A report gives consideration to the submission by Sylvia Oemcke with respect to the impact of Industrial zones on ecology especially the Waipapa river. This was supported by a further submission by BOPRC seeking a 10m setback of all buildings, structures and impervious surfaces from permanent watercourses and wetlands. The Council's reporting officer notes that the extent of the Natural Open Space zone has been reviewed and increased in the vicinity of the Waipapa river, which creates an increased buffer between potential industrial activities and the watercourse. However, it is acknowledged that PC92 does not include a setback to address the interface of the Natural Open Space zone with the Industrial zone. Accordingly, the Council's reporting officer recommends a new rule in 21.4.1.b – Yards and Setbacks of Minimum 10m where a property adjoins a Natural Open Space zone.

3.308 The s42A report also responds to a primary submission point by BOPRC (submission #25.22) to add a specific reference to "treatment" within rule 21.6.4(b).

3.309 The recommended amendments to 21.4.1(b) and 21.6.4(b) appear to be acceptable to the submitters and therefore the IHP agrees with those amendments as outlined in purple and underline below:

Section 21.4 Activity Performance Standards

21.4.1 b. Yards and Setbacks

All buildings/structures

Minimum 3m where a property adjoins a Residential, Rural-Residential, Future Urban or Rural Zone or reserve.

Minimum 10m where a property adjoins a Natural Open Space Zone.

21.6.4(b) Matters of Discretion for Restricted Discretionary Activities in Stormwater Management Reserves in Ōmokoroa Stage 3

In the Ōmokoroa Stage 3 Structure Plan area retaining the integrity of the Ōmokoroa Peninsula Stormwater Management Plan including the efficiency and effectiveness of stormwater infiltration, treatment, detention, discharge downstream and discharge to the Tauranga Harbour with particular regard to storm events.

Outstanding Issues at time of Hearing

Bruning Land

3.310 The IHP heard evidence from Mr Aaron Collier on behalf of the Brunings (submitter 31), whose site has a split zoning under the operative District Plan of Industrial and Future Urban zones. While the Brunings requested retention of the area proposed to be rezoned Industrial, Mr Collier recommends the IHP decline the rezoning of land in favour of retaining Future Urban zoning over their land. In his opinion the Industrial zone is not a relevant Residential zone under section 77G and Policy 3 of the NPS-UD because it does not provide for any residential housing.

Francis Road

3.311 While an array of additional parameters are recommended within the s42A report for addressing interface issues between the zones, the location specific issue of incompatible land use having Industrial zone opposite MDR zone along Francis Road was still outstanding at the time of the hearing.

Analysis and Considerations

3.312 The IHP notes there is not a demonstrated demand or drive for industrial activity within Ōmokoroa. This sits alongside the view of many submitters (particularly on Francis Road) who raised the range of issues identified above.

3.313 The IHP considers there is significant potential for conflict between the industrial and residential land uses. It was not satisfied during the hearing that the conflicts could be adequately mitigated in favour of the broader Ōmokoroa community.

3.314 In particular, the pinch point within the Industrial Zone at the location of the Challenge Ōmokoroa service station would more than likely require industrial traffic to both enter and exit Francis Road, generating conflict and potentially significant risks to the community.

3.315 On this basis, and having heard the views of submitters, the IHP has formed a view that the Industrial Zone advanced by Council to the west of Ōmokoroa Road be reduced in scale to encompass only the area from Ōmokoroa Road to the existing intersection of Francis Road and State Highway 2.

3.316 Additionally, the entry and exit to the Industrial Zone shall only occur from the Ōmokoroa/ Francis Road roundabout. This allows almost complete separation of industrial and residential traffic, the ability to appropriately buffer the Industrial Zone from urban communities without creating severance issues and is at a scale commensurate with the activities needed to support the Ōmokoroa community and surrounding area.

3.317 The remainder of the zone proposed by Council to the west of Ōmokoroa Road (specifically, the land to the west of the existing Francis Road intersection with State Highway 2 including Challenge Ōmokoroa service station) shall remain Future Urban Zone. This does not preclude a future plan change process which fully considers the impacts and issues associated with expanded industrial activity. The IHP notes the definition of 'industry' in the district plan as being very coarse. It effectively allows for a range of industrial use from heavy industrial through to those activities that are likely to be compatible with the Ōmokoroa community. The IHP does not have scope to address that definition, but suggests Council addresses this matter in future plan change processes. It is the view of the IHP that Council cannot rely on the view expressed by Council officers (at the hearing) that incompatibly heavy industrial activity is unlikely to occur.

3.318 The IHP supports the creation of a buffer on Francis Road for the purposes of separating the Industrial Zone for amenity purposes, particularly in relation to visual, noise and safety effects. There is a clear expectation that a bund and associated landscaping is established and maintained to address the effects identified prior to development for industrial purposes. For clarity, the IHP's recommendation to revert the land to the west of existing Francis Road intersection back to future urban would mean that the buffer would no longer be required along that portion of Francis Road.

3.319 It is important to the IHP that the establishment of an expanded Industrial Zone in Ōmokoroa is subservient to and provides for the needs and interests of the Medium-density Residential Zone.

3.320 The IHP note that this recommendation to revert some of the proposed Industrial Zone back to Future Urban and reducing the portion of Francis Road subject to the buffer, would require a number of consequential amendments. This includes revising the Planning Maps, Appendix 7 and rules within Section 12 – Subdivision and Section 15 – Future Urban. With regard to the latter, the IHP sees merit in retaining the proposed changes that generalised the Future Urban explanatory statement, issues, objectives and policies to apply to all relevant locations of the District but see it as necessary to revert to the operative rules specific for Ōmokoroa for access and stormwater management.

3.321 For the Bruning land, the Industrial Zoning is recommended to be as shown on the map entitled "Plan Change 92 – Zone Amendments – Lot 3 DPS 28670 – Natural Open Space to Industrial, Natural Open Space to Rural-Residential, Rural-Residential to Natural Open Space" dated 11/08/2023. This map is included in Attachment F – Supporting Maps under the heading of Plan Change 92 Rebuttal Evidence on Council's Plan Change 92 webpage.

SECTION 24 - NATURAL OPEN SPACE ZONE

3.322 As stated in the s42A report, the Natural Open Space zone is a proposed new zone and section within the District Plan, applied to land within Ōmokoroa deemed as generally unsuitable for urban development due to constraints associated with topography and natural hazards.

3.323 The land included within the Natural Open Space zone comprises the gully system throughout the undeveloped part of Ōmokoroa. This is primarily zoned Future Urban. While much of this was identified in the Stage 3 Structure Plan, there are some areas zoned for Natural Open Space that were previously identified as Rural Residential, Industrial, or that are included within the NZTA designation for the proposed interchange and associated works.

3.324 The Natural Open Space zoned land as proposed generally aligns with and has been informed by the Ōmokoroa Gully Reserves Concept Plan, prepared by Boffa Miskell Ltd to inform the Structure Plan Stage 3 and included as Appendix 10 to PC 92. The Stage 3 concept plan identifies natural open space for the gully systems throughout the western part of what is known as the Stage 3 area. Notably, this does not include the gully systems on the eastern side of Ōmokoroa Road, nor does it include the gully systems within the area proposed by Waka Kotahi for the future interchange.

3.325 As stated within the concept plan, the stormwater management is the primary purpose of the gully reserve network, but it will also have value for open space recreation, pedestrian connectivity and habitat restoration. The IHP understands from the s32 and s42A reports that the land within the zone will primarily have stormwater management and/or coastal inundation functions but will also provide open space, natural character, ecological corridors, cultural values and potential public recreation opportunities.

Consultation - Submissions

3.326 A small number of submissions and further submissions were received in relation to the Natural Open Space Zone as follows:

3.327 Norm and Maureen Bruning (submission #31.4) opposed the Natural Open Space zone (new section 24) and consider this should only relate to land that is already Council reserve or has been designated for reserve purposes. They noted the zone also conflicts with land within the existing NZTA designation (D181). Their submission was supported by Waka Kotahi (FS 79.2) who seeks the zone be removed from land within the footprint of designation D181.

3.328 Peter Linde (submission # 19.20, 19.31, 19.32 and 19.33) supported in part Section 24, but requested text changes to the Explanatory Statement, Significant Issues, Objectives and Policies to more accurately reflect the purpose of the Natural Open Space zone without unduly setting barriers and limitations to what can be considered appropriate use and activity within it. Jace Investments [FS 69.26] supported the submission to amend policies 24.2.2. BOPRC [FS 67.32] opposed the relief sought to Policy 24.2.2 seeking to retain 24.2.2.1 as notified and redraft 24.2.2.3 to confine to matters that can be controlled through district plan rules. Mr Linde (submission #19.34, 19.35, 19.36, 19.37) also supported in part, but requested specific wording changes to triggers for RD activities 24.3.3(a)(i) and deletion of 24.3.3(a)(iii) and sought wording changes to Matters of Discretion 24.5.2 and 24.5.3, but opposed 24.3.5 and sought its deletion.

3.329 In its own submission BOPRC (submission #25.46, 25.47, 25.48) supported in part the intent of policy 24.2.2.3, RD activities 24.3.3(a)(iv) and Matters of Discretion 24.5.2(b) but suggested redrafting to confine matters to obstruction, modification and diversion of overland flow paths and flood plains, which can be controlled through district planning rules.

3.330 Robert Hicks (submission #4.11) opposed Restricted Discretionary Activities within a floodable area and sought removal of 24.3.3. This was supported by Jace Investments [FS 69.27], in particular in relation to relaxing the earthworks limits.

3.331 Jace Investments and Kiwi Green NZ Ltd (submission #58.8) and Jace Orchards and Kiwi Green NZ Ltd (submission #59.1) opposed 24.3.5 non-complying activities and sought its deletion, instead making non-compliance with the structure plan a discretionary activity.

Points of Agreement

3.332 The s42A report outlines proposed text amendments to the provisions of the new Natural Open Space zone, in response to submissions. This includes greater clarity to the explanatory statement setting out the purpose of the zone, significant issues, objectives and policies, to better reflect the intent and function of the zone. Amendments to the activity list and matters of discretion are also proposed to both provide greater clarity and more practical provisions for existing rural land uses.

3.333 The provisions as recommended to be amended within the s42A report, have been largely agreed by submitters, with the exception of further amendments being sought by BOPRC as detailed below.

Outstanding Issues at time of Hearing

Bruning Land

3.334 Mr and Mrs Bruning (submitter 31) remain opposed to inclusion of the Natural Open Space zone over part of their land. In their view the Natural Open Space zone unfairly removes their property development rights. Under the Operative District Plan, the Bruning's land is zoned a mix of Industrial and Future Urban . Their landholding is also affected by two designations, including the Waka Kotahi SH2 designation (D181) and the Ōmokoroa Stormwater Management Reserve (D234). The relief sought is to retain the existing zoning.

Waka Kotahi

3.335 In its submission to PC92, Waka Kotahi (submitter 41) noted that PC92 introduces the Natural Open Space zoning to much of its D181 designation, replacing Rural zoning under the Operative District Plan. Waka Kotahi raised the concern that the Natural Open Space zone is incompatible with the urban infrastructure of a grade-separated interchange and may hinder the agency in its ability to construct the intersection. The relief sought was to retain the Rural zone.

3.336 The Natural Open Space zone is one of the key outstanding areas of concern to BOPRC (submitter 25). While BOPRC are generally supportive of the zone within PC92, in particular as the best mechanism to give effect to the directions of the NPS-FM, and to protect the values and extent of the streams and wetlands within Ōmokoroa, evidence from Keith Hamill (Environmental Scientist) and Nathan Te Pairi (Planner) seeks further amendments to Policy 24.2.2.3 and Matters of Discretion 24.5.2 . \

3.337 The amendments being sought to Policy 24.2.2.3 are to emphasise the ecological aspects of the zone through the inclusion of direct reference to "freshwater and coastal ecology" and "wetlands and streams", which in turn the BOPRC officers consider better given effect to the NPS-FM, policies 3, 6 and 7 in particular. BOPRC also seeks addition of "hydrological" to the matters of discretion in 24.5.2.

3.338 From an ecological perspective, the evidence of Mr Hamill supports extending areas zoned as Natural Open Space to apply to waterbodies and wetland ecosystems on specific sites, noting that BOPRC supports proposed extensions of the Natural Open Space zones are proposed by Council officers in response to submissions.

Analysis and Considerations

Cultural considerations

3.339 The Ōmokoroa Structure Plan Urban Design Cultural Overlay, prepared for the Ōmokoroa Structure Plan Stage 3, forms Appendix 6 to PC92. The intention of this was to reclaim and reinstate a Pirirākau cultural presence into Ōmokoroa. Retention and restoration of the gully systems are considered important for the practical application of cultural value and for strengthening the connection of Pirirākau to their Turangawaewae. The cultural overlay report outlines how the cultural values could be translated into practical amenity treatments including using the natural gully systems as passive reserves, opportunities for pedestrian and cycle connections, and restoring the natural environment, including indigenous vegetation.

3.340 While Pirirākau did not lodge a submission on PC92, as discussed elsewhere in this recommendation, the hapū holds mana whenua status over Ōmokoroa. The IHP heard in Ms Shephard's verbal presentation, on behalf of Pirirākau, that these gullies, or Awatere, have an important stormwater function and Pirirākau seeks protection of the gully system. Ms Shepherd considered that to date the gully systems have not been managed as intended, so Pirirākau seeks a comprehensive stormwater management plan that protects and enshrines mahinga kai as a compulsory value of the NPSFM.

Appropriateness of Natural Open Space Zone

3.341 Mr Collier, on behalf of the Brunings, is of the opinion that, by including matters ordinarily included in a standard 1st Schedule Plan Change process, PC92 goes beyond what Parliament intended when it required Council to adopt medium density residential standards (MDRS) necessary to fulfil the Council's obligations as a Tier 1 Council under the NPS-UD .

3.342 In Mr Collier's opinion, the Industrial, Open Space and Rural Residential zones are not relevant Residential zones under Section 77G and Policy 3 of the NPS-UD, because they do not provide for any residential dwellings .

3.343 Legal submissions by Ms Barry Piceno on behalf of Mr and Mrs Bruning support Mr Collier's thesis and contend that the …Open Space zoning is not a relevant residential urban zone and is not consequential on a MDRS and that the IPI plan change process does not allow the Council to include a new open space zone .

3.344 Mr Collier does note at paragraph 5.14 of his evidence that Section 80E(1) provides for related provision (including new zones) to be included, but only in instances where these support or are consequential on medium density residential standards or policy 3 outcomes.

3.345 In his analysis, at paragraph 6.10 of his evidence he considers that Section 80E (b)(iii)(A) and (B) clearly set out that there must be a causal nexus between the outcomes of achieving MDRS or Policy 3.

3.346 Ms Stubbing in her opening legal submissions for the Council, was of the view that the circumstances in Ōmokoroa are unique in terms of the background and setting for the IPI. She submits that Section 80E(1)(b)(iii) allows Council to "amend or include …zones, that support or are consequential on the MDRS or policies 3, 4 and 5 of the NPS-UD". In her view, because there is no case law on the meaning of "support" or "consequential" in section 80E, using the ordinary meaning of these terms, the new zonings do "support" the MDRS and the greater intensification on the Ōmokoroa peninsula. Therefore, she considers the Natural Open Space zone falls within the permissible scope of an IPI under section 80E of the RMA.

3.347 Mr Hextall, as Council's reporting officer, is also of the opinion that the evidence of Mr Collier takes a narrow interpretation of the scope of the IPI. In his opinion, there is a rational relationship between supporting zones that, combined with the new medium-density residential zone, overall contribute to a well-functioning urban environment.

3.348 Ms Stubbing goes on to state at paragraph 4.13 that section 80E should be interpreted broadly and the list of "related provisions" specifically includes stormwater management, which is identified as a key purpose of the Natural Open Space zone.

3.349 At paragraph 4.17 Ms Stubbing draws reference to page 125 of the section 32 report noting the proposed Natural Open Space zone is described as being the "green lungs" to the urbanisation, zoned to "provide appropriate identification and direction to the areas of constrained land and considering their role in supporting the urbanisation of the area primarily through having a storm water management function, coastal interface role and potential public recreation capabilities".

3.350 At paragraph 4.18 Ms Stubbing submits that the proposed Natural Open Space zone is a key support for, and complementary to the new MDR zone, because it provides storm water management, recreational opportunities and a buffer between other zones and the coast.

Impact of Designation

3.351 The witnesses on behalf of Waka Kotahi primarily focused on the transport requirements for Ōmokoroa rather than the underlying zoning. Consequently, very little additional evidence was provided at the hearing by Waka Kotahi regarding the extent of the future designation or the Natural Open Space zone.

3.352 The IHP heard from the Brunings that Waka Kotahi is currently in the process of widening their designation over more of their land . However, to date no Notice of Requirement has been sought.

Ecological function of the Natural Open Space zone

3.353 Mr Hextall, as Council's reporting officer, and the witnesses for BOPRC appear to agree that the Natural Open Space zone has an array of functions including stormwater and coastal inundation management functions as well as providing ecological corridors. Amendments recommended within the s42A report to the explanatory statement include direct reference to geotechnical and ecological matters.

3.354 Mr Te Pairi considers the inclusion of freshwater and coastal ecology and wetlands and streams is supported by the identification of ecological features in the gully systems. He also is of the view that these changes would give effect to the NPS-FM. However, Mr Hextall considers the further amendments requested by BOPRC to not have as direct relationship with objective 2 as those set out within the s42A report.

3.355 With respect to the addition of hydrology within the matters of discretion, Mr Hextall considers the addition of this term is not required in the context to the District Council provision.

Conclusion - New Natural Open Space zone

3.356 In relation to the creation of the new zone, the IHP is of the view the proposed Natural Open Space zone is both appropriate and supports the application of the MDRS. We agree with the Council that residential zones, or indeed any urban zones, cannot be viewed in isolation of other appropriate supporting zones. We therefore find that by identifying and protecting the gully systems for stormwater management and open space, this supports the intensification anticipated within Ōmokoroa and helps contribute to a well-functioning urban environment as defined by the NPS-UD.

3.357 The IHP finds that the labelling is consistent with the National Planning Standards, which describe a Natural Open Space zone as "areas where the natural environment is retained and activities, buildings and other structures are compatible with the characteristics of the zone".

3.358 The IHP also notes that the Natural Open Space zone appears consistent with the cultural values as highlighted by Pirirākau and helps to give effect to the protection of the gully system sought by the hapū.

3.359 The IHP prefers the view of BOPRC that, by virtue of their function as stormwater reserves, the Natural Open Space zone protects freshwater ecological corridors and enables implementation of the direction of the NPS-FM and should be recognised as such.

3.360 However, we agree with Mr Hextall that inclusion of "hydrological" in matters of discretion is unnecessary to enable WBOPDC to fulfil its functions in relation to stormwater reserves.

3.361 The IHP therefore accepts in part the relief sought by BOPRC, and recommends that the following provisions replace the proposed policy 24.2.2(3)

24.2.2 Policies

3. *Control activities to avoid adverse effects on freshwater and coastal ecology and the functioning of the stormwater system, including streams, wetlands, the natural gully network and the coastal interface, and promote improvement of these areas by providing for development that supports restoration of the values of these areas.*

Application of the zone in relation to land within designation D181

3.362 In relation to the Bruning's land, Mr Hextall advised that given the extent of the proposed alteration to the existing designation on the Bruning's land, the IHP may consider it is unnecessary to rezone that land until such time as there is greater certainty as to the impact of the proposed changes to the existing designations, any residual land and what would be the appropriate zoning of that land.

3.363 The IHP is of the view that leaving land as Future Urban in the context of a plan change for the whole of the Ōmokoroa peninsula is not best practice resource management planning. However, we accept that there are somewhat unique circumstances with respect to the land within the SH2 designation, and more particularly the Brunings land. The IHP also accepts the submission of Waka Kotahi that the Natural Open Space zone is somewhat at odds with the intention to use that land for transport infrastructure. Application of the Natural Open Space zone could also be viewed as downzoning the land from urban, to effectively sterilise the land from development. Therefore, while we consider it would be better practice to apply an urban zoning to the Bruning's land, we accept that the somewhat unique circumstances require a more bespoke approach and therefore consider that the part of this land which was proposed as Natural Open Space zone, including as modified through the Council officer's recommendations regarding boundary changes, should remain as Future urban zone for the time being. This will require changes to the Planning Maps as well as to the Structure Plan.

SECTION 4 - SUMMARY

4.1 There exists a level of disappointment among the IHP in relation to the way in which tangata whenua matters were dealt with from the outset for PC92. In this regard, the IHP considered it necessary to reiterate its strongly held views concerning the rights and interests of tangata whenua, and mana whenua values and concerns.

4.2 In summary, the IHP express that the starting point must be from the position that recognises that in Aotearoa, New Zealand, tangata whenua have rights protected by Te Tiriti o Waitangi and that consequently the RMA accords tangata whenua with a special status distinct from that of interest groups, and members of the public. Perhaps more important is the need for Council and Council processes (such as PC92) to be responsive to tangata whenua. The outcomes of engagement need to be reflected within the planning provisions. Being able to demonstrably point to the way in which a process has recognised and provided for tangata whenua beyond a set of meeting notes would be an achievement that is reflective of a more meaningful, robust process and would assist Council both strategically and relationally.

4.3 The IHP has made a series of recommendations in regard to PC92. These recommendations are concluded within the statutory direction that required WBOPDC to address intensification within the urban communities of Ōmokoroa and Te Puke. This was a requirement set by national direction as WBOPDC is a Tier 1 Council.

4.4 The IHP addressed a number of reasonably complex issues, but considered the key matters requiring deep analysis to include:

(a) financial contributions

(b) extent of the industrial zoning

(c) recognition of the broad range of values provided for with respect to the remaining Open Space

(d) addressing sensitivity for residential communities potentially impacted by other land uses, e.g. transport corridors, industrial land use etc.

(e) ensuring safety in the context of intensified residential land use adjacent to the state highway network and rail corridor. In this context, avoiding reverse sensitivity associated with pre-existing activities was an important consideration.

(f) future recognition and provision for Māori rights and interests within financial policy and operational frameworks.

(g) acknowledging the relationship between PC92 and the subsidiary Notice of Requirement for the Ōmokoroa Active Reserve.

4.5 In most circumstances, the IHP has adopted the recommendations of reporting officers for WBOPDC. This is on the basis that the IHP supports the broad direction of PC92 with its associated constraints, in the light of the framework in which recommendations are made. Where the IHP holds a different view (as identified as the key areas in 4.2, above), its analysis and position is set out within the body of the document.

4.6 The decision is supported by an amended version of the operative district plan.

4.7 The IHP acknowledges the significant body of work produced by reporting officers for WBOPDC, the contribution of submitters and the considered expert evidence of independent witnesses for the submitter parties.

4.8 The work of the IHP is provided as a series of recommendations to Western Bay of Plenty Councillors, who will make a decision in relation to the plan change in accordance with s101 of the RMA.

Greg Carlyon

Pia Bennett

Lisa Mein

Alan Withy

Appendix 6: Western Bay of Plenty District Council Planning Reply

[Attached to cover email.]

BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

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

AND

IN THE MATTER of Proposed Plan Change 92 to the Western Bay of Plenty District Plan First Review - Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters

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WESTERN BAY OF PLENTY DISTRICT COUNCIL PLANNING REPLY

Date: 29 September 2023

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INTRODUCTION

1. This reply statement has been prepared by the following Council witnesses; Mr Tony Clow, Mr Jeff Hextall, Mr Taunu Manihera, Ms Anna Price and Ms Georgina Dean. The statement relates to the following matters:

   (a) a written summary of the planning reply presented orally at the hearing on Thursday 14 September; and

   (b) a response to additional matters raised by submitters; and

   (c) response to the hearing directions issued by the Panel in the Hearing Direction 3 dated 20 September 2023 (**Post Hearing Directions**).

2. The reply statement has been prepared to address matters in the order they appeared (i.e. submitter by submitter) during the hearing. It does not repeat matters set out in the section 42A report and reply statements of evidence on behalf of the Council witnesses (dated 6 September 2023).

3. This statement provides a planning reply to the following submitters:

   (a) Waka Kotahi;

   (b) Bay of Plenty Regional Council (see also **Attachment A**);

   (c) KiwiRail Holdings Limited;

   (d) Ōmokoroa Country Club Limited;

   (e) PowerCo;

   (f) Kāinga Ora;

   (g) N and M Bruning (see also **Attachment A**);

   (h) Urban Taskforce for Tauranga / Brian Goldstone / Vercoe Holdings Limited;

   (i) Retirement Villages Association / Ryman Healthcare Limited;

   (j) Matthew Hardy;

(k) Richard Hewison;

(l) Jace Investments Limited and Kiwi Green NZ Limited;

(m) M & S Smith; and

(n) Russell Prout / David Bagley / Penny Hicks (addressed together as a response to questions from the Panel during the hearing in relation to the proposed Industrial Zoning along Francis Road).

4. For completeness, no written planning reply was considered necessary in relation to matters raised at the hearing by the following submitters:

(a) Warren Dohnt;

(b) Pete Linde;

(c) Foodstuffs;

(d) Tim Laing; and

(e) TDD Limited.

5. In this reply statement, further recommended changes to District Plan text are shown in green underline and ~~strikeout~~.

WAKA KOTAHI (SUBMITTER 41) [TONY CLOW]

6. Direction 1 in the Post Hearing Directions relates to the proposed rule for the Stage Highway 2 / Ōmokoroa Road intersection.

7. As the Panel is aware, at a meeting on Tuesday 12 September 2023 representatives from Waka Kotahi, Kāinga Ora and Council agreed the trigger for the rule should be a total of 2,680 residential units within Ōmokoroa Stage 3. This allows for most of the residential units anticipated in Stage 3. It also allows for the commercial and industrial zones to be developed, in addition to these 2,680 residential units.

8. In my oral right of reply, I supported a non-complying activity status once this total of 2,680 residential units was reached as requested by Waka Kotahi. This is because it indicates that further development is not being enabled. However, I appreciate that Kāinga Ora's position is that restricted discretionary status would be more suitable. I also noted that there were

still drafting issues to be resolved and agreed between the parties. This included the method for counting the 2,680 residential units and what exact activities would become non-complying (or restricted discretionary as per Kāinga Ora's position) once this limit was reached. There was also a need to draft wording to explain that every four residential units in a retirement village would be counted one residential unit. This is to recognise that their traffic movements at the intersection during the AM peak are lower than a typical residential unit.

9. Following the hearing, I met with staff from Council's building and resource consents teams. The general consensus was that counting the number of residential units granted building consent would be the most straightforward and reliable method. However, it was also acknowledged that this method would not be the most suitable way of counting for Waka Kotahi's purposes as it would overlook any other residential units approved through land use consent over and above the number approved through building consent. This method could present a situation where the count is say at 2,600 units but Council has granted land use consent for another 200 units and therefore has already approved 2,800 units before realising the need for the trigger.

10. The other option considered was to count residential units that had been granted either at building consent and/or land use consent. This option would be the most suitable for Waka Kotahi's purposes which is to know exactly when 2,680 units have been approved. This option is however seen by Council staff to be administratively difficult as it would require the building and resource consent teams to continuously (and manually) keep track of what residential units have been approved and to be able to recognise when to not 'double count'. For example, when land use consent was granted first and the building consent followed. It would also require Council staff to keep track of subdivisions to know exactly what residential units relate to what new lots, to assist with avoiding a double count.

11. In discussion with Waka Kotahi, I was advised that it would be unlikely that they would request a running count e.g. each year. Instead, it would likely be after say 15 years or at a point where there was significant growth in Ōmokoroa Stage 3 that necessitated a count. In my opinion, this would be a more manageable task for Council as it could primarily rely on its building consent count at the time and identify any recent land use consents that

have approved further residential units. There is still some potential for error, but less than needing to actively count application by application for a significant number of years.

12. In terms of what exact activities would become non-complying (or restricted discretionary as per Kāinga Ora's position) when 2,680 units were reached, the parties had already agreed during the week of the hearing that it should include subdivision. The remaining issue was around residential units. Waka Kotahi's preference was that any further residential units would be non-complying as this would be the most certain method for managing effects on the intersection. My preference was and is that there should still be provision for those remaining (and potentially few) landowners with vacant lots to be able to construct at least one dwelling as of right. Kāinga Ora's view was that only four or more residential units on a site should be restricted discretionary as one to three units on a site had been provided for as permitted by the MDRS and no qualifying matter had been advanced to remove this permitted activity status.

13. The issue of the qualifying matter has been addressed in Council's legal right of reply. In their submission, Waka Kotahi state that they believe that the "*inclusion of the intersection improvements (roundabout and interchange) as a qualifying matter would be appropriate*". They provide reasoning as to why the intersection is subject to safety and efficiency issues for the Panel's consideration.

14. If the Panel did consider that a qualifying matter was needed, it is my view that the safe and efficient operation of the State Highway network would be "*a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure*" under S77I(e) of the RMA. The recommended District Plan definition of "qualifying matter" would need to be added to accordingly, with the suggested wording being "The intersection of Ōmokoroa Road / State Highway 2".

15. I provided a draft rule to Waka Kotahi and Kāinga Ora on Monday 24 September 2023, which is now also the rule I have recommended further below to be added to the non-complying activity list in 14A.3.5.

16. Waka Kotahi confirmed in writing that they support the rule as drafted. However, they also explained that their preference would still be for "<u>one or more</u> residential units" (i.e. any further units) to be the non-complying

activity. They also said in their reply that they continue to seek the following objective and policy in Section 14A to support a non-complying rule.

Objective - *14A.2.1. 9 - A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.*

Policy - *14A.2.2. 19 – Providing for growth within the Ōmokoroa peninsula in sequence with the staged upgrade of the intersection of Ōmokoroa Road and State Highway 2, thereby ensuring that vehicular access to and from the peninsula is safe.*

17. Kāinga Ora have also responded in writing. They support the rule but only to the extent that it reads "restricted discretionary activities" and is for subdivision and "four or more units on a site". Matters of discretion have also been provided for the consideration of the panel. Kāinga Ora have asked if their preferred rule can be shown in full in this reply statement. This includes the associated matters of discretion, which I would support if the Panel did select a restricted discretionary status. The Kāinga Ora wording is directly below.

> ***Restricted Discretionary Activities***
>
> *Subdivision or four or more residential units on a site within the Ōmokoroa Stage 3 Structure Plan area:*
>
> *i. Following the establishment of a roundabout at the intersection of Ōmokoroa Road and Stage Highway 2 if;*
>
> - *More than 2,680 new residential units have been approved within the Ōmokoroa Stage 3 Structure Plan; and*
> - *A grade-separated interchange or equivalent has not been established at the intersection of Ōmokoroa Road and State Highway 2.*
>
> *For the purposes of this rule*
>
> - *Every four residential units in a retirement village shall be counted as one residential unit.*
> - *"Approved" shall mean that a building consent and/or land use consent has been granted and has not lapsed.*
>
> *Matters of discretion*
>
> - *Evidence of consultation with the entity with statutory responsibility for State Highway 2 and its responses to that consultation.*
> - *The safe and efficient operation of the strategic road network.*

18. I recommend the following new rule and objective and policy to support it:

Non-Complying Activities

Subdivision or more than one residential unit on a site within the Ōmokoroa Stage 3 Structure Plan area:

ii. Following the establishment of a roundabout at the intersection of Ōmokoroa Road and Stage Highway 2 if;

- More than 2,680 new residential units have been approved within the Ōmokoroa Stage 3 Structure Plan; and
- A grade-separated interchange or equivalent has not been established at the intersection of Ōmokoroa Road and State Highway 2.

For the purposes of this rule

- Every four residential units in a retirement village shall be counted as one residential unit.
- "Approved" shall mean that a building consent and/or land use consent has been granted and has not lapsed.

Objective

A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.

Policy

Providing for growth within the Ōmokoroa peninsula in sequence with the staged upgrade of the intersection of Ōmokoroa Road and State Highway 2, thereby ensuring that vehicular access to and from the peninsula is safe.

BAY OF PLENTY REGIONAL COUNCIL (SUBMITTER 25) [JEFF HEXTALL / TAUNU MANIHERA]

19. Direction 2 in the Post Hearing Directions relates to the request during the hearing for the planning witnesses for Bay of Plenty Regional Council and Western Bay of Plenty District Council to see if further agreement could be reached in relation to the outstanding matters between the parties.

20. The statement showing the parties' positions in relation to the outstanding matters relating to wording of provisions is attached to this statement as **Attachment A**.

KIWIRAIL HOLDINGS LIMITED (SUBMITTER 30)

21. This reply statement relates to two separate matters raised by KiwiRail:

    (a) the proposed building setback rule (Rule 14A.4.1(d)(ii)(b)); and

    (b) the proposed indoor rail noise rule (Rule 4C.1.3.2(c)(iii)) (Direction 3 in the Post Hearing Directions relates to this rule).

The proposed building setback rule [Tony Clow]

22. This matter relates to Rule 14A.4.1(d)(ii)(b). For the reasons I explained in the oral reply on Thursday 14 September:

    (a) having heard the evidence from KiwiRail, my recommendation is now to reduce the required setback from 10m to 5m; and

    (b) I also recommend removing the wording that exempts properties that were created by way of an application for subdivision that was approved before 1 January 2010.

23. At the request of Chair Carlyon during the hearing I undertook further research in relation to the impact of the wording "(for sites created by way of an application for subdivision consent approved after 1 January 2010)". My research confirmed that there are unlikely to be many, if any, properties in a situation where they are vacant and unable to be built on as the result of needing to comply with the proposed setback.

24. In Te Puke, there are approximately 30 properties which adjoin the railway corridor and the large majority of these are pre 2010 (currently exempt under the proposed rule). However, most of these already have residential units, and many of these are large enough to have more residential units. In my opinion those which are vacant will have enough space to build a unit 5m back from the railway corridor.

25. In Ōmokoroa, there are approximately 50 smaller lots which adjoin the railway corridor. These are already fully developed and I do not anticipate the need for any further units near the corridor. The larger, greenfield sites are a mix of those created pre/post 2010, but in all cases there is sufficient room for units to be setback at least 5m from the railway corridor.

26. I recommend Rule 14A.4.1(d)(ii)(b) (standard for setbacks) be amended as follows:

This standard does not apply to:

a. …

b. *site* boundaries with a railway corridor or designation for railway purposes ~~(for *sites* created by way of an application for subdivision consent approved after 1 January 2010)~~ in which case all *yards* shall be 5m ~~10m~~.

27. As a consequential amendment, this would also require the recommended definition of qualifying matter be changed, as follows:

"Qualifying matter" means one or more of the following:

- Land within 5m ~~10m~~ of a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010)~~.

The proposed indoor rail noise rule [Anna Price]

28. Direction 3 in the Post Hearing Directions relates to the offer during the hearing by Mr Styles (for Kāinga Ora) to discuss directly with Dr Chiles (for KiwiRail) the drafting of a rule in relation to indoor rail noise (Rule 4C.1.3.2(c)(iii)).

29. In this section I also reply to the supplementary statement of evidence of Catherine Heppelthwaite filed on behalf of KiwiRail on Friday 15 September (after the presentation of the KiwiRail case and oral reply from Council).

30. Regarding Direction 3, at the time of finalising this reply I have not received a drafted rule or position agreed between Mr Styles and Dr Chiles. I understand from Ms Gunnell for KiwiRail that Mr Styles and Dr Chiles have spoken and that Mr Styles is confirming the outcome of those discussions in a written statement. As the statement is not available to review prior to finalising this reply, I would request additional time to consider the statement and any draft rule once it has been received and will provide a supplementary reply to the Panel following that review.

31. The supplementary statement of evidence prepared by Catherine Heppelthwaite has provided further overview of outstanding matters to KiwiRail. This includes the use of the term "place of assembly" and wording

within the rail noise rule I proposed in my rebuttal evidence. It would appear from reading the statement that KiwiRail are also no longer pursuing a specific definition for “noise sensitive activities”.

32. I agree with Ms Heppelthwaite’s recommendation to remove reference to “place of assembly” in the rule as drafted in my rebuttal evidence and replace with the terms “place of worship or marae”, because I agree that these are the actual noise sensitive activities within the wider definition of “place of assembly”.

33. Ms Heppelthwaite also proposes wording changes to the rule in relation to the 100m setback, designation boundary, ventilation controls and design certificate requirements. I do not agree that the setback should be 100m for reasons set out previously in my evidence. I also do not agree that the measurement should be applied from the designation boundary. As stated previously in my evidence the designation boundary is at least 20m from the rail track, and the measurement should be taken from the point at which the noise is generated, which is the rail tracks. As such I recommend that the setback be from the rail tracks and not the designation boundary. I will leave comment on the ventilation and acoustic design certificates until once I have been able to review any written statement from Mr Styles and Dr Chiles.

34. Regarding the Vibration Alert Layer, this has been accepted by both KiwiRail and Kāinga Ora as an acceptable alternative to KiwiRail’s Vibration Controls proposed in their submission. The Rail Vibration Alert Layer will be an information only layer on Council’s ePlan maps (non-statutory layers) that signals to the property owners within 60m of the rail tracks that higher levels of vibration may be experienced in the area. No rules or other provisions are proposed with the Rail Vibration Alert layer. KiwiRail requested that wording in relation to the Alert Layer be included in the Explanatory Statement of Section 4C - Amenity however as this is an information only layer and not related to a rule or provision in the District Plan I confirm my previous recommendation that this wording not be included in the Explanatory Statement.

ŌMOKOROA COUNTRY CLUB LIMITED (SUBMITTER 56)

35. During the submitter’s presentation Mr Morné Hugo provided the Panel with a memorandum (dated 8 September 2023) that referred to the Joint

Witness Statement (**JWS**). Mr Hugo sought further changes to the provisions that were set out in the JWS including additions to an advice note, and three additional items to be added under Rule 14A.7.

36. Direction 4 in the Post Hearing Directions was an invitation to the submitter to provide any further criteria in relation to the urban design matters raised during the hearing. At the time of writing no further matters have been provided by the submitter, however, Council reserves the right to respond should the submitter provide a response in relation to Direction 4.

Urban design matters [Georgina Dean]

37. I responded to these additional matters at the hearing on Thursday 14 September, and confirm my recommendations as follows:

38. I have considered the evidence on behalf of Ōmokoroa Country Club and my recommendation is that no further changes are needed. To address Mr Hugo's suggestion to require a landscape plan from a suitably qualified person on every consent for four or more residential units on a site, an agreed outcome of the expert conferencing (recorded in the JWS) was the drafting of a requirement in the matters of discretion (14A.7.1) as follows:

"An urban design assessment is to be provided with the application prepared by a suitably qualified person(s). The extent and detail of this assessment will be commensurate with the scale and intensity of the proposed development".

39. Mr Hugo's suggested wording in additional item (a) that would require a comprehensive landscape assessment to be submitted under 14A.7.1, in my opinion is not needed as it would be captured as a potential requirement in the wording above relating to the urban design assessment.

40. In my opinion, the wording in additional item (c) that has been suggested by Mr Hugo in regard to sufficient design variety and material variations is already covered in the matters of discretion in 14A.7.1. While it is worded differently, I prefer the existing wording which I consider would allow further "teeth" to create better outcomes. The existing proposed wording is *"providing building recesses, varied architectural treatments and landscaping to break up the visual appearance of the built form."*

Advice note: residential design outcomes [Tony Clow]

41. I have considered Mr Hugo's request to add further wording to the advice note in 14A.7.1 being "Council's Residential Design Outcomes (RDO) document provides guidance to assist with addressing the matters of discretion, and alignment with the key outcomes of the RDO should be demonstrated as part of the Urban Design Assessment process". The RDO is intended to be a guide as stated. The additional wording requiring that an applicant "should" demonstrate alignment with key outcomes of the RDO reads as a directive and may bring into question whether the RDO is a guide or something more. Therefore, I do not support the requested additional wording.

Fence height rule [Tony Clow]

42. Mr Hugo requested in additional item (b) a "*requirement that "fencing on all road frontages, have a maximum 1.2m solid fencing, and then any fencing up to 2.0min height is required to be a 60% permeable design*". However, the standard for "heights of fences, walls and retaining walls" in Rule 14A.4.2(h)(ii) already contains this same requirement. Therefore, I do not consider that there is a need for the requested wording.

POWERCO (SUBMITTER 33) [TONY CLOW]

43. PowerCo spoke at the hearing to the submitter's request for the addition of a new standard, to ensure safe separation distances are maintained between people and overhead electricity lines. I acknowledge that protecting people from overhead lines is important.

44. I do not support the requested standard that would require resource consent for breaching the Electrical Code of Practice, as the Code is already required to be met.

45. The requested standard does not make it certain if a building would be permitted or not. It requires a landowner to engage a suitably qualified person to carry out an assessment which needs to then be approved by PowerCo, who decide if consent is needed or not. This is not appropriate in my view. It also would result in extra costs and time delays to landowners.

46. I maintain my recommendation as set out in the section 42A report and reply evidence that an advice note at the start of the density standards is sufficient. This will make landowners aware of the Code of Practice and the need to comply if there are electricity lines in proximity of a development. I have also recommended adding maps of overhead electricity lines to the ePlan under the non-statutory mapping layers.

KĀINGA ORA – HOMES AND COMMUNITIES (SUBMITTER 29)

47. A response to the legal submissions on behalf of this submitter is provided in the reply legal submissions on behalf of Council.

48. This reply statement relates to the following matters raised by Kāinga Ora:

    (a) definition of building footprint in Section 3 – Definitions;

    (b) up to three residential units on a site permitted by rule 14A.3.1;

    (c) height in relation to boundary in rule 14A.4.1(c);

    (d) the minimum yields in rule 14A.4.2(a) and 14A.4.3(c)(i);

    (e) labelling of Ōmokoroa Stage 3A, 3B and 3C; and

    (f) the increased height sought in the Te Puke Commercial Zone.

Definition of building footprint [Tony Clow]

49. The definition of “building footprint” in Section 3 – Definitions was introduced to implement the MDRS for building coverage and is from the National Planning Standards. In response to submissions requesting that the definition of “building footprint” be aligned with the Operative District Plan definition of “building coverage”, it was recommended in the section 42A report to remove eaves less than 1m wide, pergolas, uncovered decks, terraces and steps, and swimming pools. Kāinga Ora opposed this in their evidence on the basis that the purpose of the MDRS for building coverage is to manage bulk and location of a building and that the buildings included in the definition of “building footprint” should be assessed accordingly. Kāinga Ora also noted that some of the items recommended to be excluded were already exempt through not being buildings e.g. uncovered decks, steps and terraces and swimming pools.

50. This was not addressed in my reply evidence. I agree however with Kāinga Ora that the excluded items should be deleted (i.e. for the definition to be retained as notified) for the reasons they provided. I agree that the MDRS for building coverage is about bulk and location and it would have been intended to consider eaves less than 1m and pergolas in this rule.

51. In contrast, the existing definition and rule in the Operative District Plan for building coverage is for stormwater management. Of note, the proposed standard for impervious surfaces is now intended to address stormwater management and includes “roofs” so would include all eves.

52. The required change would be as follows:

> **"Building Footprint"** within the definition of “*building coverage*” when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means the total area of *buildings* at ground floor level together with the area of any section of any of those *buildings* that extends out beyond the ground floor level limits of the *building* and overhangs the ground. ~~but excludes eaves less than 1m wide, pergolas or similar structure of a substantially open nature. uncovered decks, uncovered terraces, uncovered steps, and swimming pools.~~

Up to three residential units on a site [Tony Clow]

53. Kāinga Ora requested a specific reference to papakāinga housing in the rule permitting up to three units on a site (Rule 14A.3.1). I had initially recommended not to add this reference as it is already clear from the explanatory statement, objectives and policies that papakāinga is provided for in the rules. However, I now recommend adding the reference as it may be useful for those landowners who want to develop their land for this purpose but who would not be certain as to whether this rule was applicable or not. The recommended note is as follows:

> Note: This standard applies to papakāinga.

Height in relation to boundary [Tony Clow]

54. With respect to height in relation to boundary (Rule 14A.4.1(c)), I am comfortable that the 4m and 60 degree rule is flexible for allowing the higher density development intended for Ōmokoroa (being a minimum of 30 units per hectare and a 22m height limit).

The requested minimum yields [Tony Clow]

55. During the hearing Kāinga Ora lowered their requested minimum densities from 50 and 35 per hectare to 35 and 25 per hectare, and advised their acceptance of Council's definition of developable area.

56. I still however recommend that the proposed minimum yields are retained as notified being a minimum of 15, 20 and 30 lots/units per hectare in Ōmokoroa, and 20 lots/units per hectare in Te Puke (see Rules 14A.4.2(a) and 14A.4.3(c)(i)).

57. Council did not need to set these minimum densities but did so to ensure that land would efficiently deliver housing. They are minimums and do not prevent landowners from achieving higher densities now or in the future.

58. The level was set to reflect the densities that the Council believes are achievable in Ōmokoroa and Te Puke. This was supported by evidence from submitters (local developers) during the hearing. These yields were also set to ensure a suitable level of financial contributions can be collected to provide the required supporting infrastructure for that growth.

Labelling of Ōmokoroa Stage 3A, 3B and 3C [Tony Clow]

59. Mr Hextall had previously explained in his reply evidence that the labels for Ōmokoroa Stage 3A, 3B and 3C could benefit from being renamed to show their association with differing yield requirements. This was in response to evidence from Kāinga Ora which sought Ōmokoroa Stage 3C to be renamed and rezoned to High Density given it requires a minimum of 30 lots/units per hectare. If the panel did consider the need to rename these, an option is Ōmokoroa Stage 3 (15+), Ōmokoroa Stage 3 (20+) and Ōmokoroa Stage 3 (30+). This would provide an association with the yield requirements which is the main reason for the differing classifications.

60. I note that Section 14A already refers to the associated minimum yields on most occasions when it refers to Ōmokoroa 3C and in all cases where it refers to Ōmokoroa 3A and 3B. The main benefit of renaming the areas would therefore be for reading the maps. This would include the "Area Specific Overlay" map in the explanatory statement for Section 14A and the District Plan Maps. The "Area Specific Overlay" map could also benefit from a note to be more explicit that each area is associated with a particular

minimum yield requirement. These mapping changes can be made for the Panel if it did consider the need to rename the areas.

61. As a consequential amendment, any changes to area names would also need to be made in Section 11 – Financial Contributions as these set out different financial contributions for each of the areas.

Increased height sought in Te Puke Commercial Zone [Jeff Hextall]

62. As I explained in the oral reply on Thursday 14 September, the current Te Puke commercial provisions potentially allow for 4 levels (maximum height of 12.5m) but only two levels have been utilised. Accordingly, there is an existing provision that allows for additional levels as a permitted activity if parties wanted to do this in the short term.

N & M BRUNING (SUBMITTER 31) [JEFF HEXTALL]

63. A response to the legal submissions on behalf of this submitter are addressed in the reply legal submissions on behalf of Council.

64. The joint statement between WBOPDC / BOPRC that is referred to above and included as **Attachment A** includes comments from Mr Hextall specifically in relation to the Bruning land.

65. As indicated to the Panel following the presentation from Waka Kotahi, from a planning perspective Mr Hextall supports that either the recommended areas (as per the section 42A report) are included or the area is reassessed once the alteration to designation process is completed and there is more certainty as to appropriate zoning.

URBAN TASKFORCE FOR TAURANGA (SUBMITTER 39) (AND BRIAN GOLDSTONE (SUBMITTER 42) / VERCOE HOLDINGS LIMITED (SUBMITTER 40) [TONY CLOW]

66. On behalf of the submitters, Mr Collier raised concerns regarding the definition of developable area, seeking the exclusion of roads, reserves and accessways to remove the association with financial contributions. As I described in the section 42A report, reverting back to the existing rule framework which charges based on net lot area would mean that financial contributions would not be charged for roads, accessways and reserves. The definition of developable area also already excludes land which has a

primary purpose of stormwater management, so would exclude a stormwater management reserve. In my opinion, the requested changes are unnecessary.

67. The submitter also requested the removal of compacted soil from the definition of impervious surfaces. I agreed with the submitter and acknowledged it would be difficult to determine/monitor in my rebuttal evidence, and proposed to remove the relevant line of the definition.

68. In terms of the 50% limit of impervious surfaces in Te Puke, I agreed in my rebuttal evidence with the submitter's view that this could (by default) mean that the 50% building coverage allowance may not be achievable in some cases.

69. However, I have also taken into account the views of Council's stormwater team and Bay of Plenty Regional Council, who have concerns that anything more than 50% per site would lead to further flooding effects both within the urban area and downstream.

70. Further, Council holds a comprehensive stormwater consent (**CSC**) from the Regional Council which requires Council to avoid increasing downstream flooding. Council staff therefore consider that we would be non-compliant with the CSC if we were to allow impervious surfaces of more than 50% (without mitigation) based on the existing level of impervious surfaces in Te Puke and the capacity of its stormwater system.

71. On this same matter, Regional Council have requested further flood modelling be undertaken for Te Puke. This is to confirm whether the proposed limit on impervious surfaces in Te Puke's urban area should be 50% or less. I understand this concern arises from the need to manage the effects of flooding on Regional Council's downstream flood protection assets.

72. Whatever the outcomes of the flood modelling, I do not support the proposed 50% limit being reduced any further. Additional limits on impervious area will make the MDRS less enabling of development and are too restrictive.

73. Therefore, my recommendation is that this 50% limit is retained for Te Puke. But I agree with the submitter that longer term solutions should be investigated by Council and Regional Council.

RETIREMENT VILLAGES ASSOCIATION (SUBMITTER 34) / RYMAN HEALTHCARE LIMITED (SUBMITTER 35)

74. This reply statement relates to the following matters raised by these submitters:

(a) matters relating to the provisions in section 14A; and

(b) reductions sought to the financial contributions payable for retirement villages.

Changes requested to section 14A [Tony Clow]

75. Having heard the evidence of RVA at the hearing, I agree that the notification requirements from Clause 5 of Schedule 3A RMA need to be incorporated back into the District Plan. They were included in PC92 as notified, and were recommended to be removed as a number of submitters had sought to reword or make additions to these. Whilst I agreed with Urban Task Force that it is not necessary to repeat these provisions, I recognise that the RMA required these notification requirements to be included into the district plan through the IPI process. The wording that I recommend be reintroduced is as follows:

14A.5 Notification

14A.5.1 Requirements

a. *Council* may require public or limited notification of resource consent applications except as listed in (b) below.

b. *Council* shall not require:

i. Public notification if the application is for the *construction* and use of one, two or three *residential units* that do not comply with one or more of the density standards in Rule 14A.4.1 (except for the standard in 14A.4.1 (a)).

ii. Public or limited notification if the

application is for the *construction* and use of four or more *residential units* that comply with the density standards in Rule 14A.4.1 (except for the standard in 14A.4.1 (a)).

iii. Public or limited notification if the application is for a subdivision associated with an application for the *construction* and use of *residential units* described in subclause (i) and (ii) above.

76. I also support the RVA request to exempt sites that contain retirement villages from the performance standard for vehicle crossings and access. This standard requires that vehicle crossings do not exceed 5.4m in width and do not exceed 50% of the length of a front boundary. However, this standard is not practicable for retirement villages as they will generally require a wider vehicle crossing and have wider sites. This would require the following change:

i. For a *site* with a *front boundary* the vehicle crossing shall not exceed 5.4m in width (as measured along the *front boundary*) and shall not ~~or~~ cover more than ~~40%~~ 50% of the length of the *front boundary* as shown in the diagram below.

Note: Any site that contains a retirement village is exempt from the requirements of this standard.

77. I support in part the RVA request to exempt units in retirement villages from the need to meet the performance standards for streetscape. Their specific request is to exempt "retirement units" but I have not supported the introduction of this definition into the District Plan for various reasons as outlined in the section 42A report and in my reply evidence. I understand their reasoning that non self-contained units in a retirement village should be afforded the same exemption as "residential units".

78. The District Plan's definition of "rest home" (which is also incorporated into the District Plan's definition of "retirement village") would capture many of these non self-contained units and adding an exemption for these will assist in providing for the relief sought. The definition of rest home is "*a facility that provides residential based health care with on-site (usually 24 hour) support to residents requiring nursing care or significant support with the activities of daily living. This may include a rest home or retirement village based hospital specialising in geriatric care*".

79. The recommended change is as follows:

Garages (whether attached to or detached from a *residential unit*) and other *buildings* (except *residential units* *and rest homes*), as measured at the façade, shall not cumulatively occupy more than 50% of the total width of the building frontage facing the *front boundary*.

Changes requested to section 14A [Jeff Hextall]

80. The matters raised by these submitters are overall noted and I acknowledge from my own experience that it can be difficult to establish retirement villages in some areas however this is not the case in the Western Bay of Plenty District. RVA did not actually identify what matters would inhibit a retirement village establishing within the subject area. I also note that Council had recently granted non-notified a resource consent for a large retirement within the Future Urban zone (to Ōmokoroa Country Club).

81. As I explained in the oral reply on Thursday 14 September, I would support a proposed new objective as follows:

> Provide for the diverse and changing residential needs of communities by enabling a variety of housing types with a mix of densities, including recognising that the existing character and amenity of the residential zones will change over time.

82. I recommend that this should become Objective 14.A.2.1.4 with subsequential renumbering of following objectives. It would also require the deletion of a policy I had earlier recommended in my reply evidence:

~~To provide for the diverse and changing residential needs of communities and recognise that the existing character and amenity of the residential zones will change over time to enable a variety of housing types with a mix of densities.~~

83. In response to the presentation from the submitters, I would support additional matters of discretion as follows:

(a) New matter of discretion (for four or more units on a site) at the end of 14A.7.1(a):

Other

The positive effects of the proposed activity.

[sequential renumbering of following matters]

(b) New matter of discretion for outdoor living space, outlook space and landscaped area as follows:

The extent that the potential adverse effects can be internalised within the development.

To be specifically added to:

- 14A.7.6: Restricted Discretionary Activities – Non-Compliance with Outdoor Living Space (Per Unit)
- 14A.7.7: Restricted Discretionary Activities – Non-Compliance with Outlook Space (Per Unit)
- 14A.7.9: Restricted Discretionary Activities – Non-Compliance with Landscaped Area

(c) Amend matter of discretion (for non-compliance with vehicle crossing and access) as follows:

The extent to which any extra width for a vehicle crossing ~~was~~ is required to provide for alternative housing typologies including multi-unit developments that are located within one site.

Financial contributions [Tony Clow]

84. I have not changed my recommendation having heard from the RVA and Ryman Healthcare at the hearing. I remain of the view that the financial contributions recommended for retirement villages are appropriate. This is to charge 0.5 of an HHE for 1-2 bedroom dwellings and independent apartments and to determine financial contributions for all other facilities (such as other units, cafes, rest homes and hospitals) by specific assessment. No further information was provided by the submitters at the hearing to address the concerns that I raised in my reply evidence.

85. With respect to independent units, my concern is that the requested financial contributions appear to be set very low based on an assumption that all retirement villages in the District will be the same as described by the submitters. In summary, this is that the residents of these independent units will have an average age in the early 80s and will generally be frail and immobile. These assumptions do not align with the nature of retirement villages that we see or are expecting to see in the District for the reasons I have explained in my reply evidence. The requested rules would also appear to exempt independent units occupied by one person from the need to pay financial contributions which I do not support.

86. I also note that the submitter Ōmokoroa Country Club confirmed at the hearing that it supports the recommendation to retain the 0.5HHE rate for retirement villages based on their reduced demand on infrastructure and services (see paragraph 3 of the summary statement of Ms Tracey Hayson provided to the Panel at the hearing).

87. With respect to other units such as assisted living, care and memory units, I maintain my view that these are already provided for under the assessment of "other facilities" in the recommended provisions. I also remain concerned that the rules drafted by the submitter appear to only apply financial contributions to units (independent or other) and as a result remove the need to pay financial contributions for additional facilities in a retirement village.

MATTHEW HARDY (SUBMITTER 13) [JEFF HEXTALL]

88. At the hearing Mr Hardy requested that the 800m2 minimum lot size proposed over this property was removed.

89. The reasoning for the amendment of the proposed zoning on the subject land is discussed in the section 42A report - Ōmokoroa Maps/Zoning [Topic 4]. The approach adopted came from a site meeting with Mr Hardy and his planning consultant Mr Sam Hurley. Mr Hurley in subsequent communications with the Council suggested an overlay over the land that restricts the subdivision potential of the land and specifically requiring larger allotments for this area. In an email from Mr Hurley dated 17 March 2023 he stated:

> *Given the attached scheme plan, we would anticipate an overlay stipulating that any subdivision would need to provide a minimum allotment size of 800m² gross, while also meeting an average of 1000m² gross site area across the development. As shown on the attached plan, this development could do so, with the smallest allotment being approximately 927m², and the larger allotment being 1269m², which would encompass the existing dwelling. This site plan has been drafted to follow existing retaining walls and contours, where possible, while also leaving sufficient space to allow for different residential options. So, taking on the concerns that have been discussed with us previously, there wouldn't necessarily need to be significant modifications and retaining walls to the land to allow for development on each of the sites.*
>
> *We have considered whether it would be better to amend the Rural Residential rules to allow for this type of development, create it's*

> *own separate chapter, or to rezone the land as Medium Density. As stated above, we would prefer that the land is rezoned to Medium Density, so that the applicant, or any future landowner, can use the MDRS to develop their site. The intention of this would be to ensure that it is easier to site a reasonably sized dwelling on each of the subsequent allotments, while reducing the potential need for retaining walls. From a practicality perspective, we also are of the opinion that it would be easier to have an overlay and separate rule within the Medium Density chapter than to create its own separate zoning or undertake significant rewrites to the Rural Residential chapter.*
>
> *It is noted that should the above be agreed to by Council then our client may withdraw their request to be heard at a hearing. However, they will not make this decision until closer to the hearing date.*

90. This approach was adopted with modification to fit with how the proposed District Plan was written. This supported a joint understanding and agreement that the site had attributes that supported a greater density that would be provided by the proposed Rural-Residential zone but also was highly visible, had a similar nature and topography to other land that was proposed to be zoned Rural-Residential zone in the locality and had geotechnical constraints.

91. I note that Mr Hurley did not provide any evidence or attend the hearing. I remain of the view that the recommendation in the section 42A report remains an appropriate planning response.

RICHARD HEWISON (SUBMITTER 1) [TAUNU MANIHERA]

92. Mr Hewison provided submissions which raised concern on wastewater and stormwater capacity, should intensification occur within the existing Lynley Park subdivision. The Panel asked for clarification and a response to these matters during the hearing.

93. In my opinion the concern would be valid should there be a likelihood of intensification occurring within the Lynley Park subdivision. It was considered that the likelihood of brownfield development is low.

94. This is due to the modern nature of the development, with dwellings constructed within the last 15 years. It was further noted that dwellings are centrally located within property boundaries, are large and therefore leave little space for brownfield development.

95. Landowners may opt to extend existing buildings and increase impermeable surfaces, leading to additional stormwater. Any additional stormwater is required to be managed to pre-development levels or less by recommended Rule 12.4.5.17. This would ensure capacity for existing stormwater infrastructure is not exceeded. There are also supporting provisions around maximum impermeable surfaces which would assist managing stormwater.

96. Wastewater in this subdivision is managed by a pump station which does have capacity limitations, however there is room within the current pump station land holdings to add capacity. Monitoring of the pump station is part of Council's existing levels of service. Should intensification occur and capacity becomes and issue, Council will need to identify a pump station upgrade as a project and determine how the upgrade is funded. Intensification may be restricted until the upgrade occurs. However as noted, there is a low likelihood of intensification.

JACE INVESTMENTS LIMITED AND KIWI GREEN NZ LIMITED (SUBMITTERS 58 AND 59)

97. This reply statement relates to the following matters raised by these submitters:

    (a) matters relating to the provisions in section 14A; and

    (b) request to include pump station in infrastructure schedules.

Changes requested to section 14A [Tony Clow]

98. This submitter considers rule 14A.4.2(j) controlling accommodation facilities should not exclude kitchens.

99. I have explained in my section 42A report and evidence at the hearing that small-scale accommodation for 5 occupants or less does not allow kitchens as a permitted activity. This provides for the likes of sleepouts and bed and breakfast activities, where the guests would also need to rely on the facilities of the dwelling on-site. Larger accommodation facilities, with kitchens if required, are provided for in the District Plan as discretionary activities e.g. hotels and motels.

100. Rule 14A.4.2(j) does not allow accommodation facilities to be self-contained with kitchens as they effectively become residential units. The District Plan already contains rules for residential units; for example, one to three per site are permitted as proposed in PC92, and in other areas of the District one residential unit is allowed on-site as a permitted activity. Allowing small-scale accommodation to have kitchens will permit extra units in error and out of line with the District Plan policies managing residential development.

Request to include pump station in infrastructure schedules [Taunu Manihera]

101. The submitters have requested that the structure plan pump station shown within the Ōmokoroa Town Centre site, be funded by financial contributions.

102. I provided further context for the pump station in the oral reply on Thursday 14 September. I explained that the pump station being included within the Ōmokoroa structure plan was driven by the good intentions of the submitter and the Ministry of Education (**MoE**), to work together and find a more efficient way for disposing of wastewater from their respective sites.

103. The conversations have not progressed in line with MoE development timelines, and as a result MoE are now planning an alternative means of wastewater management by connecting to a pump station within Prole Road. Council have agreed that MoE is able to connect to the alternative pump station.

104. In my opinion a decision around whether the pump station should be funded by financial contributions is based on the necessity and benefit of the infrastructure. In the case of the Ōmokoroa Town Centre and MoE sites, there are other options which are detailed in the existing town centre resource consent and the MoE notice of requirement. These consents include approval to connect to reticulation in Ōmokoroa Road.

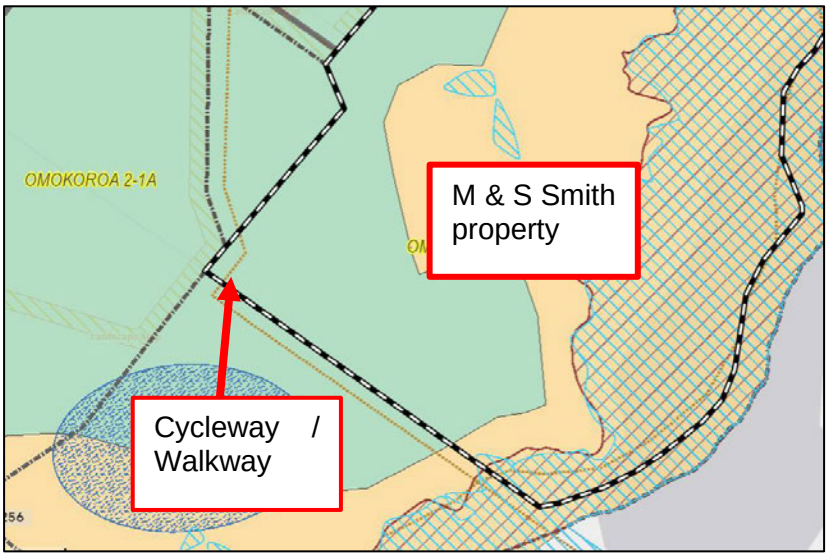
105. The consents demonstrate that neither site is reliant on the structure plan pump station. I also note there are no other upstream properties reliant on the pump station and therefore the benefit is only to the submitter and MoE.

106. The Panel also asked a question in relation to funding splits. In my opinion the options for funding splits would either be developer funded or FINCO funded. There should be no rates portion because the benefits of the pump station are directly to the submitter and the MoE only.

M & S SMITH (SUBMITTER 50) [TAUNU MANIHERA]

107. Mike and Sandra Smith made submissions on Plan Change 92, which amongst other things, requested a change to the walkway/cycleway shown on the Ōmokoroa Structure Plan where it crosses their boundary. The cycleway as notified is shown below (yellow line) in Figure 1.

Figure 1: Plan Change 92 – Notified District Plan Maps



108. The Section 42A Report recommended the alignment of the cycleway be changed such that it be wholly contained in the submitter's property, on the basis that this will align with a future road within the submitter's property which is to be formed via subdivision and development. The recommended change is shown in Figure 2 below.

Figure 2: S42A Report Recommended Change

109. The submitter remains unsatisfied by the change and I have revisited the submissions, considered the Waka Kotahi possible SH2 realignment and designation design information presented at the Plan Change 92 hearing with the submitter and have undertaken a further site visit. In considering this information, both the submitter and myself have agreed to support a further change as shown in Figures 3 and 4 below, on the basis that:

- The alignment is consistent with the notified version of the structure plan and the affected landowner (at 491 Ōmokoroa Road) did not submit against the proposed cycleway within their property;
- The alignment sits on the proposed industrial / rural residential zone boundary, adjacent to a landscape buffer zone. This is seen to be a better outcome than the notified version of the cycleway, which was located further into the rural residential zone;
- The alignment is mostly beyond the intended SH2 designation and sites wholly outside of the submitters property;
- The alignment will connect with the eastern extent of Council's planned industrial road project, which includes a walkway/cycleway to this point.

Figure 3: Supported Changes (refer green line) shown over Waka Kotahi Plans

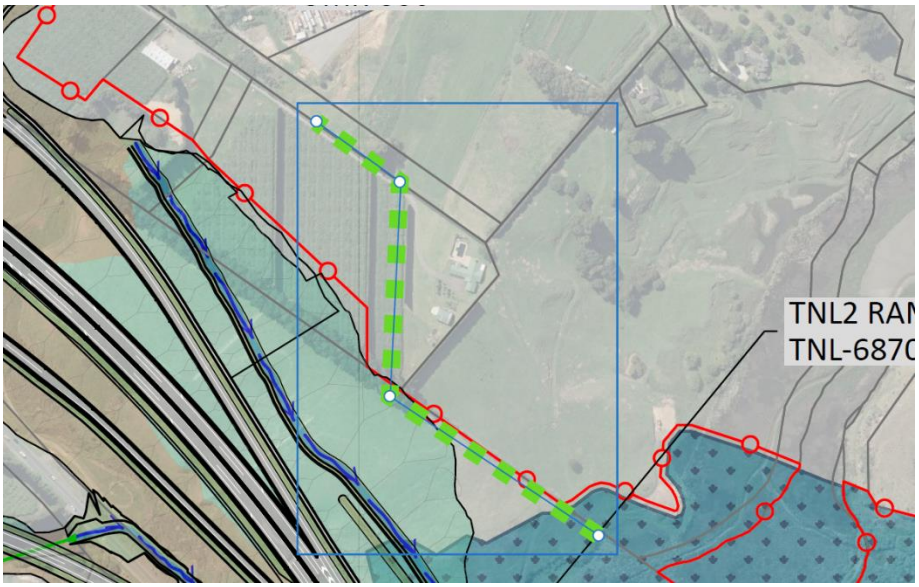
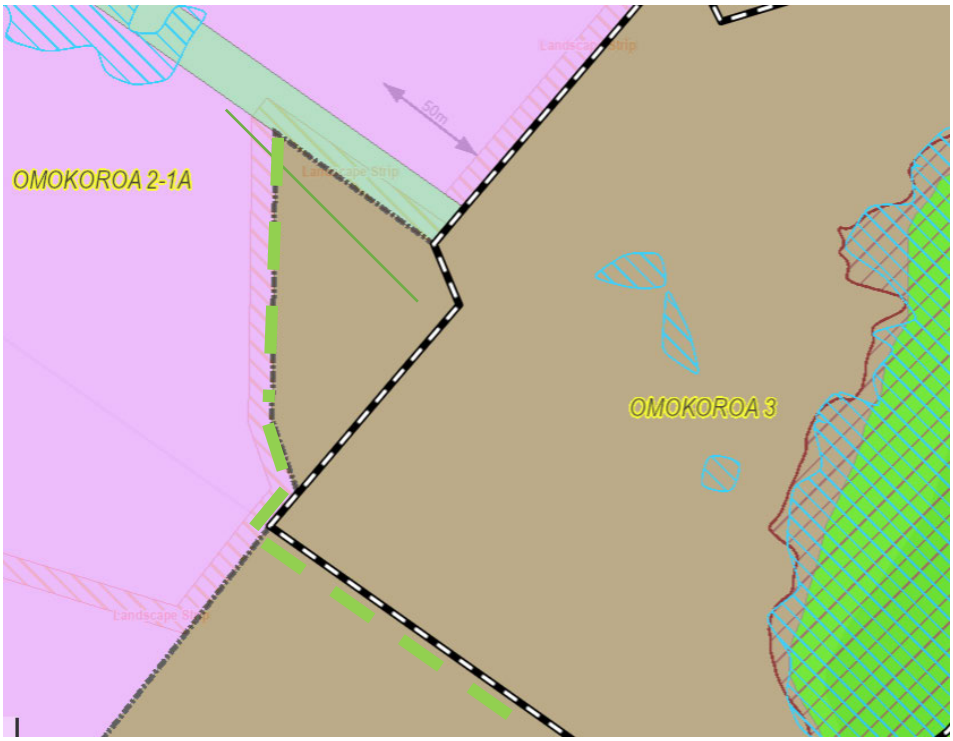


Figure 4: Agreed Changes (refer green line) shown over District Plan Map



RUSSELL PROUT (SUBMITTER 65) / BAGLEY (SUBMITTER 27) / HICKS (SUBMITTER 4) – INDUSTRIAL ZONING [TAUNU MANIHERA AND JEFF HEXTALL]

110. A planning response has been provided in relation to these three submitters to the extent they raised similar issues in relation to the proposed industrial zoning in the Francis Road area.

111. The Panel requested further reporting from Council's reporting team on two questions raised during the hearing. The questions relate to the proposed Industrial Zone adjoining Francis Road. The questions are summarised below:

(a) Whether a separate road providing access to the proposed Industrial Zone can be achieved so to separate industrial and residential traffic;

(b) Whether activities within the proposed Industrial Zone adjoining Francis Road should be further restricted so to manage the interface with residential activities.

Road access to the proposed Industrial Zone

112. The Panel questioned whether a 5th leg off the future Ōmokoroa / Francis Road Roundabout, would provide an alternative east/west access option to the entirety of the proposed Industrial Zone, and whether this should be included in the structure plan. In short, in our opinion the 5th access leg would not provide a viable access option.

113. Access to the western extent of the Industrial Zone is highly likely to be obstructed by future infrastructure that would form part of the future State Highway 2 realignment (SH2 project). Infrastructure of concern includes a stormwater pond and road carriageways. Please refer to the map included as **Attachment B** which identifies the relevant obstructions.

114. We would also caution consideration of the 5th access leg on the basis that the affected landowner (492 Ōmokoroa Road) has not been afforded due process for considering and responding to such a proposal. It should be noted that the current owner intends to establish a supermarket on this property and therefore engagement on any change in road connection is imperative.

115. The Panel also questioned whether the proposed Industrial Zone land narrowed to the extent that road access would be difficult. The narrowest point of the Industrial Zoned land is approximately 90m. Subject to design and earthworks, this width could have accommodated a 25m wide carriageway, suitable for the Industrial Zone. However as identified above, access is complicated by the SH2 project.

116. Taking note of the submissions from Mr Bagley, Mr Prout, Mr Hicks and Ms Hicks, in our opinion further refinement of the structure plan may assist the submitters. This includes:

(a) Deletion of the western roundabout from the Structure Plan and change this to a right turn bay. This would preclude industrial land using the western roundabout as an access point.

(b) Retain the roundabout which connects with the Prole/Francis link road as the single entry to the Industrial Zone. The location of this roundabout is an efficient transport outcome given it connects to other primary structure plan roads.

(c) Add a new east/west Industrial Zone structure plan road. This would ensure access is available to 51 Francis Road, being one of two proposed industrial zoned properties at the western end of Francis Road.

117. The above changes would provide for the separation of industrial and residential traffic at an earlier point along Francis Road, and mitigate the effects of the industrial traffic on the rural residential zoned properties at the western end of Francis Road. The recommended changes are annotated on the map included as **Attachment B**.

Activities permitted within the proposed Industrial Zone

118. The proposed zoning is “Industrial.” The industrial zone provisions are contained in Section 21 – Industrial of the Operative District Plan. Other than the recommended inclusion of a 10m setback from the Natural Open Space zone for buildings and structures (plus some reference updates) the Industrial Zone provisions remain unchanged. Please refer to recommended Section 21 of the Proposed District Plan provisions.

119. In addition to the Industrial Zone provisions, there are also specific amenity performance standards contained in Section 4C – Amenity of the Operative District Plan. These include noise and vibration, storage and disposal of solid waste, lighting and welding, offensive odours, effluent aerosols and spray drift, and screening (includes specific provisions for the Ōmokoroa industrial area adjacent to Ōmokoroa, Hamurana and Francis Road). Please refer to recommended Section 4C of the Proposed District Plan provisions.

120. In addition to these matters the Council has also proposed a road specific cross section which provides for additional separation of residential and related activities from industrial related activities.

121. There is a shortage of industrial land within the sub-region and as part of providing for increased residential opportunities within Ōmokoroa it is considered important to provide for employment opportunities. With the above mitigations in our opinion the operative Industrial zone activity list is appropriate in the proposed location.

CONSEQUENTIAL / MINOR AMENDMENTS

122. In preparing the planning reply a number of further consequential changes to the proposed plan change provisions have been identified. For completeness these are set out below for the Panel's considerations in making its recommendations.

Definitions of front boundary and front yard in Section 3 – Definitions [Tony Clow]

123. When PC92 was notified, a new definition of "front boundary" was proposed. This definition was to ensure that privateways and access lots serving three or more sites would be treated as a front boundary in addition to the road boundary. This definition is used in Section 14A – Ōmokoroa and Te Puke Medium Density Residential in the standards for vehicle crossings, streetscape and fence/wall height and in the matters of discretion for streetscape and setbacks. It also cross references to the definition of "front yard".

124. In the section 42A report, it was recommended to remove privateways and access lots from the definition of "front boundary". This recommendation

has not changed but further consequential amendments are required to the definition of “front boundary” and “front yard” to improve the readability of these definitions. The changes are below:

> **"Front Boundary"** when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) ~~and within the definition of "Front *Yard*"~~ means the road boundary (including the boundary of any structure plan road or designated road or paper road. ~~all of the following:~~
>
> - ~~Road boundary (including the boundary of any *structure plan* road or designated road or paper road);~~
> - ~~*Privateway* boundary (for a *privateway* that serves three or more *sites*);~~
> - ~~*Access lot* boundary (for an *access lot* that serves three or more *sites*).~~
>
> **Front Yard** means an area of land between the road boundary (including the boundary of any *Structure Plan* road or designated road or paper road) and a line parallel thereto, extending across the full width of the *lot*.
>
> Except that
>
> where any building line is shown on the Planning Maps this line shall be substituted for the existing road boundary.
>
> ~~Except that:~~

~~**Front Yard** when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means an area of land between the *front boundary* and a line parallel thereto, extending across the full width of the lot.~~

Section 11 - Financial Contributions - Rule 11.5.2 (Tony Clow)

125. One of the recommended changes (to Rule 11.5.2(b)) in the section 42A report was not carried through to the document of recommended changes to the District Plan text which the panel used at the hearing. For clarity, this wording has been re-inserted as follows:

> Where a balance *lot* is created for future subdivision or residential development, a financial contribution equal to one *household equivalent* only will be charged at this time. A financial contribution based on an average *net lot area* ~~of 625m²~~ (as specified in the table below) will only be applied to that *lot* once future subdivision or land use consent is applied for.

126. Also, as a consequential amendment to the descriptions in the proposed table at the end of Rule 11.5.2, the following changes identify that the financial contributions are payable for each lot/dwelling.

Area	Average net lot area and dwelling envelope (1 HHE per lot/dwelling)	Average net lot area and dwelling envelope (0.8 of an HHE per lot/dwelling)	Average net lot area and dwelling envelope for which a special assessment is required
Waihī Beach and Katikati	625m²	500m²	<500m²
Ōmokoroa Stage 3A	500m²	400m²	<400m²
Ōmokoroa Stage 3B	375m²	300m²	<300m²
Ōmokoroa (Outside of Stage 3)	375m²	300m²	<300m²
Te Puke	375m²	300m²	<300m²
Ōmokoroa Stage 3C	250m²	200m²	<200m²
Ōmokoroa Mixed Use Residential Precinct	250m²	200m²	<200m²

Section 14A – Ōmokoroa and Te Puke Medium Density Residential – Policy 15 (overland flowpaths) [Jeff Hextall]

127. This policy contains an error by repeating "retain" and "retained". To make the policy sensical it is recommended to reword as follows:

~~*Retain*~~ *Existing overland flowpaths are to be retained or if required to be modified shall maintain or enhance their existing function and not result in additional stormwater runoff onto neighbouring properties*.

Section 14A - Ōmokoroa and Te Puke Medium Density Residential - Rule 14A.4.1(b)(ii) (height in the mixed use residential precinct) [Tony Clow]

128. In Council's evidence, two recommendations were made in relation to height which have created conflicting rules for the Ōmokoroa Mixed Use Residential Precinct. One recommendation was to increase the height limit from 20m to 22m. Another recommendation was to duplicate the height rule from Section 19 – Commercial which allowed an increase in height from 20m to 23m subject to providing undercroft car parking. The latter rule needs to be deleted as shown below:

ii. This standard does not apply to:

a. Ōmokoroa Stage 3C where the maximum *height* for *residential units*, *retirement villages* and *rest homes* shall be ~~20~~ 22 metres and a maximum of six storeys.

b. Ōmokoroa Mixed Use Residential Precinct where the maximum *height* for *buildings* shall be ~~20~~ 22 metres and a maximum of six storeys.

~~c. Ōmokoroa Mixed Use Residential Precinct~~

~~where *buildings* locate all parking and servicing requirements enclosed below *ground level*, in which case the maximum *height* shall be 23 metres.~~

~~The maximum building/structure height in the Ōmokoroa Stage 3 Structure Plan area shall be 20m, except where buildings provide for parking enclosed, or partially enclosed/under-croft, below ground level in an area which is equal to the gross floor area of the above ground building, in which case the maximum height shall be 23m. In addition, visitor parking, servicing and loading requirements can be provided on-site at ground level in accordance with Section 4B.~~

~~For the purposes of this rule:~~

~~- Only the ground floor of the above ground building shall be included in the calculation of gross floor area; and~~
~~- The area for parking enclosed below ground level is inclusive of any areas required for manoeuvring, storage, stairwells, access and ramps.~~
~~- For any partially enclosed or undercroft parking areas the length of the exposed parking area must be screened in accordance with Rule 4C.5.3.1, except for where vehicle access is required.~~

BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

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

AND

IN THE MATTER of Proposed Plan Change 92 to the Western Bay of Plenty District Plan First Review - Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters (PC 92)

BAY OF PLENTY REGIONAL COUNCIL

AND

WESTERN BAY OF PLENTY DISTRICT COUNCIL

JOINT REPORTING ON RELIEF SOUGHT BY BAY OF PLENTY REGIONAL COUNCIL

---

1. Firstly this report records that Western Bay of Plenty District Council (WBOPDC) and Bay of Plenty Regional Council (BOPRC) have reached consensus on several BOPRC submissions made on Plan Change 92.

2. Matters yet to be resolved include:

    - Further refinement of the Natural Open Space Zone;
    - Changes to objectives, polices and rules under Section 12 (Subdivision and Development);
    - Changes to objectives, policies and rules under Section 14A (Ōmokoroa and Te Puke Medium Density Residential);
    - Changes to policies and matters of discretion under Section 24 (Natural Open Space)

    The specific relief sought by BOPRC is included within **Appendix A of Mr Te Pairi's evidence dated 25 August 2023.**

3. This document reports on whether or not agreement has been reached on the relief sought and includes brief reasons. Agreed changes are shown in GREEN. Changes requested by BOPRC but not agreed by WBOPDC are shown in BLUE.

Section 12

4. Both councils support the retention of Objective 12.2.1.6 of the Operative District Plan, subject to the inclusion of new Objective 12.2.1.8, which is Te Puke and Ōmokoroa specific. The supported new objective is as follows:

    Objective 12.2.1.8

    Subdivision and development within the Ōmokoroa and Te Puke Structure Plan Areas which minimise the effects from stormwater discharge, including adverse flooding, erosion, scour and water quality effects and any resulting effects on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments.

BOPRC/WBOPDC Response:

- *The s42A report recommended a change to Objective 12.2.1.6 which had implications for communities outside of the Ōmokoroa and Te Puke Plan change areas and beyond scope. The recommended changes are still relevant however a new objective specific to Ōmokoroa and Te Puke is necessary to avoid the scope concern.*

5. Both Council's support the retention of Policy 12.2.2.7 of the Operative District Plan, subject to the inclusion of new Policy 12.2.2.10, which is Te Puke and Ōmokoroa specific. The supported policy is below with the relief sought by BOPRC in yellow.

Policy 12.2.2.10

Subdivision and development practices within the Ōmokoroa and Te Puke Structure Plan Areas should take existing topography, drainage and soil conditions into consideration with the aim of minimising the effects of stormwater discharge and should:

- *Avoid increased flooding effects and risk on the receiving environment including ~~people~~, property and to ensure no increases in risk to people, infrastructure and buildings.*
- *Incorporate water sensitive urban design and water quality.*
- *Avoid, remedy or mitigate further erosion and scour effects.*
- *Demonstrate consistency with, or achieve better outcomes than, the objectives, methods and options of the relevant Catchment Management Plan through stormwater management plans.*

BOPRC Response:

- *BOPRC considers it is necessary to ensure that the policy framework identifies that stormwater management plans (SMPs) are the most appropriate method to manage stormwater in favour of other methods including ad-hoc approaches. In this regard, SMPs are strongly supported as a policy level matter and, is*

supported appropriate to the scale and significance of the potential effects arising from PC 92.

- *Importantly, SMP's implement of the relevant sections of the catchment management plans via Rule 12.4.5.17 in response to directions in the NPS-FM which aims to protect receiving environments as a priority[1] and, is the primary method by which stormwater attenuation is managed through subdivision processes. SMP's are also the method by which subdivision proposal consider climate change in response to RPS directions[2].*

- *While WBOPDC considers Rule 12.4.5.17 to be primarily a method to gather information, BOPRC considers that Rule 12.4.5.17 also implements a range of wider stormwater management outcomes (see Objective 12.2.1.8 and Policy 12.2.2.10) and is method by which subdivision, stormwater management and environmental protection are considered in an integrated manner.*

- *For this reason, it is considered appropriate to ensure a clear and directive policy approach and, to rely on SMPs in favour of ad-hoc approaches to the manage cumulative stormwater effects arising from the plan change.*

- *BOPRC further considers the reference to SMPs supports a robust assessment of discretionary activities (via Rule 12.4.5.11 and 24.3.4) for proposals that do not comply with the structure plan - without inclusion, the ability to refuse inappropriate proposals is undermined. Other approaches to stormwater management should be carefully controlled in addition Rule 12.4.5.1.*

---

[1] 2.1 Objective (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems
(b) second, the health needs of people (such as drinking water); and
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

[2] See BOP RPS Policy IR 2B (climate change).

WBOPDC Response:

- *WBOPDC does not agree that the words "through stormwater management plans" are necessary. SMPs are not a method for managing stormwater but rather the SMP is simply a preferred method for the collation and reporting information on stormwater management for a subdivision or development. However the information may be delivered in other forms (such as an infrastructure report or part of an AEE) which satisfies the information need. The primary goal of the policy is to enable implementation of a stormwater management approach that is consistent with the CMP, and conditions of any resource consent will then be used to implement the stormwater management approach. The intent is not to require information be provided in a single form. An SMP, in WBOPDC's view, is only a method of gathering information so to implement to CMP, and this method is captured by Rule 12.4.5.17.*

- *The s42A report recommended a change to Policy 12.2.2.7 which had implications for communities outside of the Ōmokoroa and Te Puke Plan change areas and beyond scope. The recommended changes are still relevant however a new policy specific to Ōmokoroa and Te Puke is necessary to avoid the scope concern.*

- *WBOPDC does not agree that Policy NH 4B of the Bay of Plenty Regional Policy Statement (RPS) provides direction that requires urban development be managed in a manner so that there is "no" increased risk outside the development site. Part of this view is because the RPS only provides three risk categories, High, Medium or Low.*

- *WBOPDC's view on Policy NH 4B is that it provides direction which requires a low natural hazard risk for a development site to be achieved, only in the event it does not increase risk elsewhere.*

- *If the panel is minded to support BOPRC's view, then we would suggest the following wording for bullet point 1.*

(First bullet point of Policy 12.2.2.10) - Avoid increased flooding effects and risk on the receiving environment including people, property, infrastructure and buildings.

6. BOPRC has requested an amendment to Rule 12.4.5.17(a). The change is not supported by WBOPDC for the reasons above relating to Policy NH 4B. Any changes by the panel should be consistent with any changes to Policy 12.2.2.10 above.

   a. *Be designed for attenuation of the 50% and 10% AEP critical storm events to predevelopment peak stormwater discharge and the 1% AEP critical storm event to 80% of the pre-development peak discharge except where it can be demonstrated that there will be no increased adverse flood effects on the receiving environment and avoids increases in flooding risk on people, infrastructure and property.*

   All stormwater attenuation shall be designed to take into account up to date national guidance for climate change over the next 100 years for sea level rise and rainfall intensity.

7. BOPRC has requested the following Explanatory Note be added to Rule 12.4.5.17. WBOPDC takes a neutral position on the inclusion of the explanatory note.

   The concurrent preparation and lodgement of resource consent applications to the District and Regional Councils is recommended to implement the integrated management outcomes anticipated by the relevant Catchment Management Plans through Rule 12.4.5.17 relating to subdivision stormwater management plans.

BOPRC Response:

- *As outlined in evidence, BOPRC seeks the Explanatory Note be included to support an integrated management approach. The note carries no legal weight itself and would signal to applicants and the council that concurrent preparation of applications is preferred to achieve integrated outcomes.*

WBOPDC Response:

- *WBOPDC's evidence opposed the note as it disagrees this relates to integrated management. A neutral position is adopted at this stage on the basis that the note is only "advisory" for decision makers.*

Section 14A

8. Both councils support the below amendment to Significant Issue 6. The reasons are included in Mr. Hextall's reply evidence.

Significant Issue 6

Urban development creates large areas of impermeable surfaces increasing stormwater run-off that can lead to flooding and the carrying of pollutants. These changes have implications for water quality and quantity effects on the receiving environment.

The modification of the landform can also adversely affect natural processes and the cultural values of the land.

9. Both councils support the below amendment to Objective 14A.2.1.7. The reasons are included in Mr. Hextall's reply evidence.

Objective 14A.2.1.7

Maintenance and enhancement of the stormwater management functions of both the natural and built stormwater network and, management of flooding risk and effects on the receiving environment.

10. BOPRC has requested the below amendment to Policy 14A.2.2.7. WBOPDC does not agree to the change.

Policy 14A.2.2.7

Require proposals of four or more residential units on a site to provide integrated assessments which fully assess how the land is to be used

effectively and efficiently, how the relevant requirements of the structure plan are met including provision of infrastructure including water sensitive design and, how high-quality urban design outcomes are being achieved.

BOPRC Response:

- *Water sensitive design is a primary method by which stormwater management is achieved through redevelopment processes enabled by PC 92 and, is integral to achieve integrated management directions in the RPS and the NPS-FM. As such, water sensitive design is strongly supported as a policy level matter and, is appropriate to the scale and significance of the potential effects arising from PC 92.*

- *As stated elsewhere, catchment management plans for Te Puke and Ōmokoroa specifically identify water sensitive design (WSD) as a key method to manage stormwater overtime, particularly incremental cumulative effects and the basis for this approach is addressed comprehensively in the evidence of Sue Ira for the Regional Council.*

- *In response and as discussed at the hearing, a policy level approach is appropriate which identifies WSD as a specific method to manage stormwater noting the challenges of outdated stormwater infrastructure and climate change.*

- *From an integrated management perspective, well-functioning urban environments would be enhanced by the consideration of BPO for water sensitive urban design which is inherently linked to urban design processes.*

- *For the above reasons and in terms of Chapter 14A, it is considered that WSD should be identified as a specific method (alongside other matters related to urban design) to be considered as part of integrated assessments identified in Policy 14.2.2.7. In effect, this reflects both an integrated approach and, responds to how development may occur i.e. design led or, subdivision led water sensitive design.*

- *In summary, WSD is strongly supported as a policy level matter and, is appropriate to the scale and significance of the potential effects arising from PC 92.*

WBOPDC Response:

- *WBOPDC considers the additional wording to be a duplication of Section 12 matters, with the intent of the policy to require compliance with a structure plan (versus catchment management outcomes).*

- *WBOPDC has included water sensitive urban design as part of Policy 12.2.2.10 and there is no need to replicate the same matter within Section 14A. Section 14A provides for Medium Density Residential Development and while water sensitive urban design is a matter of relevance to assessing aspects of such development it is considered that there is no need to go to this level of specificity within Section 14A. Section 12 is the appropriate section to provide this policy direction.*

11. BOPRC has requested the below amendment to Matters of Discretion 14A.7.1(l)(i). WBOPDC does not agree to the changes.

Matter of Discretion 14A.7.1(l)(i)

~~Providing~~ Identify and incorporate best practicable options for water sensitive urban design including the retention of permeable areas and the treatment of stormwater in accordance with the relevant catchment management plan.

BOPRC Response:

- *The comprehensive stormwater consents for Ōmokoroa and Te Puke include detailed options for WSD and are appropriate methods to rely on particularly in the absence of any other detailed methods to rely on and, in gaps in the Infrastructure Development Code (2002) in the Plan or guidance in the Urban Design*

Guideline which does not include reference to water sensitive design.

- *Further, this level of detail is considered appropriate to ensure the appropriate consideration of an integrated approach set out in Rule 12.4.5.17 i.e. both land-use and subdivision.*

- *In summary, an integrated approach is recommended in both the subdivision and development sections of the plan which also responses to how development may occur i.e. design led or, subdivision led.*

- *Further supporting reasons are set out in in response to Policies 14A.2.2.7 and 12.2.2.10.*

WBOPDC Response:

- *WBOPDC does not consider that the changes requested by BOPRC are appropriate as matters of discretion. It considers the wording suggested would create uncertainty for plan users as to what the best practicable option may be. Although the proposed reference to the relevant catchment management plan does provide additional guidance as to appropriate design matters at a specific point in time there may be further innovations that have yet to be updated in a catchment management plan.*

- *Catchment management plan references are more appropriate as part of Section 12, and it should be noted the rules apply to both land use and subdivision. It should be noted that matters of discretion are intended to apply to matters for consideration, rather than being a "performance standard" which the relief sought promotes.*

- *The wording as proposed by WBOPDC is succinct and identifies the relevant matter of discretion.*

Section 24

12. BOPRC has requested the below amendment to Policy 24.2.2.3. WBOPDC does not agree to the change.

Policy 24.2.2.3

'Control activities to avoid adverse effects on freshwater and coastal ecology and the functioning of the stormwater system, including ~~the~~ streams, wetlands, natural gully network and the coastal interface, and promote improvement of these areas by providing for development that supports restoration of the values of these areas.'

BOPRC Response:

- *BOPRC does not fully understand the WBOPDC position outlined below. These features have been identified extensively throughout Stage 3 of the Ōmokoroa Structure Plan in the catchment management plan to which the Natural Open Space zone (NOS) applies and would appropriately reflect the ecological matters (which are referred to in the Explanation) within the NOS and the interaction with the coastal marine area.*

- *For this reason, BOPRC consider a policy level is necessary in response to relevant directions in the NPS-FM (Objective 2.1, Policies 3, 6, and 7) and the network of connected water features across the structure plan area that have been included within the NOS zone.*

- *Consequential amendments may also be appropriate to Objective 24.2.2 which addresses functions but not ecological values.*

WBOPDC Response:

- *WBOPDC does not consider the change to be appropriate as the recommended wording links more directly with the Objective 24.2.2 (which was unchallenged by any submissions and states):*

"Maintenance and enhancement of the stormwater and coastal inundation management functions of the area."

- *The additional wording makes the policy unnecessarily lengthy and there is no need to list additional components at a policy level.*

13. BOPRC has requested the below amendment to the Matter of Discretion24.5.2. WBOPDC does not agree to the change.

Matter of Discretion 24.5.2

The potential adverse effects on the natural character, ecological, hydrological, cultural, recreational and amenity values of the area and how these may be avoided, remedied or mitigated.

BOPRC Response:

- *While regional council consent may be required, typically these consents are limited to earthworks and modification and include different threshold triggers for consent.*

- *For this reason, the inclusion of this matter is considered appropriate to ensure activities (see approach in Policy 24.2.2.3) consider the effects on the* ***function*** *of waterbodies features alongside ecological values.*

- *In summary, this provides for an integrated approach to protect the receiving environment from inappropriate development in the NOS and is supported by Policy 3.5 and Clause 3.5 of the NPS-FM.*

WBOPDC Response:

- *WBOPDC does not consider the change to be appropriate as the term "hydrological" is generally defined as relating to the study of water which can include distribution, conservation and use, and therefore unintendingly extend discretion beyond the purpose of*

this matter of discretion when practically applied through consent process. As stated in the evidence of Mr Hamill for the Regional Council hydrology is a matter that influences ecology, and accordingly the potential effects on ecology can incorporate this. The addition of the suggested term is not required in the context of the District Council provision although may be appropriate for a Regional Council provision?

Natural Open Space zone

14. BOPRC has requested additional areas to be zoned Natural Open Space zone in regard to 51 Francis Road and Lot 3 DP 28670 (N & M Bruning) and 467E Ōmokoroa Road (M & S Smith). WBOPDC does not agree to the changes.

BOPRC Response:

- *BOPRC has further considered the rebuttal planning evidence of Jeff Hextall. BOPRC continues to seek the recommended minimum changes in the ecological evidence of Keith Hamill[3] in particular, to protect ecological values in the landscape and ensure resilience of their ecosystem services, in particular for Lot 3 DP 28670.*

- *The effect of the designation (on Lot 3 DP 28670) and its interaction with national environmental standards, as well as a general response to the points made by Mr Hextall in relation to the NOS is covered in the legal submissions on behalf of BOPRC.[4].*

[3] See Figure 7 of his Primary dated 25 August 2023

[4] Including reference to s.43(1)(d).

Figure 1: Extent of NOS zone as amended in the s.42a report.

- *Of note, the NOS has otherwise been applied to most of the extent of the Designation 234 which extends down to the Mangawhai Estuary. To this end, BOPRC questions the consistency of approach as to why a different approach is applied for the extension to protect the headland of the ecological corridor down to the coastal marine area which is set out in Figure 7 of the ecological evidence of Keith Hamil.*

WBOPDC Response:

15. WBOPDC does not consider these changes are appropriate for the following reasons:

51 Francis Road

Additional areas of Natural Open Space zone were recommended to be included in the s42A report which was in response to a request by BOPRC. This property and related properties were inspected by Council staff and consultants and a GPS unit was utilised to ensure better accuracy than was available from aerial imagery. There are variations in the topography with banks and land spurs that have been taken into consideration. The latest inspection was not long after a heavy rain event that had resulted in flooding in the area and the extent of floodable area was very apparent and the related influencing factors. Discussion with the landowners on site provided additional insight into the attributes of the area. The extent of the Natural Open Space zone in this area is considered appropriate to provide for the water course feature and potential walkways in this area. Related

to this there is also a 10m landscape strip requirement for the proposed Industrial zone interface with the adjacent State Highway 2, proposed Rural-Residential zone and as recommended (expands into this interface) Natural Open Space zone which provides a further setback and controls any industrial activities (including the creation of impervious areas) in this area.

This area is not affected by any existing designations, but it is noted that the proposed alteration to the State Highway designation plans as provided to the Hearings Panel by Waka Kotahi includes this area and includes significant planned modifications to this area.

Lot 3 DP 28670 and 467E Ōmokoroa Road

The s42A report and statement in evidence in reply by Mr Hextall included detailed discussions on this matter [Refer s42A Report Planning Maps Ōmokoroa Zoning Topics 6 & 7, Statement in evidence in reply Jeffrey Hextall 42-45]. The Natural Open Space zone was significantly extended in response to the submission and subsequent further clarifications from BOPRC however further areas were included within the evidence submitted by BOPRC. The nature of the evidence was in part to provide additional buffer areas around the areas that had higher ecological values. These areas within the 'Bruning land' are generally readily identifiable through being fenced off while other areas such as the additional area that forms part of the Industrial zone in the Operative District Plan are not so and appear subject to grazing. There is also a landscape buffer strip within the Industrial zone that extends along the Rural-Residential and Natural Open Space zone areas adjacent to the Industrial zone.

The 'Bruning land' is currently subject to current designations for both stormwater and State Highway purposes. As noted above the proposed alteration to the State Highway designation plans were provided to the Hearings Panel and includes significant planned modifications including the area in the Bruning land that is in contention with BOPRC. Although concurring that this is yet to be lodged the planning is very well advanced, and as noted above there are operative designations. It has been confirmed by Mr Oliver who is the lead planning consultant working on this project for Waka Kotahi that they have engaged extensively with BOPRC

although this fact was not advised to the Panel by BOPRC staff. Mr Oliver has advised that on the consenting side it has been with Marlene Bosch and Eleanor Christianson. From the technical side (stormwater, hydrology, ecology) it has been Shay Dean, Sue Southerwood, Anna McKay and Alastair Suren. He has also advised that as well as topic-specific meetings they have a regular monthly Consenting Authorities Forum meeting where they meet with BOPRC, WBOPDC, DOC, hapu and Heritage NZ.

It is noted that the NPS for Freshwater Management includes specific provisions for urban development in the Bay of Plenty [3.34]. This includes providing for urban development in situations where this may result in the loss of natural inland wetlands subject to meeting various requirements.

Overall, the inclusion of further areas of Natural Open Space zone is not supported and either the recommended areas (as per the s42A report) are included or the area is reassessed once the alteration to designation process is completed and there is more certainty as to appropriate zoning.

PC92 – Joint Reporting - Signed on behalf of BOPRC

Name:

Position: PLANNER

Signature: Nathan Te Pairi for BOPRC.

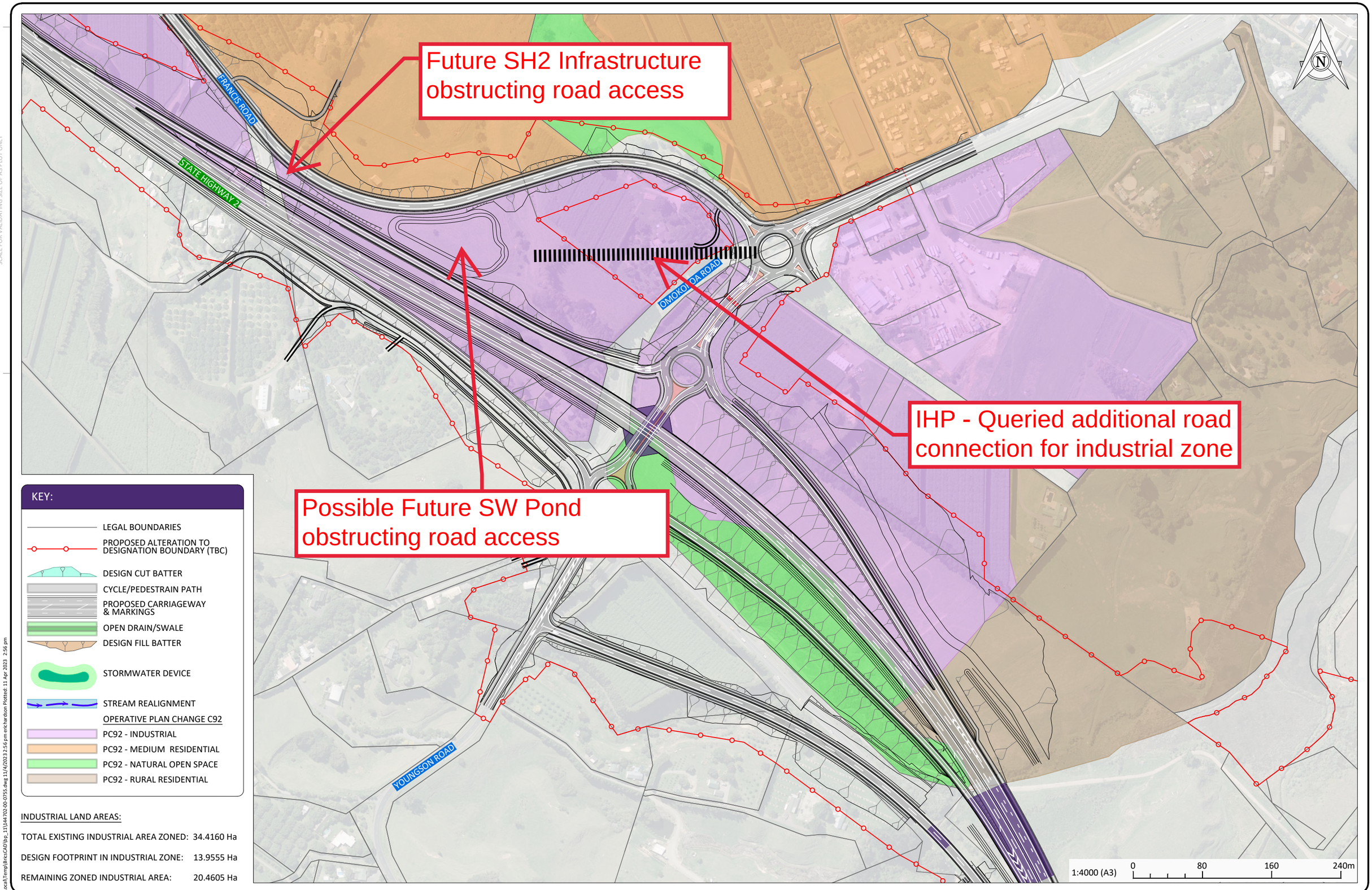
PC92 – Joint Reporting - Signed on behalf of WBOPDC

Name: Taunu Manihera

Position: Consultant Planner

Signature:

Attachment B:



KEY:

- LEGAL BOUNDARIES
- PROPOSED ALTERATION TO DESIGNATION BOUNDARY (TBC)
- DESIGN CUT BATTER
- CYCLE/PEDESTRAIN PATH
- PROPOSED CARRIAGEWAY & MARKINGS
- OPEN DRAIN/SWALE
- DESIGN FILL BATTER
- STORMWATER DEVICE
- STREAM REALIGNMENT

OPERATIVE PLAN CHANGE C92

- PC92 - INDUSTRIAL
- PC92 - MEDIUM RESIDENTIAL
- PC92 - NATURAL OPEN SPACE
- PC92 - RURAL RESIDENTIAL

INDUSTRIAL LAND AREAS:

TOTAL EXISTING INDUSTRIAL AREA ZONED: 34.4160 Ha

DESIGN FOOTPRINT IN INDUSTRIAL ZONE: 13.9555 Ha

REMAINING ZONED INDUSTRIAL AREA: 20.4605 Ha

	DATE	ISSUE/REVISION DETAIL	BY	CHK	APPR
A	11.04.2023	INITIAL ISSUE	ER	JO	JO

mx model version:

DESIGNED: CMC | CHECKED: JO | DRAWN: ER | APPROVED: JO

BLOXAM BURNETT & OLLIVER

CLIENT: WAKA KOTAHI NZ TRANSPORT AGENCY

PROJECT: TAKITIMU NORTH LINK STAGE 2

DRAWING: OMOKOROA INTERCHANGE PROPOSED DESIGN OPTION 1 AND PLAN CHANGE 92 OF OPERATIVE PLAN

STATUS: PRELIMINARY

DATE: 09.02.2023 | SCALE (ORIGINAL SIZE A3): 1:4000

DRAWING NUMBER: 144702-00-0755 | REVISION: A

Attachment B:

Legend

- Road
- Bridge
- Pedestrian Bridge
- Roundabout
- Walkway/Cycleway

Tralee Street
Hamurana Road
H-16
H-15
Anderley Avenue
H14
U-04
O-11-2
Margaret Drive
H-13
U-02-2
W-01
W-02
H-12
U-01
U-02-1
O-11-1
Gane Place
H-11
U-05
Links View Drive
Western Avenue
W-01
U-03
H-10
K-03
Kayelene Place
K-01
O-10
Lynley Park Drive
H-09.3
H-07
ECMT Railway
X-05
X-01
H-08
RD-Dev
O-08
H-06
P-01
Prole Road
O-07-2
FP-6
FP-5
FP-4
FP-3
FP-2
O-05-1
O-04-1
X-04-1
X-04-2
F3.1
O-03-1
O-03-2
Proposed Industrial Road
O-03-2.1
F3.2
F4
F6
F5
Francis Road
O-02-1
O-02-2
O-01
SH2

Delete Industrial Zone Access and Roundabout from Structure Plan, change to right hand turn only

Retain as single entrance into Industrial Zone and add new east / west SP road so

Francis Road/SH2 intersection to be closed

For more information see Appendix 7 and the LTP Structure Plan Financial Contribution Infrastructure Schedule.

Ōmokoroa Structure Plan - Stage 3 - Plan Change 92
Infrastructure - Roading and Walkway/Cycleway

Appendix 7: Western Bay of Plenty District Council Planning Reply Regarding Noise Rule

[Attached to cover email.]

BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

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

AND

IN THE MATTER of Proposed Plan Change 92 to the Western Bay of Plenty District Plan First Review - Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters

---

WESTERN BAY OF PLENTY DISTRICT COUNCIL PLANNING REPLY REGARDING NOISE RULE

Date: 12 October 2023

CooneyLeesMorgan

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

INTRODUCTION

1. I refer to the Joint Memorandum of Counsel regarding noise rule dated 11 October 2023 and the draft Rail Noise Rule attached as Appendix A to that memorandum. The reply statement has been prepared to respond to matters in relation to rail noise and the draft Rail Noise Rule prepared by KiwiRail and Kāinga Ora noise experts. It does not repeat matters set out in the section 42A report and reply statements of evidence on behalf of the Council witnesses (dated 6 September 2023).

2. Direction 3 in the Post Hearing Directions relates to the offer during the hearing by Mr Styles (for Kāinga Ora) to discuss directly with Dr Chiles (for KiwiRail) the drafting of a rule in relation to indoor rail noise (Rule 4C.1.3.2(c)(iii)).

3. In the Reply Statement dated 29 September 2023 I provided a reply to the supplementary statement of evidence of Catherine Heppelthwaite (filed on behalf of KiwiRail on Friday 15 September).

4. The Joint Memorandum of Counsel states (at paragraph 2) that KiwiRail is seeking a 100m mapped setback and Kāinga Ora seeks a fully modelled contour. I provide comments below on this outstanding issue from a planning perspective.

5. From a planning perspective my concerns on the 100m blanket setback remain as set out in my earlier evidence and reply. By applying a blanket 100m setback, noise controls would be applied to land where the noise effects may be too low to justify controls.

6. For reasons outlined previously in my evidence and reply I consider the setback should be measured from the source of the noise, being the rail tracks. This is also confirmed by the Marshall Day Acoustics report (referenced in Dr Chiles Statement of Evidence dated 25 August 2023 at paragraph 7.4). To illustrate the different between a distance measured from the rail tracks or rail boundary, I have had a series of maps prepared showing the 100m setback from the rail line vs the rail corridor boundary, and a map showing a 50m setback from the rail track. This outlines the number of properties and the extent of land captured by a blanket 100m setback rule. These maps are **attached** to this further statement.

7. I support the updates to the wording in the draft Rail Noise Rule related to suitably qualified expert and design certificates. I also support the new wording of (b), (c) & (d).

8. Part (e) of the draft Rail Noise Rule proposes an alternative for bedrooms and habitable space between 50-100m of the railway line. As I have previously raised in my evidence and reply, an acoustic expert or surveyor will still be required to certify that there is no line of sight to 3.8m directly above the formed railway track. This still leaves a blanket requirement to confirm compliance and uncertainty for a large number of properties which may not be affected by rail noise in the first place.

9. To assist the Panel I have provided a track changed version of the draft Rail Noise Rule. I have provided wording for the option of a blanket 50m setback along with changes to reference the "railway track" rather than "designation boundary".

iii. In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m ~~100m~~ of the railway track ~~designation boundary~~, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility shall meet the following requirements:

(a) The building is to be designed, constructed and maintained to achieve an internal design level of 35 dB $L_{Aeq(1h)}$ for bedrooms and 40 dB $L_{Aeq(1h)}$ for all other habitable rooms. Written certification of such compliance from a Suitably Qualified and Experienced Acoustic Consultant shall be submitted with the building consent application for the building concerned. The design certificate shall be based on:

1) A source level for railway noise of 70 $L_{Aeq(1h)}$ at a distance of 12 metres from the nearest track; and
2) The attenuation over distance being:
   i. 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres; or
   ii. As modelled by a Suitably Qualified and Experienced Acoustic Consultant using a recognised computer modelling method for freight trains with diesel locomotives, having regard to factors such as barrier attenuation, the location of the dwelling relative to the orientation of the track, topographical features and any intervening structures.

(b) For habitable rooms for a residential activity, achieves the following requirements:

i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code and that provides at least 1 air change per hour, with relief for equivalent volumes of spill air;

ii. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and

iii. does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser. The noise level must be measured after the system has cooled the rooms to the temperatures in (ii), or after a period of 30 minutes from the commencement of cooling (whichever is the lesser).

(c) For other spaces, a specification as determined by a suitably qualified and experienced person.

(d) A commissioning report must be submitted to the Council prior to occupation of the building demonstrating compliance with all of the mechanical ventilation system performance requirements in subclause (b).

(e) The requirements of (a) to (d) to not apply where the building(s) within 50m ~~100m~~ of the railway track ~~designation boundary~~:

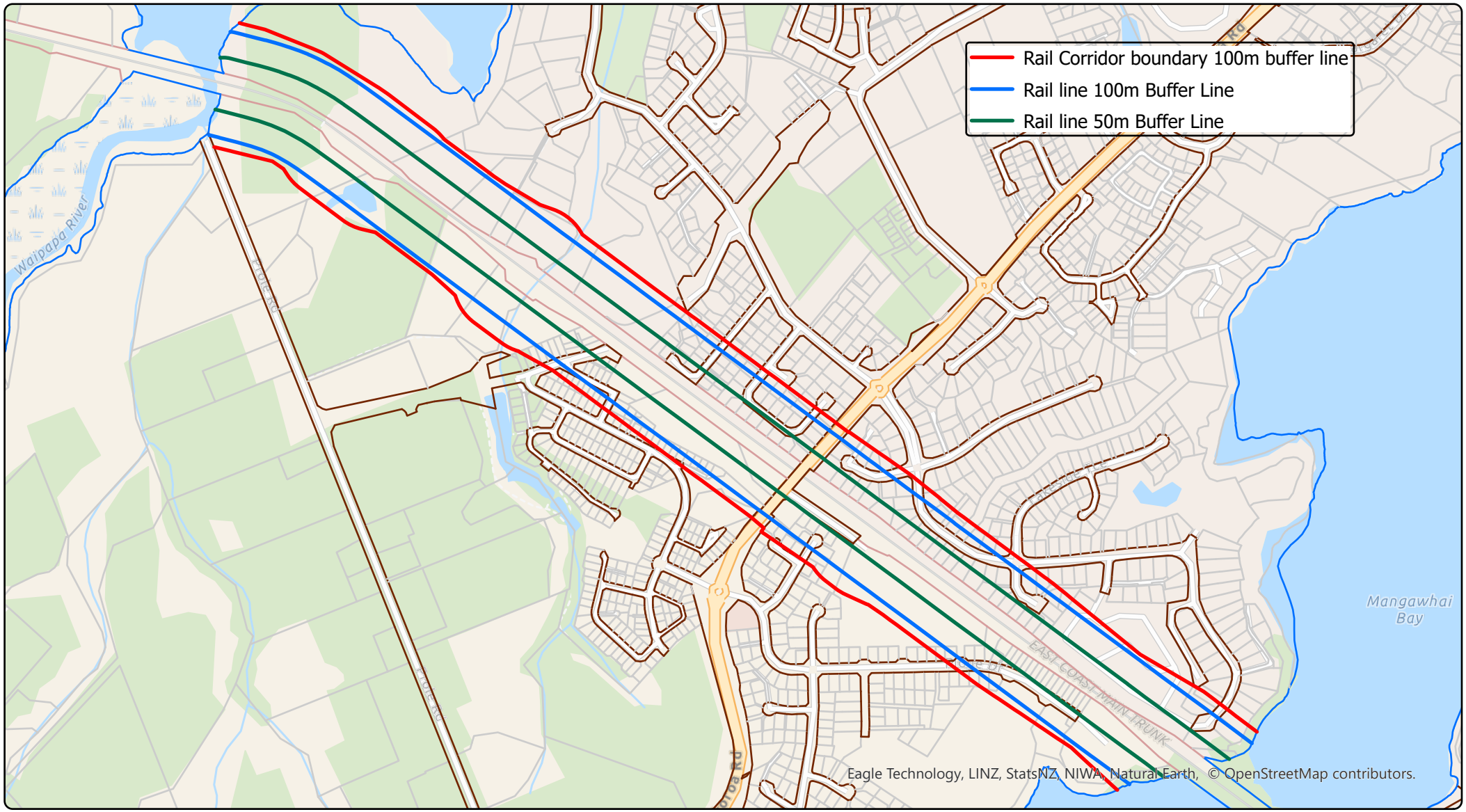
i. Is in a location where the exterior façades of the bedroom(s) or habitable room(s) ~~is at least 50m from the formed railway track and there is~~ has a solid building, fence, wall or landform that blocks the line of sight from all parts of all windows and doors of those rooms to all points 3.8m directly above the formed railway track; or

ii. Is in a location where it can be demonstrated by way of prediction or measurement by an Suitably Qualified and Experienced Acoustic Consultant that the rail noise level at all exterior façades of the bedrooms or habitable rooms is no more than 15 dB above the relevant internal noise levels in (a).

iii. Written certification from a Suitably Qualified and Experienced Acoustics Consultant demonstrating compliance with either (e)(i) or e(ii) as relevant shall be submitted with the building consent application for the building concerned.

10. No further comment has been provided on the Vibration Alert Layer and as such my recommendation remains as set out in my reply evidence on 29 September 2023.

Anna Price
12 October 2023



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Location of services is indicative only. Council accepts no liability for any error.
Archaeological data supplied by NZ Archaeological Assoc/Dept. of Conservation.

Email: gis@westernbay.govt.nz
Date: 9/10/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\Omokoroa Rail Buffers.aprx

Scale A4 - 1:10,000

0 50 100 200 300 400 500 Metres

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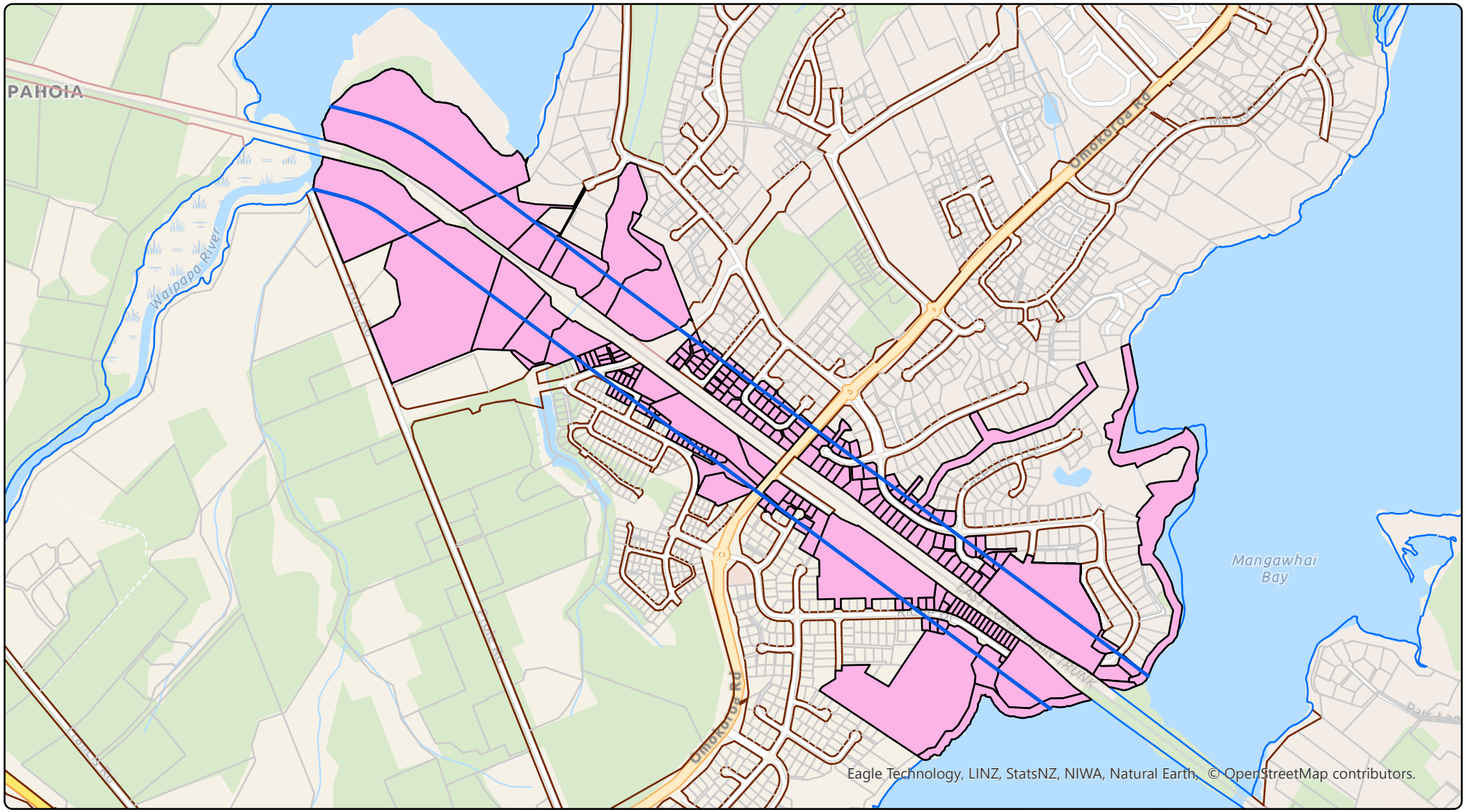
ŌMOKOROA
RAIL BUFFER LINES

N



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Email: gis@westernbay.govt.nz
Date: 6/10/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\Rail corridor buffers.aprx

Scale A4 - 1:12,500
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Metres

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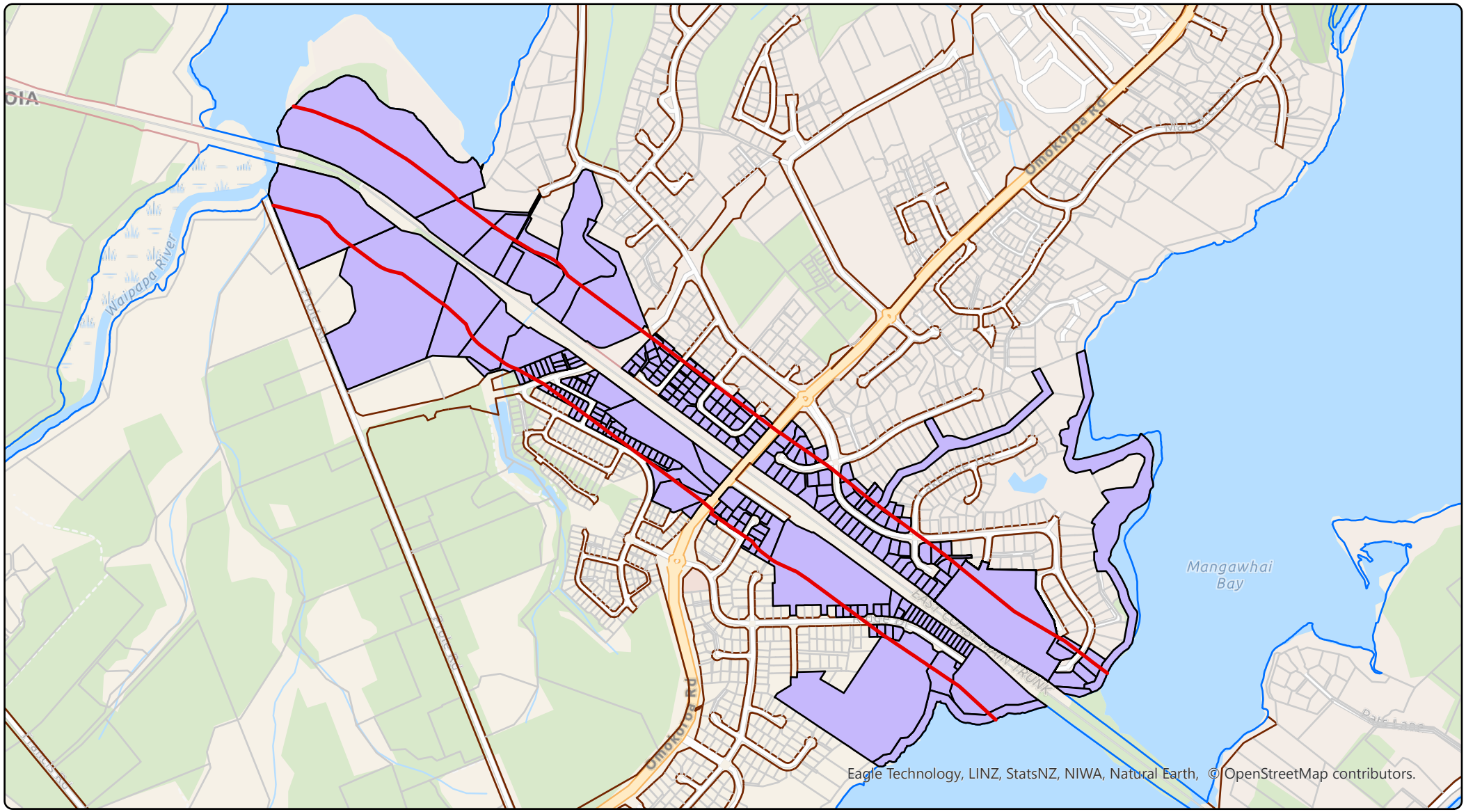
ŌMOKOROA
RAIL LINE
100m BUFFER - 334 LOTS

N



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Email: gis@westernbay.govt.nz
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Map: E:\Shape\MLB\2023\Projects\Rail corridor buffers.aprx

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Metres

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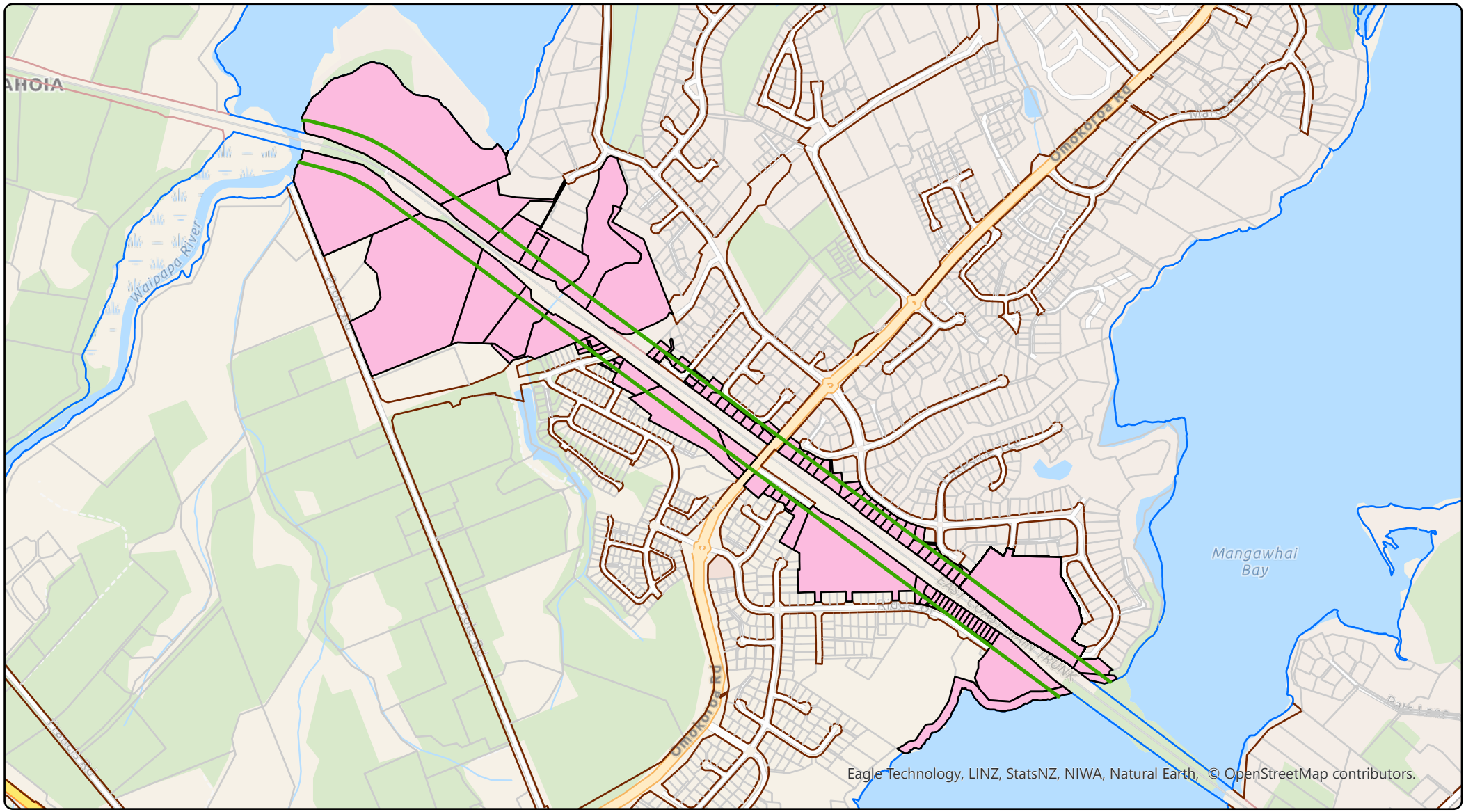
ŌMOKOROA
RAIL CORRIDOR BOUNDARY
100m BUFFER - 383 LOTS

N



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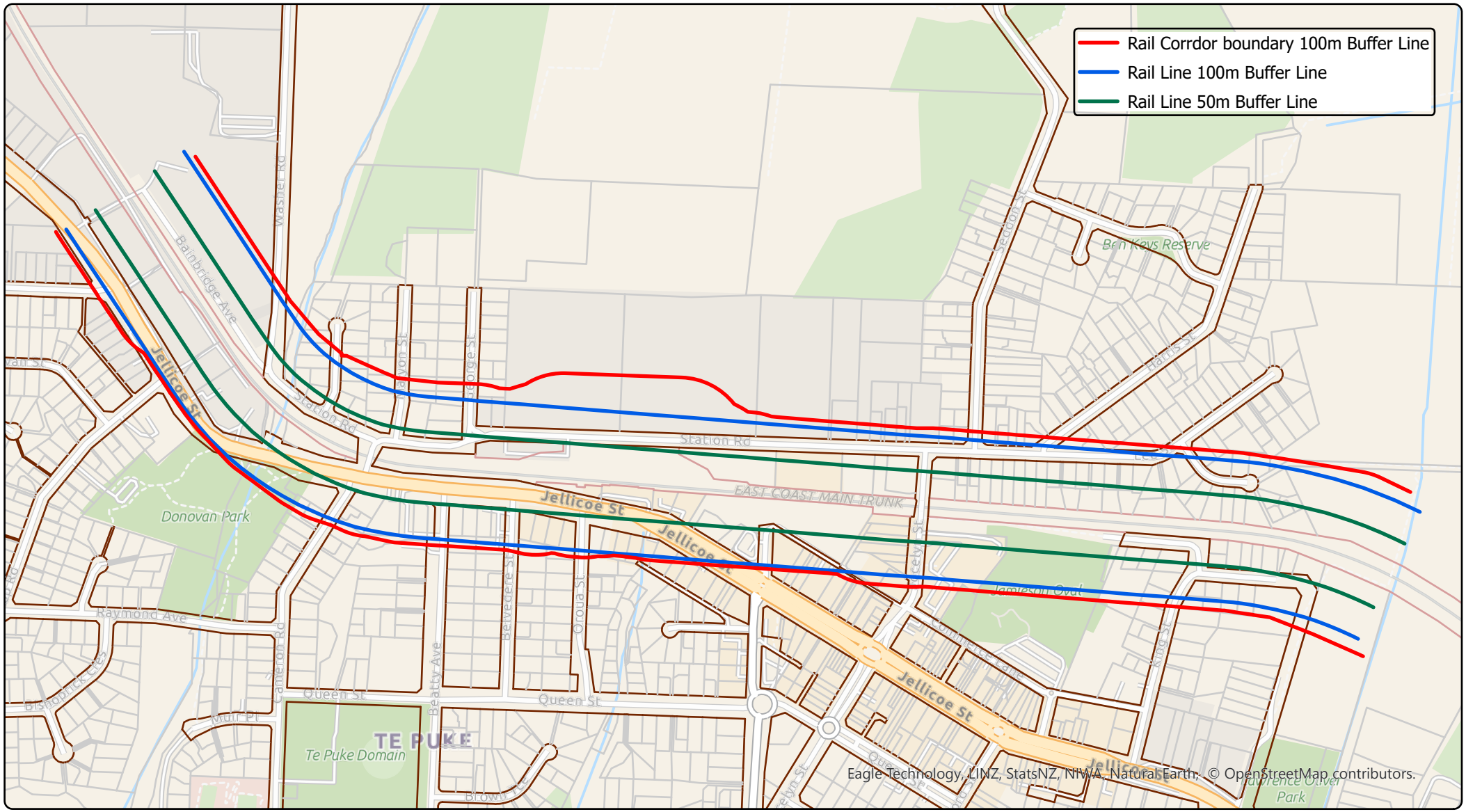
Metres

Western Bay of Plenty District Council | For our people

ŌMOKOROA
RAIL LINE
50m BUFFER - 214 LOTS

N



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Scale A4 - 1:7,500
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Metres

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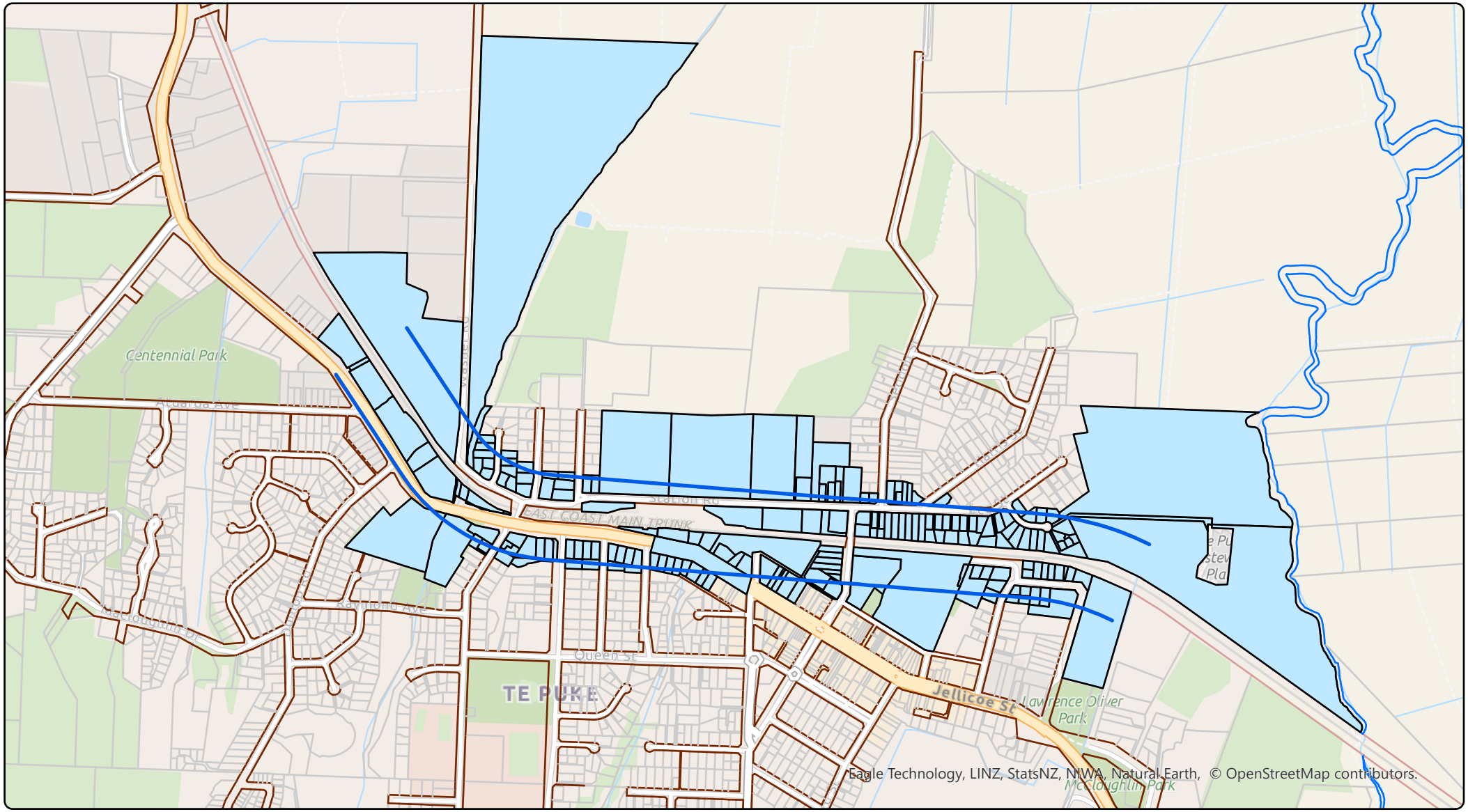
TE PUKE
RAIL BUFFER LINES

N



Email: gis@westernbay.govt.nz
Date: 9/10/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\Te Puke Rail Buffers.aprx

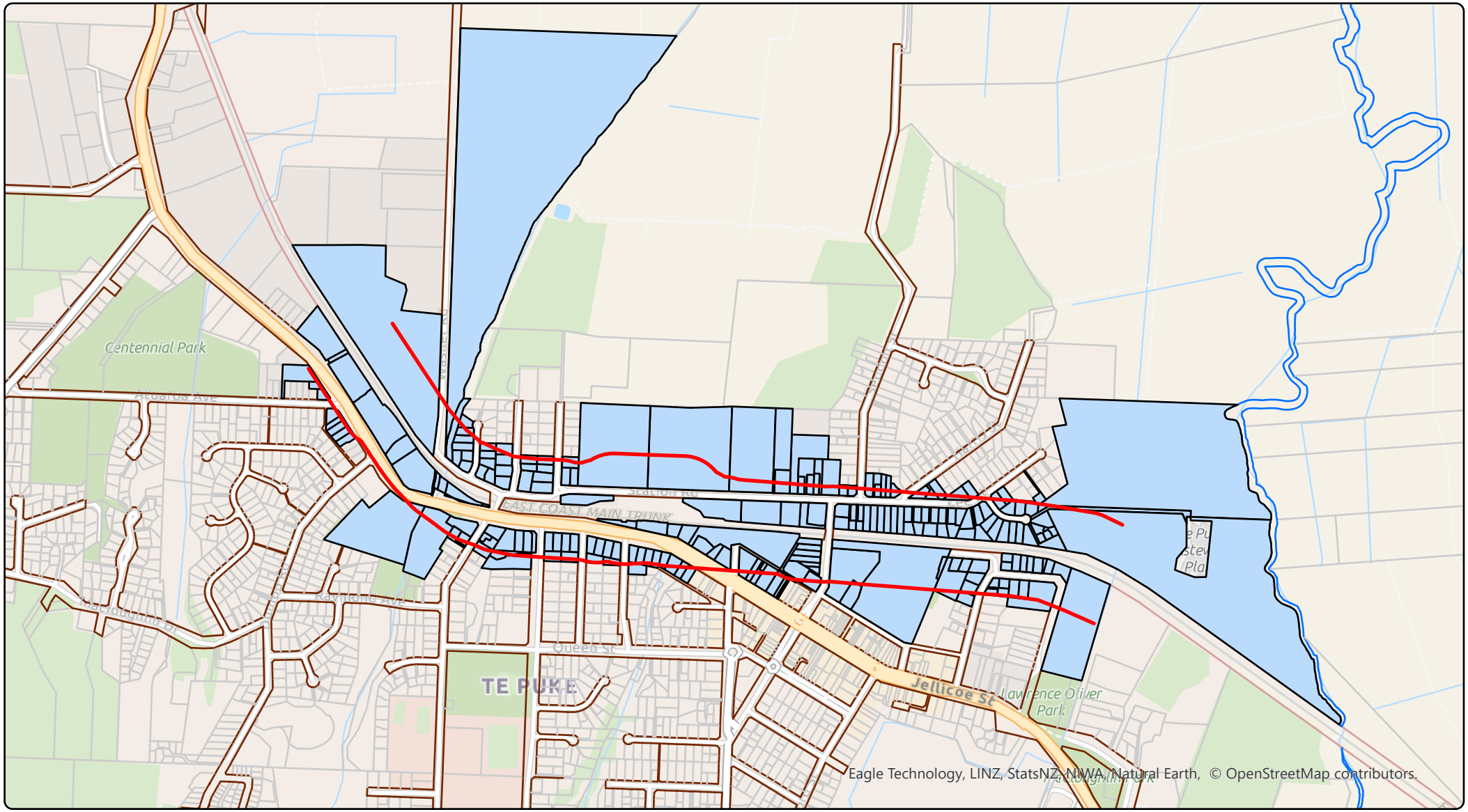
Scale A4 - 1:12,500

0 100 200 400 600 800 1,000 Metres

Western Bay of Plenty District Council | For our people

TE PUKE
RAIL LINE
100m BUFFER - 207 LOTS

N



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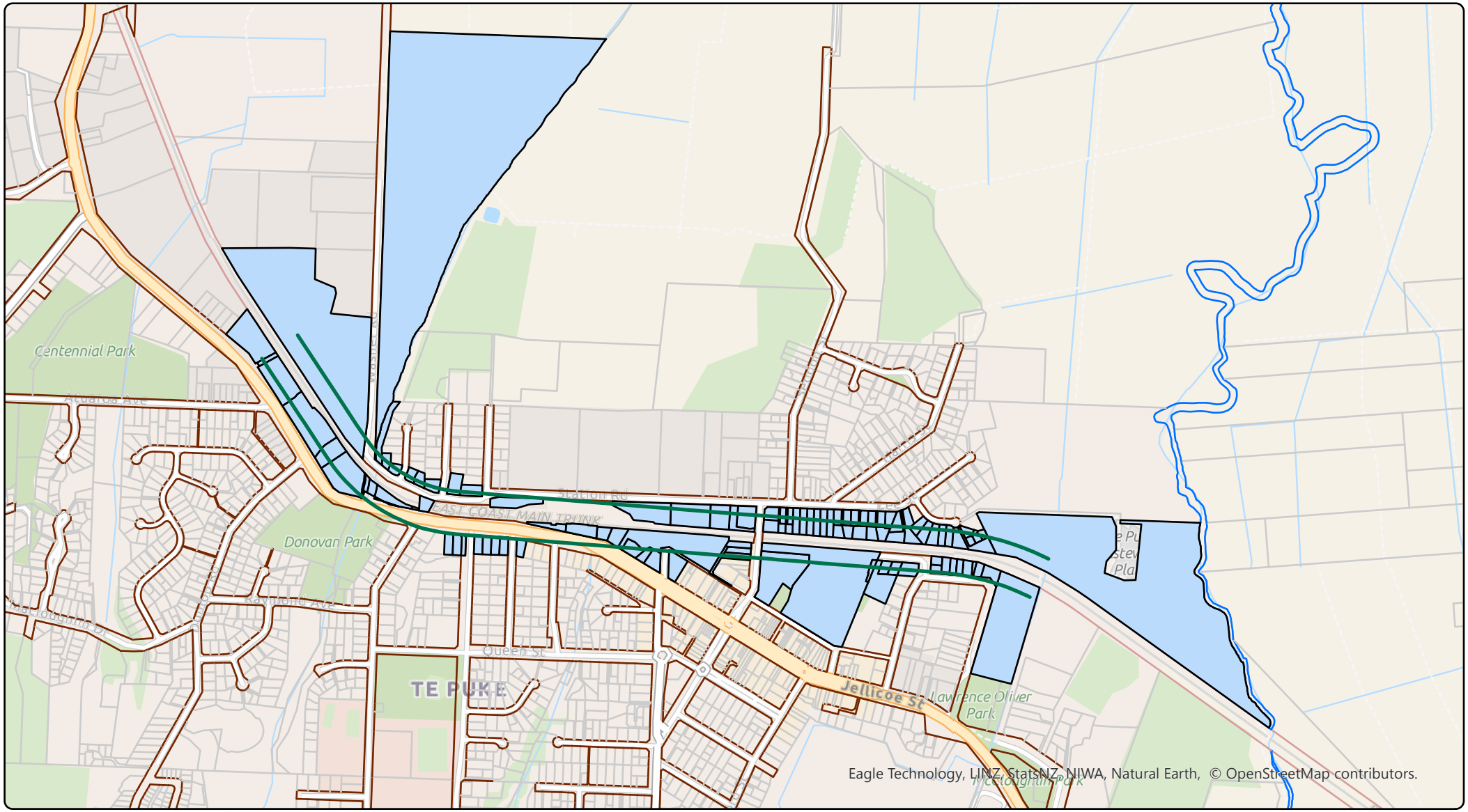
Scale A4 - 1:12,500

0 100 200 400 600 800 1,000 Metres

Western Bay of Plenty District Council | For our people

TE PUKE
RAIL CORRIDOR
100m BUFFER - 230 LOTS

N



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Email: gis@westernbay.govt.nz
Date: 9/10/2023
Operator: mlb
Map: E:\Shape\MLB\2023\Projects\Te Puke Rail Buffers.aprx

Scale A4 - 1:12,500
0 100 200 400 600 800 1,000
Metres

Western Bay of Plenty District Council | For our people

TE PUKE
RAIL LINE
50m BUFFER - 109 LOTS

N

Appendix 8: Legal Submission on behalf of KiwiRail Holdings Limited

[Attached to cover email.]

BEFORE THE INDEPENDENT COMMISSIONERS

IN THE MATTER	of the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER	on Proposed Plan Change 92 ("**PC 92**") to the Operative Western Bay of Plenty District Plan ("**District Plan**")

LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED

7 SEPTEMBER 2023

Russell McVeagh

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Auckland

1. SUMMARY

1.1 KiwiRail is a State-Owned Enterprise responsible for the construction, maintenance and operation of New Zealand's rail network. KiwiRail is also a requiring authority under the RMA and holds designations for railway purposes throughout New Zealand, including the East Coast Main Trunk line, which passes through the Western Bay of Plenty District.

1.2 KiwiRail's rail network is an asset of national and regional significance. The rail network is critical to the safe and efficient movement of freight and passengers throughout New Zealand and forms an essential part of the national transportation network and wider supply chain.

1.3 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating housing near transport corridors. However, such development must be planned and appropriately managed, with the safety and wellbeing of people and the success of the rail network in mind.

1.4 KiwiRail has submitted on PC 92 to ensure there is appropriate management of the interface between urban development and lawfully established, critical infrastructure such as the national railway network. This is critical to support development of our urban environments, and to ensure that critical transport networks are not undermined by the increasing growth and housing intensification enabled by PC 92.

1.5 KiwiRail seeks the following relief:

(a) retention of the identification of the rail corridor as a qualifying matter as proposed by Council;

(b) retention of Rule 14A.4.1(d)(ii)(b) providing a boundary setback for buildings and structures on sites adjoining the rail corridor. This rule as notified requires a 10-metre setback, however KiwiRail would accept a 5-metre setback;

(c) inclusion of a new matter of discretion in Rule 14A.7.4 designed to direct the Council, when assessing a resource consent application to reduce the rail setback, to consider whether or not there remains sufficient space within the site to undertake maintenance;

(d) inclusion of a district-wide noise standard to apply to new noise sensitive activities within 100 metres of the rail corridor;

(e) inclusion of a new definition for "noise sensitive activity"; and

(f) inclusion of a vibration "alert layer" which is an information layer only (ie has no rules or standards attached to it) to signal to property owners that higher levels of vibration may be experienced in the area due to its proximity to the rail corridor.

2. NOISE CONTROLS VS SETBACK CONTROLS

2.1 KiwiRail is seeking two types of controls through PC 92: noise and vibration controls; and boundary setback controls. The s42A report conflates these controls by suggesting that a 10-metre setback protects against rail noise and vibration effects.[1] This is incorrect.

2.2 The **boundary setback control** seeks to avoid health and safety issues caused by people entering the rail corridor because they do not have enough space on their own properties. A boundary setback requires a physical distance between a building and the property boundary with the railway corridor. This ensures people can use and maintain their land and buildings safely without needing to encroach onto the rail corridor. Any encroachment onto the rail corridor has the potential to result in injury or death for the person encroaching, not to mention stopping railway operations.

2.3 **Noise and vibration provisions** are controls requiring acoustic insulation to be installed in new or altered sensitive uses within 100 metres of the railway corridor and the application of a vibration "alert layer". Rail operations can create adverse health and amenity effects on occupiers within 100 metres of the rail corridor.[2] The noise and vibration provisions sought by KiwiRail ensure new development is undertaken in a way that achieves a healthy living environment for people locating within proximity to the railway corridor, and minimises the potential for complaints about the effects of the rail network.

2.4 We expand on the relief sought below.

3. RAIL NOISE AND VIBRATION

3.1 The s42A report identifies the rail corridor as an existing qualifying matter in the context of the 10-metre setback and implies that the noise and

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1 Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 6.

2 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10].

vibration provisions sought by KiwiRail therefore cannot be included in PC 92.[3]

3.2 This is incorrect. In addition to Council's ability to include qualifying matters, section 80E of the RMA gives the Council discretion to amend or include "related provisions".[4] This discretion is broad. By reference to the express use of the terms "amend or include", there is clearly scope to introduce new, or alter existing, provisions in a district plan through an intensification planning instrument ("**IPI**"). Other than requiring that such provisions must "support" or be "consequential" on the mandatory requirements, Parliament did not limit the scope of this power.

3.3 While neither "support" nor "consequential" are defined in the RMA, these terms invoke the need for a connection between the related provisions and the mandatory requirements. In our submission, this can (and must) include provisions to manage the interface between intensification and infrastructure. The implementation of the Medium Density Residential Standards ("**MDRS**") and policies 3 and 4 of the National Policy Statement for Urban Development ("**NPS-UD**") will result in more people living near the rail corridor in Te Puke and Ōmokoroa.

3.4 As a consequence, provisions to mitigate the effects of intensification (such as the noise and vibration controls sought by KiwiRail) are both necessary and appropriate to support the implementation of the MDRS and NPS-UD, as well as being consequential to greater intensification. This approach is also entirely consistent with other councils across New Zealand which have accepted noise controls as being within scope of an IPI plan change.[5]

3.5 In a few other IPI processes, some parties have sought submissions from KiwiRail regarding the applicability of a recent Environment Court decision *Waikanae Land Company Ltd v Kāpiti Coast District Council.*[6]

3.6 The facts in that case concerned the addition of an existing site to Schedule 9 - Wāhi Tapu Areas. The Court considered this amendment **precluded** the operation of the MDRS on the site and therefore could not be considered to "support" or be "consequential on" the MDRS.

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3 Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 6.

4 Resource Management Act 1991, s80E(2).

5 See for example the Interim Guidance on Matter of Statutory Interpretation and Issues Relating to the Scope of the Relief Sought by Some Submissions dated 12 June 2023 from the Auckland IHP under Plan Change 78 p14, where the IHP found that "the range of lawfully acceptable “related provisions” able to be included in an IPI is likely to be extensive" and did not raise scope issues in relation to changing, removing or introducing new noise controls.

6 [2023] NZEnvC 056.

3.7 KiwiRail's relief does not preclude the operation of the MDRS. The noise insulation control sought by KiwiRail will apply as a permitted activity standard. Compliance with the standard avoids consenting requirements (supporting intensification under the MDRS) while at the same time managing effects on the rail corridor as a qualifying matter (which is a relevant basis for the application of the related provisions under section 80E(2)(d) and (e)). The "preclusion" identified in *Waikanae* does not occur.

3.8 KiwiRail's relief is also clearly consequential on the intensification enabled adjacent to parts of the rail corridor by the application of the MDRS, compared to that under the existing District Plan. Intensification significantly increases the number of sensitive activities which may be undertaken compared to the existing District Plan. KiwiRail's relief proposes a way to manage the reverse sensitivity effects of that increased intensification on the rail corridor, while still allowing the MDRS to apply.

3.9 In our submission, the Panel clearly has scope to include the acoustic provisions sought by KiwiRail in PC 92.

KiwiRail's approach to noise and vibration controls

3.10 A key concern for KiwiRail in respect of the District Plan provisions is to ensure that the development of sensitive activities (particularly dwellings) near the rail corridor does not cause ongoing disturbance and adverse health effects to communities surrounding the rail corridor or constrain the use and development of the corridor as a result of reverse sensitivity effects.

3.11 Reverse sensitivity is a well-established legal concept. It is an adverse effect under the RMA.[7] It refers to the susceptibility of lawfully established activities (which cannot internalise all their effects) to complaints arising from the location of new sensitive activities near those lawfully established activities. The location of sensitive activities can place significant constraints on the operation of established activities, as well as their potential for growth and development in the future.

3.12 The Courts have recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects, and have declined applications for developments which have the potential to give rise to such effects.[8] The vulnerability of an activity to reverse sensitivity effects is

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7 See *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29] as cited in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

8 *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218.

enough to warrant the implementation of protections for the activity in question. Most recently, in relation to noise controls in areas near the rail corridor in Drury, the Court said:[9]

> The setbacks [applying noise controls] for activities sensitive to noise sensibly ensure that consideration is given both to the receiving activities and also ensure the noise generating activities (such as the rail corridor and Waihoehoe Road) are not unduly constrained.

3.13 KiwiRail is a responsible infrastructure operator that endeavours to avoid, remedy or mitigate the adverse rail noise and vibration effects it generates, through its ongoing programme of upgrades, repairs and maintenance work to improve track conditions. However, the nature of rail operations means that KiwiRail is unable to fully internalise all noise and vibration effects within the rail corridor boundary.[10] In any case, KiwiRail is not required to internalise all its effects, as the RMA is not a "no effects" statute.

3.14 Accordingly, a balance needs to be struck between the onus on the existing lawful emitter (here, KiwiRail) to manage its effects, and the District Plan providing appropriate controls for the development of new sensitive activities in proximity to the rail corridor. Prudent, forward-thinking planning plays a key part in setting community expectations around effects from the rail corridor by setting reasonable standards of treatment. If land is able to be developed with substandard mitigation, this has the potential to put both sensitive activities and the lawful operation of the rail corridor at risk. Reverse sensitivity effects can manifest in a number of ways, including through restrictions on operations of the rail network (such as night-time movements or train volumes). It is appropriate and responsible planning to ensure developers build with adequate acoustic mitigation in place where they choose to establish near the rail corridor.

3.15 KiwiRail therefore seeks the inclusion of a district-wide noise standard to manage noise sensitive activities within 100 metres of the rail corridor in order to reduce adverse health and amenity effects. The evidence of Dr Chiles sets out the technical basis for this rule.[11]

3.16 The Reporting Planner considers that the District Plan already contains a rule (Rule 4C.1.3.2(c)) which protects noise sensitive activities in all zones,

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9 *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218 at [77].

10 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [5.2].

11 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.4] – [7.6].

including protection from rail noise.[12] With respect, Rule 4C.1.3.2(c) is deficient and does not provide adequate protection for noise sensitive activities in proximity to the rail corridor nor adequately mitigate reverse sensitivity effects on rail operations.

3.17 It is also potentially more onerous than the rule sought by KiwiRail. This is because it applies blanket wide across the district rather than being triggered by proximity to a noise generator. This creates uncertainty for plan users as to when the rule is triggered and acts to require acoustic certification when may be unnecessary.[13] As set out in Dr Chiles' evidence, Rule 4C.1.3.2(c) appears to impose an unwarranted cost in that it requires all houses to have acoustic design certificates regardless of their individual noise environment.[14]

3.18 The rule sought by KiwiRail (set out in **Appendix 1**) addresses the deficiencies identified in the evidence of Dr Chiles and Ms Heppelthwaite. It provides certainty to plan users about where and what acoustic insulation controls apply, and is much more efficient than the current plan rule by only requiring those buildings within 100 metres from the rail corridor to assess the need for controls. As set out in the evidence of Dr Chiles and Ms Heppelthwaite, KiwiRail's proposed noise control provisions allow for site-specific variation to be taken into account when applying the controls.[15]

3.19 Rules with similar provisions have been adopted in a number of other district plans around the country.[16] The approach is not novel or unusual and has been well tested throughout planning processes over a number of years.

Definition of noise sensitive activities

3.20 KiwiRail seeks a new related definition for "noise sensitive activity" to support the application of the district-wide rail noise standard outlined above. KiwiRail's proposed wording is based on provisions that are commonly used in plans throughout the country.

3.21 As set out in the evidence of Ms Heppelthwaite, the current plan provisions do not have a definition of noise sensitive activities but rather include a

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12 Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 7.

13 Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 7.

14 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [6.2].

15 Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [9.3]; Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [8.3].

16 For example Christchurch, Dunedin, Auckland Unitary Plan (Drury Centre and Waihoehoe Precinct), Whangārei, Hamilton, Selwyn, Invercargill, Whakatane.

description of potential noise sensitive activities within Rule 4C.1.3.2(c).[17] This description is broadly worded and, unusually, includes noise generating activities such as sports fields (which are included in the definition of places of assembly). This results in uncertainty as to which activity the noise control is applied to.

3.22 The definition proposed by KiwiRail will ensure that the controls target activities that are truly sensitive to noise. This will assist in plan coherency by ensuring there is no confusion around the interpretation and application of the noise controls.

Ventilation

3.23 KiwiRail's standard noise controls include ventilation and heating and cooling provisions to ensure that the acoustic installation installed under those controls is not undermined by insufficient ventilation. This is because for acoustic insulation to work, windows need to be kept shut. If there is insufficient ventilation, people are forced to open their windows and are then exposed to the noise from the rail corridor.[18]

3.24 The District Plan provisions require compliance with the ventilation provisions of the New Zealand Building Code.[19] However, the air change provisions in the Building Code are at such a low threshold that they do not provide adequate ventilation compared to recommended guidelines with windows closed.

3.25 KiwiRail would expect to see higher air changes (at a minimum 2 air changes per hour, with KiwiRail typically seeking 6 air changes) to enable thermal comfort and ventilation with the windows closed. This provision was inadvertently not included in the relief sought by KiwiRail, however KiwiRail urges the Council to amend the ventilation provisions. Prudent and robust plan provisions would provide for a higher frequency of air changes than the minimum required by the Building Code where acoustic insulation is required.

Vibration alert layer

3.26 In its submission, KiwiRail sought the introduction of vibration controls for new and altered sensitive activities within 60 metres of the rail corridor to manage the adverse health and amenity effects on those near the rail corridor, while also protecting the rail corridor against reverse sensitivity effects. These controls are based on the evidence of Dr Chiles that rail

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17 Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [10.10 (g) and (h)] and [10.15].

18 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [6.5].

19 Rule 4C.1.3.2(c)(ii).

vibration can cause adverse health effects on people living nearby up to 100 metres.[20]

3.27 The Reporting Planner expressed concern around how vibration controls can be implemented from a practical perspective.[21] While Ms Heppelthwaite and Dr Chiles continue to support the inclusion of vibration controls in plans, KiwiRail would accept the inclusion of a rail vibration "alert layer" to resolve the Reporting Planner's concerns in this regard, acknowledging that the costs of managing rail vibration effects can vary significantly for developers.

3.28 This alert layer would apply to all properties within 100 metres on either side of the rail corridor designation boundary. KiwiRail considers this would provide greater coherency and efficiency for a layperson reading the District Plan to see one overlay extending to 100 metres for both noise and vibration. Dr Chiles' evidence is that adverse health effects from vibration extends up to 100 metres from the rail corridor.[22]

3.29 A vibration alert layer is an information layer to signal to property owners that higher levels of vibration may be experienced in the area due to its proximity to the rail corridor. There are no rules or other provisions associated with the vibration alert layer. Alert layers still provide some management of the effects, as landowners may be prompted when building new dwellings to consider incorporating vibration attenuation measures of their own accord or to locate new buildings outside the alert layer. New purchasers will also be alerted when purchasing a property that they may experience such effects.

3.30 **Attached** at **Appendix 1** is the wording sought by KiwiRail for the vibration alert layer to be included in the District Plan through PC 92, based on similar wording recently approved by the Environment Court.[23] Appendix 1 reflects KiwiRail's relief as outlined in Appendix A to the evidence of Ms Heppelthwaite, except for excluding the indoor railway vibration controls previously sought in KiwiRail's submission. This approach has also recently been agreed with Kāinga Ora in the Whangārei District Plan and the Precinct provisions relating to the Drury area in the Auckland Unitary Plan Operative in part.

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20 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10] – [7.11].

21 Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, pp 6-7.

22 Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10] – [7.11].

23 *KiwiRail Holdings Limited v Whangārei District Council* [2023] NZEnvC 004.

4. SETBACKS

4.1 A setback provides a physical distance between a building and the railway corridor boundary. Without a sufficient setback, people painting their buildings, clearing gutters or doing works on their roof will need to go into the rail corridor. Heavy freight trains run on the railway lines through the Western Bay of Plenty District. If a person or object encroaches onto the rail corridor, there is a substantial risk of injury or death for the person entering the rail corridor. There are also potential effects on railway operations and KiwiRail workers, ranging from the stopping of trains affecting service schedules to creating a health and safety hazard for train operators and KiwiRail workers operating within the rail corridor.

4.2 A setback control has safety benefits for the users of the land adjoining the rail corridor and users of the rail corridor; and efficiency benefits for rail operations (and passengers who use rail services including those living in the intensified housing), by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.

4.3 Setbacks are a common planning tool used to ensure the safe and efficient operation of activities such as the rail corridor, particularly when it may come into conflict with adjacent land uses. They are not novel.

4.4 Activities that comply with the setback control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity. KiwiRail has also sought the inclusion of a matter of discretion relating to setbacks to ensure the District Plan provisions provide direction to Council planners when considering an application for a reduction in the setback distance. The proposed setback controls would not create a "no build zone", but rather provide a nuanced approach to development along the rail corridor.

4.5 The District Plan currently contains a 10-metre setback, which has been included in the PC 92 provisions. This provides a generous amount of space for access to maintain buildings in properties adjoining the rail corridor. The retention of the 10-metre setback control enables Council to comply with its obligations under section 74(1)(b) of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety.

4.6 Despite recommending the retention of the 10-metre setback control, the s42A report considers that KiwiRail has not provided evidence that a 10-metre setback is needed to ensure that buildings can be used and

maintained without needing access over the rail corridor.[24] With respect, the safety issues arising from people interfering with a rail corridor should be obvious. Mr Brown's evidence sets out why there needs to be sufficient space required for scaffolding and movement in order to maintain buildings, in particular for taller buildings.[25] If not enough space is provided then the only option is for people to encroach onto the rail corridor with potentially significant consequences.

4.7 The setback is there to *prevent* people from being seriously or fatally injured from encroaching onto the rail corridor. It would be perverse for KiwiRail to have demonstrate injuries or deaths in order to support the inclusion of setback controls in the District Plan.

4.8 In terms of distances, while KiwiRail supports this Council's prudent approach to ensure safety by including a 10-metre setback in the PC 92 provisions, KiwiRail would accept a 5-metre setback as being sufficient to allow safe access and maintenance of buildings and structures on properties adjoining the rail corridor.

4.9 Kāinga Ora considers that a setback of 2.5 metres is sufficient but provides no technical basis for this. Kāinga Ora's evidence states that KiwiRail has on occasion agreed to a 2.5-metre setback with Kāinga Ora through negotiated planning processes.[26] This is correct, however Kāinga Ora has also accepted a setback of greater than 2.5 metres in other negotiated processes.[27] KiwiRail's evidence is that 2.5 metres is inadequate, and in particular a larger setback is necessary under the MDRS where three storey buildings are enabled as of right in applicable zones along the rail corridor, given that taller buildings often require additional equipment for maintenance.[28]

4.10 A setback of 5 metres ensures that there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. This allows for the WorkSafe Guidelines on Scaffolding in New Zealand to be complied with, as well as accommodating other mechanical

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24 Section 42A Report – Ōmokoroa and Te Puke Part 2 (Definitions, Activity Lists, and Standards) – Topic 12 – Rule 14A.4.1(d) – Density Standards – Setbacks, p 34.

25 Statement of Evidence of Michael Brown dated 25 August 2023 at [5.16].

26 Statement of Evidence of Susannah Tait on behalf of Kāinga Ora at [13.2]. We understand this to be a reference to Whangārei District Plan Operative in Part – TRA R10 Minimum of 2 metres – 2.5 metres "mapped" setback accepted through the appeals process depending on zone or existing buffers (eg cycle path alongside rail corridor).

27 5 metres in Auckland Unitary Plan – Drury Centre (I450.6.15) and Waihoehoe (I452.6.11) Precincts and 3 metres in Marlborough Environment Plan – Rule 5.2.1.20.

28 Statement of Evidence of Michael Brown dated 25 August 2023 at [5.16].

access equipment required for maintenance, and space for movement around the scaffolding and equipment.

4.11 Ms Heppelthwaite also considers that the setback is the most efficient outcome from a planning perspective.[29] The 5-metre setback proposed by KiwiRail protects people from the potential safety risks of developing near the railway corridor and allows for the continued safe and efficient operation of nationally significant infrastructure.

5. CONCLUSION

5.1 In our submission, the relief sought by KiwiRail will most appropriately achieve the sustainable management purpose of the RMA, protect the health and amenity of residents within proximity to the rail corridor, and ensure the ongoing safe and efficient use and operation of the railway corridor as nationally significant infrastructure.

DATED: 7 September 2023

A A Arthur-Young / K L Gunnell
Counsel for KiwiRail Holdings Limited

[29] Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [8.3].

APPENDIX 1

Base text is taken from Appendix A – Planner's recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

District Plan Maps

Insert mapping overlay which identifies a 100m buffer on each side of the railway designation boundary called "Rail Vibration Alert Overlay".

14A.7.4 Matters of Discretion

Restricted Discretionary Activities

Non-Compliance with Setbacks In considering an application that does not comply with Activity Performance Standard 14A.4.1(d) Setbacks, Council shall consider the following:

Front yard

a.[..]

Side and rear yards

d. […]

e. […]

f. Whether the location and design of the building or structure provides for the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

4C.1 Noise and Vibration

Explanatory Statement

[…]

~~Vibration from activities has not been an issue in the District.~~ In many cases Council can

manage vibration effects through the management of noise emissions or through the provisions of the Health Act. Specific standards to manage vibration are therefore not proposed. However, a Rail Vibration Alert Overlay has been applied which identifies the vibration-sensitive area within 100 metres each side of the railway designation boundary as properties within this area may experience rail vibration effects. No specific district plan provisions apply in relation to vibration controls as a result of this Rail Vibration Alert Area. The Rail Vibration Alert Overlay is to advise property owners of the potential vibration effects but leaves with the site owner to determine an appropriate response.

[…]

4C.1.3.2 Noise Limits

a. […]

b. […]

c. Noise sensitivity […]

ca. Indoor railway noise

Activity status: Permitted
(a) Any new building or alteration to an existing building or structure for a noise sensitive activity within 100m of the railway designation boundary.

Activity-specific standards:
1. Any new building or alteration to an existing building that contains a noise sensitive activity where the building or alteration:
   (a) is designed, constructed and maintained to achieve indoor design noise levels resulting from the railway not exceeding the maximum values in Table X; or
   (b) is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to all points 3.8 metres above railway tracks

Table X

Building type	Occupancy/activity	Maximum railway noise level $L_{Aeq(1h)}$
Residential	Sleeping spaces	35 dB
	All other habitable rooms	40 dB
Education	Lecture rooms/theatres, music studios, assembly halls	35 dB
	Teaching areas, conference rooms, drama studios, sleeping areas	40 dB
	Library	45 dB
Health	Overnight medical care, wards	40 dB
	Clinics, consulting rooms, theatres, nurses' stations	45 dB
Cultural	Places of worship, marae	35 dB

Activity status where compliance not achieved: Restricted Discretionary

4C.1.4.3 Restricted Discretionary Activity – Rail Noise
Council's discretion is restricted to the following matters:
(a) location of the building;
(b) the effects of any non-compliance with the activity specific standards;
(c) special topographical, building features or ground conditions which will mitigate noise impacts;
(d) the outcome of any consultation with KiwiRail.

Definitions
Amend the definition of "Qualifying Matter"

“Qualifying matter” means one or more of the following:
• Ecological features listed in Appendix 1 (Schedule of Identified Significant Ecological Features) and identified on the District Plan Maps.
[…]
• Land within 10m of a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010).~~
• […]

Consequential Change
14A.4 Activity Performance Standards
d. Setbacks
[…]
ii. This standard does not apply to:
[…]
b. site boundaries with a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010)~~ in which case all yards shall be 10m.

New Definition

Noise sensitive activity means any lawfully established:
a) residential activity, including activity in visitor accommodation or retirement accommodation, including boarding houses, residential visitor accommodation and papakāinga;
b) educational activity;
c) health care activity, including hospitals;
d) congregation within any place of worship; and
e) activity at a marae.

Appendix 9: Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora – Homes and Communities (Noise and Vibration)

[Attached to cover email.]

BEFORE INDEPENDENT HEARING COMMISSIONERS
AT TAURANGA

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI TAURANGA

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions on Proposed Plan Change 92 (Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters) (PC92) to the Operative Western Bay of Plenty District Plan (WBOPDP)**

STATEMENT OF REBUTTAL EVIDENCE OF JON STYLES ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

(NOISE AND VIBRATION)

6 SEPTEMBER 2023

Instructing solicitor:
C E Kirman
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1. INTRODUCTION

1.1 My name is Jon Robert Styles. I am an acoustic consultant and director and principal of Styles Group Acoustics and Vibration Consultants. I lead a team of 8 consultants specialising in the measurement, prediction and assessment of environmental and underwater noise, building acoustics and vibration working across New Zealand and internationally.

1.2 I have approximately 22 years of experience in the acoustics and noise control industry. For the first four years I was the Environmental Health Specialist – Noise at the Auckland City Council, and for the latter 18 years I have been the Director and Principal of Styles Group Acoustics and Vibration Consultants. I have a Bachelor of Applied Science (EH) majoring in Environmental Health.

1.3 I am the past-President of the Acoustical Society of New Zealand. I have completed two consecutive two-year terms as the President from 2016 to 2021. I have been on the Council of the Society for approximately 15 years. Styles Group is a member firm of the Association of Australasian Acoustical Consultants (AAAC) and I am on the Executive team of the AAAC. My role on the Executive is to oversee the development of guidelines for acoustical consultants to follow in their day-to-day work and to participate in the governance of the AAAC generally.

1.4 Most recently I have advised Kāinga Ora on similar noise-related issues (noise from road, rail and airports) in the review of the Wellington, Selwyn, Porirua, Waikato, New Plymouth, Waimakariri, Christchurch and Central Hawkes Bay District Plans. I advised the Whangarei District Council through the recent Urban and Services Plan Change process and appeal process that dealt with the District Plan provisions for managing exposure to road and rail noise.

1.5 I have worked on District Plan provisions relating to the management of road, rail and airport noise in a significant number of different processes around New Zealand.

1.6 I been directly advising the Gore District, Kaipara District, Napier City, Taupō District and Whangarei District Councils through comprehensive District Plan review processes. I assisted the Auckland Council through the development of the Auckland Unitary Plan and continue to provide advice to Auckland Council on both Council-initiated and private plan change requests. I have also assisted many private clients through plan change and review processes across New Zealand.

1.7 In preparing this evidence I have read the Section 42A reports and the evidence prepared by Dr Chiles, Mr Brown and Ms Heppelthwaite for KiwiRail.

1.8 I have worked with Ms Beneke and Ms Tait for Kāinga Ora in preparing this evidence.

Code of Conduct

1.9 Although this is a Council hearing, I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence.

1.10 Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

Scope of Evidence

1.11 My evidence addresses the noise and vibration issues arising from the relief KiwiRail are seeking in respect of intensification in close proximity to the East Coast Main Trunk (**ECMT**), which passes through Ōmokoroa and Te Puke.

1.12 My evidence will address the following matters:

(a) The reasons why I generally support a requirement to acoustically treat activities sensitive to noise that locate near to the ECMT;

(b) The reasons why I support a much more refined and accurate approach for defining the extent of the rail noise controls by modelling the noise levels;

(c) The reasons why I disagree with the recommendations in the s42A Report; and

(d) The issues and costs associated with controls on rail vibration and why I support a rail vibration alert layer.

2. VIBRATION CONTROLS FOR RAIL

2.1 In my experience, vibration effects extending beyond the rail corridor at a level requiring some degree of control is reasonably common. The movement of laden freight trains is generally responsible for the highest vibration levels. Passenger trains typically generate lower vibration levels due to their lower mass and better suspension (put simply). I understand that passenger trains are infrequent on the ECMT.

2.2 The vibration that is felt outside the rail corridor is highly variable and the attenuation of rail vibration over distance is very difficult to predict. The vibration levels are dependent on a wide variety of factors, such as rail and rolling stock condition, train speed and laden weight, ground conditions, topography, the type of building it is affecting, it's foundations and overall mass, and other factors.

2.3 The s42A Report recommends that no controls be adopted to manage the vibration effects. I note that the Council does not appear to have sought advice from a vibration expert on this issue.

2.4 The evidence for KiwiRail seeks the addition of specific rules and standards that require the receiving environment to manage the

potential and variable effects of vibration generated by the ECMT, without any provisions or controls that would require KiwiRail to minimise the generation of vibration at the source (inside their designations).

2.5 Importantly, the controls proposed by KiwiRail would only apply to any new development. The controls will not have any effect on the potential adverse health and amenity effects already experienced by the existing communities.

2.6 I consider that the adoption of the Best Practicable Option[1] (**BPO**) to manage vibration effects on existing communities could easily justify improvements to and changes in the operation of the network. This could include a range of measures including slowing freight trains down when they pass through residential communities at night. Vibration reduction measures might be the BPO if there was an existing vibration issue affecting the existing community.

2.7 The adoption of such measures could reduce the need for and extent of vibration controls in the receiving environment for new development, particularly where intensification is anticipated.

2.8 The controls sought by KiwiRail essentially require that vibration generated by rail traffic does not exceed a level of 0.3 mm/s V_{w95} when measured inside a range of defined noise / vibration sensitive activities.

2.9 The controls sought by KiwiRail require the landowner / developer to carry out vibration measurements of at least 15 laden freight train pass-bys operating at normal speeds and under normal conditions to determine whether there is a vibration issue at the proposed building platform, and then to carry out whatever mitigation measures might be necessary to ensure that the design level is complied with on the floor of habitable spaces.

2.10 I consider that the highly dynamic nature of any potential issues means that dealing with the potential issue in the receiving

[1] As defined by the Resource Management Act 1991

environment becomes highly uncertain, expensive and potentially highly inefficient.

2.11 The design, construction and compliance costs of implementing the indoor vibration controls will be significant and have not been quantified by KiwiRail. The evidence from Dr Chiles and Ms Heppelthwaite mention cost and acknowledge that the vibration controls could create new costs, but they do not assess how significant those costs could be and how they might affect development.

2.12 In my experience, the costs of managing vibration in the receiving environment are generally significant.

2.13 I detail the costs of the various assessments in **Appendix A** of this evidence. These are based on my experience of working with similar controls elsewhere in New Zealand.

2.14 In my view, the potential for indoor rail vibration controls and design limits should only be considered if there is relevant and robust evidence on the actual and likely effects of rail vibration beyond the boundaries of KiwiRail's rail corridors and across land where intensification is anticipated. Such evidence would need to address:

(a) Whether the adoption of the BPO and KiwiRail's own policies for managing vibration effects (particularly in existing communities) would still result in vibration levels outside the rail corridor regularly or typically exceeding a level of 0.3mm/s V_{w95} and if so why, at what level and at what distance;

(b) Whether or not it is typical for rail vibration levels to exceed 0.3mm/s V_{w95} in buildings on land where the WBPDP provides for the development of noise sensitive activities, after the adoption of the BPO inside the corridor;

(c) If so, what are the typical vibration levels and adjacent to what parts of the rail network do they arise;

(d) Are different standards appropriate for different sections of the railway network, such as where train speeds are low; and

(e) Even if the evidence does demonstrate that vibration levels exceed 0.3mm/s V_{w95} on land where intensification is anticipated, have the potentially significant costs and the benefits of the controls been properly assessed.

2.15 Ms Heppelthwaite proposes the 'rail vibration alert overlay' as an alternative method for managing vibration effects. This option would alert development to the potential adverse effects of rail vibration but does not impose any requirement to measure, predict and mitigate vibration effects in the receiving environment. This option creates awareness of the issue but avoids the potentially significant costs of achieving a set vibration level.

2.16 I support the alert overlay in this instance.

3. NOISE CONTROLS FOR RAIL

3.1 I generally support the concept of rail noise controls in the receiving environment as proposed by KiwiRail.

3.2 The s42A Report states that no change to the ODP provisions is required and that no specific rail noise controls should be adopted. I disagree with the s42A report. I consider that specific rail noise controls should be adopted and that the ODP provisions are unclear and uncertain and will not adequately deal with the effects of rail noise.

3.3 Even though I support the concept of rail noise controls, I consider that the controls proposed by KiwiRail are blunt and inefficient. I consider that a considerable level of refinement is required to ensure that the controls are efficient and will not apply to land where the effects are too low to justify controls.

Recommendations in the s42A Report

3.4 The s42A Report does not include any assessment by an acoustics expert.

3.5 The s42A Report recommends that no specific rules for managing rail noise are required and that the provisions of the operative Rule 4C.1.3.2(c) will adequately manage the issue.

3.6 I disagree with the s42A Report's recommendations.

3.7 I agree with Dr Chiles and Ms Heppelthwaite that the provisions of Rule 4C.1.3.2(c) are problematic in many ways and are not suitable for the control of rail noise effects.

3.8 I consider that many of the specific issues with Rule 4C.1.3.2(c) make it inefficient and unworkable for situations other than rail noise as well. I therefore disagree with the recommendations for Topic One in the s42A Report as well.

3.9 My specific concerns with using Rule 4C.1.3.2(c) for the management of rail noise effects are:

(a) Rule 4C.1.3.2(c) does not specify what the external level of noise is, how it should be derived and on what basis. The controls for managing rail noise should be specific and contained in the rule to avoid the need for measurement and dispute about train speed, length and noise level. I consider that this is probably the most significant issue.

(b) The spatial extent that the rule covers is not specified. It would not be possible for a plan user or the Council to determine whether acoustic treatment for rail noise would be required or not for any particular situation, and if so, to what degree.

(c) Rule 4C.1.3.2(c) contains unclear and uncertain terms such as "potentially noise-sensitive activities" and "such as".

(d) The table of sound levels not to be exceeded is unclear and ambiguous. The reference time interval for the application of the noise levels is not clearly specified. If it were time-averaged over the day and night periods respectively (as it appears they are) these timeframes and levels are inappropriate for the management of rail noise effects.

(e) The rule applies to a range of potentially noise sensitive activities, but the sound levels in the table only apply to offices and residential units. These are inconsistent and it makes the rule unworkable for anything other than offices and residential units.

(f) Rule 4C.1.3.2(c) also requires that where windows and doors need to be closed to achieve the internal noise levels, the rooms only need to be ventilated to meet the requirements of clause G4 of the New Zealand Building Code. It is well-accepted in New Zealand that this is insufficient for allowing people to remain cool, comfortable and healthy. I consider that current best-practice would see the ventilation and cooling requirements upgraded considerably to ensure they are fit for purpose and will achieve appropriate outcomes.

3.10 For these reasons, I disagree with the recommendations in the s42A Report and I consider that controls more like those sought by KiwiRail are appropriate.

KiwiRail's proposed controls

3.11 KiwiRail seek a set of noise controls that are specific to managing the effects of rail noise. I agree with KiwiRail that a specific set of controls is appropriate in this case.

3.12 However, I consider that the controls proposed by KiwiRail are inefficient and relatively blunt.

3.13 I consider that the main issue is the standard setback distance of 100m where the controls will apply. I consider that this will apply the controls to land that is not affected by noise to the degree that controls are necessary. This will force developers and homeowners through a process that will be unnecessary. Such a process would be even more complicated and inefficient if the recommendations in the s42A Report are adopted.

3.14 I consider that the standard setback distance incorporates potentially significant inefficiencies by ignoring a range of factors that can influence the rail noise level at any particular property. These factors include:

(a) Train speed on each part of the network;

(b) Screening by topography (which is significant in some parts of the Western Bay of Plenty District);

(c) Screening by buildings;

(d) The effects of tunnels, bridges and other structural features.

3.15 For example, the ECMT passes through Ōmokoroa in a significant cutting. This will significantly reduce noise levels from the rail pass-bys, and especially from the rolling stock at the bottom of the cut. However, it may not screen the exhaust noise from the locomotive very well.

3.16 These factors will reduce the extent of land affected by rail noise but may complicate the application of KiwiRail's proposed compliance pathway where an applicant can demonstrate that their site is screened from the railway line up to a height of 3.8m.

3.17 I consider that the most efficient and appropriate way of defining the extent of the rail noise controls is to model the propagation of noise using computer sound modelling.

3.18 My experience is that this will have the effect of significantly reducing the spatial extent of the controls overall, and especially where there is more complex topography and screening effects.

3.19 I consider that the noise from the entire corridor should be modelled in this way to define the extent of the controls.

3.20 I consider it likely that most applicants seeking to develop more than one property (say for a subdivision) would engage an acoustic expert to conduct the modelling if it is not completed now. I therefore consider that not completing it now is simply passing on the cost to developers to demonstrate that the controls might not be reasonable or required across the land they want to develop. This would incur costs for the applicants and the Council at each occurrence, and it would create unnecessary uncertainty in the process arising from differing interpretations of the rules and modelling requirements, and different approaches by different consultants.

3.21 I consider that the computer noise modelling exercise should be undertaken now. It could be limited to the areas where intensification is being provided for.

3.22 I consider that such modelling is relatively straightforward given the easily accessed and reliable LIDAR terrain and other digital spatial data.

3.23 I consider that relying on modelled noise level contours prepared and incorporated into PC92 now, rather than a standard metric setback distance, ensures the burden of assessment mitigation does not extend any further into the community than is absolutely necessary.

3.24 Other than the fact that i do I do not support the standard setback distances, I generally support the provisions and definitions proposed by KiwiRail.

3.25 However, I consider that some minor amendments should be made to the controls proposed by KiwiRail. These include:

(a) The level of rail noise is not specified, and it should be;

(b) The methods for determining the rate of noise level attenuation over distance is not specified, and it should be;

(c) The requirements for mechanical cooling and ventilation to allow people to remain cool, comfortable and healthy in closed rooms are not specified, and they should be.

4. CONCLUSION

4.1 I have considered the application of rail noise and vibration controls for the Western Bay of Plenty district. My overall views are:

(a) The cost and complexity of the rail vibration controls and indoor vibration limit sought by KiwiRail are significant;

(b) I generally support the 'rail vibration alert layer' as proposed by KiwiRail;

(c) I disagree with the s42A Report that rail noise controls are not necessary;

(d) I consider that the recommendation in the s42A Report to maintain the operative provisions is quite problematic. I consider that Rule 4C.1.3.2(c) has a number of issues that make it inappropriate for managing rail noise (and any other noise sources in the District);

(e) I generally support the application of separate rail noise controls as sought by KiwiRail, with some important caveats:

(i) The spatial extent of the controls needs to be defined by noise modelling now – especially in areas where intensification is anticipated;

(ii) The source levels of rail noise need to be defined in the rule;

(iii) The methods for defining the attenuation of noise over distance need to be specified; and

(iv) The performance standards for mechanical cooling and ventilation should be specified for situations where the indoor noise levels can only be achieved where windows and doors need to be closed.

Jon Styles

6 September 2023

APPENDIX A – Brief note on the cost of noise and vibration mitigation

In my experience, the costs of complying with the proposed noise standards may include:

1) Acoustical design work to achieve the specified internal noise levels. This is generally straightforward and for a typical dwelling the cost would generally be between $500 and $1000 +GST.

2) Additional construction costs to achieve the specified internal noise levels, such as thicker glass or double-glazing, a heavier façade materials, sarking under the roof, additional layers of plasterboard, solid core doors in the façade. Based on my experience, the extra costs of building materials and labour can be significant (>$50,000 +GST) for dwellings very close to major roads or dwellings close to railway lines. The cost is typically less for a new-build compared to retrofitting insulation to an existing building.

3) Installing mechanical cooling (air conditioning) and a mechanical fresh air supply to enable people to keep their windows and doors closed to keep the noise out. In my experience the cost of this ranges considerably based on the size of the building and the number of rooms. For a typical single-level dwelling, it is my experience that either a ducted heat pump system would be required, or a system comprising at least two indoor high-wall or cassette units, as well as a one or more small, silenced fans to provide an exchange of fresh air. In my experience, the cost of these systems can range from approximately $1000 +GST for the supply and install of a fresh air fan, (or fans) where air conditioning is already proposed, or $10k to $20k +GST for an air conditioning system and silenced fans where none were otherwise proposed.

4) Resource consent processes. The estimation of these costs is beyond my area of expertise.

The cost of meeting the proposed vibration standards is generally much greater than for noise.

If a new noise sensitive activity or an alteration to an existing noise sensitive activity is proposed within the vibration effects area where vibration limits must be complied with, the following procedure would generally be necessary:

1) The applicant would need to engage a suitably qualified vibration expert to carry out vibration measurements at the location of the proposed noise sensitive activity.

2) The vibration measurements would need to capture at least 15 pass-bys of the vibration source of interest. If it were for road vibration, the measurements could probably be conducted in a few hours (to capture 15 trucks in the lane(s) of interest).

3) If it was rail vibration, the seismograph would need to be set up and left for several days to capture 15 freight train pass-bys. The time and cost of this work would be significant. The instrument would need to be secured and a power source arranged for the week or two of measurements required. This may include solar power, and in some instances additional secure enclosures if the site is otherwise open.

4) The rail network would need to be operating normally with no temporary speed restrictions for maintenance or other reasons in place, and the trains being measured would need to be laden. These factors can be difficult to determine.

5) The pass-by data would need to be analysed against the requirements of NS8176E and a brief report prepared that sets out the measured vibration levels and confirming whether the vibration levels in the proposed noise sensitive activity would be less than 0.3mm/s V_{w95}.

Based on my experience, the cost of an initial vibration assessment would be in the order of $3k to $4k +GST. There are few consultants with the necessary equipment and expertise to do this work in New Zealand, so it is likely that many assessments would be completed by consultants from outside the region.

The cost of a rail vibration assessment would be considerably greater given the likelihood that the assessment period would be for at least several days or a week and potentially longer. I estimate that the cost of a rail vibration assessment would be in the order of $5k to $8k +GST, and possibly more if security, solar panels and extensive travel is required.

If the vibration assessment demonstrates that the vibration level in the proposed noise sensitive activity will be greater than 0.3mm/s V_{w95}, the options for the applicant would generally be:

1) Isolate the building from the ground vibration by using base isolation techniques. My experience is that the cost of this treatment would typically be $100k +GST for a single-level dwelling on top of the cost of the build itself.

2) Build a larger building from heavy masonry construction. The additional mass of the structure (compared to a lightweight structure) would assist in reducing the vibration level inside the noise sensitive activity. This option is high-risk and, in my experience, high-cost compared to normal dwelling construction methods and materials.

3) Abandon the proposal due to cost. In my experience, this option is commonly adopted when applicants find out the true cost and difficulty of dealing with the vibration issues. Often this happens when the design of the building is well-advanced and considerable time and cost has already been expended.

In my experience, option (3) above is often found to be the only viable option.

In some cases, the applicant has only found out the implications of the vibration controls after resource consent has been granted. The vibration assessment might be required by a condition of consent to be addressed before the building is occupied. By the time the vibration survey has been undertaken and results provided, plans to build are well underway and construction has started in some cases. My experience is that this has led to the abandonment of the development in some cases and significant financial losses.

Appendix 10: Joint Memorandum of Counsel Regarding Noise Rule

[Attached to cover email.]

BEFORE THE INDEPENDENT HEARINGS COMMISSIONERS
AT TAURANGA

IN THE MATTER	of the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER	of Proposed Plan Change 92 ("**PC 92**") to the Operative Western Bay of Plenty District Plan ("**District Plan**")

JOINT MEMORANDUM OF COUNSEL REGARDING NOISE RULE

11 OCTOBER 2023

Russell McVeagh

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MAY IT PLEASE THE COMMISSIONERS:

1. This joint memorandum is filed on behalf of KiwiRail Holdings Limited ("**KiwiRail**") and Kāinga Ora - Homes and Communities ("**Kāinga Ora**").

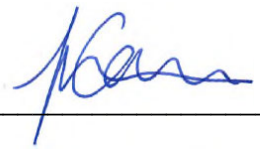
2. This memorandum relates to expert conferencing held in response to Direction #3 from the Hearing Panel, which asked Dr Chiles (on behalf of KiwiRail) and Mr Styles (on behalf of Kāinga Ora) to discuss the wording of the proposed rule for indoor rail noise ("**Rail Noise Rule**") promoted by KiwiRail and report back to the Hearing Panel on the outcome of those discussions. The Rail Noise Rule would apply in the event that the Panel accepts a 100 metre mapped contour, as sought by KiwiRail, as opposed to a fully modelled contour, as sought by Kāinga Ora.

3. Dr Chiles and Mr Styles met via virtual conferencing on Friday 22 September 2023 to discuss the proposed wording for the Rail Noise Rule.

4. The draft Rail Noise Rule with amendments agreed to by both experts, in the event that a 100 metre mapped contour is applied, is attached at **Appendix A**. The rule has also been reviewed by the Western Bay of Plenty District Council.

Dated: 11 October 2023

A A Arthur-Young / K L Gunnell
Counsel for KiwiRail Holdings Limited



B J Matheson / A Cameron
Counsel for Kāinga Ora - Homes and Communities

APPENDIX A – RAIL NOISE RULE WITH PROPOSED AMENDMENTS

iii. In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 100m of the railway designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility shall meet the following requirements:

(a) ~~(a)~~ The building is to be designed, constructed and maintained to achieve an internal design level of 35 dB $L_{Aeq(1h)}$ for bedrooms and 40 dB $L_{Aeq(1h)}$ for all other habitable rooms. Written certification of such compliance from a Suitably Qualified and Experienced Acoustic Consultant ~~suitably qualified and experienced acoustic engineer~~ shall be submitted with the building consent application for the building concerned. The design certificate shall be based on:

1) A source level for railway noise of 70 $L_{Aeq(1h)}$ at a distance of 12 metres from the nearest track; and
2) The attenuation over distance being:
    i. 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres; or
    ii. As modelled by a Suitably Qualified and Experienced Acoustic Consultant using a recognised computer modelling method for freight trains with diesel locomotives, having regard to factors such as barrier attenuation, the location of the dwelling relative to the orientation of the track, topographical features and any intervening structures.

~~assume railway noise to be 70 LAeq(1h) at a distance of 12 metres from the track, and must be deemed to reduce at a rate of 3 dB per doubling of distance up to 40 metres and 6 dB per doubling of distance beyond 40 metres.~~

(b) For habitable rooms for a residential activity, achieves the following requirements:

i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code and that provides at least 1 air change per hour, with relief for equivalent volumes of spill air;

ii. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and

iii. does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser. The noise level must be measured after the system has cooled the rooms to the temperatures in (ii), or after a period of 30 minutes from the commencement of cooling (whichever is the lesser).

(c) For other spaces, a specification as determined by a suitably qualified and experienced person.

(d) A commissioning report must be submitted to the Council prior to occupation of the building demonstrating compliance with all of the mechanical ventilation system performance requirements in subclause (b).

(e) The requirements of (a) to (d) to not apply where the building(s) within 100m of the railway designation boundary:

i. Is in a location where the exterior façades of the bedroom(s) or habitable room(s) is at least 50m from the formed railway track and there is a solid building, fence, wall or landform that blocks the line of sight from all parts of all windows and doors of those rooms to all points 3.8m directly above the formed railway track; or

ii. Is in a location where it can be demonstrated by way of prediction or measurement by an Suitably Qualified and Experienced Acoustic Consultant that the rail noise level at all exterior façades of the bedrooms or habitable rooms is no more than 15 dB above the relevant internal noise levels in (a).

iii. Written certification from a Suitably Qualified and Experienced Acoustics Consultant demonstrating compliance with either (e)(i) or e(ii) as relevant shall be submitted with the building consent application for the building concerned.

Appendix 11: Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited

[Attached to cover email.]

Before the Hearings Commissioners

Under	the Resource Management Act 1991 (**RMA**)
In the matter of	a submission by KiwiRail Holdings Limited (Submitter 30 and Further Submission FS 71) on Plan Change 92 (**PC92**)
and in the matter of	Operative Western Bay of Plenty District Plan (**ODP**)

Primary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited regarding Plan Change 92 on the Western Bay of Plenty District Plan

Dated 25 August 2023

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

1.0 My full name is Catherine Lynda Heppelthwaite. I am a Principal Planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).

1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner, and have done so for the past 18 years.

1.2 I have extensive experience with preparing submissions and assessing district plans provisions in relation to noise and vibration, most recently in relation to the New Plymouth, Porirua and Whangarei District Plans where I assisted Waka Kotahi by providing specialist planning evidence on similar issues (noise and vibration).

2 CODE OF CONDUCT

2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

3.0 My evidence will address the following:

a. The statutory and higher order planning framework; and

b. KiwiRail's submissions and further submissions in relation to building setbacks and noise and vibration controls;

c. Council's s42A recommendations; and

d. Amendments required to the ODP.

3.1 In preparing my evidence, I have considered the:

a. Introductory Section 42A Report Plan Change 92 – Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters[1] (**Section 42A Introduction Report**).

b. Section 4C – Amenity prepared by Ms Anna Price (**Section 42A Amenity Report**).

c. Section 14A – Ōmokoroa And Te Puke Medium Density Residential Part 2 – Definitions, Activity Lists & Activity Performance Standards prepared by Mr Tony Clow (**Section 42A MDR Part 2 Report**).

d. Section 14A – Ōmokoroa And Te Puke Medium Density Residential Part 3 – Matters Of Control And Matters Of Discretion prepared by Mr Jeff Hextell (**Section 42A MDR Part 3 Report**).

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

4.0 In preparing this evidence I have specifically considered the following:

a. The purpose and principles of the RMA (sections 5-8);

b. Provisions of the RMA relevant to plan-making and consenting;

c. National Policy Statement on Urban Development 2020 (**NPS-UD**);

d. Bay of Plenty Regional Policy Statement (**RPS**) with specific reference to:

i. *Issues: 2.3.3 Regionally significant energy and infrastructure issues 1 Reverse sensitivity effects on infrastructure*
Inappropriate subdivision, use and development can result in reverse sensitivity effects on existing or planned infrastructure, as well as the maintenance and upgrade of infrastructure necessary to support the sustainable growth of the region. [page 38]

ii. *Objective 6 [page 22]*
Provide for the social, economic, cultural and environmental benefits of, and the use and development of nationally and regionally significant infrastructure and renewable energy.

iii. *Policy EI 3B: Protecting nationally and regionally significant infrastructure [page 129]*
Protect the ability to develop, maintain, operate and upgrade existing, consented and designated nationally and regionally significant

[1] Prepared conjointly by Mr Tony Clow along with co-authors Mr Taunu Manihera, Mr Jeff Hextell, Ms Anna Price and Ms Abi Mark and dated 11 August 2023.

infrastructure from incompatible subdivision, use or development. Ensure that where potentially incompatible subdivision, use or development is proposed near regionally significant infrastructure, it should be designed and located to avoid potential reverse sensitivity effects.

iv. *Explanation extract: Protecting regionally significant infrastructure does not mean that all land uses or activities under, over, or adjacent are prevented.*

v. *Method 17: Identify and manage potential effects on infrastructure corridors [see page 176]*
In consultation with relevant infrastructure owners and operators, identify infrastructure corridors (including associated buffers where appropriate) and establish objectives, policies and methods to manage potential effects on the long term planning of the maintenance, operation and upgrade of their infrastructure, as well as to encourage its efficient use.
…
Implementation responsibility: Regional, city and district councils

vi. *Objective 7 [page 23]*
Provide for the appropriate management of:
(a) any adverse environmental effects (including effects on existing lawfully established land uses) created by the development and use of infrastructure and associated resources;
(b) any reverse sensitivity effects on established, consented or designated infrastructure.

vii. *Policy EI 7B: Managing the effects of infrastructure development and use [page 130]*
Manage the development and use of infrastructure and associated resources so as to address actual or potential effects on existing lawfully established activities in the vicinity.

viii. *Explanation: The planning, development and operation of infrastructure and any associated resources need to be carefully managed to ensure that potential adverse effects (including reverse sensitivity effects) are appropriately avoided, remedied or mitigated*

ix. *Method 3: Resource consents, notices of requirement and when changing, varying, reviewing or replacing plans Regional council, city and district councils see page 173]*
Policies […] , EI 3B, […], EI 7B, […] shall be given effect to when preparing, changing, varying or reviewing a regional plan or a district plan, and had regard to when considering a resource consent or notice of requirement. Implementation responsibility: Regional council, city and district councils.

x. *Method 17: Identify and manage potential effects on infrastructure corridors city and district councils see page 176]* [see above]

4.1 **Proposed Change 6** to the RPS has been notified with hearings held in late June 2023. As decisions are yet to be released, limited weight should be given to PC6.

4.2 In addition, Council has described the relevant statutory documents in the Section 42A Introduction Report[2] with which I generally agree or accept and will not repeat here.

4.3 The Emissions Reduction Plan[3] is a matter to be had regard to by Council when preparing or changing its district plan. Of particular relevance within the Emissions Reduction Plan for rail is *Action 10.3.1: Support the decarbonisation of freight* which includes as a key initiative:

- *Continue to implement the New Zealand Rail Plan and support coastal shipping*.

4.4 For completeness, the New Zealand Rail Plan (**NZRP**) lists as a strategic investment priority[4]:

- *Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and*

4.5 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time. The designated corridor of the East Coast Main Trunk railway line passes through the Western Bay of Plenty District (including both the Ōmokoroa and Te Puke urban areas) and is a key part of the KiwiRail network nationally.

5 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, KiwiRail's primary submission seeks:

a. that rail be identified as a qualifying matter[5] pursuant to s77I(e) and s77O(e) of the RMA;

[2] Pages 9 to 17.
[3] RMA, section 74(2)(d).
[4] The New Zealand Rail Plan April 2021, Part B, pages 25 and 38 for key details.
[5] Submission 30.1.

b. a suite of provisions requiring acoustic insulation to be installed in new (or altered) sensitive uses within 100m of the railway corridor[6];

c. provisions requiring vibration controls for buildings containing new (or altered) sensitive uses within 60m of the railway corridor[7];

d. a new definition for "noise sensitive activity"[8] to support the noise and vibration provisions;

e. retention of 14A.4.1(d)(ii)(b) and 14A.4.1(d)(ii)(d) (relating to building setbacks)as notified[9];

f. inclusion of a new matter of discretion in 14A.7.4[10] addressing the location and design of the building or structure as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor; and

g. all related and consequential amendments as required to achieve the relief sought above (not allocated a submission point number).

5.1 KiwiRail made further submissions in support of the Council's submissions seeking the inclusion of a definition of "qualifying matter"[11], and retention of 14A2.1 Objective 1and 14A Explanation as notified[12].

5.2 KiwiRail also made further submissions in support of Kāinga Ora's submissions[13] that sought to simplify and better integrate PC92 with the ODP, and to amend 14A2.1 Objective 8[14] and 14A2.2 Policy 17[15] to provide for better integration with surrounding land uses and higher density zoning in Te Puke. KiwiRail's support for these submissions was prefaced on it being consistent with its own primary relief. KiwiRail opposed Kāinga Ora's submission seeking the removal of the definition of "structure"[16] and to curtail Council's ability to determine full or limited as notification for infringements of

[6] Submission 30.4.
[7] Submission 30.5.
[8] Submission 30.6.
[9] Submissions 30.1 and 30.2.
[10] Submission 30.3.
[11] FS71.1.
[12] FS 7.13.
[13] For example, FS71.3 and 71.4.
[14] FS 71.6.
[15] FS 71.7
[16] FS71.8.

a range of standard. It also opposed the New Zealand Housing Foundation submission seeking deletion of 14A.4.1(d) (building setbacks).

5.3 KiwiRail's further submissions have either been accepted, amendments made to provisions with which I am comfortable, or where rejected, I agree with the reasons. No further commentary is provided on the further submissions.

6 SECTION 42A ASSESSMENT

6.0 The 42A Authors make the following recommendations:

a. **Noise and vibration controls**: Ms Price considers it is appropriate to give a level of protection to the rail corridor, but does not propose any changes to the ODP provisions regarding noise or the inclusion of vibration provisions.

b. **Qualifying matter:** Mr Clow[17] supports the Council's submission seeking the inclusion of a definition of qualifying matter. The proposed definition includes the railway corridor. I support the inclusion of the definition, subject to suggested changes detailed in Section 7 below.

c. **Building setbacks (14A.4.1(d)(ii)(b) and 14A.4.1(d)(ii)(d))**: Mr Clow[18] proposes to retain the 10m building setback as notified (supported by KiwiRail) to provide for building maintenance.

d. **Setback matter of discretion** (14A.7.4)**:** Mr Hextell[19] does not consider a new matter of discretion is necessary in relation to building setbacks from the rail corridor.

6.1 I will address these matters further below.

7 QUALIFYING MATTERS

7.0 I support the retention of rail as a qualifying matter in relation to building setbacks for the reasons set out the s42A Report which states[20]:

> *Council's Section 32 Addendum Report identifies the rail corridor as an existing qualifying matter in the context of the 10m setback. This is*

[17] Section 42A - Section 14A -Omokoroa and Te Puke (Definitions, Activity Lists and Standards), prepared by Mr Clow, pages 6 and 7.
[18] Section 42A MDR Part 2 Report, page 34.
[19] Section 42A MDR Part 3 Report, page 27.
[20] Section 42A MDR Part 2 Report, page 34.

deemed "a matter required for the purpose of the safe or efficient operation of nationally significant infrastructure" under Section 77I(e) of the RMA.

7.1 Mr Clow noted KiwiRail[21] (FS 71.1) support the definition and seek that it be accepted to the extent that it is consistent with the relief sought in their submission such as setbacks from the rail corridor and noise and vibration controls.

7.2 Noting KiwiRail supported the definition as notified, this support is limited to the extent it is consistent with its wider relief. The bracketed wording that is proposed to be included in the definition, is not, in my opinion, consistent with KiwiRail's wider relief. :

land within 10m of a railway corridor or designation for railway purposes ***(for sites created by way of an application for subdivision consent approved after 1 January 2010) (bold added)***

7.3 In particular, the wording in brackets seems to mean that only sites that have been created by way of a subdivision consent after 1 January 2010 will be subject to the qualifying matter. The setback from the rail corridor is needed as a matter required for the purpose of the safe or efficient operation of nationally significant infrastructure. This applies to sites regardless of when they were created and this wording should be deleted. A consequential change deleting the bracketed wording is also required at 14C(d)(ii)(c)

8 BUILDING SETBACK

8.0 I rely on Mr Brown's evidence[22] which:

a. describes why a setback is necessary for maintaining buildings within the MDRZ;

b. describes the risk to persons both accessing the rail corridor to undertake adjoining property maintenance and rail corridor users (train operators and passengers); and

[21] FS71.1.
[22] Evidence of Mr Michael Brown, 25 August 2023.

c. confirms Mr Clow's view[23] that KiwiRail's submission on setbacks is not about managing noise and vibration but is instead to ensure that buildings and structures are able to be used and maintained without needing access on or over the rail corridor.

8.1 In addition to Mr Brown's evidence, it is not uncommon for district plans to include provisions which limit uses of land to protect the operation of infrastructure beyond the designation boundary and also to provide safe and healthy environments for people.

8.2 For example, Transpower has included in a range of district plans[24] a national grid corridor overlay which restricts activities within a specified spatial extent of its network (around both pylons and lines). Airports and ports are another common infrastructure type which restrict activities and / or require mitigation for certain activities on surrounding private land[25].

8.3 For completeness, I have considered other methods (ie, no setback and extending existing designation widths) to provide for building maintenance and the safety of adjoining occupants. This is assessed in the format of Section 32AA and included as **Attachment B**. I conclude that a setback is the most efficient outcome as it retains land development potential (by way of resource consent) in the setback.

9 NOISE AND VIBRATION

9.0 Dr Chiles[26] has provided evidence which I accept and summarise the key findings as:

a. Research confirms that noise and vibration have adverse health and amenity effects on people[27];

b. Based on his analysis, Dr Chiles concludes the appropriate provisions to manage noise and vibration effects apply from the edge of the rail designation boundary and are:

i. 100m for noise[28]; and

[23] Section 42A MDR Part 2 Report, page 34.
[24] For example, Chapter D26 of the Auckland Unitary Plan.
[25] For example, Chapters D24 Aircraft Noise Overlay and D25 City Centre Port Noise Overlay of the Auckland Unitary Plan.
[26] Statement of Dr Chiles, 25 August 2023.
[27] Statement of Dr Chiles, Section 4.
[28] Statement of Dr Chiles, paragraph 7.4 to 7.6.

ii. 60m for vibration effects to manage health and amenity effects. The control (60m) is designed to capture the worst of those likely effects, not all effects. The 60m distance balances the variability of vibration effects and with Dr Chiles' preference for 100m control[29].

9.1 Dr Chiles provides technical evidence which demonstrates health and amenity effects will occur as a result of noise and vibration from the rail corridor. The implementation of the MDRS and policies 3 and 4 of the NPS-UD will result in more people living near the rail corridor. As a consequence, the provisions sought by KiwiRail are, in my opinion, required to ensure intensification can occur in a way that appropriately manages the interface between the rail corridor and noise sensitive activities.

9.2 I have considered other methods (including a limited noise control and no vibration control) to address heath, amenity and reverse sensitivity effects. This is assessed in the format of Section 32AA and included as **Attachment C**. I conclude that a 'permitted activity' setback for noise is the most efficient outcome to provide for health and amenity along with consequentially reducing potential reverse sensitivity effects.

9.3 For rail vibration, I accept Dr Chiles' assessment that vibration can have adverse health and amenity effects on people that requires avoidance, remediation or mitigation under the RMA. I also understand that the exact design requirements to ensure compliance with appropriate vibration levels depend significantly on site-specific factors, including ground condition / soil type, topography or other environmental features. As a result of this, the level of controls required and the associated cost of implementing such controls can therefore differ significantly on a site-to-site basis.

9.4 I have provided (in my **Attachment A**) provisions which reflect my preferred outcome (a 60m vibration control) but also a (less preferred) alternative of a "Rail vibration alert overlay" (**Alert Overlay)** (further described in Mr Brown's evidence)[30]. The Alert Overlay would be included within the District Plan maps (100m from the rail designation boundary) along with an explanation in the introduction to the Noise Chapter. Its purpose is to ensure landowners and occupiers are aware that vibration effects may be present in this location.

[29] Statement of Dr Chiles, paragraph 7.9 to 7.13.
[30] Evidence of Mr Brown, 25 August 2023, paragraph 6.17.

9.5 There are no rules or other provisions associated with the Alert Overlay. Landowners can then make their own design and location decisions should they wish to mitigate such effects. This enables behaviour change and appropriate warning to landowners.

9.6 Proposed changes to the plan provisions for noise and vibration are included as **Attachment A**.

10 RESPONSE TO S42A REPORTS

Noise and Vibration

10.0 Ms Price has accepted that noise from rail lines should be managed[31] but raised the following concerns[32] with adopting the noise and vibration controls proposed by KiwiRail:

a. Lack of justification of the distances proposed, in particular, whether the 100m and 60m distances are generic distances applied throughout New Zealand or if this is based on specific site analysis in relation to the line through Ōmokoroa and Te Puke (in particular, distance to dwellings / if the rail corridor is in a cutting).

b. Number of properties potentially affected by proposed new rules.

c. Whether KiwiRail has received noise or vibration complaints from the relevant sections of the line in Te Puke and Ōmokoroa (including where KiwiRail has given its written approval to landowners to establish dwellings within the 10m setback in Ōmokoroa).

d. Cost of specific foundation design, noise barriers and vibration certification.

Distance

10.1 Dr Chiles' evidence[33] sets out the technical basis for the 100m and 60m distances proposed for the acoustic and vibration controls.

[31] S42A Report, Section 4C: Amenity, page 7.
[32] S42A Report, Section 4C: Amenity, pages 6 and 7.
[33] Evidence of Dr Chiles, paragraphs 7.4 to 7.6 and 8.3.

Property Numbers

10.2 In relation to the number of properties impacted by the controls I note the controls proposed are not retrospective, they apply only to new or modified noise sensitive activities adjacent to the rail corridor. This means the total number of properties affected by the controls is not a relevant measure as only those sites with development potential (and a willing developer) will need to consider and implement the controls.

10.3 KiwiRail has provided two maps which overlay the proposed 60m vibration and 100m noise controls within the Ōmokoroa and Te Puke areas (see **Attachment D**). I have also made a high level review of aerial photographs and zone maps in the Ōmokoroa and Te Puke areas to assess the potential impact of the provisions.

10.4 In the Figures below I have shown in red circles large lots and lots containing older housing on more generous sites that one could assume are most likely to be developed first (as compared to smaller lots containing more modern housing). I consider the identified areas as those which are most likely to trigger KiwiRail's proposed controls within the life of the ODP.

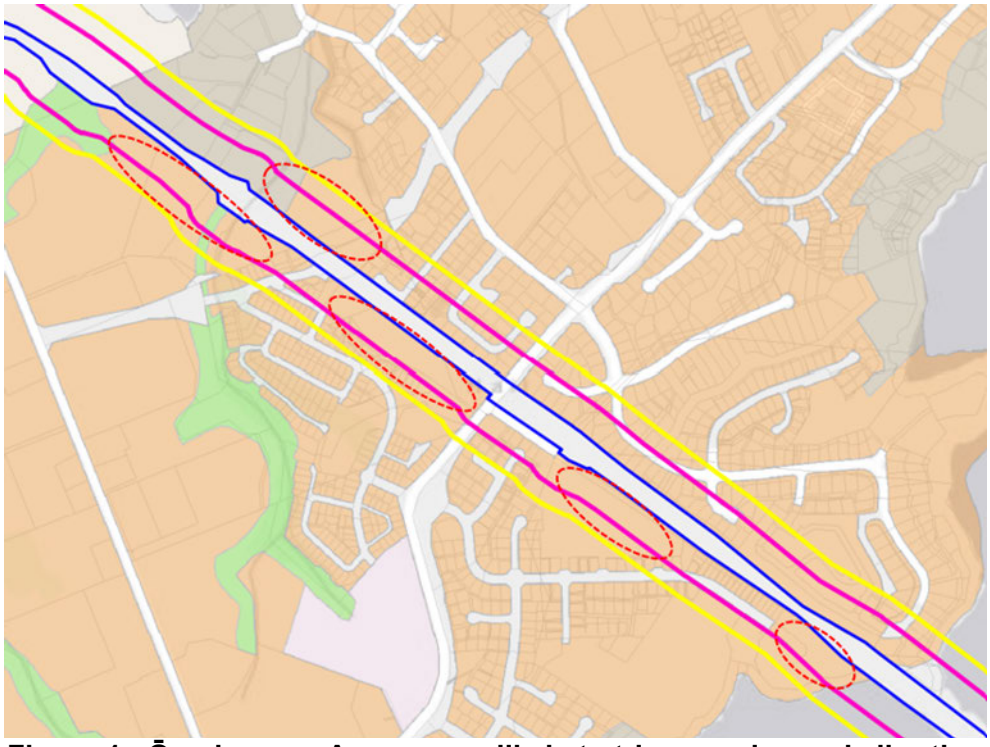


Figure 1: Ōmokoroa – Areas more likely to trigger noise and vibration controls (red circles)

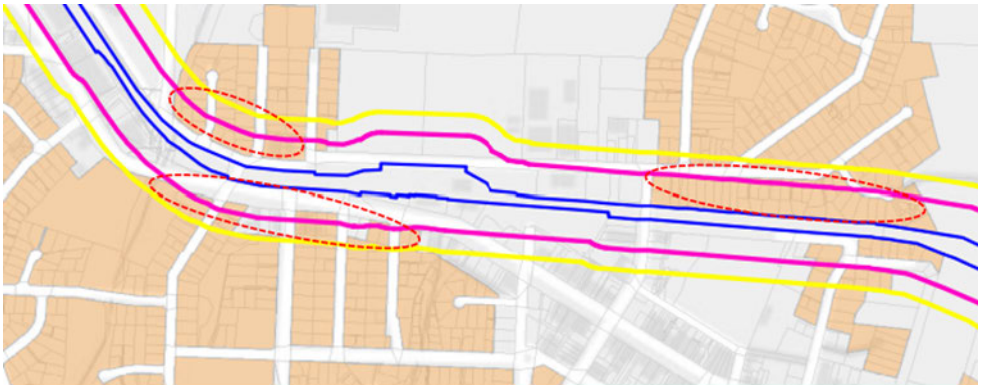


Figure 2: Te Puke– Areas more likely to trigger noise and vibration controls (red circles)

Overall, when viewed in the context of the PC92 areas, and considering the benefits to health the controls would bring, there will be only a limited area likely to be impacted by the controls.

Complaints

10.5 Mr Brown has confirmed that KiwiRail receives complaints in relation to its activities. However, I agree with Mr Brown that the number of complaints should not be the focus[34]. The intent of the acoustic standards is to minimise the need for complaints . In Dr Chiles' opinion, in terms of adverse health effects, existing complaints are irrelevant and complaints are not reliable indicators of health effects[35].

10.6 Ms Price identified[36] that KiwiRail has given approval for activities in the existing 10m setback and that "*Council officers are also not aware of any complaints in relation to noise and vibration from this reduced setback*"[37].

10.7 Firstly, the primary purpose of the 10m yard setback is to provide for building maintenance to be undertaken in a safe manner, not to protect occupiers from noise or vibration effects. Dr Chiles[38] has confirmed that a 10m setback does not control most of the potential adverse rail noise and vibration effects. Accordingly, approvals for a reduced setback are not an appropriate data set for noise and vibration effects.

[34] Evidence of Mr Brown, paragraphs 6.11 – 6.12.
[35] Evidence of Dr Chiles, paragraphs 8.4.
[36] S42A Report, Section 4C: Amenity, pages 6 and 7.
[37] S42A Report, Section 4C: Amenity, pages 6 and 7.
[38] Evidence of Dr Chiles, paragraph 8.2.

10.8 In relation to circumstances where KiwiRail has provided affected party approval for buildings within the 10m setback, I have been provided with copies of nine written approvals that KiwiRail has given in the district since 2015. Two were for garages in the required yard and the remaining seven were for residential activities. Of the seven residential approvals provided, all were required to maintain a setback from the corridor (from approximately 2.8m – 6m) and, with the exception of one, also provided noise and/or vibration mitigation, as well as no complaints covenants in some cases.

10.9 I respectfully suggest, that, in addition to the points raised by Dr Chiles and the purpose of the 10m yard setback being to provide for building maintenance, the lack of complaints arising from the properties KiwiRail granted approval to is more likely a result of:

a. the provision of mitigation; and/or

b. the entering into of no-complaints covenants.

Existing Plan Rule 4C.1.3.2(c)

10.10 Finally, Ms Price[39] considers existing rule 4C.1.3.2(c) already acts to protect noise sensitive activities in all zones, which would include protection from rail noise. While I agree with the intent of the rule, I consider 4C.1.3.2(c) has the following shortcomings:

a. The spatial extent of the rule is not specified (ie, how would a plan user know if they were near a high noise generator and triggered the rule?).

b. The source of the noise for which the activity is to be protected is not specified (so there is no certainty that rail would be identified).

e. The rule uses discretionary language / examples in its wording (eg. "such as") and is therefore uncertain.

f. Some activities listed in the text of the rule do not all have commensurate noise levels in the companion table (ie. veterinary facilities, medical or scientific facilities do not have specified day or night time noise levels and therefore appear not to be subject to any control).

[39] S42A Report, Section 4C: Amenity, page 7.

g. Some of the listed noise sensitive activities can themselves be sources of noise (eg animals at veterinary facilities).

h. Inclusion of the defined term *places of assembly* (which includes within its definition *…clubrooms, taverns, restaurants, art galleries, theatres, sports fields, facilities for recreation activities and tourist facilities)* is likely to lead to some unusual outcomes, for example, the definition includes both noise sensitive activities and noise generating activities (this issue could be avoided by use of a specific definition of *noise sensitive activities).*

i. It should be clear that it applies to additions to existing noise sensitive activities or new noise sensitive activities.

10.11 Dr Chiles[40] also identified the following technical limitations of existing rule 4C.1.3.2(c):

a. The table in rule 4C.1.3.2(c)(i) sets internal noise limits without specifying the basis for external noise exposure to be used in the design.

b. The noise limits in rule 4C.1.3.2(c)(i) apply to the 'L_{Aeq}' metric, and in accordance with the assessment standard specified in 4C.1.3.4, this would use a 15-minute averaging period. This would result in noise limits being relatively stringent for short-duration rail noise events.

c. The ventilation rule in 4C.1.3.2(c)(ii) does not include air change or temperature parameters specified beyond the Building Code minima; windows might need to be opened for occupants to be comfortable, which would compromise the sound insulation.

d. The ODP does not include any explicit controls for new and altered buildings affected by railway vibration.

10.12 Noting these issues, I do not consider existing rule 4C.1.3.2(c) adequately addresses noise effects from rail. I therefore support the inclusion of the provisions proposed by KiwiRail as these will provide a more certain approach to ensuring health effects are managed in locations where increased intensity is proposed and growth is likely.

[40] Evidence of Dr Chiles, paragraphs 6.3 to 6.6.

10.13 I agree with Ms Price[41] that KiwiRail's proposed provisions can only apply to the spatial area within PC92 and appreciate that the KiwiRail provisions would need to sit alongside 4C.1.3.2(c) (which would continue to apply elsewhere). A plan wide approach can be considered at the time that a full plan review is undertaken. I have made recommended amendments as set out in **Attachment A**.

Cost

10.14 Dr Chiles' evidence addresses[42] cost and I have also assessed this in my s32AA assessment.

Definition of Noise Sensitive Activity

10.15 As identified in sections 10.10 (g) and (h), there are some limitations with the description of noise sensitive activities. I prefer a specific definition of *noise sensitive activities* so that it may be targeted at the most sensitive uses; reliance on existing plan definitions may lack the finesse needed. For example, my preferred wording to capture *places of assembly* is more focused on the specific activity which is actually sensitive to noise being *congregation within any place of worship.*

Matter of Discretion 14A.7.4

10.16 KiwiRail proposed a new matter of discretion for activities that do not comply with the new permitted activity standard requiring buildings and structures to be setback from the rail corridor:

> *f. The location and design of the building or structure as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor*

10.17 Mr Hextell has rejected this as[43]:

> *The setbacks only relate to internal property boundaries and the proposed matter appears to relate to people not accessing the railway corridor which affects land beyond a properties boundary and accordingly is beyond the ambit of the performance standard. From a resource consent*

[41] S42A Report, Section 4C: Amenity, page 6.
[42] Evidence of Dr Chiles, paragraph 8.6.
[43] Section 42A MDR Part 3 Report, pages 26 and 27.

processing perspective KiwiRail is likely to be recognised as an affected party in situations where there is non-compliance with the setback and accordingly would have the opportunity to assess the specific proposal.

10.18 Rule 14.4.1(d)(iii) requires that:

Where any yard adjoins […] A railway corridor or designation for railway purposes, it shall be a minimum of 10m.

10.19 I do not agree with Mr Hextell that "*the setbacks only relate to internal property boundaries".* Rule 14.4.1(d)(iii) is very clear that it applies to any yard adjoining a rail corridor/designation. In forming this view I have also considered the Explanatory Note which is part of rule 14.4.1(d). This allows that where subdivision is proposed, the yard requirement applies to the existing certificate of title boundary "base land" only, not "proposed" internal / new subdivision boundaries.

10.20 In my opinion, an internal boundary is a new lot boundary separating a subdivided property, ie, one lot is separated into two lots and the boundary between the two newly created lots is the internal boundary of the subdivision. This new boundary does not affect the existing certificate of title boundary which already adjoins the rail designation.

10.21 I would be most concerned if this rule was interpreted by Council as meaning that setback provisions did not apply to subdivided lots.

10.22 I would also like to respond to Mr Hextell's comment that the matter of discretion "*appears to relate to people not accessing the railway corridor"*. The matter of discretion is designed to direct the Council, when assessing an application to reduce the setback, to consider whether or not there remains sufficient space within the site to undertake maintenance (ie. not on KiwiRail land). Given this has caused confusion, I recommend a minor amendment (shown blue below).

f. Whether t~~T~~he location and design of the building or structure provides for ~~as it relates to~~ the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

10.23 Finally, I agree KiwiRail may be considered an affected party (as evidenced by Table 1 above), however this test is discretionary and KiwiRail may not always be notified.

11 CONCLUSION

11.0 In conclusion:

a. **Building Setback**:

a. A 10 metre setback from the railway corridor has been accepted by the s42A Author as a qualifying matter. I support the inclusion of the rail setback in the proposed qualifying matter definition; however, the proposed wording contains an unnecessary caveat relating to timing of subdivision consent which should be removed.

b. I support the retention of the 10 metre setback from the railway corridor.

c. In my view a suitable matter of discretion needs to be included to ensure that the purpose of the setback control (being provision for safe on-site building maintenance) is considered during consent applications.

b. **Noise and Vibration**:

a. The RPS anticipates significant infrastructure will have effects (which may include noise) and that infrastructure needs to be protected from reverse sensitivity effects arising from incompatible activities (including by rules and policies within district plans). Dr Chiles has provided evidence that noise and vibration have adverse health effects; the S42A Author generally agrees it is appropriate to give a level of protection to the rail corridor.

b. KiwiRail is proposing an updated noise rule applying 100m from the rail corridor These changes manage the adverse effects of rail activities on adjacent land users. It is critical that PC92 appropriately address these issues so that the health and wellbeing impacts on neighbouring communities are minimised and the ongoing operation and efficiency of the rail network can be maintained.

c. With respect to vibration, I prefer a 60m vibration control, but at a minimum, understand KiwiRail would accept the (less preferred) alternative of a “Rail vibration alert overlay”.

d. Consequential changes including matters of discretion and a new definition of "noise sensitive activity" are also proposed.

c. In my view the amended provisions are necessary to appropriately mitigate the effects identified by Dr Chiles and to implement the RPS and District Plan policy framework.

Cath Heppelthwaite
25 August 2023

Attachment A: Proposed Changes

Base text is taken from Appendix A – Planner's recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

District Plan Maps
Insert mapping overlay which identifies a 100m buffer on each side of the railway designation boundary called "Rail Vibration Alert Overlay".

14A.7.4 Matters of Discretion
Restricted Discretionary Activities
Non-Compliance with Setbacks In considering an application that does not comply with Activity Performance Standard 14A.4.1(d) Setbacks, Council shall consider the following:

Front yard
a.[..]
Side and rear yards
d. […]
e. […]
f. Whether the location and design of the building or structure provides for the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

4C.1 Noise and Vibration
Explanatory Statement

[…]

~~Vibration from activities has not been an issue in the District.~~ In many cases Council can manage vibration effects through the management of noise emissions or through the provisions of the Health Act. Specific standards to manage vibration are therefore not proposed. However, a Rail Vibration Alert Overlay has been applied which identifies the vibration-sensitive area within 100 metres each side of the railway designation boundary as properties within this area may experience rail vibration effects. No specific district plan provisions apply in relation to vibration controls as a result of this Rail Vibration Alert Area. The Rail Vibration Alert Overlay is to advise property owners of the potential vibration effects but leaves with the site owner to determine an appropriate response.

[…]

4C.1.3.2 Noise Limits
a. […]
b. […]
c. Noise sensitivity […]

ca. Indoor railway noise
Activity status: Permitted
(a) Any new building or alteration to an existing building or structure for a noise sensitive activity within 100m of the railway designation boundary.

Activity-specific standards:

1. Any new building or alteration to an existing building that contains a noise sensitive activity where the building or alteration:

(a) is designed, constructed and maintained to achieve indoor design noise levels resulting from the railway not exceeding the maximum values in Table X; or

(b) is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to all points 3.8 metres above railway tracks

Table X

Building type	Occupancy/activity	Maximum railway noise level $L_{Aeq(1h)}$
Residential	Sleeping spaces	35 dB
	All other habitable rooms	40 dB
Education	Lecture rooms/theatres, music studios, assembly halls	35 dB
	Teaching areas, conference rooms, drama studios, sleeping areas	40 dB
	Library	45 dB
Health	Overnight medical care, wards	40 dB
	Clinics, consulting rooms, theatres, nurses' stations	45 dB
Cultural	Places of worship, marae	35 dB

Activity status where compliance not achieved: Restricted Discretionary

4C.1.4.3 Restricted Discretionary Activity – Rail Noise
Council's discretion is restricted to the following matters:
(a) location of the building;
(b) the effects of any non-compliance with the activity specific standards;
(c) special topographical, building features or ground conditions which will mitigate noise impacts;
(d) the outcome of any consultation with KiwiRail.

cb. Indoor railway vibration

1. Any new buildings or alterations to existing buildings containing a noise sensitive activity, within 60 metres of the railway designation boundary.

2. Compliance with standard 1 above shall be achieved by a report submitted to the council demonstrating compliance with the following matters:

(a) the new building or alteration or an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or

(b) the new building or alteration to an existing building is a single storey framed residential building with:

i. a constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and
ii. vibration isolation separating the sides of the floor slab from the ground; and
iii. no rigid connections between the building and the ground.

4C.1.4.4 Restricted Discretionary Activity – Rail Vibration
Matters of discretion
(a) location of the building;
(b) the effects of any non-compliance with the activity specific standards;
(c) special topographical, building features or ground conditions which will mitigate vibration impacts;
(d) the outcome of any consultation with KiwiRail.

Definitions
Amend the definition of "Qualifying Matter"

"Qualifying matter" means one or more of the following:
• Ecological features listed in Appendix 1 (Schedule of Identified Significant Ecological Features) and identified on the District Plan Maps.
[…]
• Land within 10m of a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010).~~
• […]

Consequential Change
14A.4 Activity Performance Standards
d. Setbacks
[…]
ii. This standard does not apply to:
[…]
b. site boundaries with a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010)~~ in which case all yards shall be 10m.

New Definition

Noise sensitive activity means any lawfully established:
a) residential activity, including activity in visitor accommodation or retirement accommodation, including boarding houses, residential visitor accommodation and papakāinga;
b) educational activity;
c) health care activity, including hospitals;
d) congregation within any place of worship; and
e) activity at a marae.

Attachment B: S32AA Assessment of Building Setback

Having regard to section 32AA, the following is noted:

Effectiveness and efficiency

• The proposed rail setback will be more efficient and effective than other methods (such as widening the rail designation to provide a setback) as it provides flexibility of use by resource consent allowing for situations where building within the setback is acceptable. Applying a wider designation means land will not be available for use at all, the setback yard by contrast could enable future use by way of resource consent

• Providing no setback or a minimal setback will not support an efficient outcome generally as incursions can lead to disruption to the rail network / inefficient operation and endanger safety.

Costs/Benefits

• The recommended amendments will limit building in some locations (cost). However, the impact on overall development capacity is marginal and resource consent can be sought to infringe the setback standard.

• The benefits are providing for a safer and more efficient rail network which supports passenger transport (being itself a significant supporting factor for residential intensification).

• The setback will enable greater certainty, and safety, for homeowners and occupiers to undertake maintenance to their dwellings.

Risk of acting or not acting

• Evidence has been provided of the risks to public safety and network efficiency if there is action taken to remove the setback or significantly reduce it. These actions could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns. This would also increase the risk to the health and safety of adjoining residents.

Decision about most appropriate option

• Retention of the proposed setback as set out in my evidence is therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.

Attachment C: S32AA Assessment of Noise and Vibration Controls

Having regard to section 32AA, the following is noted:

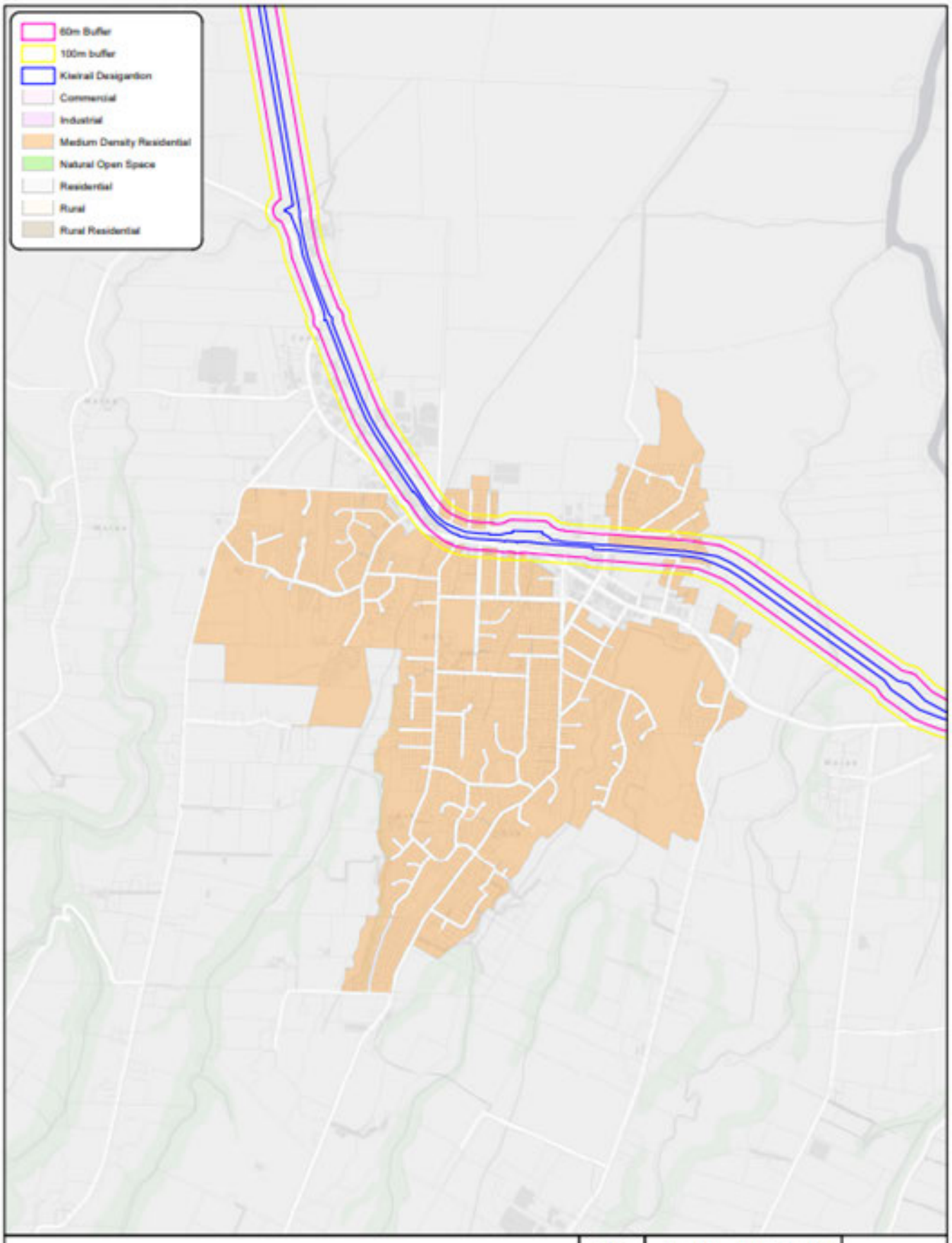
Effectiveness and efficiency
• The proposed changes will be more efficient and effective at balancing infrastructure and health and amenity resulting from intensification than other methods (such as the existing noise rule)
• Retaining the existing noise rule and the lack of vibration controls will not support an efficient outcome as effects on health and amenity on residents will not be addressed and new reverse sensitivity effects could arise (which could lead to inefficient operation of nationally significant infrastructure), in particular arising from the greater intensification of the area.
• Option adopts a 'prevention is better than cure approach'.

Costs/Benefits
• The recommended amendments may require additional assessments for some buildings and activities in some locations.
• Where standards are infringed, there will be costs to applicants in seeking resource consent. In practice, this is generally not anticipated or experienced elsewhere as there are standard engineering solutions that can be implemented to achieve compliance. However, where there is an infringement, the extent of those costs will vary depending on whether a developer already requires consent for subdivision or to infringe other standards in the plan. the benefits are however improved health and amenity and reduced risk of reverse sensitivity effects (benefits). The rail network provides passenger transport which is a significant supporting factor for residential intensification proposed.
Where standards cannot be met, there is a consenting pathway for development of noise sensitive activities.
• The changes will enable greater certainty for homeowners as to their ability to live comfortably and free from the most significant health and amenity impacts when in close proximity to infrastructure (benefits). Compared to the status quo of the existing noise rule, the changes will also provide greater certainty around when an acoustic assessment will be required.
• Dr Chiles' evidence is that rail vibration can routinely be experienced at over 100m from the railway corridor. In applying the provisions only out to 60m (due to the volume of traffic on the line), the provisions are a pragmatic response in that they address health and amenity effects at sites most affected by rail vibration.
• The provisions are an integrated response to planning in that it allows development of sensitive activities to occur near the rail corridor in a way that appropriately manages the effects of, and on, the ongoing use and operation of the rail corridor.
• The noise and vibration provisions do not apply to existing activities so there are no additional constraints on developed sites where redevelopment is not anticipated.

Risk of acting or not acting
• Heath and amenity effects will occur if no action is taken.
• Potential for reverse sensitivity effects on the operation of the rail network

Decision about most appropriate option
• Based on the evidence of Dr Chiles, the recommended amendments as set out in my evidence are therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.

Attachment D: Proposed 100m noise and 60m vibration control



Te Puke Designation Map

KiwiRail

A3

1:18,000

0 200 400 600 800

Meters

23/08/2023

Appendix 12: Section 42A Report excerpts referred to in Appendix 1

(ii) employment that are anticipated to be provided or reduced	No direct cultural costs however allowing more residential units and the associated reduction in minimum lot sizes will reduce the land area available to potentially manage on-site stormwater and will intensify the built environment which could be considered to have an adverse effect on the cultural values from both a landscape and water quality perspective if the latter was not managed appropriately.
Benefits Environmental Economic Social Cultural Including opportunities for: (i) economic growth that are anticipated to be provided or reduced; and (ii) employment that are anticipated to be provided or reduced	**Environmental** The more efficient use of the land will assist in reducing the pressure on other land areas to be developed for residential purposes. The larger size of the lots is sufficient to provide for less visual impact and to provide more permeable surface area (reducing stormwater runoff) than a full medium density development. **Economic** The landowner will be able to create more lots to either sell or develop. The more efficient use of the land will also assist in reducing development costs while avoiding the need for larger scale earthworks and associated costs. **Social** Provides additional housing in close proximity to the town centre and schools providing additional population to support these and related community facilities. Likely to provide an increased range of housing styles/choice to suit the site's topography. **Cultural** No direct cultural benefits.
Quantification	Not practicable to quantify.
Risks of Acting/ **Not Acting if there is uncertain or insufficient information about the subject matter**	Sufficient and certain information is available.

TOPIC 5 - PROPOSED INDUSTRIAL ZONE – INCLUDING REQUESTS TO CHANGE INDUSTRIAL ZONE BOUNDARIES AND FOR ALTERNATIVE ZONINGS

BACKGROUND

To support a well-functioning urban environment, it is necessary to provide a mixture of zoning that supports commercial and industrial activities. There are two existing Industrial zoned areas within Ōmokoroa however one area has largely been redeveloped for residential use through a consent under the Housing Accords and Special Housing Areas Act 2013 and is proposed to be rezoned Medium-Density Residential as part of PC 92 to reflect that use.

The other area located to the east of Ōmokoroa Road towards the State Highway (referenced as Stage 2 Industrial), was initially proposed to be rezoned Industrial in 2007 (Plan Change 81) and was made operative in part in 2010 and in full in 2021 after the resolution of an appeal to the Environment Court.

what alternative zoning is being sought along Francis Road if the proposed Industrial Zone there is removed.

OPTIONS

Option 1 – Retain proposed Industrial Zone boundaries as notified.

Option 2 – Retain proposed Industrial Zone boundaries as notified except remove the Industrial Zone on the south-western side of the current Francis Road (rezone to an alternative zone).

Option 3 - Retain proposed Industrial Zone boundaries as notified but include more explicit parameters for development along the Francis Road interface with the proposed Medium Density Residential Zone.

Option 4 – Retain proposed Industrial Zone boundaries as notified except remove the Industrial Zone on the south-western side of the current Francis Road (and replace with an alternative zone) and add new Industrial zoning to areas adjacent the east side of Ōmokoroa Road and/or adjacent the existing Industrial Zone currently in rural use.

Option 5 – Remove all proposed new Industrial Zoning.

DISCUSSION

The locational issues can be divided between three general areas being the proposed Industrial Zones on the:

South-western side of the current Francis Road;

South-western side of the proposed Francis Road extension that links to Ōmokoroa Road;

Bruning land which is an extension of the existing Industrial Zone (Stage 2 Industrial).

In regard to the latter there are no specific submissions opposing this, however this is also linked with submissions supporting and opposing the adjacent area being rezoned Natural Open Space Zone. Part of this land is recommended to be rezoned to Industrial. This is discussed in Topic 5 (Natural Open Space Zone) which follows.

The submission from Mr Yule raises issues regarding the provision of industrial zoned land as a whole which could be deemed to apply to all the proposed Industrial Zone areas. To support a well-functioning urban environment there is a need to provide employment opportunities. As pointed out in submissions and subsequent discussion with submitters, adding new industrial land could also have negative effects on existing employment opportunities provided by orchard operations and existing related commercial/industrial activities. There is however at a sub-regional level a shortfall of industrial land and an increase in land being converted to horticultural use. There is currently a SmartGrowth project which is further assessing the sub-regional industrial land requirements with an aim to identify future industrial areas.

In regard to the proposed Industrial Zone at Francis Road area there is a large degree of opposition to the proposed Industrial Zoning from existing nearby land owners.

A number of submissions have suggested new alternative areas that could be rezoned to industrial. These include areas located on Ōmokoroa Road. One area includes most of the land that is identified as an active reserve and subject to a notice of requirement to designate the area for reserve purposes. Other areas are an extension of the Industrial Zone on the western side of Ōmokoroa Road and additional areas currently used for rural activities adjacent the operative Industrial Zone (Stage 2).

The above provides a means of addressing a number of the issues raised in submissions. Although Francis Road will provide an access point for some medium density residential areas the Ōmokoroa Stage 3 Structure Plan also includes the Prole/Francis Road link which will provide access points to other areas.

As discussed above the area is likely to be affected by the proposed State Highway / Ōmokoroa Road intersection improvements. This will impact upon the area of actually available industrial land. The remaining industrial area will be in close proximity to the State Highway and will also have (once the road works are completed) good connectivity to the state roading network. The proximity of proposed medium density areas to the State Highway may make these areas sensitive to the State Highway's noise and other pollutants which do not suit residential development. The Industrial Zone can however be used to provide a buffer. It is acknowledged that industrial activities similarly can cause such effects, but these can generally be mitigated by performance standards and related controls unlike with a State Highway.

To support the above, a recommended new roading cross section has been developed in consultation with landowners which provides for a 25m road reserve and incorporates an acoustic bund, separated cycle/walkway and associated landscaping. This is included at the end of this report and in Attachment 1. Associated with this is an amendment to the base Ōmokoroa Stage 3 Structure Plan which provides more certainty regarding access and a recommended change to Section 12 – Subdivision and Development by including additional access controls by adding Francis Road to 12.4.4.4(c). Refer to the part of the Section 42A Report for Section 12 – Subdivision and Development (Topic 9).

The proposed Industrial Zone is also recommended to be modified slightly in the south-western Francis Road area to take into account existing ecological values. This is discussed in more detail in Topic 6 (Natural Open Space Zone).

Overall, it is concluded that the proposed Industrial Zone on the south-western side of Francis Road should remain however before any industrial development occurring there are a number of controls to add and pre-requisites that must be satisfied. The specific rule changes to provide for this are recommended within Section 12 – Subdivision and Development and therefore discussed in the part of the Section 42A Report for Section 12 – Subdivision and Development (Topic 21). To provide context for the above discussion however the changes are also recorded below:

Insert new wording as follows:

12.4.4.4 Property Access

c. Access on to Ōmokoroa Road ~~(Future Urban, Industrial and Residential Zones)~~, Prole Road, Francis Road, Athenree Road (between State Highway 2 and Koutunui Road), Steele Road, Emerton Road (excluding the first 500m from Seaforth Road) and Waihi Beach Road (between Wilson Road and Fergus Road).

i. The number or potential number of dwellings or other activities gaining direct access to these roads shall not be increased, except as identified on a structure plan. On subdivision or development, Council may apply a segregation strip to the certificate of title to ensure that access is gained from elsewhere in the Zone. For Prole Road and Francis Road any existing accesses shall be closed and relocated~~:~~ where alternative legal and physical access has been provided.

Open Space Zone over the property as discussed under "Natural Open Space Zone – Merits of Zone".

The areas that generally fit the description of the Natural Open Space Zone are constrained land that support the urbanisation of the wider area primarily through having a stormwater management function and which are generally well recognizable and largely fenced off from farming activity. There are however existing farm access roads that run through these areas. The additional area sought by the Regional Council to be zoned Natural Open Space Zone is proposed to be zoned Rural-Residential as publicly notified.

In recognition of the similar characteristics and ecological and connectivity benefits of having a contiguous Natural Open Space Zone area it is recommended that the zone boundaries be altered to reflect this.

The Regional Council have requested that, in response to draft amended zoning maps in response to submissions and subsequent site reinspection, an additional area be rezoned Natural Open Space Zone. This connects to the operative Industrial Zone (Stage 2) and includes an area currently designated for stormwater management reserve purposes by the District Council. The Regional Council consider that their submission 25.2 provides sufficient scope for this matter to be considered. The submission stated the following as the relief sought:

"Ensure that the Natural Open Space Zone is applied to waterbodies and freshwater ecosystems that require management and protection under the NPSFM, including the consideration of including waterbodies at 51 Francis Road, 42 Francis Road and the gully system above and below the area for proposed stormwater wetland E1."

As reported above the specific sites that were identified have been reassessed. The area in question is largely within the operative Industrial Zone which has been the subject of an extensive Environment Court case (Plan Change 81) which has relatively recently been settled. This area has been largely unchanged as part of Plan Change 92 because the zoning and related provisions are considered appropriate and are linked with various development projects and associated funding that have commenced. The design of the Stage 2 Industrial area incorporates stormwater management provisions which includes most of the area in question. The extension of the Natural Open Space Zone into this area would fragment the Industrial zoning complicating the development of the area. There are no other Natural Open Space zoned areas to the north where a linkage could be considered to have some value. The Natural Open Space Zone is not intended to capture every waterbody/wetland within the Plan Change area.

Considering the above and the lack of clear identification of what properties might be affected by the Regional Council's submission to allow other parties to have further submissions, it is assessed that additional changes to this area are not appropriate.

The Natural Open Space Zone as notified also included an area on the Bruning property that extended to Ōmokoroa Road. The nature of this western end of the property does not meet the general characteristics of land to be considered natural open space being mainly pasture and it is recommended that this area is therefore proposed to be rezoned Industrial which is consistent with adjacent zoning.

The overall result for the Bruning property is that there is a reduction in the area zoned Natural Open Space Zone that abuts the Industrial Zone and extension of the Natural Open Space Zone into the Rural-Residential Zone utilising for the main part existing fence lines for demarcation. The extended Industrial Zone area has some development constraints however the landscaping strip that is part of the Operative District Plan can be incorporated within these areas.

SECTION 21 – INDUSTRIAL ZONE

AUTHORS: ANNA PRICE / JEFF HEXTALL

CONTENTS

INTRODUCTION

The Industrial Zone is an existing zone in the Operative District Plan that provides for industrial and ancillary activities in a number of settlements across the District including Ōmokoroa and Te Puke. This zone is important for the economic well-being of the District as it enables employment and the provision of goods and services. In the context of Plan Change 92 there is further land proposed to be rezoned to Industrial in Ōmokoroa but no changes for Te Puke. The proposed new area of Industrial Zone land in Ōmokoroa supports the new Medium Density Residential Zone, as it provides employment opportunities and a buffer between State Highway 2 and the new Medium Density Residential Zone. The Plan Change only proposes minor amendments to the Section to add references to Ōmokoroa Stage 3 but apart from that it remains unchanged.

TOPIC 1 – RULE 21.3.1 - PERMITTED ACTIVITIES

BACKGROUND

Plan Change 92 has not proposed any changes to the list of activities permitted in the Industrial Zone (Rule 21.3.1).

SUBMISSION POINTS

Two submission points were received. No further submission points were received. The submission point on this topic is summarised as follows:

Ara Poutama (24.13) considers that community corrections activities are essential social infrastructure and play a valuable role in reducing reoffending. They note intensification and population growth in urban areas creates more demand for these types of facilities. They believe it is important that provision is made to enable non-custodial community corrections sites to establish, operate and redevelop, within appropriate areas. The submission requests that "community corrections activities" be inserted into the permitted activity list (Rule 21.3.1) in the Industrial Zone.

Ara Poutama (24.1) also seek a new definition of "Community Corrections Activity" from the National Planning Standards as follows:

"Community Corrections Activity means the use of land and buildings for non-custodial services for safety, welfare and community purposes, including probation, rehabilitation and reintegration

from this reduced setback. New vibration controls would add further cost to building including the need for specific foundation design, noise barriers and vibration certification.

The submitter may have overlooked that Rule 4C.1.3.2(c) is already in place to protect noise sensitive activities in all zones which would include protection from rail noise. This rule, as discussed in Topic 1, requires noise sensitive activities to provide an acoustic certification with building consents to demonstrate how they meet internal noise levels. This may involve the need for acoustic insulation and ventilation where necessary. In practice, this requirement is regularly applied to activities when in proximity of railways.

Many of these same noise sensitive activities are repeated in KiwiRail's table and the noise limits are generally similar. There is no reason for a separate table for KiwiRail or for a change in approach to capture activities within a 100m area. This would also mean that a new definition of "noise sensitive activity" is not required.

RECOMMENDATION

That Option 1 be accepted.

Status quo - No specific rules for managing indoor railway noise or vibration.

The following submissions are therefore:

ACCEPTED

Submission	Point Number	Name
FS 68	2	Classic Group
FS 70	15	Kāinga Ora
FS 70	16	Kāinga Ora
FS 73	4	New Zealand Housing Foundation
FS 73	5	New Zealand Housing Foundation
FS 73	6	New Zealand Housing Foundation
FS 76	2	Retirement Villages Association
FS 76	3	Retirement Villages Association
FS 76	4	Retirement Villages Association
FS 77	2	Ryman Healthcare
FS 77	3	Ryman Healthcare
FS 77	4	Ryman Healthcare

REJECTED

Submission	Point Number	Name
30	4	KiwiRail
30	5	KiwiRail
30	6	KiwiRail

Appendix 13: Relevant pages of Independent Hearing Panel Report Attachment C – District Plan Provisions

"Quarry Effects Management Area (QEMA)" means an area of land surrounding the Cameron Quarry site at Otamarakau to manage *reverse sensitivity* effects relating to noise and other effects from the quarry operation.

"Quarrying" may include the excavation of overburden, rock, sand and clay; blasting processing (crushing, screening, washing, and blending); the storage, importation, distribution and sale of minerals including aggregate; ancillary *earthworks*; deposition of overburden; treatment of wastewater; landscaping and rehabilitation works including clean filling; and ancillary *buildings* and *structures*.

"Qualifying matter" means one or more of the following:

- Ecological features listed in Appendix 1 (Schedule of Identified Significant Ecological Features) and identified on the District Plan Maps.
- Natural features and landscapes listed in Appendix 2 (Schedule of Identified Significant Ecological Features) and identified on the District Plan Maps.
- Cultural and built heritage features listed in Appendix 3 (Schedule of Identified Significant Historic Heritage Features) and identified on the District Plan Maps.
- Proposed Esplanade Reserves, Esplanade Strips and Access Strips identified in Appendix 4 (Schedule of Proposed Esplanade Reserves and Strips) and identified on the District Plan Maps.
- Designations listed in Appendix 5 – Schedule of Designations and identified on the District Plan Maps.
- Reserves identified on the District Plan Maps.
- Stability Areas – Landslip and General identified on the District Plan Maps.
- Floodable Areas identified on the District Plan Maps.
- Coastal Inundation Areas identified on the District Plan Maps.
- Coastal Erosion Areas – Primary Risk and Secondary Risk identified on the District Plan Maps.
- ~~Land within 10m of a railway corridor or designation for railway purposes (for sites created by way of an application for subdivision consent approved after 1 January 2010).~~
- Land within the following distances of a railway corridor or designation for railway purposes:
  - 5m for the purpose of setbacks.
  - 60m for the purpose of indoor railway vibration.
  - 100m for the purpose of indoor railway noise.
- Lot 601 DP 560118 and Lot 603 DP 560118 (Harbour Ridge) for new sites created from these which adjoin the esplanade reserve (directly south of the railway line in Ōmokoroa).

See Table 1 (A) and (D) of Council's decision regarding recommendations of the IHP rejected by Council.

"Reflectivity" means the reflectance value of a material or colour and is determined by the amount of light they will reflect and is indicative of their likely visibility in the landscape. For example, white has a reflectance value of 100% whereas black has a reflectance value of 0%.

"Regenerating Forest" means secondary forest that has developed following earlier clearance of primary forest (see definition of *Tall Forest*), and is dominated by species such as kānuka, kamahi (Weinmannia racemosa), rewarewa, treeferns (Cyathea and Dicksonia species) or mixtures of these and other species.

"Regional Council" means the Bay of Plenty Regional Council.

"Replacement" means improvement, repair and/or replacement of worn or technically deficient aspects provided the replacement is to a similar character, size and scale.

"Residential Activity" within the definition of "*residential unit*" when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) means the use of land and *building(s)* for people's living accommodation.

"Residential Unit" when used in Section 14A (Ōmokoroa and Te Puke Medium Density Residential) or when "*dwelling*" shall instead mean "*residential unit*" as described in the definition of "*dwelling*" means a *building(s)* or part of a *building* that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities. To be used for a residential activity exclusively by one household means the the residential unit is to be *self contained.*

Note:

Within Section 11 (Financial Contributions) and Section 14A (Ōmokoroa and Te Puke Medium Density Residential) any use of the term "*residential unit*" shall also mean "*retirement village dwelling*" and "*retirement village independent apartment*".

"Restaurants and other eating places" means any land and/or *buildings/structures* on or in which food and/or beverages are sold to the public generally for consumption on the premises, and may include premises licensed under the Sale of Liquor Act 1999. Part of the trade of the premises may be derived from the sale of food for consumption off the premises.

"Rest Home" means a facility that provides residential based health care with on-site (usually 24 hour) support to residents requiring nursing care or significant support with the activities of daily living. This may include a rest home or *retirement village* based hospital specialising in geriatric care.

"Retailing" means any activity on land and/or within a *building/structure* or part of a *building/structure* whereby goods and services are sold, exposed or offered for sale to the public, but does not include the sale of fuel for motor vehicles, vehicle, machinery and automotive parts sales, restaurants, warehouses*, building and construction wholesalers and retailers*, the sale of goods provided for within Rule 18.4.1 p. ii. in respect to *Rural Contractors Depots* or the storage, distribution or assembly of goods.

"Reticulated Infrastructure" means a communal or community inter-connected piped, collection, distribution, and treatment system for water supply, stormwater and wastewater systems, including any associated pumping station, treatment works and other ancillary equipment or facilities.

"Reticulated Infrastructure of Adequate Capacity" means an inter-connected piped, collection, distribution, and treatment system for water supply, wastewater and stormwater, and in addition for wastewater and stormwater, a disposal system where the pipes and other components of the system are of sufficient size and capacity to meet the peak demands of a proposed subdivision, *development* or land use activity, and in general accordance with the *Council's* Development Code.

"Retirement Village" means a complex containing *retirement village dwellings* and/or *retirement village independent apartments* for the purpose of housing people predominantly in their retirement, and may provide services for the care and benefit of the residents (including *rest homes* and hospitals), including an activities pavilion and/or other recreational facilities or meeting places for the use of the residents of that complex and visitors of residents.

"Retirement Village Dwelling" means a self contained residential unit and includes detached, semi-detached and attached houses within a *retirement village.*

"Retirement Village Independent Apartment" means a self contained residential unit that is part of a block containing multiple apartments (usually multi-level) within a *retirement village.*

"Reverse Sensitivity" means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.

"Riparian Area or Riparian Margin" means a strip of land of varying width adjacent to the bed of a stream, river, lake or *wetland*, which contributes or may contribute to the maintenance and enhancement of the natural functioning, quality and character of the stream, river, lake or *wetland*; and the natural character of the margins of streams, rivers, lakes and *wetlands*. For the purposes of the District Plan, the definition does not include land adjacent to artificial watercourses, artificial waterbodies, and ephemeral flowpaths.

"RMA" means the Resource Management Act 1991 and Amendments.

When a frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm. Testing outside these hours may only take place for urgent unforeseen maintenance purposes or for testing operational readiness.

Except that:

e. Written approval for exceeding noise limits

Noise from the operation of a frost protection fan or fans may exceed the noise levels described in a. above, if:

i. The noise to be produced by the operation of the frost protection fan(s) is assessed and determined by an appropriately qualified and experienced acoustic engineer.

The assessment shall include:

- the noise levels to be produced by the operation of the frost protection fan(s);
- identification of the non-compliances with the noise levels specified in a. above;
- a plan showing the location, and the Global Positioning System co-ordinates, of the frost protection fan(s) to which the assessment applies;

and

ii. The written approval of the owners of the land, and owners and occupiers of the *dwelling(s)* to which the non-compliances apply have provided their written approval for the non-compliances identified in the assessment provided in i. above.

and

iii. The information in i. and ii. above is provided to *Council* prior to the installation of the frost protection fan(s).

Explanatory Notes:

Fan Type - The distance required to achieve 55dB *LAeq* and 65dB *LAmax* will vary depending on the noise performance of the frost protection fan(s).

For portable frost protection fans, determination and/or certification of noise to be emitted must take into account the full range of possible operating locations for the device.

4C.1.3.6 Indoor Railway Vibration

See Table 1 (A) of Council's decision regarding recommendations of the IHP rejected by Council.

1. In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 60m of the railway designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall be protected from vibration arising from the nearby rail corridor.

2. Compliance with standard 1 above shall be achieved by a report submitted to the council demonstrating compliance with the following matters:

(a) the new building or alteration to an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or

(b) the new building or alteration to an existing building is a single storey framed residential building with:

i. a constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and
ii. vibration isolation separating the sides of the floor slab from the ground; and
iii. no rigid connections between the building and the ground.

4C.1.4 Matters of Discretion

4C.1.4.1 Restricted Discretionary Activity – Audible Bird Scaring Devices

Council shall restrict its discretion to the noise levels and the consequential affect on amenity of the neighbouring properties. Notification of the application is not required. For the purposes of identifying affected persons, written approval shall be required from persons who will experience noise levels above 65dBA *SEL* (excluding a residential *dwelling* on the same property as the audible bird scaring device). Should any written approvals not be obtained from an affected person(s) notice will be served on those persons.

4C.1.4.2 Restricted Discretionary Activity - Frost Protection Fans

Council shall restrict its discretion to the following:

a. The level of noise that is to be emitted from the frost protection fan(s).

b. The effect of noise on the owners of land, and owners and occupiers of *dwellings* who will be affected by noise levels over 55dB LAeq and/or 65dB LAmax.

c. The hours of operation, duration and frequency of use of the frost protection fan(s).

d. The best practicable option for preventing or minimising adverse effects associated noise emissions. This may include, but is not limited to consideration of alternative options for frost protection, effectiveness of those alternative options, affordability, cumulative effects of existing frost protection fans in the vicinity, effects on established land uses, and proposed mitigation.

e. The operational requirements of the frost protection fan(s).

4C.1.4.3 Restricted Discretionary Activity – Indoor Railway Noise

Council's discretion is restricted to the following matters:

a. location of the building;

b. the effects of any non-compliance with the activity specific standards;

c. special topographical, building features or ground conditions which will mitigate noise impacts;

d. the outcome of any consultation with KiwiRail.

4C.1.4.4 Restricted Discretionary Activity – Indoor Railway Vibration

See Table 1 (A) of Council's decision regarding recommendations of the IHP rejected by Council.

Council's discretion is restricted to the following matters:

a. location of the building

b. the effects of any non-compliance with the activity specific standards

c. special topographical, building features or ground conditions which will mitigate vibration impacts

d. the outcome of any consultation with KiwiRail

a. *Council* shall reimburse developers for the costs of providing completed *infrastructure* as identified in the Ōmokoroa *Structure Plan* Infrastructure Schedule. For the purpose of this rule "completed" shall mean *infrastructure* that is constructed, approved by *Council* and vested in *Council*.

b. Temporary *infrastructure* that is constructed by the developer to facilitate development will not be considered for reimbursement e.g. temporary power, utility services or vehicle crossings.

c. The level of reimbursement given for all relevant *infrastructure* identified in the Ōmokoroa *Structure Plan* Infrastructure Schedule shall be based on an agreed estimate presented at the time of design.

d. Reimbursement shall be paid in accordance with *Council's* Long Term Plan except that reimbursement can occur earlier if negotiated with *Council*.

e. *Council* reserves the right to complete any of the works itself to facilitate development.

12.4.11.7 Ōmokoroa Light Industrial Zone

Proposed *lot* boundaries shall align with the boundary between the Ōmokoroa Industrial Zone and Ōmokoroa Light Industrial Zone and not straddle it.

12.4.11.8 Francis Road Industrial Zone Development Prerequisites

Prior to granting or Section 224 certification for subdivision, or the commencement of any industrial or business activity in the Francis Road industrial Area, the following is required:

See Table 1 (B) of Council's decision regarding recommendations of the IHP rejected by Council.

a. The closure of the Francis Road intersection with State Highway 2 shall be completed. Alternatively, prior to this intersection being closed, access into the Industrial Zone from Francis Road at or beyond it's intersection with State Highway 2 shall be prevented by way of an appropriate legal mechanism to *Council's* satisfaction.

b. The link between Ōmokoroa Road and Francis Road shall be completed in accordance with the Francis Road Structure Plan Area Typical 25m Cross-section. [The Francis Road design shall provide for safe movement of people utilising a variety of modes of transport and catering for a range of age groups with modal separation incorporated and shall include appropriate acoustic mitigation].

c. The site shall be fully serviced by sewerage, water and stormwater infrastructure.

12.4.12 Waihi Beach, Island View and Athenree Structure Plans

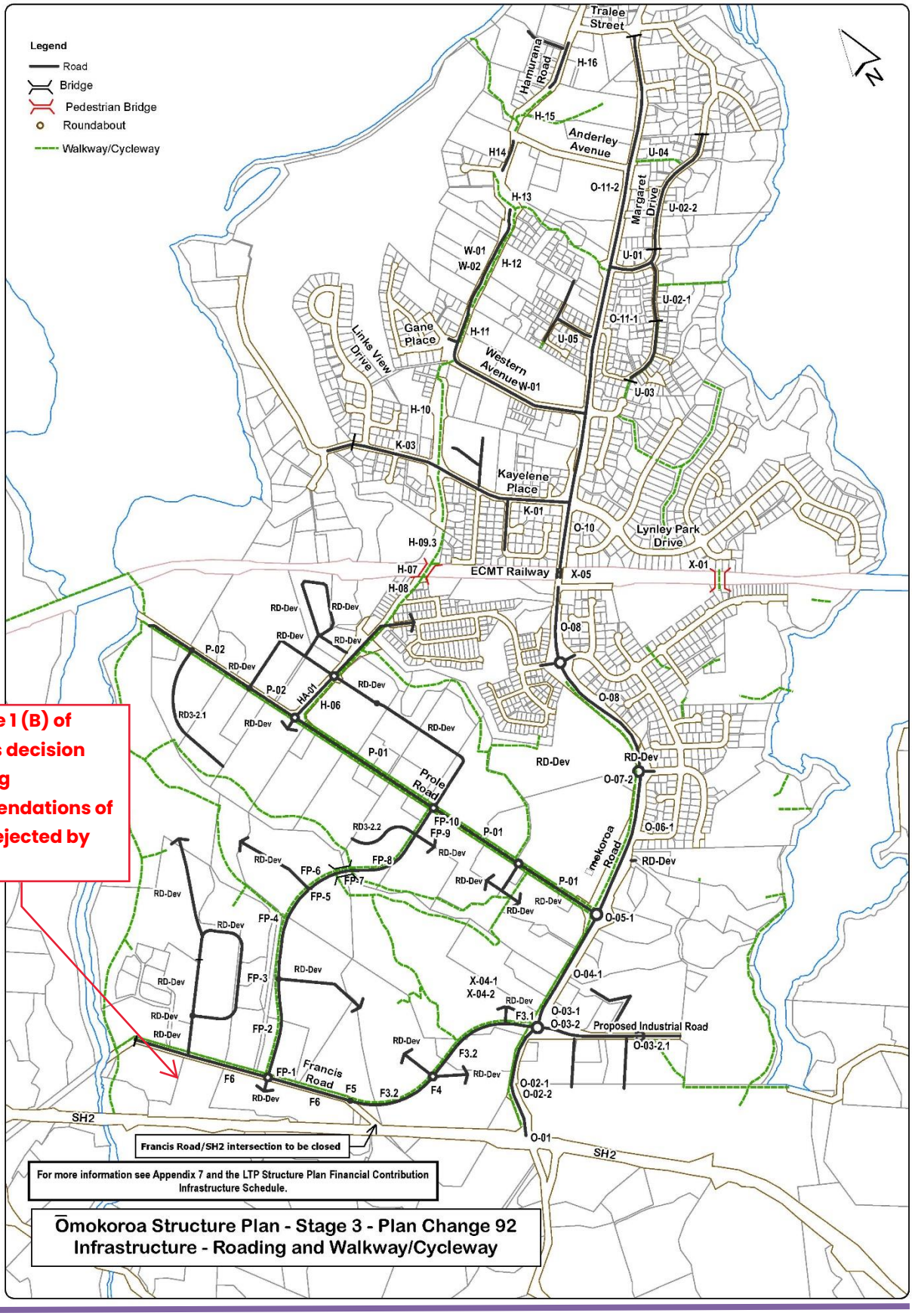
12.4.12.1 Stormwater

a. In the Waihi Beach, Island View and Athenree *Structure Plan* areas all new subdivision *developments* shall be designed for attenuation of the five year and 50 year flood flows to pre-development levels.

b. For all subdivision *development* in Athenree, in addition to the above all subdivision *development* will need to be in accordance with the Athenree Stormwater Plan (June 2001).

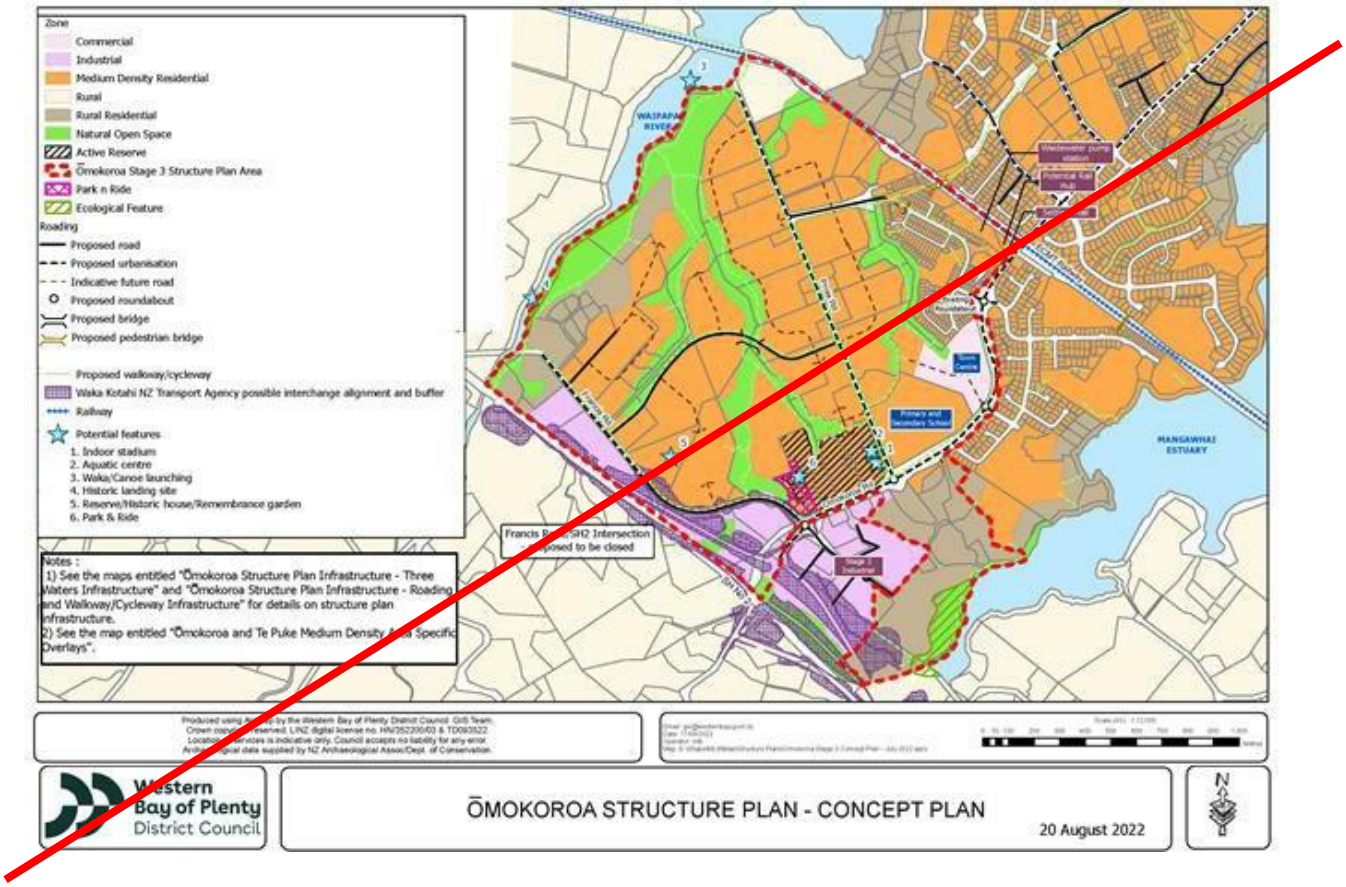
c. For all subdivision and *development* in Waihi Beach and Island View:

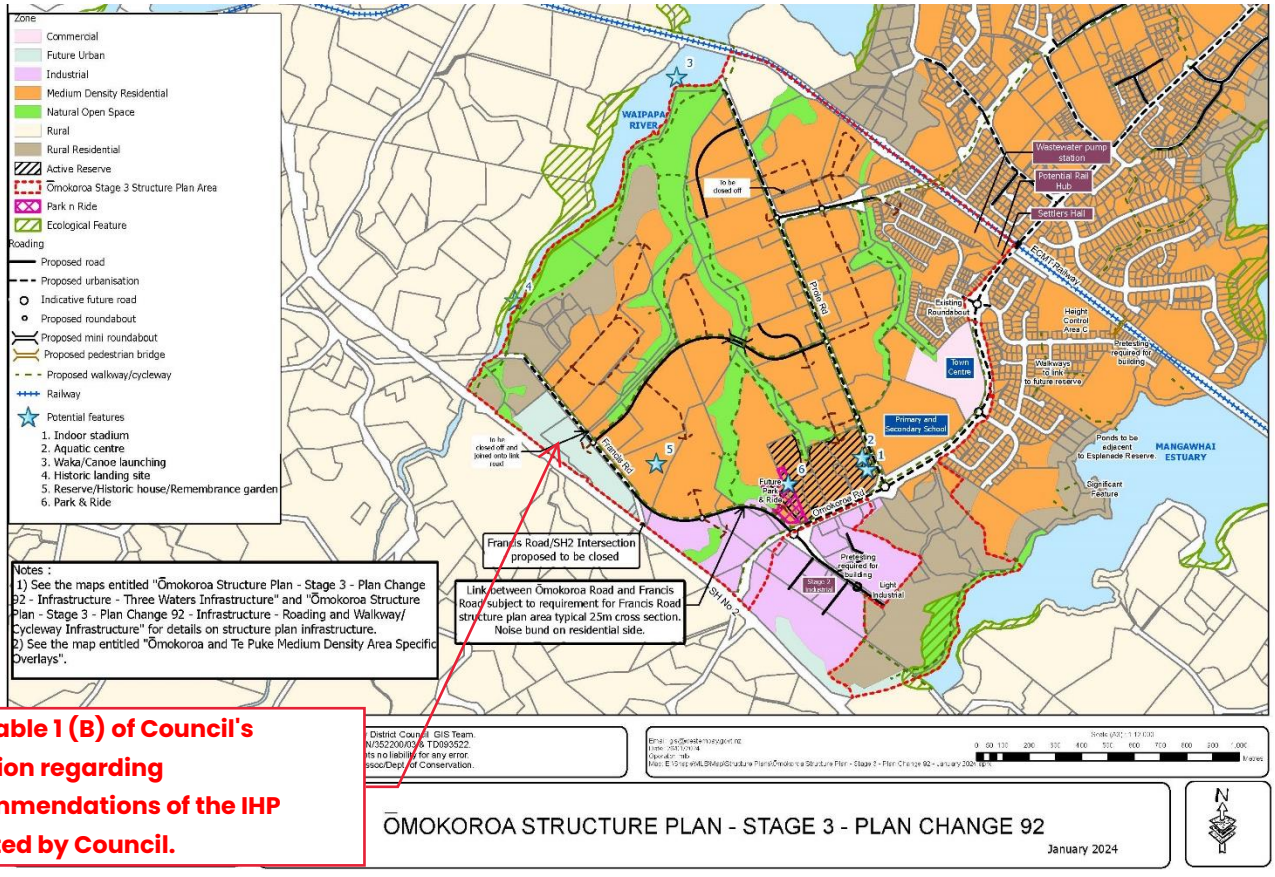
i. Existing overland flow paths should not be altered or changed without investigating and mitigating any effects.



See Table 1 (B) of Council's decision regarding recommendations of the IHP rejected by Council.

4.5 Ōmokoroa Structure Plan - Concept Plan





See Table 1 (B) of Council's decision regarding recommendations of the IHP rejected by Council.

Appendix 14 – Documents produced in an Intensification Streamlined Planning Process

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