WESTERN BAY OF PLENTY DISTRICT COUNCIL

Report & Decision for the Independent Hearing Commissioners

Following a Hearing held at Council Chambers, Western Bay of Plenty District Council, 1484 Cameron Road, Tauranga on Wednesday the 13th of November and Thursday the 14th of November 2024

A. Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, we, the Hearing Panel ('**Panel**'), make the following decision on the provisions of the operative Western Bay Plenty District Plan (First Review) and matters raised in submissions and further submissions to proposed Private Plan Change 95 – Pencarrow Estate, Pongakawa.

B. We (Commissioner Whetu and Commissioner Kemble) have been appointed by the Western Bay of Plenty District Council (**'WBoPDC'** or the '**Council**') as to hear and decide the application of a proposed Private Plan Change for Pencarrow Estate made by Kevin and Andrea Marsh (which we collectively refer to as the **'Applicant'**) to (by way of summary) rezone land from Rural to a combination of predominantly Residential, with a small area of Commercial zoning in the operative Western Bay of Plenty District Plan (First Review) (hereafter referred to as either '**the WDP**' or '**the District Plan**'). The WBoPDC has allocated the proposed Private Plan Change a number, so the application is generally referred to as proposed Private Plan Change 95 (or '**PPC95**' for short) or as '**the Proposal'**.

C. We note that PPC95 was lodged with the WBoPDC on the 15th of December 2022. It consisted of a substantial amount of information in the form of a 'section 32 analysis' and technical appendices. This information was subsequently added to by the Applicant post lodgement, and in the lead up to the hearing. We refer to the full suite of information as '**the Application Documents**'.

D. This document records our discussion and analysis of the submissions, and further submissions, that were lodged to PPC95. It is given under the auspices of the Resource Management Act 1991 (hereafter referred to as either '**the RMA**' or '**the Act**').

REPRESENTATIONS & APPEARANCES

E. The following representations and appearances were made during the course of the hearing:

The Applicant

Vanessa Hamm (Lawyer, Holland Beckett)
Kevin and Andrea Marsh (Applicants). Logan Marsh attended but did not present.
Richard Coles (Planner, Momentum Planning & Design)
Sue Matthews (Paengaroa Community Association)
Kirsty Garrett (Pukehina Residents & Ratepayers Association)
Joel Perry (Pedology & Land Productivity, LandVision)
Craig Haggo (Principal, Pongakawa School)
Peter Cooney (Developer, Classic Developments)
David Hamilton (Developer, Celt Saxon Corp). Mr Hamilton exchanged evidence but was not required to present his evidence as we had no questions of him.

Daniel Hight (Engineer, Lysaght Consultants)
Kirsten Brown (Geotechnical Engineer, CMW Geosciences)
Bruce Harrison (Traffic Engineer, Harrison Transportation)
Kevin Counsell (Economist, NER Economic Consulting)
Vincent Murphy (Planner, Momentum Planning & Design)

Submitters in Support:
Scott Adams (Director, Carrus Corporation)
Paul Hickson (Local Pongakawa Farmer)
Mark Boyle (Managing Director, Te Puke Economic Development Group)
Robyne Cooper (Pongakawa Local)
Ngāti Whakahemo representatives (opened and closed our hearings with karakia)

Neutral Submitters:
Waka Kotahi. Did not attend the hearing, but did exchange what we consider to be a statement of position, rather than expert evidence.

Submitters in Opposition:
Michael Maassen (Pongakawa Local)
Rebecca and Cameron Black (Pongakawa Farmers)

Bay of Plenty Regional Council
Rachel Boyte (Lawyer, Bay of Plenty Regional Council (or '**BoPRC**'))
Lucy Holden (Planner, BoPRC)
Sue Sutherwood (Director, Yaku Consultants)

WBoPDC
Kate Stubbing (Lawyer, Cooney Lees Morgan)
Fraser Colegrave (Economist, Insight Economics)
Stuart Ford (Pedology and Land Productivity, AgriBuisness Group)
James Abraham (Infrastructure Engineer - Water Services, WBoPDC)
Abigail Mark (Planner & Processing Officer, WBoPDC)
Samantha Prendergast (Transportation Engineer, WBoPDC)
Jason Crummer (Recreation Planner, WBoPDC)
Lauren Coyle (Planning Co-ordinator, WBoPDC). Ms Coyle was the Hearing Administrator, and attended all of the hearing but did not present, although she did address some logistical matters.
Tony Clow (Planner, WBoPDC). Mr Clow attended the hearing but did not present.
Natalie Rutland (Environmental Planning Manager, WBoPDC). Mrs Rutland attended the hearing but did not present.
Te Hau Gardiner (Lawyer, Cooney Lees Morgan). Mr Gardiner attended the hearing but did not present.
Georgina Dean (Urban Designer, WBoPDC). Ms Dean attended the hearing but did not present.
Tracey Miller (Planner, WBoPDC). Ms Miller attended the hearing but did not present.
Ken Lawton (Infrastructure Planner, WBoPDC). Mr Lawton attended the hearing but did not present.
Peter Watson (Reserves and Facilities Manager, WBoPDC). Mr Watson attended the hearing but did not present.

BACKGROUND & PROCEDURAL MATTERS

1. This is the report and decision of Independent Hearing Commissioners James Whetu and Gavin Kemble. As we have previously noted, we were appointed by the WBoPDC to hear and decide the application lodged by the Applicant for PPC95.

Evidence Exchange Process

2. When we were engaged, the WBoPDC hearing was scheduled for the 6th and 7th of June 2024. This was ultimately delayed at the request of the Applicant, due to some personal matters that took precedence. Prior to the initial planned hearing for June 6th and 7th, we issued a minute to the parties. Minute #1 addressed procedural matters and was aimed at ensuring an efficient and a fair evidence exchange. As we have noted, the hearing was unable to take place during the scheduled period of June 6th and 7th. As a consequence, this matter was put into abeyance until the Applicant advised the Council that the hearing could commence. Minute #2, issued on the 20th of August 2024, confirmed the updated hearing date and timetable for exchange information. The following exchange timetable was imposed:

    i. The WBoPDC was directed to issue (to all of the parties to this hearing) its section 42A report ('**the s42A Report**') by 5pm on Friday the 11th of October 2024;

    ii. The Applicant's written evidence (expert and non-expert) was to be submitted to the WBoPDC by 5pm on the 24th of October 2024, and circulated to all of the parties to the hearing ('**the Parties**') on the following day;

    iii. The Submitters' written evidence (expert and non-expert) was to be forwarded to the WBoPDC by 5pm on the 4th of November 2024, and circulated to the parties shortly thereafter; and

    iv. The Applicant's evidence in response (expert and non-expert) was to be circulated by 5pm on the 12th of November 2024, and supplied to the parties on the 13th of November 2024.

3. The evidence exchange timeframes were generally met by the parties.

4. The Application Documents, the submissions and further submissions, the s42A Report from the Processing Officer for the WBoPDC, and the pre-circulated evidence, were all pre-read by us. In that regard, and in accordance to section 41C(1)(b) of the Act, all information received was 'taken as read' during the hearing process.

5. During the course of the hearing, we heard from legal counsel for the Applicant, the WBoPDC and the BoPRC, all of whom were asked to take us through their legal submissions in some detail. We also received evidence from lay submitters, some of which were detailed and lengthy.

6. We heard from the Applicant and a selection of experts assisting with the Proposal as well as the WBoPDC and a selection of experts assisting the Council. Further, statements of evidence in support of both the submissions opposing and supporting PPC95 were also heard.

7. The hearing for PPC95 commenced at 9:30am on Wednesday the 13th of November 2024, with a karakia by a kaumatua from Ngāti Whakahemo opening our proceedings. Evidence was heard until approximately 5:10pm on Thursday the 14th of November, when the hearing was adjourned, pending the provision of additional information.

8. Minute #3 formally outlined the plans for a site visit by us, which was conducted on Friday the 22nd of November 2024.

9. Minute #3 also sought further information from selected experts. In that regard, it formalised requests that we had made verbally on the 14th of November 2024. All of the further information was ultimately supplied. The Applicant's experts were also given the opportunity to respond to evidence that was not pre exchanged (that is, information that was presented during the course of the hearing). That information was ultimately supplied in keeping with the timeframes set out in Minute #3.

11. Having considered all the information provided up to that point, Minute #4 was issued on the 3rd of December 2024 and directed expert conferencing from Mr Abraham, Ms Brown, Mr Hight and Ms Southerwood before 5pm on the 11th of December 2024. An associated joint witness statement ('**JWS**') was required to be issued to Ms Coyle by the 13th of December 2024. We also directed that expert conferencing would be undertaken by Ms Holden, Ms Mark, Mr Coles and Mr Murphy by the 18th of December 2024 and required that a JWS was to be issued to Ms Coyle no later than 5pm on the 23rd of December 2024. All of the actions were completed and the information requested was supplied in accordance with Minute #4.

10. We again met to discuss the adequacy of the information before us, and having done so, issued Minute #5 on the 5th of February 2025, inviting the Applicant to provide its closing submissions by the 12th of February 2025. Those submissions were duly received within this timeframe. Having reviewed the legal submissions provided by Ms Hamm, we decided that we did not need to reconvene the hearing. Minute #6 was issued to the parties on the 13th of February 2025, formally closing the hearing.

11. We wish to formally acknowledge the general willingness of all parties to respond to all our questions and directions. We also wish to record our thanks to Ms Coyle for the considerable assistance that she provided throughout the hearing.

Procedural Matters

12. In Minute #1, we invited all parties to identify any procedural matters or issues. No procedural matters or issues were identified prior to the hearing.

13. Mr Kemble identified and addressed four potential conflicts of interest in the first minute on the 16th of May, 2024. In this regard, Mr Kemble recorded established relationships he had with four people who had been, at that time, identified as being engaged by some of the parties to this proceeding. The people identified were Richard Coles, Nick Swallow, Mary Hill and Vanessa Hamm. While Mr Kemble stated that he did not consider that an actual or potential conflict of interest existed, the parties were invited to make submissions if they considered that such a conflict did exist. None of the parties advised that they considered an actual or potential conflict of interest existed.

14. At the commencement of the hearing on Wednesday November 13th, Mr Kemble addressed the actual and potential conflicts, and highlighted that he knew additional parties that had been engaged to assist the parties. In this regard, he discussed established relationships that he had with Sasha Patete-Marsh, Rachel Boyte, Scott Adams and Vincent Murphy. The parties to the hearing were again invited to advise if they considered that an actual or potential conflict arose from Mr Kemble having these relationships with the individuals cited. Again, no concerns were raised, with all legal counsel present advising that they agreed no real or perceived conflict of interest was present.

15. Ms Hamm, for the Applicant, raised a procedural issue prior to the commencement of the hearing on the morning of November 13th 2024. In this regard, Ms Hamm pointed us to the evidence that had been exchanged by the WBoPDC and opined that the WBoPDC was seeking to call evidence from experts that were not involved in the preparation of the s42A Report. Ms Hamm felt this manner was procedurally unfair for the Applicant and impacted natural justice as it introduced new material that the Applicant could not have reasonably anticipated. She also highlighted that while this could be remedied by giving the Applicant's experts a right of reply to the new evidence, she was clear that the costs of such replies would add an extra burden on the Applicant. We understand her submissions on this point to be that it would be unreasonable and unfair to place such a burden on the Applicant.

16. Ms Stubbing responded to this matter for the WBoPDC. We understand her advice to be that all of the parties engaged in the hearing by the WBoPDC had been involved in the assessment of PPC95 as it advanced and were involved (but maybe were not directly cited) in the s42A Report. Ms Stubbing was also clear that the best information needed to be before us if we were to make a well informed and robust decision.

17. After deliberating on the legal submissions that were put to us, we determined that while sympathetic to the Applicant's position, that we agreed with Ms Stubbing that in order to make the most informed decision we could, we required the best information. We agreed with Ms Stubbing that such information included the advice of the experts that the WBoPDC was to call. In order, however, to ensure that natural justice was preserved, we enabled the Applicant's experts to reply to the evidence of the experts being called by the WBoPDC. The process and timeframes for that response are set out in Minute #3. We record, for completeness, that the Applicant took advantage of the opportunity we provided.

18. We also addressed, at the commencement of the hearing, two matters related to the timing and form of submissions that were lodged to the PPC95. Both issues were highlighted by Ms Mark in her report. In this regard, Ms Mark advised that:[1]
    a. Scott Adams (Submitter 32) had lodged his submission to PPC95 one working day late; and
    b. Hayden Dugmore (further Submitter 38) had lodged his further submission in an incomplete manner, insofar as he had not identified the submission point numbers his further submission related to. Rather he had quoted the submitter number.

19. Ms Mark advised us that she did not object to either submission being accepted as she felt that neither had an impact on the plan change process.[2]

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[1] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 9, section 6
[2] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 9, paragraph 6.6

20. We invited the parties in attendance to advise if they had a position on the acceptance, or otherwise, of the submission of Mr Adams and the further submission of Mr Dugmore. No party (including the Applicant for PPC95) opposed the acceptance of either the submission or the further submission.

21. Having heard from the parties, we deliberated and determined that we would accept the submission of Mr Adams and the further submission of Mr Dugmore in accordance with section 37(1)(a) and (1)(b) and 37A of the RMA. In that regard, and in summary, we considered that no party would be disadvantaged or prejudiced by the acceptance of either document, and by their inclusion in the documents before us. We also considered that the documents provide useful insight from members of the community that would benefit our assessment. Lastly, and having considered section 21 of the RMA, we do not consider that the acceptance of either document would result in an unreasonable delay being experienced by any party.

Statutory Context for Our Assessment

22. It is common ground that section 73(2) of the Act allows any person to request that a change be made to a district plan. In this instance, PPC95 seeks to amend the District Plan. We shortly return to how PPC95 seeks to amend the WDP shortly.

23. It is also common ground that Schedule 1 (Part 2) of the Act sets out the matters that we are to consider when assessing the merits of PPC95. Ms Mark, for the WBoPDC concisely summarises those requirements in paragraphs 4.2 and 4.3 of her s42A Report.[3] For the purposes of this report, we adopt that summary, and do not repeat it in this decision.

24. Given the statutory content that applies to our assessment, this decision is structured as follows:
    a. We first summarise the changes sought to the WDP by PPC95;
    b. We then describe the environmental values that exist in and around the area that PPC95 applies to (which we refer to as '**the Site**' in the remainder of this decision);
    c. We then assess the actual and potential environmental effects of PPC95 on the existing environmental values;
    d. We then discuss whether PPC95 accords with and gives effect to the applicable national policy statements;
    e. We then discuss if PPC95 accords with and gives effect to the operative Bay of Plenty Regional Policy Statement ('**the RPS**'). It is important for us to recorded that we utilised the RPS as it was modified by proposed Plan Change 6. We come back to proposed Plan Change 6 later in this decision;
    f. We then discuss the relevant provisions of the planning instruments that are recognised by the applicable iwi authority;
    g. We then discuss if PPC95 accords with and is the most appropriate way to give effect to the purpose and principles of the Act (as summarised in Part 2 of the RMA);
    h. And we then consider PPC95 in accordance with section 32AA of the Act; and
    i. We ultimately then set out our decisions in relation to both PPC95 and the submissions / further submissions to PPC95.

25. We record for completeness that we received no evidence to suggest that there are relevant provisions of a regional plan, or that a water conservation order exists that we need to turn

[3] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 6

our attention to. Similarly, we received no evidence to suggest that trade competition or the effects of trade competition are live in relation to the Proposal. Given this, we do not address these considerations further in this decision.

26. We also record, again for completeness, that the management plans and strategies prepared under legislation other than the Act have been considered when we consider the statutory planning instruments. This is especially the case for the various SmarthGrowth strategies.

The Proposal

27. The Proposal is described to us in several places and in several different documents. We ultimately prefer the description provided by Ms Mark in section 3 of her s42A Report and have adopted it and relied upon it. That said, and by way of a very concise summary:
    a. PPC95 seeks to rezone of 12.4ha of rural land to a combination of residential, reserve and commercial zoning, with a developable area of 8.98ha. The rural land in question is situated in relatively close proximity to an existing residential area off Arawa Road in the wider area of Pongakawa. We record, for completeness, that the Arawa Road residential area is not located in close proximity to the Pongakawa School or the other community facilities that exist in that general location;
    b. Pongakawa is a small rural settlement located some 20km southeast of Te Puke. We heard extensive evidence that the hinterland of Te Puke is transitioning from dairy-focused land use to a greater horticultural and agriculture focus. The evidence before us is that this has created growth in rural living, increasing the demand for orchard worker accommodation and residential housing in the nearby areas;
    c. PPC95 seeks to create a village-like environment with increased residential housing and commercial amenities including shops, convenience stores, cafés and community services such as healthcare and education facilities. Additionally, the development plans include reserves and a playground to support growth in the area. **Figure 1**, which follows, summarises what is proposed and where; and
    d. Staging of the development is proposed. The proposed staging plan is attached as **Figure 2**, and is a feature of the rules framework that has been advanced by the Applicant.

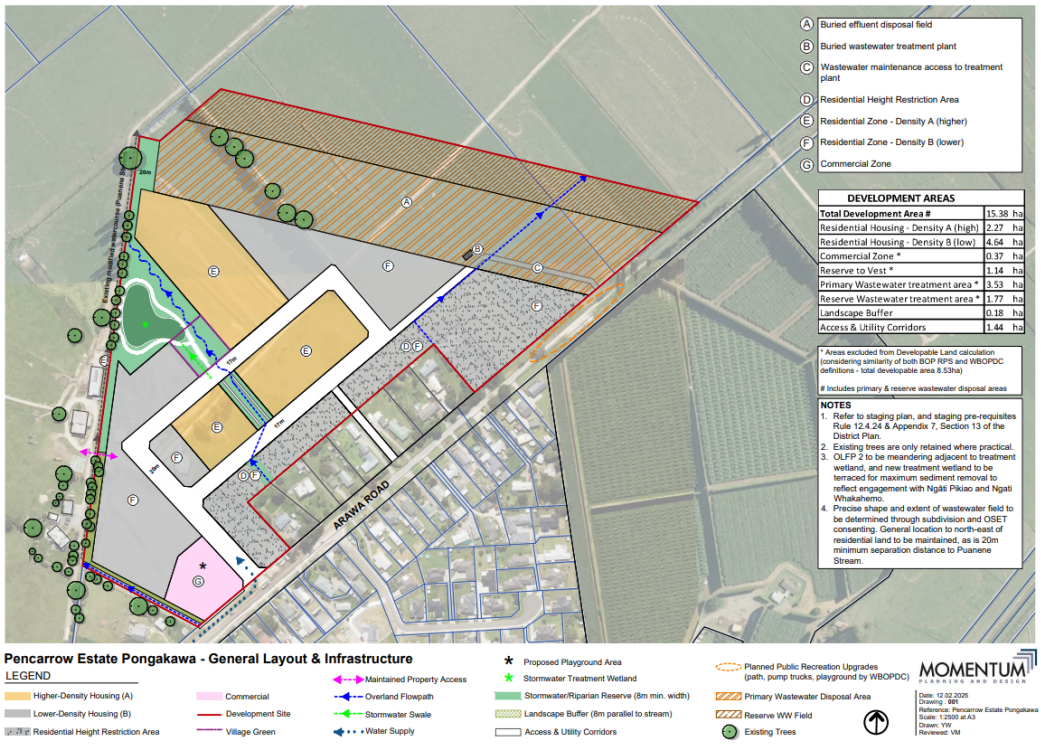

Figure 1: Proposed Pencarrow Estate Development Plan *(Source: Hamm, V, Reply Legal Submissions, 7th of February 2025)*

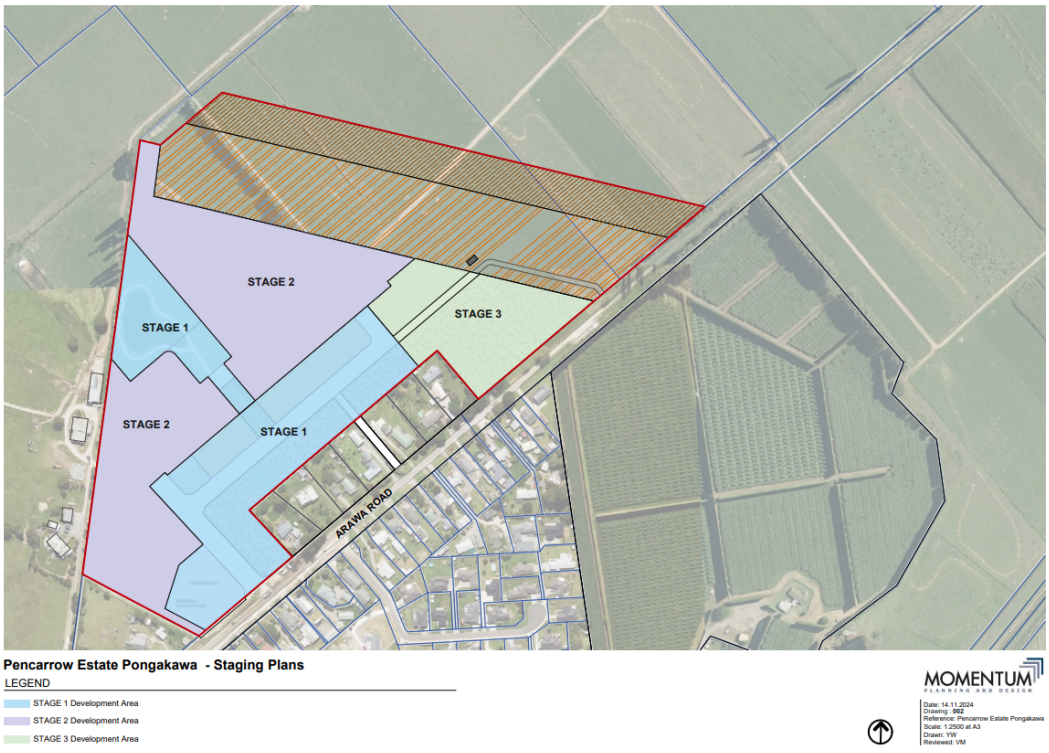

Figure 2: Proposed Pencarrow Estate Staging *Plan (Source: Hamm, V, Reply Legal Submissions, 7th of February 2025)*

28. We discuss the types of development that PPC95 would enable when we discuss the Proposal's anticipated environmental effects and its alignment (or otherwise) with the various statutory planning instruments.

29. Of some note, however, is that we understand that:[4]
    a. PPC95 will extend a small residentially zoned area (which we refer to as a '**residential enclave**') apparent on the eastern side of Arawa Road. The residential enclave commenced with the establishment of approximately five (5) dwellings in the 1960s. We were advised that this enclave expanded to become 62 lots in the 1980s, and that a further 23 lots were established and developed by 2016;
    b. Nine (9) lots of a rural-residential nature exist along the western side of Arawa Road. The majority (eight (8) lots) of the lots were established in 1997, with the nineth being established in the 2000s; and
    c. Established commercially zoned land is presently conspicuous by its absence in the residential enclave. In that regard, the residential lots that exist are not serviced by commercially zoned land or activities, with the nearest shop being included within a service station that is some 1.8 kilometres ('**kms**') away from the Site.

30. Suffice to say, therefore, that PPC95 would enable development to both further consolidate an existing area of residential development, and would enable the establishment of commercial activities within an area that has none. Both of these changes would significantly alter the character of both the existing settlement and the surrounding rural land.

Submissions & Further Submissions

31. We were advised that PPC95 was notified on the 10th of November 2023 and was open for submissions for 20 working days (the period for submissions to be lodged closed at 4pm on the 8th of December 2023). A 'Summary of Submissions' was then publicly notified for further submissions on Saturday the 3rd of February 2024 and was open for 10 working days (the period for further submissions closed at 4pm on the 19th of February 2024). A total of 37 submissions and four (4) further submissions were received.

32. Ms Mark, in section 8 of her report provides a useful summary of the submissions which we consider to be accurate. We therefore adopt that summary, and repeat it in full as follows:[5]

    8.2. "*37 submissions were received. Four further submissions were received. The overall positions of the submitters can be generally summarised as shown in Table 1 below. 16 submissions support the Plan Change, four submissions support in part and 21 submissions oppose the Plan Change.*

    8.3. *Two submission points supported the Plan Change in its entirety (Dianne Boothby (5.1) and Robert Allcard (6.1)) with no further explanation given.*

Support		***Support in Part***		***Oppose***	
No.	*Submission Name*	*No.*	*Submission Name*	*No.*	*Submission Name*
1	*Craig Haggo*	*10*	*Robin Simmons*	*7*	*Julian Clayton*
2	*Maketu Volunteer Coastguard*	*25*	*Kirsten Jefferson*	*8*	*Craig Green, Lisa McArthur*

[4] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section42A Report', 11 October 2024, pages 14 & 15, paragraphs 9.1 to 9.5
[5] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Report', 11 October 2024, page 11, paragraphs 8.2 & 8.3

3	*Shane Beech*	*26*	*Waka Kotahi*	*9*	*Graeme Gillespie*
4	*Maketu Volunteer Fire Brigade*	*27*	*Bay of Plenty Regional Council*	*12*	*[Michael Maassen]*
5	*Dianne Boothby*			*14*	*Rachel Sexton*
6	*Robert Allcard*			*15*	*Cyndi and Troy O'Reilly*
11	*Neville and Jill Marsh*			*16*	*Jordan and Ian O'Malley*
13	*Mark Boyle (Te Puke Economic Development Group)*			*17*	*Joseph and Victoria Phillips*
21	*Paengaroa Community Association*			*18*	*Jurgen Delaere*
22	*Peter Cooney*			*19*	*Alan and Patricia Birley*
24	*David Hamilton*			*20*	*Hamish Henderson*
28	*Pukehina Ratepayers & Residents Association Inc*			*23*	*Karen Summerhays, Nicola Cooke*
29	*Ngāti Whakahemo*			*31*	*Rebecca and Cameron Black*
30	*Paul Hickson*			*33*	*Gaye Allan*
32	*Scott Adams*			*34*	*Jodi Ahfook*
FS41	*Robyne Cooper*			*35*	*Tai Ahfook*
				36	*Gina and David Brookes*
				37	*Jo Delaere*
				FS38	*Hayden Dugmore*
				FS39	*Bay of Plenty Regional Council*
				FS40	*Waka Kotahi*

Table 1: Overall position of submissions"

33. We have considered the submissions and the further submissions lodged to PPC95. They are addressed to the extent we consider necessary in the body of the decision.

The Existing Environment

34. While defining the existing environment can sometimes be a complex and challenging task, we have nothing before us to suggest that defining the existing environment is complex in this instance. Again, we received detailed information on the various values that exist within, and adjacent to, the area that would accommodate PPC95. The following is a concise summary that we have prepared, having regard to that detail.

35. PPC95 applies to the Site which is located at 1491 State Highway 2 (or '**SH2**') and 53 Arawa Road, Pongakawa. The Site consists of two properties, the largest being a substantial portion of a property owned by the Applicant. 53 Arawa Road comprises a large lot that is rural-residential in nature. More specifically, the Marsh Farm is a 76.7 hectare ('**ha**') working dairy farm featuring a private dwelling and two ancillary sheds north of SH2, with additional sheds, a milking shed, and an effluent pond further north. A second dwelling is situated on the eastern side of the farm. The property at 53 Arawa Road, which joins the Marsh Farm along the northwestern side of Arawa Road, is also included in the proposed site (refer to **Figure 3**).

Figure 3: *Outline of the existing site owned by the Applicant (red line); the proposed plan change (blue dotted line), the location of key structures (blue circles)*

36. The Site is surrounded by farmland (owned by the Applicant) to the north and west, rural-residential properties across Arawa Road to the northwest, and the Penelope Place residential subdivision to the east and southeast. We heard evidence, which we accept, that the landscape is predominantly rural, although we note that the Penelope Place development has introduced an residential enclave (or settlement) into this rural setting. Except for the Te Puke Panel & Paint business located off SH2, there are no other commercial or industrial activities apparent within this settlement.

37. The broader area of Pongakawa has an established node of community infrastructure, which is situated approximately 1.8 km from the Site along SH2. It includes a combined primary and intermediate school, swimming pool, community hall and sports centre ('**the Pongakawa Action Centre**' or '**PAC**'). The nearest high school and supermarket are in Te Puke (15min drive/20km away). Of note is that no one suggested that the Site forms part of these areas. Rather, we understand the evidence to be that the facilities are proximate to the Site and thus could be accessed by parties who reside within the Site, should PPC95 be developed.

Current Topography

38. The Site slopes slightly from west to east, from an eight metre elevation near SH2 to a two metre elevation at the eastern boundary. We heard that the Site is predominantly flat, which we observed during our site visit. While there was some debate regarding the finer grained nature of the Site's productive capacity, we heard that this site is deemed to be highly productive land and has NZ Land Use Capability Classification ratings of Class 2 and Class 3, indicating a moderate-high value for primary production.

Contaminated Land

39. A Detailed Site Investigation (or '**DSI**') suggests there is potential for the Site to contain contaminated soils. The possible contaminants are said to include pesticides, superphosphate-based fertilisers, and lead-based paint. The Applicant advised us that while such contaminants could be present, the soil tests show that they do not exceed guideline values for residential use, suggesting negligible human health and environmental risks. The Site is deemed suitable for residential development with minimal risks of adversely affecting local ecosystems. There is no expert evidence before us which contested this advice.

Infrastructure

40. We were advised that the only portable water reticulation present is a main and riser main on Arawa Road. We were further advised that the current water supply that runs along SH2 services Pongakawa and that it is already at capacity.

41. We were advised that no council wastewater and stormwater are onsite.

42. The Applicant advised us that the Site contains farm drains which act to manage the water table, keeping the land suitable for farming all-year around. While there are presently no current truly natural watercourses on the Site, we were also advised that the drains present were a channelled section of the Puanene Stream. We note that the drains ultimately discharge to the Wharere Canal which, in turn, drains into the Waihi estuary.

Natural Hazards

43. The evidence before us is that the overall hazard risk on the Site is low.

44. That is not to say, however, that there is no natural hazard risk present. In this regard, we were advised that there is the potential for a 1% AEP (1-in-100-year) rainfall events, which would result in areas of the Site flooding

45. The Site is near the Maketu-Pukehina Tsunami Zone, which could be inundated in the event of a tsunami. **Figure 4**, which follow, show these two hazard zones.

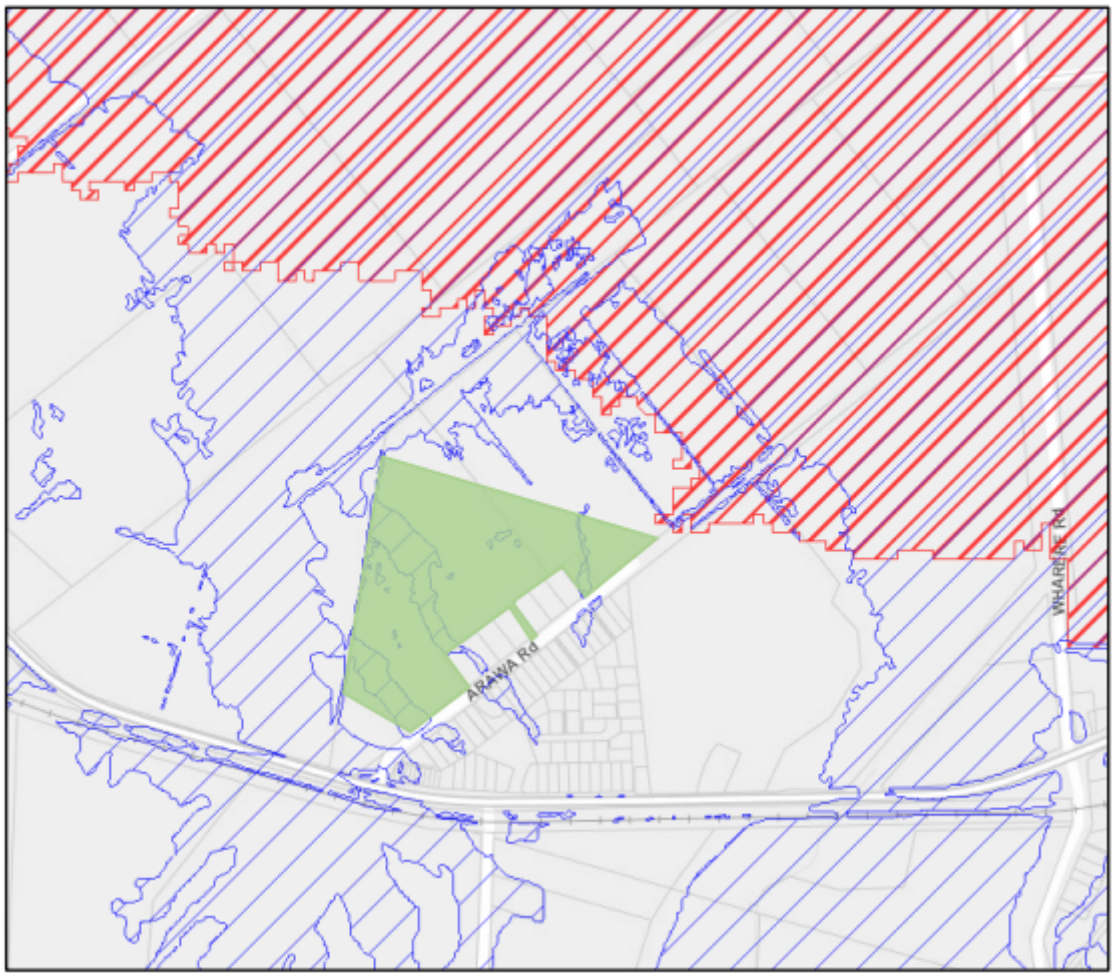

Figure 4: The blue dash represents the 1% AEP (1-in-100-year) Rainfall Flooding Event. The red dash represents the modelled tsunami risk at Maketu, Little Waihi and Pukehina. The green zone is the Site. (*Source: MPAD, The AEE*)

Ecological Considerations

46. We were advised that the Site is situated within the catchment of the Waihi Estuary which is in the Waitahunui Water Management Area ('**WMA**'). The advice to us was that all of the waterways within the catchment of the Estuary are heavily modified, are impacted by the adjacent land uses, have degraded water quality, and that all of these factors combine to impact on the freshwater ecology and impact on the health of the watercourses. That said, we were advised that a good diversity of native fish species (at least two of which (long finned eel and inanga) are highlighted as being 'At Risk – Declining in the New Zealand Threat Classifications) are present within the catchment of the Estuary.[6]

47. Of note is that there are no watercourses within the Site, but there are watercourses situated close by / that bound the Site.[7] A drain, and an excavated duck pond exist to the west of the Site. Wildlands opine that it is likely that the fish species will use this drain. This is due to the watercourse, while modified and degraded, possessing reasonably good habitat and being a key linkage / route for migrating fish species.[8]

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[6] Momentum Planning and Design ('**MPAD**'), 'Application for Plan Change Rural to Residential, Arawa Road, Pongakawa, for Kevin and Andrea Marsh (Pencarrow Estate), Updated November 2023' ('**the AEE**'), page 28, section 7.3 & Dean, H, Evidence in Chief (or '**EiC**'), 4th November 2024, pages 4 & 5, paragraphs 18 to 21

[7] MPAD, The AEE, page 28, section 7.3

[8] MPAD, The AEE, page 28, section 7.3

48. The Applicant advised us that there are no terrestrial habitat types within the Site that are dominated by indigenous species. In this regard, we were advised that the native species present tend to be present by themselves or in small clumps.[9]

Cultural, Archaeological & Heritage Values

49. There was a general absence of detail in both the Application Documents for PPC95 and in the s42A report as to the cultural values and associations that exist in relation to both the Site and the surrounding environs. This concerned us, as resulted in detailed questioning of the Applicant's planning experts during the hearing, and requests for additional detail after the conclusion of the first hearing days.

50. The Applicant advised us that an archaeological assessment had been completed for the Site and that no archaeological sites were discovered.[10] In the same breath, the Applicant responsibly advises, however, that it is reasonable to suspect that previously unrecorded archaeological sites are present.

51. The Applicant also advises, in section 7.2 of the AEE, that there are no nationally listed or district scheduled heritage buildings within the Site.

Rural Character, Residential Character & Amenity Values

52. The Applicant's advice to us was that both the Site and the land to the north, east, south-east and west are clearly of a rural character, and that the amenity they enjoy is linked to that character.[11] This reflects our own observations when we conducted our site visit. The obvious outlier to this observation is the residential enclave that has been developed around the eastern side of Arawa Road and in and around Penelope Place. This has a clear and apparent (urban) residential character, especially when viewed from within the enclave, similar to residential suburbs in settlements such as Te Puke and Tauranga. In between these two areas is a row of rural-residential dwellings that, in effect, provide a transition from the higher density residential development around the rural land associated with the Site.

53. We record, for completeness, that the planners attending the expert conference on the 20th of December usefully set out the various elements that make up or contribute to rural character. These elements were agreed and are summarised on pages 2 and 3 of the JWS that stemmed from the expert conference.[12] We do not repeat that detail but rely on it in our determination of the rural character that exists. We note the direct and significant role that the District Plan plays in defining the elements of rural character and confirm that we had regard to that direction when determining what values exist.

54. We record, for completeness, that our overall impression of the Site and the environments is rural. We consider this to be the dominant character. The residential enclave is distinct and apparent but clearly does not alter the dominant character. As we have noted, this area of residential development is confined and is, in our opinion, surprising to come across. We can see no logical reason for why it exists in the location it does, although we accept that this

[9] MPAD, The AEE, page 29, section 7.3
[10] MPAD, The AEE, page 28, section 7.2
[11] MPAD, The AEE, page 33, section 7.7
[12] Cole, R, Murphy, V, Mark, A, Holden, L, 'Joint Witness Statement – Planning' (hereafter referred to as '**JWS2**'), 20th of December 2024, pages 2 & 3

latter fact has little relevance to the matter at hand. In that regard, in a factual sense, the residential enclave exists and establishes a residential influence on those areas around it.

Transportation & Traffic

55. We received a lot of information on the existing traffic and transportation environment, which we now summarise.

56. Bruce Harrison presented evidence in support of the Applicant's case at the hearing. Paragraphs 11 to 13 of Mr Harrison's evidence concisely sets out the 'existing transport context', which we consider is robust and provides a concise summary of the status quo. We adopt that summary, but record, for completeness only[13]:
    a. Arawa Road is an existing road with a 'Local Road' classification, and has a speed limit of 40 kilometres per hour ('**kms/hr**'). It provides access to the Site, the rural residential properties and to the residential enclave that is centred around Penelope Place. It is sealed, with the extent of the seal varying between five (5) and six and a half (6.5) metres;
    b. Arawa Road intersects with SH2, which is deemed to be a 'Strategic Primary Arterial Road' and enjoys a speed limit of 100 km/hr. The intersection is a 'T-intersection and is 'give way' controlled. It has a sealed width of 13.5 metres. A right turn bay is provided from SH2 into Arawa Road; and
    c. Arawa Road carries, on average, 350 vehicles per day ('**vpd**') whereas SH2 carries, on average, 7,056 vpd.

The Actual & Potential Effects on the Environment

57. We are required to have regard to any actual or potential effect that the Proposal could have on the environment; in particular having regard to any adverse effect in respect to making a rule.

58. Having considered the information and evidence before us, we are most attracted to the approach adopted by the Applicant to the various environmental effects considerations. Consequently, we follow their broad structure in this part of our decision. A significant difference, however, is that we have not strayed into the analysis of the Proposal against the provisions of the various statutory and non-statutory planning instruments. That is a matter that we address separately in subsequent sections of this decision.

59. We, therefore, address the Proposal's environmental effects in the following subsections of this section of the decision.
    a. Reverse Sensitivity;
    b. Contamination;
    c. Archaeological, Heritage and Cultural;
    d. Ecological and Hydrological;
    e. Infrastructure;
    f. Geotechnical Stability;
    g. Natural Hazards;
    h. Rural Character, Residential and Amenity;
    i. Traffic and Transportation;
    j. Earthworks and Construction; and
    k. Positive.

[13] Harrison, B, 'Evidence in Chief'('**EiC**'), 24th of October 2024, paragraphs 11 to 13, page 4

Reverse Sensitivity Effects

60. We heard evidence relating to reverse sensitivity concerns, primarily associated with the continued operation of the balance of the Applicant's existing farm, and from the adjacent horticultural activities on the eastern side of Arawa Road. This matter was also raised in some of the submissions to PPC95.[14] We accept both concerns as being legitimate and matters that we are required to consider. We also note, however, that we heard no expert evidence to suggest that the matters were live, by the time of the hearing.

61. In this respect, we understand that the Applicant's proposed relocation of the adjacent farming activities from the boundaries of the Site, and the proposed use of reserves and buffers within the Site are considered to be sufficient to address the reverse sensitivity concerns that could arise within the Site itself, and from the continued operation of the Applicant's farm.

62. In terms of the adjacent horticultural activities, we agree with Ms Mark that the obligations on the horticulturalist to manage spray drift and the existing shelterbelt of the Site will be adequate to address any adverse effects from that activity.[15]

63. Given the absence of any disagreement amongst the expert advice that is before us, we are satisfied there are measures proposed (and incorporated into PPC95) to ensure that any effect is managed appropriately. In that regard, we consider that any actual and potential reverse sensitivity effect can be managed to the point that it is minor or less. We consider the reverse sensitivity prerequisites applying to Stages 1 and 2 of any development of the Site are the only provisions that need to be incorporated into PPC95 to achieve this outcome.

Contamination Effects

64. Contamination issues arise, we understand, due to some of the land uses that have been conducted within the Site. As we have already foreshadowed, the evidence before us is that some of the soils within the Site have been contaminated but that all of the monitoring conducted has found that the contamination levels do not exceed the guideline values for residential land use.[16] The Applicant contends that this means that the Site is suitable for residential development.

65. The Applicant also advised that the soil monitoring revealed that the development and disturbance of land within the Site poses no contamination exposure effects to terrestrial or aquatic ecosystems.[17]

66. Having considered the information that is before us, we are satisfied that the contamination that is present does not make the Site unsuitable for the usesenvisaged by PPC95. We are further satisfied that subsequent processes, such as those governed by the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011, will ensure that any adverse effects can be appropriately managed to the point whereby any adverse effects of this nature are avoided, remedied or mitigated. We also do

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[14] Refer, for example, to Gillespie, B, Submission, 5th December 2023, page 3, Birley, A & P, Submission, 7th December 2023, page 2, paragraph 19.2, Black, C & R, Submission, 8th December 2023, page 4, paragraph 31.5

[15] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Report', 11 October 2024, pages 98 to 100, paragraphs 19.1 to 19.15

[16] MPAD, The AEE, page 27, section 7.1

[17] MPAD, The AEE, page27, section 7.1

not consider that any rules or other provisions need to be included in PPC95 to address this type of actual or potential environmental effect. In that regard, we are satisfied that the frameworks existing within the applicable national, regional and territorial statutory planning instruments will ensure that any such effects are addressed to the extent needed for any effects of this nature to be appropriately managed.

Archaeological, Heritage & Cultural Effects

67. The evidence before us is that the Proposal will not result in any adverse effects on items of built heritage.[18]

Further, while we understand that impacts on archaeological items and sites cannot be discounted, the collective advice before us is that this impact can be addressed with the requirement that an archaeological authority be obtained prior to development occurring.[19] We accept this advice, as we understand that Heritage New Zealand will not grant such an authority unless measures are put in place to appropriately manage any impacts of the activities that would be enabled by PPC95 on archaeological resources that are unearthed during any construction activities. Further, we note that the development will not proceed without an archaeological authority being first granted.[20]

68. We were advised that Ngāti Makino, Ngāti Pikiao, Ngāti Rangitihi and Ngāti Whakahemo are the Tangata Whenua for the Site and the surrounding environs. We understand that while some of these entities hold statutory acknowledgements for areas within the Bay of Plenty, none apply to, or close to the Site. [21]

69. More particularly, Ms Mark provided a useful summary of the engagement that has occurred with Tangata Whenua in section 5 of the s42A Report. In this regard, we were advised that:[22]
    a. Ngāti Rangitihi was engaged over PPC95, but choose not to comment or otherwise involve itself in the advancement of PPC95;
    b. Ngāti Makino indicated that Ngāti Whakahemo would respond on its behalf, and thus choose not to take an active part in the process associated with PPC95;
    c. Ngāti Pikiao was engaged over PPC95. Wastewater and stormwater management, water quality and the provision of meandering (in preference to straight, channelised) water courses were sought. We record, for completeness, that no submission was lodged seeking these outcomes; and
    d. Ngāti Whakahemo has engaged with the Applicant, the outcome of which is a submission that supports PPC95, subject to the water quality being managed and safeguarded.

70. We also note that Tania Turner lodged a submission to the Proposal on the 5th of December 2023. The submission was lodged, we understand, on behalf of Ngāti Whakahemo.[23] As Ms Mark noted, the submission is lodged in support of PPC95. The support offered appears to

[18] MPAD, The AEE, page 27 & Appendix 5, section 7.2
[19] MPAD, The AEE, page 27 & Appendix 5, section 7.2
[20] MPAD, The AEE, page 27, section 7.2
[21] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11 October 2024, page 8, paragraphs 5.2 and 5.3
[22] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11 October 2024, pages 8 & 9, paragraphs 5.7 to 5.11
[23] Turner, T, Submission, 5th December 2023, page 2

be contingent upon a number of environmental outcomes being achieved, however. Those measures are, in summary:

a. That comprehensive environmental protection measures are incorporated into PPC95 around the water intake area;
b. The implementation of robust environmental protection measures for stormwater disposal, prioritising the preservation and safeguarding of waterways and ecosystems is undertaken;
c. The implementation of stringent environmental protection measures for wastewater management, with a focus on preserving and safeguarding the waterways and ecosystems is undertaken; and
d. The implementation of comprehensive environmental protection measures in the monitoring of wastewater development and disposal, ensuring strict adherence to regulations and safeguarding the integrity of the waterways and ecosystems occurs.

No further information was provided by Mrs Turner and/or Ngāti Whakahemo. As a consequence, we have nothing we can rely on to determine if the outcomes sought in Mrs Turner's submission are satisfied within the content of PPC95, except for the comments made by the Ngāti Whakahemo kaumatua who opened and closed our proceedings with karakia. We can only presume, on the basis that neither Mrs Turner nor Ngāti Whakahemo felt the need to appear before us and present their submission, that there is a broad level of comfort in the Proposal. With that said, we have been careful to consider the outcomes sought by Mrs Turner when we have considered the biophysical effects of the Proposal. In that regard, it is clear to us that Mrs Turner is most concerned with the waterways / water quality and the ecosystems that are supported both within the Site and that could be impacted by development occurring in the manner envisaged by PPC95.

71. The potential for the Proposal to impact on cultural values is, in our opinion, more vexed than most of the other categories of actual and potential effects we have to consider. In this regard, while the Applicant has engaged with Tangata Whenua over the Proposal, little tangible information was initially provided to enable us to have regard to the actual or potential cultural effects that could arise. The AEE talks of the need for the Proposal to provide an appropriate level of management to ensure that the ecosystems and water resources are protected. Additional information was provided both during and following the adjournment of the hearing. Unfortunately, we found this information to be of limited assistance.

72. We certainly can see the causal connection between the cultural values and associations that have been expressed and the need for the Proposal to ensure that those values are maintained or improved. As is apparent in our discussion of the Proposal's actual and potential effects on the ecological and hydrological values, we consider that PPC95 responds appropriately to both of these biophysical values.

73. While somewhat troubled by the quality of the information that is before us on the actual and potential cultural effects of PPC95, we are satisfied that the Applicant has sought to engage with the relevant Tangata Whenua entities and that it has sought to respond appropriately to the feedback that has been provided. It follows, therefore, that we are satisfied, albeit by a relatively slim margin, that the actual and potential cultural effects of PPC95 can also be appropriately managed. Indeed, given the information before us, we are satisfied that any actual or potential cultural effects can be managed to the point that they are minor (or less).

74. We considered whether an advice note was needed to be inserted into PPC95 to remind those looking to undertake development than an archaeological authority is required before land disturbance can commence. While initially attracted to that prospect, we ultimately determined that this matter can be left to the requirements of the legislation that exists.

75. We also considered if we needed to make cultural effects a matter that the WBoPDC can exercise its control over when determining a resource consent application for a controlled activity in accordance with proposed Rule 12.4.24.2(b.) of PPC95. We ultimately determined that this was not needed given the general level of comfort that had been expressed by Tangata Whenua in relation to PPC95. In reaching this conclusion we also note the advice of the planners that a discretionary resource consent application(s) will very likely be needed to realise the Proposal and that such resource consents will likely be needed from both the BoPRC and the WBoPDC. We are satisfied that these processes will ensure that any adverse cultural outcomes are addressed to the point that the effects are either acceptable, and resource consent is granted, or are avoided, whereby the resource consent applications will, in all likelihood, be declined. We are also satisfied that the existing national, regional and territorial planning instruments will ensure that sufficient attention is paid to the issue of cultural effects in the resource consent application phase.

Ecological & Hydrological Effects

76. Wildlands Consultants Limited ('**Wildlands**') were engaged by the Applicant to assess the potential for the Proposal to impact on the ecological (terrestrial and freshwater) values present within the Site.

77. In summary the information and evidence before us is that the actual and potential ecological and hydrological effects of the Proposal can be described as follows[24]:
    a. Puanene Stream (which the AEE describes as a 'drain') to the west of the Site and the associated duck pond will not be directly impacted by the Proposal;
    b. While stormwater is to be discharged to the Puanene Stream to the west of the Site, its treatment will prevent the manifestation of any unacceptable water quality impacts;
    c. The development of a stormwater detention facility within the Site (as part of the development of the Proposal) as a managed wetland is expected to generate positive ecological benefits. Indeed, we heard that care is needed to ensure that both the stormwater quality and the facilities that will form part of the stormwater network are constructed and operated so as to maintain the quality of the habitats in the drain to the west of the Site;[25]
    d. The highly modified terrestrial environment present within the Site means that any loss of indigenous species will have a very small impact. While not stated explicitly within the AEE, we understand that native tree species are proposed to be used as street trees, so as to provide habitat for avifauna.[26] In many respects, this appears to be offered as an offset;[27]

78. At a very fundamental level, the AEE advised us that the Proposal is suited to the Site, from an ecological perspective. There does not seem to be any expert disagreement with this statement, although revisions were suggested to the structure plan to better enable an

[24] MPAD, The AEE, pages 28 & 29, section 7.3
[25] MPAD, The AEE, page 29, section 7.3
[26] MPAD, Pencarrow Estate Pongakawa – Landscaping Plan (Drawing 004), 14th November 2024
[27] MPAD, The AEE, page 29, section 7.3

outcome that accords with the opinions of all experts. We understand that these amendments were made by the Applicant and are apparent within the version of PPC95 that was presented by Ms Hamm with her legal submissions in reply.[28]

79. We heard limited evidence from experts in these areas, which we understand was due to there being broad agreement that these values can be protected between the Applicant, the WBoPDC and the BoPRC. Indeed, only the BoPRC called expert ecological evidence, being that of Hamish Dean, a qualified ecologist with some 21 years' experience. We understand the key points raised by Mr Dean to be[29]:

a. The Puanene Stream is a waterway within a heavily degraded catchment (being the catchment of the Waihi Estuary). Efforts are underway to restore the catchment. Indeed, it is one of the BoPRC's priority catchments for freshwater improvement;
b. Riparian Buffers represent an important ecological link between the terrestrial and freshwater environments. They can both improve water quality and the habitat available for instream biota;
c. A buffer should be established between the Puanene Stream and the residential development that would be enabled by PPC95. The buffer does not need to be fully planted, but there should be a strip of native planting that is maintained to ensure that it functions as intended. Not only does this represent good (best) practice, but it will both undo some of the historic impacts of the land uses within the Site on the Stream, and contribute to improved ecological functioning of the Stream and its margins; and
d. The riparian buffer should be eight (8) metres wide.

80. We also heard evidence from Lucy Holden (a resource management planner with some 11 years' experience) on this matter. While Ms Holden cannot and indeed did not seek to adduce expert ecological evidence, we see the logic of her advice that we do not solely rely (as the Applicant had proposed) on a rule in the District Plan to set structures back from the Puanene Stream. Ms Holden recommended that we effectively buttress the existence of a rule with a consent notice that applies to all of the titles that abut the Puanene Stream to ensure that the proposed eight (8) metre setback exists in perpetuity.[30]

81. We record that some submitters highlighted ecological matters of concern. A notable example was Hamish Henderson who expressed concern about stormwater and wastewater discharges from the Site (once developed in accordance with PPC95) impacting on the already degraded Waihi Estuary. We understand him to state that the impacts of land use should not just be minimising adverse effects. Significant improvements are, in his opinion, warranted.[31] We have already highlighted the environmental outcomes sought by Ms Turner in our discussion of the Proposal's cultural effects.

82. We agree with the concerns raised by the submitters but have taken considerable comfort from the body of expert ecological advice that is before us. In that regard, we are satisfied that the measures proposed to capture, treat and discharge stormwater and wastewater are appropriate to the environs, while the creation of a wetland habitat, an 8-metre-wide planted buffer, and the use of native plant species in the street / buffer planting will ensure that any effects are acceptable and, in our opinion, are likely to be, at worst, minor. We note also that

[28] Mark, A, EiR, 22nd November 2024, paragraph 59 & Hamm, V, Reply Legal Submissions, 7th of February 2025, page 31, paragraph 54
[29] Dean, H, EiC, 4th November 2024, pages 3 to 10, paragraphs 18 to 39
[30] Holden, L, EiR, undated, pages 2 & 3, paragraphs 6 to 8 & Holden, L, EiC, undated, pages 11 to 13, paragraphs 40 to 50
[31] Henderson, H, Submission, 4th December 2023, page 2, paragraphs 20.1 & 20.2

additional resource consents are likely to be needed, from both the WBoPDC and the BoPRC prior to the realisation of the development enabled of PPC95.[32] This will give a further opportunity for the actual and potential effects of the specific proposals to be assessed. As the activity classifications are, we were advised, likely to be discretionary, there will be opportunity for all relevant considerations to be assessed, for conditions to be imposed and even for resource consent to be declined, should the relevant Consent Authority determine that the ecological effects of a proposal are unacceptable.

83. While accepting that there are matters that need to be addressed in any resource consent application process, the advice to us is that the structure plan which forms an integral part of PPC95, and the associated rules of the plan change will result in the ecological outcomes that are needed. We have considered the proposed provisions of PPC95 to determine if further rules or provisions need to be inserted. We have ultimately determined that no additions are needed to ensure that the necessary ecological outcomes are achieved, and that any adverse ecological effects are either avoided, or can be managed to the point whereby they will be minor or less. We are also satisfied that the development of the Site in the manner enabled by PPC95 will, in all probability, generate a beneficial ecological outcome.

Infrastructure Effects

84. There was initially some contention amongst the experts for the parties as to the ability for the Site to be serviced by infrastructure. As a consequence of the expert conferencing we directed, after the adjournment of the hearing, any areas of substantive contention appear to have been resolved. In that regard, the JWS dated the 5th of December 2024[33] advised us that:

a. Effluent disposal via soakage fields is proposed at the Site. The experts present at the conference advised us that even if very conservative soil parameters are used, soakage fields can be accommodated within all of the lot sizes proposed. They also advised us that there is no need to set development densities based on soil soakage rates;[34]

b. Detailed soakage testing to determine the precise size and location of the disposal fields can be deferred until the resource consent stage of any development on the Site. This advice stemmed from the agreed position that we have summarised in Bullet Point 1 and the associated comfort amongst the experts that the discharge of effluent can be accommodated on the Site in a manner that meets the relevant standards and expectations of both the WBoPDC and the BoPRC;[35]

c. While there was originally some concern about the location of an overland flow path relative to a planned irrigation field (the overland flow path traversed part of the planned irrigation field), that any issues can be addressed in the detailed design phase associated with any resource consent process. More precisely, we heard that the irrigation field proposed can be installed in a modular and irregular manner, meaning that it will be possible to avoid any overland flow path;[36] and

d. While there are a number of factors that will need to be carefully considered when the resource consent applications are advanced for the Proposal, all of the experts who attended the conference agreed that sufficient space is available within the Site

[32] Cole, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, Attachment 1

[33] Hight, D, Brown K, Southerwood, S, Abraham, J, 'Joint Witness Statement – Stormwater / Wastewater' (hereafter referred to as '**JWS1**'), 5th of December 2024

[34] Hight, D, Brown K, Southerwood, S, Abraham, J, JWS1, 5th of December 2024, pages 2 & 3

[35] Hight, D, Brown K, Southerwood, S, Abraham, J, JWS1, 5th of December 2024, pages 4 & 5

[36] Hight, D, Brown K, Southerwood, S, Abraham, J, JWS1, 5th of December 2024, pages 3 & 4

for the establishment and operation of both the irrigation field and a suitable reserve area.[37]

85. We record, for completeness, that we heard a lot of evidence / read a lot of information on the ability for the soils underlying the Site (and indeed the groundwater table) to accommodate the stormwater and effluent disposal (via groundwater disposal) that PPC95 would enable. While the experts were able to resolve their disagreements (as is evident from the Bullets Points (a.) and (b.) of this paragraph), criticism from lay submitters, such as Mr Maassen remains.[38] We understand Mr Maassen's position to be that the Applicant's analysis is fundamentally flawed, and does not represent what he and others experience at the Sites in the surrounding environs. We note that this was a recurrent theme in a number of submissions.

86. We understand that additional potable water infrastructure will be needed to service the development of the Site. The evidence and advice before us is that such infrastructure can be provided, and that design should occur at the detailed design phase.[39] We record, for completeness, that some submitters stated that the existing water supply would be inadequate to service the development that PPC95 would enable.[40] This reinforces the need to improve and update the potable water supply to the Site.

87. In a similar vein, we understand that all necessary power and communications infrastructure can be installed to service the development of the Site in the manner enabled by PPC95.[41] We also understand that Pongakawa School can accommodate the additional primary and intermediate aged children that the development of the Proposal could generate.[42]

88. The planning experts who attended the expert conferencing on the 17th of December 2024 advised us, having reviewed the JWS that arose from the infrastructure expert conferencing (conducted on the 11th of December 2024), that amendments should be advanced to the rules of PPC95. Those amendments are logical and are thus accepted by us as being appropriate responses to the recommendations that arose from the conference of the infrastructure experts.[43] The amendments recommended were:
    a. That a note be added onto the structure plan drawings to enable some flexibility on the precise shape of the wastewater disposal field (while maintaining the 20-metre separation from the Puanene Stream); and
    b. Bringing the eastern-most overland flow path ('**OLFP 3**') forward so it forms part of the pre-requisites associated with Stage 1. The advice to us is that this should avoid the complexity of having to provide an overland flow path around a wastewater field that was installed to service earlier stages.

89. In her closing legal submissions, Ms Hamm stated:

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[37] Hight, D, Brown K, Southerwood, S, Abraham, J, JWS1, 5th of December 2024, page 6
[38] Maassen, M, EiR, undated, our renumbered page 8 to 10 (numbered '1' to '3' and unnumbered (twice) on Mr Maassen's evidence), refer also to Clayton, J, Submission 5th December, page 4, paragraphs 7.7 &, in part, 7.8
[39] MPAD, The AEE, page 30, section 7.4
[40] Such as, but not limited to, Jefferson, K, Submission, page 2, paragraph 5.3
[41] MPAD, The AEE, pages 30 & 31, section 7.4
[42] Haggo, C, Submission, 17 November 2023, page 2, paragraph 1.1
[43] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 15

"In summary, the applicants have produced sufficient evidence to demonstrate that stormwater and wastewater management can be addressed, and that any details to be refined can be appropriately dealt with during the resource consent process."[44]

90. Having considered the information that is before us, we agree with Ms Hamm's summation on this point.

91. More particularly, given all of the information and expert evidence that is before us, we conclude that the collection, treatment and discharge stormwater and wastewater, and the supply of potable water does not prevent the realisation of the Proposal subject to appropriate provisions being contained within PPC95. We acknowledge and appreciate the concerns expressed by some submitters, such as Mr Maassen, but we have been persuaded by the body of expert evidence which seems to agree that the infrastructure needed for the Proposal to proceed can be provided; although the detailed design of the infrastructure will need to be carefully evaluated when the resource consent applications for the realisation of the Proposal are lodged. We are satisfied that it is appropriate to defer the supply of these details until the resource consent application stage.

92. We have also considered the detail included within PPC95 to determine if any other rules or provisions are needed in relation to this classification of actual and potential environmental effects. Having done so, we are satisfied that the detail proposed is sufficient to ensure that any actual or potential infrastructure effects can be managed either now, or in the future. We are also satisfied that PPC95 will ensure that any adverse effect is minor or less, or avoided altogether.

93. We record, also, that there is general agreement between the experts as to the provisions that are needed within PPC95 to address the actual and potential effects of the development that could arise were PPC95 to be approved. The one area of apparent disagreement, which appears to be more of an issue of form over substance, relates to the stormwater prerequisite that must occur prior to a section 224 (of the Act) certificate being issued, or a land use and/or activity authorised by a building consent being conducted on the Site (refer to proposed rule 12.4.24.23 of PPC95).

94. Ms Mark recommends that we adopt a prerequisite which requires the production of an engineering design report, which is prepared by a suitably qualified chartered engineer, to, by way of a broad summary, address the stormwater undertakings given by the Applicant, and the findings of the various infrastructure experts (as recorded in JWS1). Mr Murphy, on the other hand, recommends that we impose two performance matters that apply in 10% AEP (10-year) and 1% AEP (100-year flood) events. Basically, requirements that runoff from the Site is entirely contained during a 10% AEP (10-year) storm event, or 80% of retained during a 1% AEP (100-year) stormevent.

95. Having considered both options, we are more attracted to the rule framnework that is recommended by Ms Mark. In this regard, it is clearer, has a better foundation in the evidence and information that is before us, and includes a formal 'check and balance' as it includes an explicit requirement that an engineering design report be produced to demonstrate compliance.

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[44] Hamm, V, Reply Legal Submissions on Behalf of Kevin and Andrew Marsh ('**Reply Legal Submissions'**), 7th of February 2025, page 30

Geotechnical Stability Effects

96. The AEE asserts, at page 32[45], that investigations conducted by CMW Geoscience conclude that the Site is suitable for urban development of the nature envisaged by PPC95. In this regard, we were advised that while the Site, like much of New Zealand, faces earthquake and geotechnical risks, the adoption of measures such as 'foundation design TC2/TC3' can be employed to mitigate that risk.

97. No expert opinion was offered to suggest that this advice was incorrect. Indeed, we heard evidence which supported this contention.[46] As a consequence, we accept the assurances provided by the Applicant and conclude that the Site is geotechnically suitable for the type and density of development that would be enabled by PPC95. Further, we are satisfied that specific guidance is not needed within PPC95 around this type of actual and potential effect. In this regard, we are satisfied that such guidance is also provided under other statutes and statutory planning instruments (such as section 12 of the District Plan).

Natural Hazard Effects

98. As we have recorded, the Site is subject to a number of natural hazards, although we understand that the overall natural hazard risk is low.[47] The key risk is, we understand, that the Site could be flooded, or that the filling of the Site could result in higher flood levels being felt (displaced) elsewhere (that is, not on the Site). The Applicant's expert (Mr Hight) assured us that any flooding risk on the Site can be managed and that any risk of elevated downstream flooding would be negligible.[48] [49] The BoPRC's expert (Ms Southerwood) also confirmed that the overland flow paths proposed by the Applicant, and reflected in PPC95, will ensure that up-catchment stormwater flows can be adequately accommodated.[50]

99. Some questioned if the natural hazard risk could be adequately addressed[51], with some experts raising concerns over considerations such as evacuation routes during flood events and the potential for higher stormwater discharge volumes to impact on both the Puanene Stream and the Little Waihi Drainage Scheme.[52] We understand these issues were resolved though engagement between some of the parties and the Applicant.[53]

100. The evidence before us is that the various natural hazard risks (such as seismic risk) are considered to be of a usual or typical profile, and that any associated effects can be managed through design and construction of the development enabled by PPC95 to the point that they are acceptable.[54] We are also satisfied that no additional provisions need to be included into PPC95. In that regard, we consider that the flooding potential is adequately addressed within the provision proposed, while the other natural hazards will be addressed via other statutes and the provisions of the District Plan

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[45] MPAD, The AEE, page 32, section 7.6
[46] Refer, for instance, to Hight, D, EiC, 24th October 2024, pages 5 & 16, paragraphs 13 & 42
[47] MPAD, The AEE, page 32, section 7.6
[48] MPAD, The AEE, page 33, section 7.6, Hight, D, EiC, 24th October 2024, pages 7, 8, 10, 11, 13, 14, 16 to 18, paragraphs 19 to 22, 24 & 29, 31, 39, 41, 43 to 46, & 48
[49] We note that Ms Southerwood, who presented expert evidence as part of the BoPRC's case, appears to agree with this advice. Southerwood, S, EiC, undated, page 7, paragraphs 24 to 27
[50] Southerwood, S, EiC, undated, page 8, paragraph 28
[51] Refer for example to O'Malley, J & I, Submission, 8th December 2023, page 2, paragraph 16.1
[52] Southerwood, S, EiC, undated, pages 5 to 7, paragraphs 17 to 23
[53] Refer, for example, to Mark, A, EiR, 22nd November 2024, paragraph 48, also refer to the agreements reached in the JWS1, Hight, D, Brown K, Southerwood, S, Abraham, J, JWS1, 5th December 2024, pages 2 & 3, paragraphs 6 to 10
[54] Which accords with the original proposition set out in the AEE; refer to MPAD, The AEE, page 33, section 7.6

Rural Character, Residential Character & Amenity Effects

101. While we received information related to the potential for the development of the Site in accordance with PPC95 on the rural character, we consider the most compelling source of information to be set out in the JWS that arose from the expert planning conference that was conducted on the 17th of December 2024.

The expert planners advised us that a combination of planning and landscape architecture evidence is needed to quantify the effects that arise in this category. We agree.

The planners also advised us that:[55]

a. PPC95 would alter the rural character of the Site. Indeed, we understand their collective advice to be that the change represents an inherent loss of rural character. We agree. It is hard to see how the Site would retain any of its rural character were it to be developed in the manner enabled by the PPC95;
b. PPC95 would modify the rural character of what we have termed the rural-residential properties that are accessed off the western side of Arawa Road. As we have stated, we consider that this strip of properties provides a transition between the higher density residential development that exists to the east of Arawa Road and the Site. The impact of the Proposal on the rural character of these properties is described as 'high', but mitigation measures are offered in the form of building height restrictions, 'yard' setbacks, controls on the reflectivity of the new buildings constructed on the Site, and by the establishment of 'soft' landscape planting. We record for completeness that these restrictions were developed in consultation with landscape architects and are embodied within the version of PPC95 submitted by Ms Hamm with her Legal Reply Submissions;
c. PPC95 would alter the views of those properties on the eastern side of Arawa Road, by replacing an area with clear rural character, with a clear residential area. The advice before us, which we accept, is that this effect would be limited to those properties that have views over the Site. Beyond that impact, no substantive effects seem to be anticipated; and
d. Beyond these areas, any change enabled by PPC95 would be noticeable but can be managed (with the implementation of appropriate edge treatment and with the adoption of reflectivity controls) to an extent that any adverse effects would be low to moderate.

102. At a fundamental level, Mr Coles and Mr Murphy opine that given the content of PPC95, the Proposal's impact on rural character will be acceptable. Ms Holden does not offer an overarching opinion on this matter. Ms Mark advised us that mechanisms can be incorporated into PPC95 to manage this impact to some extent[56], but it seems clear from her evidence that she continues to consider that enabling PPC95 will result in a fundamental change from rural to residential.

103. We heard from submitters; some of whom offered us lay evidence in relation to the matter of rural character. In this regard:

a. Mike Maassen remarked that most of the existing residents in the residential enclave enjoy living in this area due to its quiet rural character. He advised us that residents are happy to travel greater distances to shop and for employment due to the quiet

[55] Cole, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, pages 3 & 4
[56] Mark, A, the s42A Report, 11 October 2024, pages 8 & 9, paragraphs 18.13 to 18.21, & Mark, A, EiR, 22nd November 2024, paragraph 60

rural character and lifestyle that they enjoy. He talks of the enclave having a charm and quiet rural character where traffic is kept to a minimum and children play and feel safe doing so. He expresses concern that the urbanisation anticipated by PPC95 will threaten this peaceful character[57];

b. Mark Boyle opined that the development enabled by PPC95 would fit naturally with the existing residential enclave. We understand this to mean, in part at least, that he considers the Proposal would be complementary to, rather than to detract from the character that is present;[58]

c. Julian Clayton is clear that the scale of development enabled by PPC95 would triple the residency in the Arawa Road locale and would remove both the rural aspects of the existing community and the enjoyment associated with living in this location. This submitter goes on to state that to urbanise the Site would negatively impact on the existing community and advised us that the development of the nature enabled by PPC95 would represent a blight on the landscape.[59]

d. Craig Green and Lisa McArthur state that the density of the development that PPC95 would enable is totally out of keeping with the density of the properties in the residential enclave;[60]

e. Rachel Sexton states that she moved to her current residence to take advantage of the rural character and outlook. We understand her to opine that this character and the associated feeling of safety she has for herself and her children, would be threatened if PPC95 is granted. We further understand her to effectively ask us to maintain the character that is present.[61] Cyndi and Troy O'Reilly advance similar concerns, although with a greater focus on the crime that a larger residential suburb could bring;[62] and

f. Joseph and Victoria Phillips state that residential development of the nature enabled by PPC95 would not fit with the characteristics of the existing environs and would negatively impact the local community.[63] The broad nature of the concerns they expressed are further supported by Cameron and Rebecca Black.[64]

104. Of the opinions expressed, we find ourselves most closely aligned to Ms Mark. In this regard, it is clear to us that enabling development in a manner envisaged by PPC95 will have a substantial and significant impact on the level of rural character that is abundant within and around the Site, with only the residential enclave associated with Penelope Place being unimpacted. But even then, the residents of the residential enclave will experience a substantial change when driving to and from their dwellings. In this regard, we are of the opinion that the development of the Site will not only alter the landscape which they experience when driving down Arawa Road, but it will generate additional activity; beyond the levels that one would currently associate with the Site and its surrounding environs as they exist. Given this, we conclude that the development of the Site, even with the implementation of the management / mitigation mechanisms that have been built into the provisions of PPC95, would have a notable and enduring adverse effect on the rural character that pervades in all but the residential enclave associated with Penelope Place.

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[57] Maassen, M, EiR, undated, page 2
[58] Boyle, M, Submission, 6th December 2023, our page 5 (page 3 of Mr Boyle's letter), un-numbered paragraph
[59] Clayton, J, Submission, 5th December 2023, page 2, Paragraph 7.1
[60] Green, C & McArthur, L, Submission, 6th December 2023, pages 1 & 2, paragraph 8.1
[61] Sexton, R, Submission, 8th December 2023, pages 1 to 3, paragraphs 14.1 & 14.2
[62] O'Reilly, C & T, Submission, 8th December 2023, pages 1 & 2, paragraph 15.1
[63] Phillips, J & V, Submission, 7th December 2023, pages 3 & 4, paragraph 17.7
[64] Black, C & R, Submission, 8th December 2023, page 2, paragraph 31.1

105. We record, for completeness, that we accept that the management / mitigation measures developed by the Applicant and inserted into PPC95 will serve to lessen the impact on rural character. We also agree that little more can be done to further lessen the Proposal's likely impact on the existing levels of rural character; aside from maintaining the status quo (which would be achieved by the decline of the applications that are before us) or greatly reducing the density of the development that can occur. The latter is not within the scope of the PPC95 that is before us and has not been supported by expert evidence. As a consequence, it is not a matter that we have considered further. It follows that we do not consider that any additional rules or provisions can be added to PPC95 to further reduce this impact.

106. Rural character impacts aside, we note that the development of the Site could impact on the level of amenity that is present within and surrounding the Site. This was a point of concern highlighted by, for example, Julian Clayton, Mr and Mrs Phillips and Mr and Mrs O'Reilly.[65] The key points of focus in the AEE were ambient noise increases, odours being emitted from the disposal fields associated with the dwellings, and access to recreation reserves and amenities. We understand the Applicant's advice to be that:

a. The emission of unreasonable noise is not expected if the Site is developed in accordance with PPC95. In this regard, the noise emissions will be similar to those experienced in the residential enclave associated with Penelope Place, while noise emitted from the commercial activities will be obscured and mitigated by the noise of the vehicles using Arawa Road;
b. Discernible odours will be addressed by the location of the disposal field away from the nearest private residences not within the Site, and the use contemporary on-site treatment systems; and
c. The minimum lot sizes proposed will enable on-site amenity to be addressed. The new reserves and facilities that are a feature of the proposed design will further enhance these amenity levels.

107. Having considered the advice and information that is before us, we agree that the amenity of the Site and the surrounding environs will be modified by the construction activities associated with the realisation of PPC95. We also agree that if not carefully designed and operated, things such as the emission of unpleasant odours could arise from the disposal field. That said, we are comfortable that any impacts can be adequately and comprehensively addressed by the implementation of well known (and existing) permitted activity limits (on things such as noise and dust generation) or via any associated resource consent application processes. We do not consider that specific controls on these matters are needed within the body of PPC95.

Transportation & Traffic Effects

108. We were advised that the development of the Site in accordance with PPC95 could generate up to 1,636 vpd, with a peak generation predicted to be 195 vehicles per hour ('**vph**'). When these volumes are added to the existing traffic measurements for Arawa Road (484 vpd), we understand that 2,120 vpd and a peak hourly volume of 249 vph could eventuate. We further understand that this increase would see increases of approximately 572 vpd on SH2 to the east of its intersection with Arawa Roadand an increase of 1,064 vpd to the west of SH2's intersection with Arawa Road.[66]

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[65] Clayton, J, Submission, 5th December 2023, pages 4 & 5, Paragraphs 7.7 & 7.11, O'Reilly, C & T, Submission, 8th of December 2023, page 3, paragraph 15.4, Phillips, J & V, Submission, 7th December 2023, page 3, paragraph 17.5
[66] Harrison, B, Evidence in Chief ('**EiC**'), 24th of October 2024, page 4, paragraphs 11 to 13

109. We received different perspectives from a number of the parties as to what these projected increases meant for the use of the traffic network. In this regard:

a. Mr Harrison recommended that we extend Arawa Road's sealed carriage way to 8.5 metres wide between SH2 and the entrance to the Site, and 6.5 metres for the remainder of its length. We understand his advice to be that this will enable good access to the Site and will pressure a safe traffic and transportation environment beyond that point. We understand his evidence on this point to be that no increase in the sealed carriage way width of SH2 is needed;

b. Mr Harrison also recommends that the remarking of the existing right turn bay, the establishment of a left turn bay and a replaced guardrail on SH2 is needed to ensure that the SH2 / Arawa Road intersection operates efficiently with low delays, minimal queues and high levels of service. We were advised, also by Mr Harrison, that this intersection design should provide an acceptable level of service, even with the projected growth in vehicle movements on SH2 in the coming decade;[67]

c. Mr Harrison then advised us that the proposed location and design of the road access into the Site should be able to comply with the applicable guidelines and standards (including those set out in the District Plan), and that the road corridors within the Site are suitable to cater for the expected level of demand;[68]

d. Mr Harrison was also clear that the development of the Site in the manner proposed would be consistent with recent Multi-Modal Travel initiatives that are being / have been advanced for the existing residential enclave, but also opined that PPC95 had been designed to improve an important Multi-Modal hub, with the proposed location of the existing bus stop from its location near the Arawa Road / SH2 intersection to a location within the Site, near the proposed commercial hub.[69] Submitters questioned the veracity of this advice, with some stating that the Proposal would serve to maintain the reliance on private motor vehicles with consequential impacts on congestion and environmental quality. Others commented that the Applicant's expected public transport benefits were wishful thinking;[70]

e. While the New Zealand Transport Authority Waka Kotahi (or '**the NZTA**') did not attend the hearing, it tabled a statement which Ms Coyle provided to both the parties and ourselves. The statement is clear that:[71]

   i. The NZTA does not oppose PPC95;[72] and

   ii. The NZTA supports the changes sought by Ms Mark in her s42A Report.

   We understand that all of the changes to PPC95 sought by the NZTA have been made, and have been agreed with the Applicant and WBoPDC;[73]

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[67] Harrison, B, EiC, 24th of October 2024, pages 8 to 11, paragraphs 28 to 34

[68] Harrison, B, EiC, 24th of October 2024, page 11, paragraphs 35 & 36

[69] Harrison, B, EiC, 24th of October 2024, pages 11 & 12, paragraphs 37 to 40

[70] Clayton, J, Submission, 5th December 2023, pages 2 & 3, paragraph 7.3, Green, C & McArthur, L, Submission, 6th December 2023, page 2, paragraph 8.2, Black, C & R, Submission, 8th December 2023, page 5, paragraph 31.7

[71] Cowper, T, Hearing Statement, 4th November 2024, pages 1 and 2, paragraphs 2.1 to 2.5

[72] We note, for completeness, that the NZTA lodged a neutral submission to PPC95. In this regard, its position was that safe vehicular access can be provided from Arawa Road to SH2 with upgrades broadly in line with what the Applicant provided. It sought, however, additional information. NZTA also contended that PPC95 would appear to be inconsistent with key provisions within the NPSUD, Refer Peti, A, Submission of NZTA, 8th December 2023, paragraphs 26.4 to 26.3

[73] Mark, A, Statement of Evidence in Reply (hereafter referred to '**EiR**'), 22nd November 2024, paragraphs 50 & 51

f. Mr Maassen was very clear when he stated that the intersection of Arawa Road and SH2 is of particular concern. While acknowledging the measures proposed by the Applicant, it was clear that he did not consider the measures to be adequate. In this regard, he opines that with the residential lots and the commercial centre, a 500% increase in vehicle trips can be expected. He advised us that a major upgrade of the Arawa Road / SH2 intersection is needed to ensure that the traffic and transportation effects of the Proposal can be offset.[74] Mr Maassen also questioned aspects of Mr Harrison's traffic modelling, his evidence being that some of the assumptions underpinning this analysis were not realistic. He left us with the very clear impression that he did not consider Mr Harrison's modelling to be accurate.[75] Mr and Mrs Black also raised concerns regarding some of the assumptions employed in the traffic modelling;[76]

g. Submitters such as Paul Hickson, Robin Simmons and Kirsten Jefferson offered conditional support to the Proposal but sought modifications to PPC95. Mr Hickson lobbied for the speed limit on SH2 to be reduced (something that is not within our remit to consider or require) and seems to promote the establishment of a pedestrian pathway for school children over their property (which while very laudable, is also not within our remit). Ms Simmons sought unimpeded access for emergency vehicles at all times and that consideration be given for the children who had to cross the main road (which we presume is SH2) to catch the school bus. Ms Jefferson asked us to consider enabling access to be provided from roads other than Arawa Road;

h. Other submissions considered the proposed improvements to the Arawa Road / SH2 Intersection to be beneficial, insofar as they will enable traffic on the State Highway to continue to flow smoothly;[77]

i. Some submitters[78] highlighted what they considered to be notable traffic and transport related concerns. Julian Clayton advised us that the additional heavy vehicle movements in and out of Arawa Road could increase the damage to this carriage way. Gina and David Brookes commented that the existing traffic volumes are already causing the carriageway to be damaged;[79]

j. Mr Green and Ms McArthur advised us that without a viable / realistic public transportation option(s), the increased vehicle movements generated by the Proposal would result in an unacceptable risk to those using the road network;

k. Ms Sexton expressed concern regarding the safety of the Arawa Road / SH2 intersection now, and highlighted the challenges that adding more vehicles to a dangerous situation could create. This view was shared by Jo Delaere, who emphasized the need for residents to travel by private vehicle to get to facilities such as the school;[80]

l. Mr and Mrs O'Reilly echoed the concerns regarding the safety of the Arawa Road /SH2 intersection[81] and the increased risk that will arise if the Proposal brings more

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[74] We record, for completeness, that this comment received support from Julian Clayton; refer to Clayton, J, Submission, 5th December 2023, pages 3 & 4, paragraph 7.6

[75] Maassen, M, EiR, undated, our renumbered page 5 & 6 (numbered '2' and unnumbered on Mr Maassen's evidence)

[76] Black, C & R, Submission, 8th December 2023, page 5, paragraph 31.7

[77] Marsh, N & J, Submission, 6th December 2023, page 2, paragraph 1.3

[78] Clayton, J, Submission, 5th December 2023, pages 3 & 4, paragraph 7.6, Green, C & McArthur, L, Submission, 6th December 2023, page 2, paragraph 8.2, Sexton, R, Submission, 8th December 2023, pages 1 to 3, paragraph 14.1 & 14.4, O'Reilly, C & T, Submission, 8th December 2023, pages 2 & 3, paragraph 15.2, Henderson, H, Submission, 4th December 2023, page 2, paragraphs 20.3 to 20.4

[79] Brookes, G & D, Submission, 5th December 2023, page 2, paragraph 36.1

[80] Delaere, J, Submission, 4th December 2023, page 2, paragraph 37.1

[81] As did Jordon and Ian O'Malley - O'Malley, J & O, Submission, 8th December 2023, pages 1& 2, paragraph 16.2, Joseph and Victoria Phillips – Phillips, J & V, Submission, 7th December 2023, pages 1 & 2, paragraph 17.1, Jurgen Delaere – Delaere,

children into the existing environment. Hamish Henderson expressed similar concerns;

m. Alan and Patricia Birley also expressed concern at the pressure the Proposal would cause on SH2 and seemed to promote having more than one access point from the Site to the State Highway.[82] This view was shared by Gaye Allan[83], Tai Ahfook[84] and Jodi Ahfook;[85]

n. Karen Summerhays and Nicola Cooke expressed a concern that if enabled, PPC95 would add more traffic to the already pressurised northern gateway to Te Puke;[86]

o. We note that Samantha Prendergast, a Transportation Engineer at the WBoPDC, was called to give evidence for the WBoPDC on traffic and transportation matters. While not commenting on issues associated with the intersection of SH2 and Arawa Road (which she advised is a matter for the NZTA to comment on), Ms Prendergast was clear when she advised that she is 'not opposed' to PPC95 on the basis of the proposed modifications to Arawa Road and the proposed internal roads within the Site. In this regard, we understand her evidence to be that while additional detail will be required before the development enabled by PPC95 could be realised, that the detail could reasonably be provided as part of any subsequent resource consent processes.[87] We record, for completeness, that this position moderates the position expressed by WBoPDC in Ms Mark's s42A Report;[88]

p. We understand Ms Mark's evidence in reply to be that she is satisfied that the rules proposed by the Applicant (more specifically Mr Murphy) to address traffic and transportation in PPC95 are adequate, both in response to NZTA's comments, and those made by Ms Prendergast;[89]

q. Ms Holden opined that as the further development at the Site would serve to reinforce the reliance on private vehicles, that it would not achieve the direction advanced in a number of the RPS's transportation focussed objectives and policies. In this respect, we understand the broad thrust of her evidence to be that the Proposal would not make public transport more viable and would not readily promote alternative modes of transport (such as walking and cycling) to the use of private vehicles;[90]

110. We have considered all of the information provided to us on this topic in detail. Traffic and transportation matters are clearly a source of particular concern for a number of the submitters to PPC95. Having both reviewed the information before us and paid particular attention to traffic and transportation issues when we visited the Site, we accept the concerns stated as being relevant and justified. We find, however, the evidence of Mr Harrison to be credible and well informed. While we accept that there will always be concerns with modelling, we find the comfort expressed by the NZTA and Ms Prendergast for the broad advice provided by Mr Harrison to be reassuring; to the point that we are, ourselves comfortable to rely on both the modelling and Mr Harrison's advice. It follows, therefore, that we consider that with the various mechanisms proposed by Mr Harrison in place, any adverse

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J, Submission, 5th December 2023, page 2, paragraph 8.2, & Karen Summerhays & Nicola Cooke, Cooke, N & Summerhays, K, Submission, 8th December 2023, page 2, paragraph 23.1

[82] Birley, A & P, Submission, 7th December 2023, page 2, paragraph 19.3

[83] Allan, Gaye, Submission, 5th December 2023, page 2, paragraph 33.1

[84] Ahfook, T, Submission, 5th December 2023, page 2, paragraph 35.1

[85] Ahfook, G, Submission, 5th December 2023, page 2, paragraph 34.1

[86] Karen Summerhays & Nicola Cooke, Cooke, N & Summerhays, K, Submission, 8th December 2023, page 3, paragraph 23.3

[87] Prendergast, S, EiC, 13th of November 2024, paragraphs 7 to 16

[88] Mark, A, the s42A Report, 11 October 2024, pages 61 & 62, paragraphs 12.50 to 12.52

[89] Mark, A, EiR, 22nd November 2024, paragraphs 49 to 52

[90] Holden, L, EiC, undated, pages 8 & 9, paragraphs 27 to 30

traffic and transportation effects arising from PPC95 can be appropriately managed and mitigated.

111. We have also considered the detail of PPC95 and are comfortable that no additional rules (to those already proposed) need to be inserted as a consequence of this category of actual and potential environmental effect.

Earthworks & Construction Effects

112. While we were advised that a detailed earthworks design had not been completed for the development of the Site, we were informed that 'high level investigations' had confirmed that a suitable landform can be formed on the Site using conventional earthmoving techniques.[91] Our site visit did not reveal anything that caused us to question the legitimacy of that advice.

113. We record, for completeness, that we received information on the effects that can arise from the construction and earthworks activities on the Site, were PPC95 to be enabled. The commentary was, understandably, concise and ultimately concluded that these types of effects are well known and able to be addressed via compliance with established permitted activity rules and, if needed, resource consents.[92] We note that Ms Mark also referred us to the myriad of standards and processes that have been designed and implemented for some time (including the noise limits within the District Plan) to address these types of effects. Her advice to us was that additional rules are not needed within PPC95 to manage this category of effect.[93]

114. As we have already noted, we understand that a resource consent for a discretionary activity is likely to be required from the WBoPDC to realise all or part of the Proposal, should PPC95 be approved. The same advice also leads us to the conclusion that a resource consent will in all probability be required from the BoPRC to enable, amongst other things, the earthworks that would be required to realise the Proposal.[94] While legislative change is on the horizon, we have no way of determining if that legislation will change the thresholds and requirements for additional scrutiny. We note that there is no room for speculation or conjecture in making this decision. It follows that we must make the decision on the basis of the information that is before us.

115. That information leads us to the conclusion that while effects will undoubtedly arise as a consequence of the earthworks and construction works needed to realise a development of the nature allowed by PPC95, there is nothing before us to suggest that those effects will be especially notable (significant or worst) and thus, unacceptable. We also expect that these effects will be subject to greater scrutiny when the resource consents necessary for any proposal are sought at a later date. We agree with Ms Mark that additional rules and provisions do not need to be inserted into PPC95 to address this category of actual and potential effect.

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[91] Hight, D, EiC, 24th October 2024, page 5, paragraph 13
[92] MPAD, The AEE, page 36, section 7.10
[93] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11 October 2024, pages 100 to 102, paragraphs 20.1 to 20.14
[94] Cole, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, Attachment 1

Positive Effects

116. We heard a lot of evidence regarding the positive effects that approval of PPC95 would generate.[95] We also heard a lot of evidence which questioned the legitimacy of the positive effects that were advanced by the Applicant and others. In this regard and in summary, we were advised that:

a. PPC95 would enable the supply of additional housing near a source of notable demand, being associated with (i) the workers needed to support the horticultural endeavour which has a strong foothold in and around Pongakawa, including close to the Site, (ii) workers at the soon to be open Rangiuru Business Park, and (iii) others seeking to enrol their children in the Pongakawa School.[96] It is important for us to record that this benefit was questioned by some who presented to us or whom submitted in relation to PPC95.[97] Some of these parties opined, in summary, that additional housing would be taken up by people seeking a rural location with urban amenities and not the families of the horticultural workers. Some went further and suggested that there were better locations in which to enable residential development. This tended to be associated with the consolidation of larger urban areas.[98] Others raised housing affordability, advising us that it was a 'myth' and went on to highlight that with its challenges (from flooding and so forth), that the actual cost of housing at the Site would be high. We also heard that the housing typologies enabled within PPC95 would not enable the housing that is needed;[99]

b. Having additional dwellings and residents would improve the ability of some of the existing essential organisations to recruit volunteers; with the Maketu Coastguard and the Maketu Volunteer Fire Brigade submitting on this basis;[100]

c. PPC95 was advanced on the basis that it would help to address a shortfall in housing that exists along an area described as being 'the Eastern Corridor' of the Tauranga / Western Bay sub-region;[101]

d. PPC95 would deliver much needed commercial activities and social infrastructure (with the example cited being medical facilities). We note that submitters lend support for the contention that further amenities are needed to service the existing residential enclave, although some recorded reservations about the type of commercial activities that could be attracted.[102] This beneficial effect was also

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[95] Refer, for example to Garrett, K, EiC, 25th October 2024, page 2& 3, paragraphs 3 to 7, Cooney, P, EiC, 24th October 2024, pages 2 & 3, paragraphs 6 to 10, Matthews, S, EiC, 25th October 2024, pages 2 & 3, paragraphs 4 & 5, Cooper, R, EiC, undated, page 2, Boyle, M, EiC, 4th November 2024, page 3, paragraph 9, Adams, S, EiC, 4th November 2024, pages 2 to 4, paragraphs 4 to 7, Hickson, P, EiC, 4th November 2024, page 1, Haggo, C, Submission, 17 November 2023, page 2, paragraphs 1.2 & 1.3, Maketu Volunteer Coastguard, Submission, 27th November 2023, page 2, paragraph 2.1, Beech, S, Submission, 25th November 2023, page 2, paragraph 3.1, Boyle, M, Submission, 6th December 2023, our pages 4 & 5 (page 2 of Mr Boyle's letter), paragraphs 3.4, 3.5 & 3.6, Elmsly, C, Submission, 6th December 2025, our pages 3 & 4 (pages 1 & 2 of Mr Elmsly's letter), paragraphs 21.1 to 21.3, Cooney, P, Submission, 8th December 2023, page 2, paragraphs 22.1 & 22.2, Hamilton, D, Submission, undated, page 2, paragraphs 24.1, Hickson, P, Submission, 8th December 2023, page 2,

[96] MPAD, The AEE, page 36, section 7.11

[97] Such as Maassen, M, EiR, undated, page 3, Clayton, J, Submission, 5th December 2023, page 3, paragraphs 7.4 & 7.5, O'Reilly, C & T, Submission, 8th December 2023, pages 3 & 4, paragraph 15.5, Black, C & R, Submission, 8th December 2023, pages 4 & 5, paragraph 31.1, Delaere, J, Submission, 4th December 2023, page 2, paragraph 37.1

[98] Refer, for example, to Green, C, McArthur, L, Submission, 6th December 2023, page 3, paragraphs 8.4 & 8.5, Sexton, R, Submission, 8th December 2023, pages 1 to 4, paragraphs 14.1, 14.5 & 14.6, Cooke, N & Summerhays, K, Submission, 8th December 2023, page 3, paragraph 23.4

[99] Cooke, N & Summerhays, K, Submission, 8th December 2023, page 3, paragraph 23.2

[100] Maketu Volunteer Coastguard, Submission, 27th November 2023, page 2, paragraph 2.1, Maketu Volunteer Fire Brigade, Submission, 26th November 2023, page 2, paragraph 4.1

[101] MPAD, The AEE, page 36, section 7.11

[102] Refer, for example, to Jefferson, K, Submission, 8th December 2023, page 2, paragraphs 5.1, and 5.2, Marsh, N & J, Submission, 6th December 2023, page 2, paragraph 1.1, Boyle, M, Submission, 6th December 2023, our page 5 (page 3 of Mr Boyle's letter), paragraph 3.3, Gillespie, B, Submission, 5th December 2023, page 3

questioned by some who appeared before us.[103] We understand their argument to be that a zone provides an opportunity for such facilities to be provided, but does not guarantee the realisation of such facilities. Some took this line of argument further and questioned if there would be the critical mass needed for commercial and social services to be established as part of the development of the Site. Others still advised us that the absence of these types of commercial facilities in the residential enclave was advantageous.[104] In addition, others seemed to question if the social needs of the residents would be provided for within the Site, and asked if the residents would contribute to the social infrastructure of the surrounding towns, the clear implication being that the residents of Te Puke / the Maketu Ward should not have the bear this cost;[105] and

e. The delivery of additional reserves within the Site and a number of ecological benefits associated with the development of the Site were also advanced (by the Applicant) as being benefits of the Proposal.[106] We understand that Ms Mark agrees that the reserves shown on the structure plan forming part of PPC95 are appropriate, accord with the WBoPDC's Recreation and Leisure Strategy and need to be retained.[107]

117. The Applicant called Kevin Counsell to give expert economic evidence. Mr Counsell is a qualified and experienced economist with some 24 years experience. He addressed a number of matters that are related to the level of benefit that the Proposal could generate. We understand his advice to be that:[108]

a. The Proposal is required to provide sufficient development capacity to meet the demand for housing in the Pongakawa – Te Puke market. Mr Counsell opined that this equates to an economic benefit (which he valued at $8,000,000) to purchasers of the residential lots enabled by PPC95;

b. While quantifying the cost of losing ten hectares of productive land at $550,000, that a net economic benefit would arise if PPC95 was allowed to proceed. We understand his evidence to be that this benefit would be in the order of $7,450,000; and

c. Having additional residential development adjacent to the existing residential enclave would result in an improved utilisation of existing infrastructure and would also see the addition of facilities provided; thereby, we understand, effectively consolidating the residential enclave into something that is more complete.

118. The WBoPDC called Mr Fraser Colegrave, an economist with 27 years' experience. Mr Colegrave's evidence cast doubt as to the validity of some of the evidence we received. In this regard, we understand Mr Colgrave to:[109]

a. Contend that the demand for dwellings within the vicinity of the Site is dropping, not increasing. He pointed us to data from Statistics New Zealand and to building consent data from, we presume, the WBoPDC, to support this opinion;

b. Question if the houses built on the Site would be affordable for workers in the horticultural sector;

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[103] Refer, for example to Phillips, J & V, Submission, 7th December 2023, pages 2 & 3, paragraph 17.4
[104] Sexton, R, Submission, 8th December 2023, page 3, paragraph 14.3
[105] Cooke, N & Summerhays, K, Submission, 8th December 2023, page 3, paragraph 23.5
[106] MPAD, The AEE, page 36 & 37, section 7.11
[107] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11 October 2024, pages 14 & 15, paragraphs 16.10 to 6.13, & Mark, A, EiR, 22nd November 2024, paragraph 58
[108] Counsell, K, EiC, 24th October 2024, pages 6, 7, 17, 23 to 26 & 30, paragraphs 18, 21, 22, 53, 61 to 71, & 84
[109] Colegrave, F, EiC, 13th November 2024, paragraphs 17 to 31, & 46 to 57

c. Contend that the demand for horticultural workers in and around Pongakawa has shrunk. Again, he cited data from Statistics New Zealand to support this claim;
d. Opine that further intensification / expansion at Paengaroa and/or Te Puke represents a superior outcome for accommodating the type of growth that PPC95 would enable. He also states that the intensification of existing urban centres has been an effective response to the need for additional housing supply across New Zealand, including in Tauranga; and
e. Without providing a particularly robust commentary as to why, Mr Colegrave opines that Mr Counsell' does not conclusively demonstrate that the development of the Site in the manner envisaged by PPC95 will deliver net economic benefits over the retention of the Site in rural production.

119. Ms Holden lends support to Mr Colgrave's concerns when she quite definitively states that the settlement enabled by PPC95 is not required to deliver sufficient development capacity to the Western Bay of Plenty sub-region.[110]

120. The economic efficiency of PPC95, relative to other potential locations for the type of development it will enable, is something that we address in the context of some of the statutory planning instruments and thus is not something that we dwell on here.

121. It seems apparent to us that PPC95 will generate a number of actual and potential positive effects, should it proceed. In that regard, we accept that it will offer additional housing, in an attractive environment, and in a location that will benefit the surrounding social infrastructure (such as the school, the voluntary emergency services and the action centre). We accept that there is a need for additional housing in the Eastern Corridor, at least in the short term, and that PPC95 would satisfy a portion of that demand, although a very small portion. We also accept that the design of the Proposal and the commitment to utilising good engineering design and native species will result in ecological and water quality benefits, while the supply of reserve land will benefit both the existing residents and those that came as a consequence of PPC95. Lastly, we agree with the Applicant's contention that the ability for some commercial services to be provided locally should generate a benefit for both existing and future residents.

122. We do not accept, however, that PPC95 will benefit the workforce associated with primary industry. While understanding the rationale advanced by the Applicant, its claim that the additional residences would be of direct benefit to the horticultural industry was simply not supported by sound evidence. While it is not our role to speculate, we will record that it makes more sense to us that PPC95 will simply exacerbate the residential enclave's existing function, which is something akin to it being to a 'dormitory suburb' for the likes of Te Puke, Papamoa and Paengaroa.

123. While acknowledging the concerns expressed by Mr Colgrave regarding its veracity, we have sufficient confidence in Mr Counsell's analysis to accept that when considered from a land use value perspective, the Proposal will result in a net economic benefit. We do not, however, have sufficient comfort in the analysis to adopt the estimated benefit of $7,450,000, which seems, to us, to be overly simplistic and generalised. As, however, it would require a significant shift in the in the analysis for the predicted net benefit to change into a net loss,

[110] Holden, L, EiC, undated, pages 6 & 13, paragraphs 18 & 52

we have sufficient comfort to conclude that a net economic benefit will arise. We simply cannot quantify the magnitude of the benefit.

The National Policy Statements

124. The evidence before us is that there are three National Policy Statements that are of relevance to our assessment, being the National Policy Statement for Urban Development ('**the NPSUD**'), the National Policy Statement for Highly Productive Land ('**the NPSHPL'**) and the National Policy Statement for Freshwater Management ('**the NPSFM**').

125. We consider each of these particularly important statutory planning instruments as follows:

NPSUD (May 2022)

126. At the time of PPC95's lodgement with the WoBPDC, the May 2022 version of the NPSUD was in place. This version remains in effect at the writing of this decision.

127. We note that the May 2022 version of the NPSUD incorporates the amendments made by section 77S(1) of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. The Application Documents, and subsequent evidence and statements, refer to this version of the NPSUD.

128. Clause 1.3 of the NPSUD states that it applies to:
    (a) all local authorities that have all or part of an urban environment within their district or region (that is what the NPSUD describes as tier 1, 2 and 3 local authorities); and
    (b) planning decisions by any local authority that affect an urban environment.

    There are also some objectives, policies, and provisions in Parts 3 and 4 that apply only to tier 1, 2, or 3 local authorities.

129. We were advised that WBoPDC is a Tier 1 authority, and that the BoPRC had initiated a review to the RPS (proposed Plan Change 6) to give effect to the May 2022 version of the NPSUD.

130. Additionally, we were advised that the NPSUD directs local authorities to prepare a number of key documents. Those outputs of the NPSUD that are relevant to PPC95 are:
    - SmartGrowth Housing and Business Capacity Assessment (the '**HBCA**') dated December 2022, and
    - Future Development Strategy - SmartGrowth Strategy 2024-2074 (the '**SmartGrowth Strategy**' (which includes documents such as the FDS)) publicly released July 2024.

131. Both Councils and the Applicant identified and provided an assessment of the relevant provisions prescribed in the NPSUD, and have addressed the documents listed in the preceding paragraph. A summary of their respective assessments are outlined below.

132. The Applicant's assessment / consideration of the NPSUD is primarily presented in the following documents:
    - The Application Documents;
    - The Further Information response dated 20 August 2024;
    - The Evidence in Chief (or '**EiC**') of Mr Murphy and of Mr Coles;
    - The legal submissions presented by Ms Hamm at the Hearing;
    - Ms Hamm's right of reply;
    - The reply planning evidence of Messrs Murphy and Coles; and

- In Ms Hamm's legal submissions on the Environment Court decision *Gardon Trust v Auckland Council [2025] NZEnvC 58*.

133. The Application Documents identified the NPSUD as a relevant planning document, and assessed objectives 1 to 8. The Application Documents state that PPC95 is consistent with these objectives. Additionally, the Application Documents also refer to and consider the 2022 HBCA, the SmartGrowth Strategy, Urban Form and Transport Initiative (or '**UFTI**') business case document, as well as the statutory documents Change 6 to the RPS and the WBoPDC's District Plan.

134. As part of the response to the further information request with PPC95, the Applicant provided an updated engineering servicing report and correspondence from the NZTA. Also included in that response were economic assessments.

135. Mr Coles EiC focuses on the higher-level planning considerations and development constraints[111], with Mr Murphy's EiC providing a more in-depth planning assessment and analysis of statutory planning frameworks.[112] Both Mr Coles and Mr Murphy agree that the NPSUD is relevant to PPC95.

136. Mr Coles advised, in his EiC, that both the WBoPDC and BoPRC identified the NPSUD as a key planning instrument that could present a constraint to PPC95. Consequently, Mr Coles sought an opinion from the BoPRC as to whether the residential enclave is an urban environment.[113] A letter from BoPRC[114] sent after this engagement was clear that it did not consider the residential enclave to be, or to be within an urban environment.

137. Mr Coles advises that there is planning pathway to approve PPC95 under the NPSUD because of the responsive planning approach. In summary, we understand his advice to be that there is a housing shortage identified in the Tauranga/Western Bay of Plenty districts, and that PPC95 is designed in manner to contribute to a well-functioning urban environment and connection to transport corridors.

138. Mr Coles further advised in his EiC[115] that PPC95 will meet criteria Policy UG7A[116] of Change 6 to the RPS, and goes on to opine that PPC95 will give effect to NPSUD.

139. Mr Murphy states, in his EiC, that the residential enclave is an urban environment.[117] Having offered this opinion, he then states that there is a clear pathway to enabling and allowing PPC95, through satisfaction of relevant NPSUD thresholds and policy requirements. Ultimately, he advised us that the intent of the NPSUD is met.[118]

140. At paragraph 62 of his EiC, Mr Murphy opines that:

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[111] Coles, R, EiC, 24th October 2024, page 2, paragraph 5
[112] Murphy, V, EiC, 24th October 2024, page 3, paragraph 11
[113] Coles, R, EiC, 24th October 2024, page 6, paragraph 14
[114] Letter dated 6 May 2022
[115] Coles, R, EiC, 24th October 2024, pages 4 and 8, paragraphs 10(f) and 21
[116] To avoid confusion, we note that reference to Policy UG7A of Change 6 in Mr Coles EiC was before the provisions in Change 6 were incorporated into the RPS on 17 April 2025. The policy was re-numbered and is now Policy UG5A in the RPS
[117] Murphy, V, EiC, 24th October 2024, page 4, paragraph 15
[118] Murphy, V, EiC, 24th October 2024, page 5, paragraph 18

"(t)he first limb of the scope of applicability of the NPSUD is clearly met for PPC95 as WBOPDC is a Tier 1 territorial authority containing urban environments. The second limb is to consider whether or not the planning decision in question is one that affects an urban environment[119]*."*

141. On this matter, Mr Murphy advises[120] that the residential enclave is urban in character, because it meets:
- numerous definitions in some of the BoPRC's statutory planning documents;
- the definition of 'urban' in the SmartGrowth Strategy; and
- the definition of 'urban', as a description of zoning within the NPS-HPL strategic planning document.

In reaching this opinion we understand his position to be that the Site and the surrounding environs are predominantly urban in character.

142. Mr Murphy also referred to Mr Counsell's economic assessments and evidence which identifies PPC95 as part of housing and labour market that is at least 10,000 people.

143. The evidence of Mr Coles and Mr Murphy was supported, and further discussed, in the legal submission presented by Ms Hamm.

144. On the matter concerning the urban environment definition in the NPSUD, Ms Hamm contends that PPC95 qualifies as an intended area of land that is predominantly urban in character.

145. In her right of reply legal submissions, Ms Hamm responded to several key issues, of which, on matters related to the NPSUD, the submission focused on four key areas, being:
- The definition of urban environment including what the definition intends;
- Responsive planning;
- Whether PPC95 gives effects to the NPSUD; and
- The SmartGrowth Strategy 2024-2074.

146. In traversing these matters, Ms Hamm advised us that on the evidence, there is a planning pathway in the NPSUD for PPC95.

147. In her further legal submission responding to the *Gardon Trust v Auckland Council* Environment Court decision, Ms Hamm submits that the decision is relevant to PPC95 and provides helpful guidance on the term locality and market, and expresses that a real-world approach informed by environment, social, cultural and economic factors is applied.

148. Ms Mark, in her s42A Report, comprehensively assesses PPC95 against the NPSUD, and its supporting documents (this analysis is principally captured in her Topic 2 – Settlement Pattern).

149. Ms Mark concludes that the PPC95 is not supported by the NPSUD and strategic initiatives that guide strategic growth planning for the Western Bay of Plenty District.[121]

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[119] Murphy, V, EiC, 24th October 2024, page 19, paragraph 62
[120] Murphy, V, EiC, 24th October 2024, page 19, paragraph 63
[121] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 41, section 9

150. In coming to her view, Ms Mark traverses several matters. By way of a summary, we understand Ms Mark's key advice to be that:

- The Site is not identified in any strategic growth planning initiatives (such as the SmartGrowth Strategy);
- The Site and the residential enclave are not predominantly urban in character, and are not part of the housing and labour market of 10,000 people; and
- That the NPSUD and Change 6 to the RPS are not relevant to the assessment of PPC95 as the Site is not in an urban environment.

151. More specifically, Ms Mark thoroughly discusses whether the Site and the surrounding environs are predominantly urban in character and are part of a housing and labour market of at least 10,000 people [122] and opines that the area is predominantly rural in character[123] and that the residential enclave is better categorised as a settlement of 500 to 600 people.[124]

152. We note that in forming her opinion, Ms Mark refers to technical assessments from WBoPDC's development/infrastructure team, and external economic expertise.

153. A peer review of NERA's two economic assessments was commissioned by WBoPDC and undertaken by Fraser Colegrave of Insight Economics. We understand Mr Colegrave to opine that the NERA reports are not sufficiently robust[125] and to advise that he does not support the conclusions of the NERA assessments. More specifically, Mr Colegrave advises that:

> 1. *The proposed PC95 site is 15km from Te Puke, which is within the radius typically considered to establish the boundaries of a housing market;*
> 2. *The proposed PC95 site, as modified by the plan change, and Te Puke have similar accessibility to amenities such as commercial services, parks, schools, community facilities, and natural amenities;*
> 3. *The proposed PC95 site and Te Puke have similar accessibility to employment opportunities such as the Rangiuru Business Park, horticultural farms, and employment in Te Puke and Tauranga; and*
> 4. *House prices in Pongakawa and Te Puke are highly correlated, which is indicative of strong substitution between the two locations.[126] "*

154. At paragraphs 3.8 of Ms Stubbing's legal submissions for the WBoPDC's the Council's position on the NPSUD is clearly stated. In this regard, we were advised that:

> "*the Arawa Road settlement is not considered an urban environment that is intended to be subject to the urban development requirement in the NPS-UD*[127]"

155. Furthermore, Ms Stubbing at paragraph 3.9 of her legal submissions advised us that:

> "*There are two urban environments within the Western Bay of Plenty District, which are the settlements of Te Puke and Ōmokoroa. Both are plan-enabled to grow to populations of 13,000 people*.[128]"

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[122] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, pages 23-41, section 9
[123] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 23, section 9
[124] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 24, section 9
[125] Colegrave, F, 'Peer Review of PC95 Economic Assessment', 10th of May 2024, page 8, section 6
[126] Colegrave, F, 'Peer Review of PC96 Economic Assessment on Locality and Market', 10th of May 2024, page 1
[127] Stubbing, K, Legal Submissions, 12th of November 2024, page 5
[128] Stubbing, K, Legal Submissions, 12th of November 2024, page 5

156. Ms Stubbing concludes that neither the Site nor the residential enclave are predominantly urban in character[129], which she then contends means that the NPSUD is not relevant to the assessment of PPC95 as the Site is not within or intended to be an urban environment.

157. In her legal submission's responding to the *Gardon Trust v Auckland Council* Environment Court decision, Ms Stubbing restated her opinion that the PPC95 area is not an urban environment (as defined by the NPSUD). She also stated that the difference between the Waiuku area of land (which was the subject of the aforementioned case) and the Site is their proximity/location within a locality and market of 10,000 people.

158. Ms Boyte stated the role and responsibility of the BoPRC in giving effect to the NPSUD, and addressed the BoPRC's participation in the development and delivery of strategic initiatives required under the NPSUD. Ms Boyte also advised us that the position of BoPRC is that the NPSUD is not relevant to PPC95 because PPC95 is a proposal that does not affect an urban environment.[130]

159. In her legal submission for the BoPRC on this matter, Ms Boyte also states, amongst other matters, that PPC95 is inconsistent with the strategic initiatives that are intended to give effect to the NPSUD. As a consequence, we understand the advice of Ms Boyte to be that PPC95 is contrary to the strategic direction of the NPSUD.

160. Ms Holden's EiC referred to Topic 2 (Settlement Pattern) in the s42A Report, and expressed support for Ms Mark's assessment. In this regard, Ms Holden advised us that:
- The residential enclave is not an urban environment, nor is intended to be an urban environment;
- The expansion of the residential enclave is not required for delivering sufficient development capacity in the Western Bay of Plenty;
- Accessibility to and from the Site, and the projected dwelling numbers (new and existing) is not a significant enough reason to require the provision for public transportation; and
- PPC95 will not support a well-functioning multi-modal transport system.

161. In her evidence, Ms Holden concludes that:

> "*… while increasing housing availability is necessary, it is essential that new housing developments are located to ensure that they contribute to well-functioning urban environments, including in a way that aligns with the strategic planning framework, infrastructure capabilities and the various relevant environmental considerations.*"

162. We have considered all of the information before us, which was substantial. We have sought to distil the keys issue and the evidence / information to its essence. It was evident to us a (the) key question is whether the NPSUD is relevant to our assessment of the Proposal. This hinges, in accordance with clause 1.3 of the NPSUD, on whether the Site is an urban environment. If the Site and its surrounds are not within an urban environment, then the NPSUD is not relevant (as directed in clause 1.3 of the NPSUD).

163. It follows, therefore, that we must first determine if the Site and the surrounding environs are an urban environment. If they are, then we need to consider the remaining provisions of the

[129] Stubbing, K, Legal Submissions, 12th of November 2024, page 15
[130] Boyte, R, Legal Submissions, 12th of November 2024, page 3

NPSUD. If they are not, our conclusion must be that the NPSUD is of no relevance to PPC95. We now set out our findings in relation to this initial, but important question.

164. It is uncontested that the NPSUD defines/interpretation of urban environment as meaning:

"… any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
- *is, or is intended to be, predominantly urban in character; and*
- *is, or is intended to be, part of a housing and labour market of at least 10,000 people."*

Predominantly Urban in Character

165. As we have already recorded, during our site visit, we drove through Arawa Road and Penelope Place, and observed the extent of the established residential community in proximity to the Site. We also travelled to Pongakawa school, the PAC and the Pongakawa Memorial Hall.

166. Although we observed a number of features (such footpaths, housing density, curbs and so forth) in immediate proximity to the Site that distinguishes the residential enclave as an environment with urban qualities, we are very clear that the Site and the surrounding environs function in a distinctly rural environment.

167. We record, for completeness, that the Site is zoned Rural, with the Application Documents referring to the Site and environment as 'rural'[131], as does the JWS arising out of the planning conference, where all of the planning experts agreed that the existing environment is rural.[132]

168. Lastly, while we accept that the portion of the Site which abuts the row of rural-residential properties with frontage to Arawa Road has an outlook across an environment with urban features, we do not consider that this outlook alters the predominantly rural character of the Site and its broader environs.

169. As a consequence, we consider that the Site does not have a predominatly urban character. While we accept that the residential enclave does, we do not consider that its character extends onto the Site. Equally, we consider the broader environment to be distinctly rural in its character. In that regard, the residential enclave is, in our opinion, an outlier that does not sit comfortably in an area which is clearly rural. Further, and as we noted when we discussed the Proposal's effects on rural character, were the development enabled by PPC95 to occur the rural character would, in our opinion, be significantly impacted.

Intended Urban Environment

170. The Applicant's contention that the Site is 'intended to be an urban environment' is not, in our opinion, correct.

171. In applying the term 'intended', we are persuaded by the evidence of Ms Mark and Ms Holden, and the supporting legal submissions from Ms Stubbing and Ms Boyte. In this regard, we consider 'intention' is shown by the SmartGrowth documents which we have previously acknowledged. It is clear to us that neither the Site, nor Pongakawa more generally, are locales where further urban development is planned. Further, we do not consider that the Applicant made out its line of argument that 'responsive planning' is enabled by the SmarthGrowth documents, and that the areas highlighted for future growth

[131] MPAD, AEE, pages 8 to 12 & pages 13 to 18, section 2 & section 3
[132] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, pages 2 to 5

in these documents should not be considered to be a definitive list. Given this, we prefer the opinion expressed by Ms Mark:

"*The proposed location of the site is not supported by the legislation and initiatives that guide strategic growth planning for the District including SmartGrowth, UFTI, NPS-UD, HBA, FDS and RPS*."[133]

172. Because the NPSUD's definition of the term 'urban environment' is conjunctive (insofar as it includes an 'and' and not an 'or' between the two thresholds that must be achieved), the failure to achieve one of the thresholds renders the achievement of the other largely irrelevant. Given that we have found that the Site and its surrounding environs are neither predominantly, or intended to be predominantly urban in character, we need not determine if the same area of land is part of a housing and labour market of at least 10,000 people. This is a matter that we return to, however, in our discussion of the NPSHPL.

173. In closing on this matter, we find that the NPSUD is not a planning pathway available to PPC95 because the Site is not in an urban environment.

174. Given this finding, no further consideration of the SmartGrowth Strategy, HBCA and UFTI is needed within the context of the NPSUD. Indeed, no further discussion of the NPSUD is needed.

NPSHPL (August 2024)

175. The NPSHPL came into force in October 2022 and was amended in August 2024. The August 2024 version of the NPSHPL remains in effect at the writing of this decision.

176. The objective of the NPSHPL is to protect highly productive land for the use in land-based primary production, both now and for future generations.

177. The NPSHPL provides a definition/interpretation of highly productive land as:

"… highly productive land means land that has been mapped in accordance with clause 3.4 and is included in an operative regional policy statement as required by clause 3.5 (but see clause 3.5(7) for what is treated as highly productive land before the maps are included in an operative regional policy statement and clause 3.5(6) for when land is rezoned and therefore ceases to be highly productive land)."

178. The NPSHPL definition refers to clause 3.4 which imposes a requirement on the BoPRC to map highly productive land in its region.

179. We were advised by Ms Mark[134] and Ms Boyte[135] that the BoPRC has commenced the mapping exercise and expect it to be advanced through their Plan Change 8 (NPS-HPL) (or '**Change 8**') to the RPS. We were, however, advised that Change 8 is yet to be publicly notified. Notification must be no later than 17 October 2025.

180. In the absence of a map being included in the RPS, the NPSHPL refers to clause 3.5(7) which states:

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[133] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 41, section 9, paragraph 9.133

[134] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 41, section 10, paragraph 10.3

[135] Boyte, R, Legal Submissions, 12th of November 2024, page 2

"(7) Until a regional policy statement containing maps of highly productive land in the region is operative, each relevant territorial authority and consent authority must apply this National Policy Statement as if references to highly productive land were references to land that, at the commencement date:

(a) is:

(i) zoned general rural or rural production; and

(ii) LUC 1, 2, or 3 land; but

b) is not:

(i) identified for future urban development; or

(ii) subject to a Council initiated, or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle."

181. In the District Plan, the PPC95 Site is zoned Rural, and both the Application Documents and s42A Report confirm that the land use capability class of the Site is LUC 2. Additionally, we note that the PPC95 Site is not identified for future urban development, and PPC95 is not a Council initiated plan change. Given this, we find that the Site qualifies as highly productive land, and therefore the NPSHPL is relevant to our assessment of PPC95.

182. Clause 3.6 of the NPSHPL set outs the restrictions, and criteria, for the urban rezoning of highly productive land. Of particular relevance to PPC95 is clause 3.6(1) which reads:

"(1) Tier 1 and 2 territorial authorities may allow urban rezoning of highly productive land only if:

(a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and

(b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and

(c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values."

183. As we have previously recorded, WBoPDC is identified as a Tier 1 authority.

184. In responding to clause 3.6(1)(a)-(c), the Applicant, and both the WBoPDC and BoPRC, have provided advice, evidence and legal submissions. We now summarise our understanding of the parties' advice to us.

185. The Application Document considers[136] clause 3.6(1) of the NPSHPL, and advises us that:

a. Through the rezoning proposed by PPC95, it will contribute to meeting the identified shortfall in sufficient housing development capacity in the region and district, therefore meeting clause 3.6(1)(a);

b. There is an emerging need for housing in Pongakawa, and features of the Site for development, and its locality to facilities (such as the Pongakawa school, the PAC, Pongakawa Memorial Hall and SH2), enables it to meet clause 3.6(1)(b) of the NPSHPL; and

c. PPC95 will respond to its surroundings by supporting the local rural economy and providing a functional and accessible rural settlement with local and recreational facilities and services, therefore meeting clause 3.6(1)(c).

[136] MPAD, AEE, pages 49 to 50, section 9.2.3

186. Subsequent reports were prepared to inform and support PPC95. Those reports of greatest relevance to the assessment of the Proposal against the NPSHPL are:
   a. A high-level preliminary economic appraisal prepared by NERA ('**NERA Prelim Report**');
   b. An analysis of the geographic boundaries of the local housing markets prepared by NERA ('**NERA Analysis**'); and
   c. A Land Productivity Assessment prepared by Land Vision.

187. We heard from two of the report writers (Mr Counsell and Mr Perry), both of whom offered us their expert opinions on the ability for PPC95 to meet clause 3.6(1) of the NPSHPL. These expert opinions were supplemented by the planning evidence of Mr Murphy. Mr Coles also advised that PPC95 can meet the requirements of the NPSHPL.

188. In Mr Counsell's NERA Prelim Report, a high-level assessment of clause 3.6(1)(a) to (c) is provided. In summary, the NERA Prelim Report advises that:
   a. With respect to clause 3.6(1)(a), the report:
      i. Outlines that an "*assessment of the sufficiency of development capacity to meet demand for housing typically starts by assessing population and household forecasts for an area, and converting these to an indicator of residential housing demand*";[137]
      ii. Used the NPSHPL implementation guide when it considered the test for 'sufficient development capacity';[138]
      iii. Identified the relevant geographic area being assessed (the Pongakawa Statistical Area 2)[139]. A map was provided in the report;
      iv. Presented a high growth scenario as an appropriate approach;[140] and
      v. Concludes that PPC95 intends to supply up to 130 dwellings and that there are no other sources of new residential dwelling supply that would be expected to absorb the growth in demand for housing in Pongakawa.[141]
   b. With clause 3.6(1)(b), the report advises that:[142]
      i. There is no other land zoned for residential growth in Pongakawa;
      ii. The other flat and isolated locations near SH2 are also classified as highly productive land;
      iii. Land around other commercial entities along SH2 is further distanced from the Pongakawa residential community (which we understand to mean the existing residential enclave), restricted in size, and susceptible to reverse sensitivity effects; and
      iv. Land surrounding Pongakawa school is classified as a reserve and is further distanced from the Pongakawa residential community.
   c. With respect to the economic analysis for clause 3.6(1)(c), the report advises that the economic benefits of PPC95 are:
      i. That it will expand the supply of residential housing, benefiting purchasers of housing by lowering prices and providing them with more housing choice, in proximity to multiple growing employment land-uses;[143]

[137] NERA, High-level preliminary economic appraisal, page 2, paragraph 5
[138] NERA, High-level preliminary economic appraisal, page 3, paragraph 7,
[139] NERA, High-level preliminary economic appraisal, page 2, paragraph 5,
[140] NERA, High-level preliminary economic appraisal, page 3paragraphs 8 and 9,
[141] NERA, High-level preliminary economic appraisal, page 6, paragraph 11
[142] NERA, High-level preliminary economic appraisal, page 7, paragraph 12
[143] NERA, High-level preliminary economic appraisal, page 7, paragraph 15

ii. That PPC95 will facilitate the operation of a competitive land market;[144] and
iii. That PPC95 will result in the better utilisation of the existing infrastructure, relative to an alternative site that is located further away from the existing residential housing.[145]

189. In the NERA Analysis, Mr Counsell provides further information with regard to the assessment of clause 3.6(1)(b), and presents a case that PPC95 is in the Te Puke locality and market.[146]

190. Mr Counsell concludes[147] in the NERA Analysis that:
a. The Site is 15km from Te Puke, which is within the radius typically considered to establish the boundaries of a housing market;
b. The Site, if modified in accordance with PPC95, and Te Puke will have similar accessibility to amenities such as commercial services, parks, schools, community facilities, and natural amenities;
c. The Site and Te Puke have similar accessibility to employment opportunities such as the Rangiuru Business Park, horticultural farms, and employment in Te Puke and Tauranga; and
d. House prices in Pongakawa and Te Puke are highly correlated, which is indicative of strong substitution between the two locations.

191. In the her right of reply, Ms Hamm directed us to the JWS from the planning experts which highlights the existence of a housing shortage now and through to the short and medium term[148] and that the shortage relative to capacity persists through that same timeframe.[149] Ms Hamm advised us that this evidence is clear that there is insufficient development capacity.[150]

192. Ms Hamm also pointed us to the discussion in the JWS arising from the planning conference where it addresses the infrastructure readiness of plan enabled residentially zoned land in Te Puke. We understand her submission on this point to be that Te Puke is not infrastructure ready to accommodate further growth at this time, and that the provision of infrastructure by WBoPDC will be made available based on timing of any future developments.

193. In her legal submission responding to the Environment Court's decision *Gardon Trust and Auckland Council,* Ms Hamm advised that it (the decision) is relevant to PPC95. In that regard, she advised us that it was relevant to providing guidance on interpretation of the term 'same locality and market' and 'insufficient development capacity'.[151]

194. The s42A Report and Ms Mark's evidence contend that 3.6(1)(a to c) of the NPSHPL cannot been satisfied by PPC95. In this regard, she opined that all three of the requirements in clause 3.6(1) cannot been met. In this regard, Ms Mark advised us that clause 3.6(1)(a) is not met as PPC95 is not required to provide sufficient development capacity.

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[144] NERA, High-level preliminary economic appraisal, page 7, paragraph 16
[145] NERA, High-level preliminary economic appraisal, page 7, paragraph 16
[146] NERA, Plan Change 95: analysis of the geographic boundaries of local housing markets, page 2 to 6, paragraphs 8 to 23
[147] NERA, Plan Change 95: analysis of the geographic boundaries of local housing markets, page 6 to 7, paragraph 24
[148] Hamm, V, Reply Legal Submissions, 7th of February 2025, page 19
[149] Hamm, V, Reply Legal Submissions, 7th of February 2025, page 20
[150] Hamm, V, Reply Legal Submissions, 7th of February 2025, page 20
[151] Hamm, V, Legal Submissions, 28th of March 2025, page 1

195. Ms Mark refers to the peer review report prepared by Insight Economics and Mr Colegrave's EiC to inform her assessment and position on whether PPC95 is part of a housing and labour market of at least 10,000 people.

196. Mr Colegrave outlines in his assessment[152], and affirms in his EiC[153], his disagreement with Mr Counsell's assessment that the locality and market of PPC95 / Pongakawa is part of Te Puke.

197. Mr Colegrave further contends the demand projections presented by Mr Counsell are not reliable nor fit-for-purpose[154].

198. Ms Mark (in her s42A Report) also refers to the HBCA, which identifies a shortfall in housing supply across the medium and long term for the District as a whole.[155] However, Ms Mark points out that the HBCA does not refer to Pongakawa as an area with housing demand.[156]

199. In her legal submission, Ms Stubbing submits that the intention of the NPSHPL is to protect highly productive land for primary production.[157] On considering the three tests prescribed in clause 3.6.(1), Ms Stubbing opines that the evidence provided by the Applicant does not establish that PPC95 meet the requirements.[158]

200. In her memorandum responding to the *Gardon Trust and Auckland Council* decision, Ms Stubbing advises that the Waiuku proposal and PPC95 are not comparative. We understand her advice to be that the spatial extent for defining the locality and market with the Waiuku proposal involved the extension of an existing urban settlement of 10,000 people, rather than an extension of an existing rural settlement as proposed by PPC95.[159]

201. Ms Stubbing's advice to us was, therefore, that the Court's decision has limited relevance to PPC95 in relation to clause 3.6 of the NPSHPL.[160]

202. In its submission, the BoPRC stated:
    1. PPC95 is contrary to the NPSHPL; and
    2. PPC95 does not meet NPSHPL clause 3.6.

203. In this regard, we understand the submission to contend that the Site is highly productive land under the NPSHPL and is zoned rural. In addition, the submission notes that the Site is not identified for future urban development.

204. The BoPRC's submission goes on to advise that PPC95 does not satisfy clause 3.6(1) of the NPSHPL because there is no evidence of demand for housing in the Pongakawa area and capacity has already been enabled in more efficient locations.

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[152] Colegrave, F, 'Peer Review of PC96 Economic Assessment on Locality and Market', 10th of May 2024, page 1
[153] Colegrave, F, EiC, 13th November 2024, page 8, paragraph 44
[154] Colegrave, F, EiC, 13th November 2024, page 5, paragraph 24
[155] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 17, section 9
[156] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, page 32, section 9
[157] Hamm, V, Reply Legal Submissions, 7th of February 2025, page 20
[158] Stubbing, K, Legal Submissions, 12th of November 2024, page 9
[159] Stubbing, K, Memorandum on Behalf of Western Bay of Plenty District Council, 28th of March 2025, page 2
[160] Stubbing, K, Memorandum on Behalf of Western Bay of Plenty District Council, 28th of March 2025, page 2

205. Ms Holden, in her EiC, supports the position expressed in the BoPRC's submission, and opines that PPC95 is contrary to the NPSHPL[161] and that PPC95 is not required for delivering sufficient development capacity.[162]

206. Similar to the WBoPDC legal submissions, the BoPRC legal submissions outline that clauses 3.6(1)(a)-(c) of the NPSHPL have not been satisfied.[163]

207. Ms Boyte, in her memorandum for the BoPRC responding to the *Gardon Trust and Auckland Council* decision, advises that the Waiuku proposal and PPC95 are fundamentally different. Ms Boyte goes on to comment that there is helpful guidance with regard to rural settlements and how such settlements cannot be pulled in for the purpose of analysing locality and market.[164]

208. Ms Boyte submits that Pongakawa (including the Site) is not an urban environment and therefore clause 3.6 of the NPSHPL cannot be met.[165]

209. The JWS arising from the planning conference recorded the agreement and disagreement between the experts regarding, amongst other things, whether sufficient development capacity has been provided within the SmartGrowth Strategy and HBCA. This discussion between the planning experts is relevant to clause 3.6(1)(a) of the NPSHPL.

210. The JWS arising out of the planning conference also records a number of areas of disagreement between the Applicant's planners and planners retained to assist the two councils. The recorded disagreements were regarding the:

- Location of PPC95[166]
  - Mr Coles and Mr Murphy are of the opinion that the Site / Pongakawa is considered by the FDS and is part of the Eastern Corridor;
  - Ms Mark and Ms Holden record that they do not view the focus on particular corridors as relevant because the Future Development Strategy (or '**FDS**') addresses supply as a whole to meet expected demand.
- Flexibility of the FDS[167]
  - Mr Coles and Mr Murphy record that there is flexibility built into the FDS for PPC95 to deliver sufficient development capacity.
  - Ms Mark records that while the FDS acknowledges a shortfall, the purpose of the FDS is to provide a way forward by identifying where growth should occur. It (the FDS) does not identify Pongakawa as being an area where growth should occur.
- Role of Plan Changes[168]
  - Mr Coles and Mr Murphy record that the FDS contemplates plan changes to add to urban housing supply.
  - Although Ms Mark does not disagree with this view of plan changes, she records concern that such an approach undermines the 'Connected Centres' approach; which is a feature of the FDS.

[161] Holden, L, EiC, page 6, paragraph 20
[162] Holden, L, EiC, page 6, paragraph 18
[163] Boyte, R, Legal Submissions, 12th of November 2024, page 7
[164] Boyte, R, Memorandum, 28th of March 2025, page 2
[165] Boyte, R, Memorandum, 28th of March 2025, page 2
[166] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 9
[167] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 9
[168] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 10

- Responsiveness within the FDS[169]
  - Mr Coles and Mr Murphy refer to page 163 of the FDS which, in their view, reinforces the responsiveness (flexibility and agility) within the FDS to respond to shortfalls in urban development.
  - Ms Mark's states that page 163 outlines that alterations to the Connected Centres programme can occur if they do not compromise the objectives and growth directives set out in the SmartGrowth Strategy.

211. Of note is that the planners at the conference agreed that there is a housing shortage in the Western Bay of Plenty. The planners also agreed that this shortage is distinct from there being insufficient development capacity.

212. The objective of the NPSHPL is very clear when it states that *"[h]ighly productive land is protected for use in land-based primary production, both now and for future generations"*.

213. One means of doing this is set out in Policy 5 of the NPSHPL, which states that:

"The urban rezoning of highly productive land is avoided, except as provided in this National Policy Statement"

214. As we have already recorded, Policy 3.6(1) provides a pathway for such rezoning to occur. In summary, three clauses need to be met for such rezoning to be contemplated. We have very carefully evaluated all of the evidence before us on this topic. We address each of the three clauses of Policy 3.6(1) in the following paragraphs.

Clause 3.6(1)(a) Provide sufficient development capacity to meet demand

215. During the hearing, Mr Murphy helpfully led us through the SmartGrowth Strategy identifying and explaining aspects of the strategy that he considers demonstrates that there is, or is likely to be, shortfall in housing in the immediate location to meet demand.

216. We note that on the matter of there being a shortfall, that the signatories to the JWS arising out of the planning conference agree that there appears to be a housing shortage relative to capacity in the short and medium terms.[170]

217. The NERA High-level preliminary economic appraisal of PPC95 indicates that there will be a shortfall in supply in Pongakawa in the next 5, 10 and 25 year periods[171], and states that PPC95 is required to provide sufficient development capacity. Both in this assessment and his evidence, Mr Counsell advises that the supply of 120 to 130 dwellings which could be realised, as a consequence of PPC95, would go some way to meet the demand for housing.[172] As we have already recorded, this view was questioned by Mr Colegrave.

218. This is a challenging area for us to determine given the contradictory evidence we have from two experienced and respected economists. Ultimately, we consider the evidence of Mr Counsell, alongside the evidence of Mr Murphy and the commentary with the JWS arising from the planning conference to be the most persuasive. It follows, therefore, that we

[169] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 10
[170] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 20
[171] NERA, High-level preliminary economic appraisal, page 12, paragraph 11
[172] Counsell, K, EiC, 24th October 2024, page 6, paragraphs18

consider that the urban rezoning is required to provide sufficient development capacity to meet demand for housing.

219. It is not lost on us, however, that Clause 3.6(1)(a.) states that the urban rezoning must give effect to the NPSUD and that we have previously found that this planning instrument is not relevant to the assessment of PPC95.

220. In order to reach a finding on this point, we have, for completeness, considered if the Proposal could achieve the NPSUD's overarching purpose, which we consider is set out in its objectives. While we are of the opinion that the Proposal would achieve the types of outcomes sought in section 2.1 of the NPSUD, the objectives, unsurprisingly, reinforce Clause 1.3 of this national policy statement in making it clear that this planning instrument only applies to urban environments. The Site and the surroundings environs are not an urban environment. Having reached this finding, the question then becomes can an urban rezoning proposal that is not within an urban environment give effect to a planning instrument that only applies to urban environments? We consider that it can not.

221. Given the foregoing, on the evidence of both Mr Murphy and Mr Counsell and given the content of the JWS arising out of the planners conference, we are satisified that PPC95 meets the overarching intent of clause 3.6(1)(a). However, we do not consider that it accords with the very prescriptive direction given within clause 3.6(1)(a). In this regard, we do not consider it possible for the Proposal to give effect to a planning instrument that does not apply to it. As a consequence, we do not consider that PPC95 meets the direction set by this clause. Given that the clause is conjunctive, insofar as all three limbs of clause 3.6(1) need to be met for urban rezoning to occur on highly productive land, we do not consider that clause 3.6(1) can be used to enable PPC95. Rather, we consider that the failure to achieve this provision means that PPC95 can not give effect to the NPSHPL.

222. It is important for us to record that we consider that PPC95 and the type of development it enables is consistent with clauses 3.6(1)(b) and 3.6(1)(c) of the NPSHPL. We now, for completeness, provide a very concise summary of our reasons for reaching those findings in the following sections of our decision.

<u>Clause 3.6(1)(b) No other reasonably practicable and feasible options in the same locality and market</u>

223. The NERA report advises that having analysed the geographic boundaries of local housing markets, that that Pongakawa and Te Puke lie within a single housing market.[173] Mr Counsell reiterated this conclusion to us in his EiC.

224. We also heard from Mr Boyle, a representative for the Te Puke Economic Development Group (submitter 13). Mr Boyle described the extent of Te Puke's economic area and the nine (9) communities captured therein, of which, one of the communities is Pongkawa.[174]

225. Ms Hamm submitted that in the assessment of the locality and market for PPC95, a real-world approach should be adopted.[175] That real-world outlook, she advised, is the description presented by Mr Counsell and Mr Boyle (Te Puke Economic Development Group).

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[173] NERA, Analysis of geographic boundaries, page 7, paragraph 25,
[174] Boyle M, Statement from the Te Puke Economic Development Group, page 2, paragraph 3
[175] Hamm, V, Reply Legal Submissions, 7th of February 2025, page 4, paragraph 10

226. Having carefully evaluated and weighed the evidence and submissions that are before us, we are most attracted to the line of argument advanced by Ms Hamm in relation to this matter. In that regard, we consider that a real world approach in identifying and confirming locality and market is appropriate and consider the analysis of Mr Counsell to be sufficiently robust so as to be pursausive in this instance. We found Mr Colegrave's criticisms of Mr Counsell's analysis to be initially concerning, but upon closer analysis to lack a real world lense. To put that another way, we found his analysis to be academically founded, and to not be informed by local observations and realities. This was highlighted by the lack of engagement between Mr Colegrave and local entities, and the absence of a recent site visit. Accordingly, we are satisfied that Pongakawa should be considered as part of the Te Puke locality and market.

227. Turning next to the matter of whether there is other reasonably practicable and feasible options to the Proposal, we were directed to efforts to enable development in centres such as Te Puke and Paengaroa, with Te Puke seeming to attact the most attention. We note that the JWS arising from the planning conference records comments (by Ms Mark) in response to the projected timing needed to provide the infrastructure to serve development capacity in Te Puke. We understand the advice to be that the WBoPDC's Long-Term Plan (the '**LTP**') expects infrastructure will be available when the market is ready. We were advised that this is known as a 'just in time' approach.[176]

228. Mr Coles and Mr Murphy acknowledge the 'just in time' principle which is a feature of the WBoPDC's LTP. Both contend, however, that there are deficiencies with the existing infrastructure in Te Puke, and that the time needed to rectify these deficiencies will mean that they are unlikely to meet short term capacity.[177]

229. Given the evidence that is before us, we are also not satsified that the necessary infrastructure will be provided within Te Puke inside of three years to ensure that sufficient development capacity will be met for the short term.[178]

230. In addition, given the evidence before us regarding the alternative options that could accomodate the predicted residential growth in Pongakawa, we are of the opinion that the Site presents the most efficient and logical option, in the short to medium term. In that regard, we are not satisfied that alternatives such as Te Puke can accomodate this level of demand due to the limitations and constraints on the provision of things such as infrastructure. Paengaroa is also, in our opinion, constrained to the point whereby we question if the demand can be accommodated within it.

231. Given the foregoing, we are satisfied, albeit by a slim margin, that there is no other practicable and feasible options for providing at least sufficient development capacity within the same locality. We are also satisfied that the provision of reserves and commercially zoned land will enable, especially when coupled with the residential enclave, an environment with rural qualities. These findings lead us to the opinion that PPC95 meets the requirement of clause 3.6(1)(b), at least as far as the short and medium term requirement for housing is concerned.

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[176] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 12
[177] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, pages 12 & 13
[178] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 12

Clause 3.6(1)(c) Environmental, social, cultural and economic beneifts

232. In Appendix D of his EIC, Mr Murphy provides an assessment of PPC95's costs and benefits against the four wellbeings. His advice to us was that this analysis demonstrates that PPC95 meets the requirement of clause 3.6(1)(c) of the NPSHPL.

233. We have carefully reviewed the table in Mr Murphy's Appendix D and are persuaded by it. Indeed, this reinforces our previous finding that PPC95 will enable development that is likely to have long term benefits that outweigh any long term costs.

234. Given the foregoing, we are also satisfied that PPC95 meets the requirement of clause 3.6(1)(c).

NPSFM (October 2024)

235. The NPSFM is a statutory planning instrument drafted by the Crown. It applies to all freshwater resources in New Zealand and to their receiving environments (to the extent that these latter environments are impacted by freshwater.[179] In our evaluation of PPC95, we have considered the version of the NPSFM that was officially amended and came into full force in October of 2024.

236. Part 1 of the NPSFM is notable as it defines and explains the 'fundamental concept' which underlies and informs all aspects of this planning instrument. In this regard, it defines 'Te Mana o te Wai'. It states, amongst other things, that Te Mana o te Wai (or '**TMotW**') refers to the fundamental importance of water and recognises that protecting the health of freshwater in turn, protects the health and wellbeing of the wider environment. It further states that six (6) principles inform the NPSFM and its implementation, being:

a. *Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater;*
b. *Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations;*
c. *Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others;*
d. *Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future;*
e. *Stewardship: the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations; and*
f. *Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.*[180]

237. Part 2 of the NPSFM contains an all-encompassing objective and 15 associated policies. Those provisions of greatest relevant to PPC95 are repeated and discussed as follows:

238. Objective 2.1 states:

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)
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

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[179] Ministry for the Environment (or '**MfE**'), 'NPSFM', October 2024, page 8, section 1.5
[180] MfE, 'NPSFM', October 2024, page 5, section 1.3

239. The associated policies of direct relevance to the Proposal are set out in section 2.2 of the NPSFM and state:

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 5: Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

Policy 9: The habitats of indigenous freshwater species are protected.

Policy 10: The habitat of trout and salmon is protected, insofar as this is consistent with Policy 9.

Policy 13: The condition of water bodies and freshwater ecosystems is systematically monitored over time, and action is taken where freshwater is degraded, and to reverse deteriorating trends.

Policy 15: Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement.[181]

240. We have considered the information before us in light of the outcomes sought within these exceptionally important provisions. Having done so, we are satisfied that the outcomes sought can be achieved, should PPC95 be approved.[182] In this regard, and focussing on the most relevant provisions:

a. For the reasons we set out in our discussion of the Proposal's ecological effects, we are satisfied that PPC95 will reduce the contaminants being discharged into the freshwater that traverses under (groundwater) and adjacent to the Site. This, we expect, will not only benefit Puanene Stream as it passes the Site, but it will benefit the downstream ecology, albeit in a minor way. The same water quality improvements will, in our opinion, prioritise the health benefits of those that live in and adjacent to the Site, and those who abstract and/or recreate in the freshwater environs downstream of the Site. Not only do these outcomes accord with what was sought by Ngāti Whakahemo in its submission to PPC95, but it will enable people and communities to provide for their social and economic wellbeing. These outcomes accord, in our opinion, with Objective 2.1 and Policies 2 and 15;

b. We are also satisfied that the proposed provisions and form of PPC95, including the structure plan, will, when coupled with the need to secure a resource consent(s) associated with the development of each stage, ensure that the ecological and water quality benefits of the Proposal are realised;

c. The foregoing accords, in our, opinion, with TMotW (and thus Policy 1) as it recognises the fundamental importance on water to all aspects of life, and not only seeks to maintain it, but protect it in a manner that accords with the outcomes expressed by Tangata Whenua and some within the wider community. The Applicant would also be demonstrating its stewardship toward the water resource, and showing a level of care and respect towards this resource, which is appropriate to the size, scale and influence (on the freshwater resource) of the Proposal. Were PPC95 to be approved as it is proposed, we are also satisfied that it would also accord with the principle of governance set out in the preliminary provisions of the NPSFM;

d. While only as small portion of a larger catchment, we are satisfied that the Proposal will, none-the-less, contribute to the broader water quality outcomes that are sought.

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[181] MfE, 'NPSFM', October 2024, pages 10 & 11, section 2.2

[182] We record, for completeness, that this finding is aligned with the advice given to us by Ms Mark (Mark, A, Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11 October 2024, paragraph 17.11, page 19) and MPAD (MPAD, The AEE, pages 48 & 49, section 9.2.2)

It will achieve this by ensuring that stormwater and wastewater flows are treated and discharged in accordance with measures that are designed to the applicable guidelines and standards as set by both the BoPRC and the WBoPDC; and by ensuring that the margins of the Puanene Stream are planted and maintained. This in our opinion, is aligned with Policy 3;

e. The evidence before us is that the community has determined that the water quality in the catchment of the Waihi Estuary needs to be improved. This is aligned with the outcomes sought within Policy 5 and, in part, Policy 13. We are satisfied that the Proposal will, if developed in accordance with the framework set by PPC95, contribute to both the improvements sought within the NPSFM and the communities of interest;

f. We are also satisfied that the habitat of indigenous species provided by Puanene Stream, as it traverses past the Site, will be protected to the point that it can be, should PPC95 be approved. This is primarily achieved by the requirement for any development to provide stormwater and waste disposal systems that accord with the standards perscribed by both the BoPRC and WBoPDC, and rules that impose the setbacks from the Puanene Stream. The obligation to plant buffers between the development and the Puanene Stream will also, we consider, assist in achieving the kinds of outcomes required by Policy 9 and, to the extent it is relevant, Policy 10.

241. The NPSFM also imposes other obligations on territorial authorities, one of which is relevant to our consideration of PPC95. In that regard Section 3.5(4)[183] is clear that:

Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

242. We are satisfied, for the reasons already stated, that PPC95 contains the provisions required to achieve this outcome in relation to both the Site and the adjacent Puanene Stream.

The Bay of Plenty RPS

243. Section 74(2) of the RMA requires territorial authorities to have regard to any RPS.

244. The Bay of Plenty RPS promotes the sustainable management of the natural and physical resources of the Bay of Plenty Region. It has been subject to a number of plan change processes, with further changes being advanced.

245. On the 17th of April 2025, Change 6 was made operative and incorporated into the RPS. These provisions give effect to the NPSUD and enable urban development and provision for additional development capacity. We have considered the RPS, as amended by PC6 in our analysis of PPC95.

246. Proposed Change 8 is currently being prepared, and is scheduled for public notification on (or before) the 17th of October 2025. Given this, Change 8 has no legal status and has not been afforded any weight in our analysis.

247. The resource management issues and objectives of the RPS that are, in our opinion, relevant to PPC95 are:

[183] MfE, 'NPSFM', October 2024, page 15, section 2.5

- *Energy and Infrastructure*
  - *Objective 7 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.

- *Integrated Resource Management*
  - *Objective 10 Cumulative effects of existing and new activities are appropriately managed.*
  - *Objective 11 An integrated approach to resource management issues is adopted by resource users and decision makers.*
  - *Objective 12 The timely exchange, consideration of and response to relevant information by all parties with an interest in the resolution of a resource management issue.*

- *Iwi Resource Management*
  - *Objective 13 Kaitiakitanga is recognised and the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are systematically taken into account in the practice of resource management.*
  - *Objective 15 Water, land, coastal and geothermal resource management decisions have regard to iwi and hapū resource management planning documents.*
  - *Objective 17 The mauri of water, land, air and geothermal resources is safeguarded and where it is degraded, where appropriate, it is enhanced over time.*

- *Matters of National Importance*
  - *Objective 18 The protection of historic heritage and outstanding natural features and landscapes from inappropriate subdivision, use and development.*
  - *Objective 19 The preservation of the natural character of the region's coastal environment (including coastal marine areas), wetlands, lakes and rivers and their margins.*
  - *Objective 20 The protection of significant indigenous habitats and ecosystems, having particular regard to their maintenance, restoration and intrinsic values.*
  - *Objective 21 Recognition of and provision for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
  - *Objective 22 The coastal marine area, lakes and rivers are generally accessible to the public.*

- *Urban and Rural Growth Management*
  - *Objective 23 A compact, well designed and sustainable urban form that effectively and efficiently accommodates the region's urban growth.*
  - *Objective 24 An efficient, sustainable, safe and affordable transport network, integrated with the region's land use patterns.*
  - *Objective 26 The productive potential of the region's rural land resource is sustained and the growth and efficient operation of rural production activities are provided for.*

- *Water Quality and Land Use*
  - *Objective 27 The quality and mauri of water in the region is maintained or, where necessary to meet the identified values associated with its required use and protection, enhanced.*

- *Natural Hazards*
  - *Objective 31 Avoidance or mitigation of natural hazards by managing risk for people's safety and the protection of property and lifeline utilities.*

248. We now summarise our analysis of these provisions, and the policies that seek to implement the outcomes that are sought.

Energy and Infrastructure

249. Policy EI 7B gives effect, at least in part, to Objective 7. This policy seeks to "*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*".

250. We have already discussed the infrastructure issues (including all actual and potential effects) earlier in this decision. There was differences of opinion between the experts as to the ability for the Site to be serviced by the infrastructure needed for the development enabled by PPC95. As we have recorded, however, these disagreements were ultimately resolved during the conference conducted by the infrastructure experts. The evidence now before us is that all actual and potential effects arising from the provision and operation of the infrastructure needed to service the Site can be appropriately managed to the point where they are acceptable. This includes any reserve sensitivity effects. We are also satisfied that PPC95 contains the necessary provisions to ensure that this management occurs.

251. Accordingly, we are satisfied that PPC95 is consistent with Objective 7 and Policy EI 7B of the RPS.

Integrated Resource Management

252. Objectives 10 to 12 require, by way of a broad summary, integrated responses to the Bay of Plenty's primary resource management issues.

253. Objective 10 promotes the appropriate management of cumulative effects of existing and new activities. Objective 11 seeks to ensure an integrated approach to resource management issues involving resource users and decision makers is adopted. Objective 12 requires the timely exchange, consideration and response to information for relevant resource management issues.

254. We consider that of the policies imposed to implement these three objectives, that the following are directly relevant to our assessment of PPC95:
    a. Policy IR 1B: Applying a precautionary approach to managing natural and physical resources;
    b. Policy IR 2B: Having regard to the likely effects of climate change;
    c. Policy IR 3B: Adopting an integrated approach;
    d. Policy IR 5B: Assessing cumulative effects; and
    e. Policy IR 6B: Promoting consistent and integrated management across jurisdictional boundaries.

255. We acknowledge from the outset that the Applicant has undertaken engagement with parties that have an interest in PPC95, and has proposed what we consider to be an appropriately integrated plan change. In this regard, the Applicant has sought to identify, understand and address the the environmental and resource mamnagement matters/issues facing the Proposal.

256. We also acknowledege that some of the matters/issues identified by both the WBoPDC and BoPRC, and the submitters in opposition, haven't been addressed to their satisfaction.

257. The technical reporting, proposed design and proposed staging of PPC95, has, in our opinion, involved a careful and thorough technical examination of the Proposal's actual and potential effects. In doing so, we consider that the Applicant has sought to understand the environmental context, recognise the values of both Tangata Whenua (such as the mauri of Puanene Stream) and the potentially affected parties / stakeholders and to adopt appropriate responses to the same. Indeed, this is recognised by the level of expert agreement that pervades all but the interpretation of the key statutory planning instruments.

258. While accepting that not all of the matters of concern are resolved, we are satisfied that the approach to develop and evaluate PPC95 (including by us in the production of this decision) are consistent with those policies and that, that approach will assist in achieving the relevant objectives.

Iwi Resource Management

259. Objective 13 requires that kaitiakitanga is recognised and the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) are taken into account in the practice of resource management, while Objective 17 seeks to safeguard and, where appropriate enhance the mauri of water, land and other resources over time. Also, it states that where the mauri may be compromised, the appropriate tikanga Māori and kawa would need to be followed.

260. There are several policies that support the identified objectives and which are, in our opinion, of relevance to our assessment. They are:

- Policy IW 3B: Recognising the Treaty in the exercise of functions and powers under the Act;
- Policy IR 4B: Using consultation in the identification and resolution of resource management issues;
- Policy IW 4B: Taking into account iwi and hapū resource management plans;
- Policy IW 5B: Adverse effects on matters of significance to Māori;
- Policy IW 6B: Encouraging tangata whenua to identify measures to avoid, remedy or mitigate adverse cultural effects; and
- Policy IW 2B: Recognising matters of significance to Māori.

261. It is important for us to again acknowldge the support that PPC95 has obtained from Ngāti Whakahemo, as well as a record of consultation with Ngāti Pikiao where their comments have informed PPC95. We are satisfied that the Applicant has sought to engage with Tangata Whenua in the manner sought by the applicable provisions of the RPS.

262. The presence of Ngāti Whakahemo at the hearing in opening and closing our proceedings, and articulating their support of PPC95, provides the Panel confidence that the appropriate tikanga Māori and kawa of Ngāti Whakahemo will guide discussions and activities regarding the enhancement of mauri and exercise of kaitiakitanga.

263. While there was no discussion of the applicable iwi and hapū management plans in the Application Documents, this was ultimately rectified in the information that was placed before us. In this regard, both the s42A report and the JWS arising from the planning conference identify and provide an outline of the two iwi resource management plans held by WBoPDC. As a consequence, we have taken account of these two plans, and the outcomes they seek in our evaluation of PPC95. We consider that it is reasonable to expect that should PPC95 be approved, these iwi and hapū management plans will be considered when all but the resource consent applications for the proposed subdivision of the Site

occurs (this reflects the controlled activity status that would apply to the subdivision should PPC95 be granted).

264. We discussed the actual and potential cultural effects of the PPC95 earlier in this decision. We concluded, albeit by a slim margin, that PPC95 responds appropriately to the cultural effects that are expected to arise.

265. Given the foregoing, we are satisfied that PPC95 is consistent with the objectives and policies of the RPS that seek outcomes in relation to the issue of Iwi Resource Management.

Matters of National Importance

266. Objectives 19, 21 and 22 are a reflection and acknowledgement of section 6 of the RMA, specifically the following subsections:

- Section 6(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- Section (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- Section 6(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;
- Section 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and
- (f) the protection of historic heritage from inappropriate subdivision, use, and development.

267. We are of the opinion that the following policies are directly relevant to the assessment of PPC95:

- Policy MN 1B Recognise and provide for matters of national importance
- Policy MN 4B Encouraging ecological restoration
- Policy MN 5B Encouraging public access to and along the coast, lakes and rivers
- Policy MN 8B Managing effects of subdivision, use and development

268. We have paid close attention to the various matters of national importance, and have sought to both recognise and provide for them in in our assessment of PPC95. We shortly discuss Part 2 of the Act. Our findings in relation to the relevant matters of national importance are addressed in that section of this decision. As is apparent from that analysis, however, we consider that PPC95 can both recognise and provide for all of the relevant matters of national importance.

269. Policy MN 4B is relevant as it encourages restoration. Ecological restoration is proposed. We are satsified PPC95 contains the provisions needed to both protect existing ecology, whilst also containing measures to improve and restore (to an extent considered appropriate by the relevant experts) the ecological values that presently exist.

270. The Puanene Stream is not identified as a river, however we acknowledge that it is a waterbody in the district/region. PPC95 will improve public access to and along the Puanene Stream and thus will give effect to Policy MN 5B.

271. Furthermore, and as we have already discussed in this decision, we note the support from, and active participation of, Ngāti Wakahemo in PPC95. In addition, and for the reasons

already provided, we are satisfied that the PPC95 both recognises and provides for those values that have been identified by Tangata Whenua.

272. With respect to Policy MN 8B, we are satisfied that the level of natural character associated with the portion of Puanene Stream adjacent to the Site will be enhanced should PPC95 be granted in the manner proposed.

Urban and Rural Growth Management

273. As we have already recorded, PC6 was made operative and incorporated into the RPS on the 17th of April 2025.

274. It is important for us to record from the outself that with the incorporation of Change 6 into the RPS, the numbering of policies in the RPS have changed (for instance *Policy UG 7A Providing for unanticipated or out-of-sequence urban growth – urban environments* in Plan Change 6 is identified as Policy UG 5A in the RPS). It is important for us to record that we have adopted the references evidenced in the RPS following the incorporation of Change 6.

275. We have, earlier in this decision, discussed the NPSUD where we determined that PPC95 is not an 'urban environment'. This is a notable conclusion in the context of the RPS as it confines, significantly, the number of policies that are relevant to the the assessment of PPC95. In this rergard, we consider that the relevant urban growth policies are limited to:

- Policy UG 10B: Managing the effects of subdivision, use and development on infrastructure;
- Policy UG 13B: Restricting urban activities outside urban environments; and
- Policy UG 14B: Managing rural development and protecting versatile land.

276. For the reasons that we have already stated, we are satisfied that PPC95 accords with the outcomes sought in Policy UG10B.

277. Policy UG 13B of the RPS follows.

> *"Policy UG 13B: Restricting urban activities outside urban environments*
>
> *Restrict the growth of urban activities located outside urban environments unless it can be demonstrated that sound resource management principles are achieved, including:*
>
> *(a) The efficient development and use of the finite land resource, and*
>
> *(b) Providing for the efficient, planned and coordinated use and development of infrastructure."*

278. As is apparent from the foregoing, Policy UG 13B restricts the growth of urban activities outside urban environments. It is uncontested before us that PPC95 would enable urban activities to be established on an area of rural land.

279. Both the Application Document and the s42A Report considered Policy UG 13B (referred to as Policy 14B in both reports). It was also addressed in the planning evidence and legal submissions that we received on this matter. We summarise our understanding of this advice in the following bullet points:

- Applicant:

- Outlines their understanding of Policy UG 13B;[184]
- Advises that Policy UG 13B is relevant if PPC95 is not considered an urban environment;[185]
- Opines that PPC95 is an efficient use of the finite land resource because less then 10 hectares of land will be lost to create housing supply that is required to address a short and medium term housing shortages.[186]

▪ WBoPDC:

- Acknowldeges the Applicant's assessment of Policy UG 13B but offers a contrary opinion, being that that PPC95 does not meet Policy UG 13B;[187] and
- We understand that the Council's contrary position is founded on opinions related to PPC95 resulting on infrastructure inefficiency and on the use of finite land resources.[188]

280. It is clear to us that Policy UG 13B provides for urban activities outside urban environments if both of the following can be achieved:
(a) The efficient development and use of the finite land resource; and
(b) Providing for the efficient, planned and coordinated use and development of infrastructure.

281. We have already recorded that we consider that infrastructure can be supplied to the Site in a manner that is both appropriate and will not have any unacceptable adverse effects. As a consequence, much hangs on whether the development of land in the manner enabled by PPC95 would represent an efficient development and use of the land resource.

282. No party contested the contention that that the development enabled by PPC95 would remove appropriately 10 hectares of rural land from productive use. As we have noted, this land contains soils whose protection is addressed in a National Policy Statement (being the NPSHPL). While their protection is prioritised, such protection is not unilateral. In this regard, there are exceptions where the NPSHPL says the loss of highly productive soils is acceptable. As is apparent from our earlier analysis, we have concluded, albeit by a relatively fine margin, that the loss of highly productive soils is not acceptable. In this regard, while the evidence leads us to the finding that the urban development enabled by PPC95 is necessary to address a housing shortfall, where there are no feasible or practicable alternatives and the environmental benefits outweigh the costs, the Proposal does not give effect to the NPSUD. Indeed, we have concluded that the NPSUD is not relevant to the assessment of PPC95. In this context, the NPSHPL is clear that urban rezoning of highly productive land is not allowed. As a consequence, when all things are considered, we are unable to conclude that PPC95 represents, in the context of Policy UG 13B, an efficieint use of the finite land resource. In every other respect, we consider PPC95 to be an efficieint use of natural and physical resources.

283. Policy UG 14B is relevant as the Site is in the rural zone.

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[184] MPAD, Planning Framework, page 43, section 9.1 & Coles, R, EiC, 24th October 2024, pages 8 and 9, paragraphs 23 and 24
[185] Murphy, V, EiC, 24th October 2024, page 45, paragraph 140
[186] Murphy, V, EiC, 24th October 2024, page 45, paragraph 141
[187] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, pages 37 to 39, section 9
[188] Mark, A, EiC, 22nd November 2024, page 10, paragraph 32

284. Policy UG 14B seeks the protection of versatile land. We have already determined (in our analysis of the NPSHPL) that PPC95 can not satisfy clause 3.6(1) of the NPSHPL. This, in our view, means that the type of loss that would occur in this instance is neither acceptable nor envisaged by the superior statutory planning instruments. We do not consider that the direction set by Policy UG 14B can trump the conclusion reached in relation to the NPSHPL.

285. Given the foregoing, we are of the opinion that PPC95 is consistent with some, but not all of the relevant Urban and Rural Growth Management objectives and policies of the RPS.

Water Quality and Land Use

286. Policy WL 1B, which is entitled 'Enabling land use change', is the only policy that supports Objective 27.

287. As we have already noted, we are satisfied that the change in land use from rural to urban, when coupled with the measures proposed within PPC95 to treat the discharges from the Site has the potential to generate a positive effect on the environment. This would be achieved through the reduction in the volume of contaminants being discharged from the Site into Puanene Stream and thus the wider catchment. This, in our opinion, is consistent with the outcomes sought by Objective 27 and Policy WL 1B. Again, we are satisfied that PPC95 contains the provisions needed to ensure this outcome is achieved.

Natural Hazards

288. Objective 31, and its policies, seek to manage natural hazards and avoid or mitigate the effects of them.

289. There are 14 natural hazards policies. Those policies of most relevance to our assessment of PPC95 are summarised as follows:

- Policy NH 1B Take a risk management approach to control the use, development and protection of land to avoid or mitigate natural hazards by assessing the level of risk according to the likelihood of natural hazards occurring and their potential consequences;
- Policy NH 4B Managing natural hazard risk on land subject to urban development by requiring a Low natural hazard risk to be achieved on development sites after completion of the development;
- Policy NH 7A Identifying areas susceptible to natural hazards where those natural hazards could affect people, property and lifeline utilities;
- Policy 11B Providing for climate change by incorporating the effects of climate change in natural hazard risk assessment; and
- Policy NH 12A Managing natural hazard risk through regional, city and district plans.

290. We have previously addressed both the natural hazards risks that apply to the Site, and the manner in which the development enabled by PPC95 could impact on those risks. We consider that the potential natural hazard risks facing the Site are well known, and have been well quantified. This included, we understand, considering the risks that would be faced when the projected impacts of climate change were factored in. For the reasons we have previously set out, we are satisfied that a proposal of the nature envisaged by PPC95 can occur within the Site in a manner that does not give rise to unacceptable natural hazard effects, or cause the level of natural hazard risk to be more than low. We are cognisant that additional information will need to be produced to ensure that this is the case, but we are also satisfied that PPC95, together to the other provisions of the various statutory planning

instruments, will ensure that this detail is provided when the necessary resource consents are sought.

291. It follows, therefore, that we are satisfied that PPC95 contains appropriate provisions to ensure that every natural hazard risk is appropriately managed. As a consequence, we also find that PPC95 can be advanced in a manner so as to give effect to the direction sought by the RPS on natural hazard considerations.

Iwi Management Instruments

292. Section 74(2A) of the RMA directs territorial authorities to take account of any relevant planning documents recognised by an iwi authority on lodged with the territorial authority.

293. We have already recorded the absence of any discussion of the relevant iwi and hapū management plans / instruments in the Application Documentation. This deficiciency was, however, ultimately addressed by other sources. The experts who attended the planning conference identified and agreed in their JWS that the following iwi planning documents are relevant to PPC95[189]:

a. Ngāti Pikiao Iwi Resource Management Plan – Ngā Tikanga Whakahaere Taonga o Ngāti Pikiao Whānui Iwi Resource Management plan 1997; and
b. Ngāti Rangitihi Iwi Management Plan 2011

294. It was further outlined in the JWS that arose from the planners conference that Ngāti Makino and Ngāti Whakahemo are currently developing their iwi planning documents but that nothing has been lodged with the BoPRC or the WBoPDC.[190]

295. Ms Mark, in her s42A report provides some commentary[191] on the two iwi planning documents. We consider the brief insight provided by Ms Mark to be helpful. In this regard, we were advised:

> "*Ngāti Pikiao Iwi Resource Management Plan – Nga Tikanga Whakahaere Taonga o Ngāti Pikiao Whanui Iwi Resource Management Plan, 1997, includes but is not limited to references to the management of water, water quality and discharges to water and property development*."
>
> "*Ngāti Rangitihi Iwi Environmental Management Plan 2011, sets out objectives, policies and methods for a range of matters, including but not limited to, restoring, maintaining and protecting the mauri of freshwater resources, improving water quality, the disposal of wastewater, the avoidance of fragmentation of farming land, rural sprawl and the inefficient use of productive soils.*"

296. Further, the JWS arising out of the planners conference also provided some useful insight as to the outcomes sought by the two iwi mamagement plans. In this regard, the JWS states[192]:

> *"Ngāti Pikiao Iwi Resource Management Plan – Nga Tikanga Whakahaere Taonga o Ngāti Pikiao Whanui Iwi Resource Management Plan, 1997, includes but is not limited to references to the mauri of resources including water, the management of water, water quality (p83) and discharges to water and property development. Engagement protocols and enabling Kaitiakitanga.*

[189] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 5
[190] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 5
[191] Mark, A, 'Plan Change 95 – Pencarrow Estate, Section 42A Planning Report', 11th of October 2024, pages 8 & 9, section 5
[192] Coles, R, Murphy, V, Mark, A, Holden, L, JWS2, 20th of December 2024, page 6

This iwi planning instrument recognises the RMA and the need to manage resource in a sustainable way for current and future generations. It emphasises Ngati Pikiao's role as Kaitiaki has not relinquished despite alienation of the land through confiscation. At page 74 the plan recognises Section 74 RMA regarding the need to have regard to recognised Planning Documents recognised by iwi. At page 81 the plan it identified Ngati Pikiao's expectations regarding the supply of Plan Change documents at no charge. This has been supplied to Ngati Pikiao and engagement undertaken.

Ngāti Rangitihi Iwi Environmental Management Plan 2011, identifies the rohe and sets out objectives, policies and methods for a range of matters, including but not limited to, restoring, maintaining and protecting the mauri of freshwater resources, improving water quality, the disposal of wastewater, the avoidance of fragmentation of farming land, rural sprawl and the inefficient use of productive soils. Engagement protocol and enabling Kaitiakitanga.

The plan change site is within Ngati Rangitihi's rohe and the Iwi Environmental Management Plan has specific water related objectives and policies at P30 – 33. With regard to wastewater, they are concerned about protecting the mauri of the water and the effect wastewater discharges will have on the water, particularly direct wastewater discharges which may be considered spiritually and culturally offensive."

297. Given the information that is before us, we consider that PPC95 is now in a form which delivers on the types of outcomes sought in the relevant iwi and hapū management plans. In this regard, we consider that the Applicant did engage in a manner that enabled Tangata Whenua to, if they choose to, act as Kaitiaki. We also consider that where feedback was provided, the Applicant sought to ensure the PPC95 responded appropriately. The best example of this, in our opinion, is the achievement of what we expect to be an ecological benefit. We understand that this benefit arose, at least in part, in response to the concerns that were expressed in the hapū and iwi planning instruments regarding the Puanene Stream and the wider catchment into which it drains.

298. We acknowledge that the Ngāti Rangitihi Iwi Environmental Management Plan 2011 seeks the avoidance of farm land fragmentation, 'rural sprawl' and the inefficient use of productive soils. While PPC95 will, but its very nature, result in the fragmentation of rural land, we do not consider that it will represent rural sprawl (as the Proposal would enable higher intensity urban development and its consolidation around the residential enclave) or the inefficient use of productive soils. We consider that the retention of a productive rural lot of approximately 67 hectares will mitigate any effects arising from the lost (via 'fragmentation') of the Site. The Proposal will, however, see highly productive soils lost to primary production in a manner that does not accord with the national direction (as articulated in the NPSHPL).

Part 2 of the Act

299. The decision of the Supreme Court in the case entitled *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38 (as adopted in the later decision of the High Court *RJ Davidson Family Trust v Marlborough District Council* [2017] NZHC 52) has caused some to question whether the Act requires a 'broad overall judgement' against the matters listed in section 104 and the purpose and principles of the Act in sections 5 to 8 - absent any invalidity, incomplete coverage, or uncertainty of meaning within the relevant statutory planning instruments. We have not encountered any of these situations. Indeed, we have no expert evidence before us which suggests that any of these situations exist, and that we need to turn our attention to Part 2 of the Act to aid our evaluation of the PPC95 against the provisions of the higher order statutory planning instruments. That said, however, we are required to consider Part 2 in the light of sections 74(1)(b) and 32(1)(a) of the Act. As a consequence, we have completed a separate

evaluation of the Proposal against those parts of Part 2 which we consider to be relevant to the Proposal. We summarise our findings as follows.

300. In completing our assessment of Part 2 we have treated the principles contained in sections 6, 7 and 8 as being subordinate to the purpose set out in section 5 of the Act. In that regard, we understand that the matters set out in sections 6, 7 and 8 are not an end in themselves, but inform the Act's purpose.

Section 6

301. Section 6 lists eight matters of national importance that the Council has an obligation to recognise and provide for. All of the matters listed, with the exception of sections (g) and (b), are, in our opinion, relevant to PPC95.

302. The term 'protected customary right' applies to marine and coastal areas.[193] Given this, we are of the opinion that section 6(g) is not relevant to these proceedings. Equally, there is no evidence before us to suggest that the Site is within or proximate to outstanding natural features and landscapes. As a consequence, we are of the opinion that section 6(b) is of no relevance to the Proposal.

303. Section 6(a) states that the preservation of the natural character of, amongst other things, wetlands, lakes and rivers and its protection from inappropriate subdivision, use and development, is a matter of national importance. We did not hear evidence specifically on natural character, but the information before us suggests that Puanene Stream and its margins are highly modified and at the lower end of the natural character spectrum. Indeed, our site visit confirms this. We are satisfied that the level of natural character associated with Puanene Stream will, in all probability, be enhanced by the PPC95, insofar as the provisions before us (including the structure plan itself) require that discharges to the Stream will be better managed and formal treatment will occur, while the margins of this water course will be planted with appropriate native species.

304. The protection of significant indigenous vegetation and significant habitats of indigenous fauna is provided for as a matter of national importance in section 6(c). It is important, in our opinion, to note that section 6(c) makes no reference to 'inappropriate subdivision, use or development', which leads us to the conclusion that its application requires a different approach to that which is employed for some of the other matters of national importance. In this respect, 'protection' is imperative. The standard of 'inappropriateness' that is a feature of provisions such as 6(a) of the Act, has no relevance.

305. The evidence before us is that the Site contains little terrestrial ecological values of note, but that while degraded, some notable native species are likely to be present within the Puanene Stream. For the reasons we have already set out, we are satisfied that PPC95 contains the

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193 Section 6(g) of the Act refers to:
" … the protection of protected customary rights …"
The term 'protected customary right' is defined by the Act as being the definition in Section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011, which is:
"… an activity, use, or practice –
(a) established by an applicant group in accordance with subpart 2 of Part 3; and
(b) recognised by –
  (i) a protected customary rights order; or
  (ii) an agreement …"

provisions needed to not only protect those values that are present, but to, in all likelihood, improve them.

306. Section 6(d) states that the maintenance and enhancement of public access to and along rivers, amongst other locales, is a matter of national importance. It is clear to us that the PPC95 will contribute to, and in all probability improve, public access to the Puanene Stream. Given this, the Proposal can, in our opinion, be advanced in a manner that recognises and provides for the matters set out in section 6(d).

307. The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga is a matter of national significance under section 6(e). Having considered all of the information before us, we are satisfied that the consultation undertaken by the Applicant reflects the importance that Mr and Mrs Marsh have attached to Tangata Whenua's involvement in the design and advancement of the PPC95. It also reflects, again in our opinion, the Applicant's recognition that Tangata Whenua has a special and enduring relationship with the environs associated with the Proposal, and that only Māori can determine the nature of the cultural effects that could be caused, were the Proposal to proceed.

308. We have previously highlighted the cultural effects of PPC95. For the reasons already set out, we are satisfied that PPC95 appropriately identifies and contains provisions that will respond to those effects. Therefore, we are also satisfied that PPC95 appropriately recognises and provides for the matters highlighted in section 6(e).

309. The protection of historic heritage from inappropriate subdivision, use and development is a matter of national significance under section 6(f). The term 'historic heritage' is, as defined by the Act, an all-encompassing construct. It includes, for example, historic sites, structures, places and areas, archaeological sites, sites of significance to Tangata Whenua and the surroundings associated with natural and physical resources. These matters have all, in our opinion, been considered in our assessment of the relevant planning instruments and the Proposal's actual or potential environmental effects. For the reasons we have already set out, the Proposal is not inappropriate in the context of section 6(f) in that it contains the necessary provisions to ensure that PPC95 is not an inappropriate activity and thus is something that needs to be protected against in the context of section 6(f).

310. The management of significant risks from natural hazards is a matter of national importance under section 6(h). This is a matter that attracted a lot of attention in the information that is before us, with a number of submitters claiming that the natural hazard risks are notable, and that enabling further residential development on the Site would not be appropriate. The expert evidence before us leads us to a different conclusion, however. In that regard, we are satisfied that PPC95 contains appropriate provisions (especially when considered within the scheme of all of the statutory planning instruments that apply to the Site) to ensure that the risks of natural hazards are appropriately considered and managed.

Section 7

311. Section 7 lists 11 matters that we must have particular regard to when determining PPC95. All but two of the matters listed are, in our opinion, of relevance to the Proposal. In this regard, section 7(ba) and section 7(j) of the Act has limited, if any, relevance to the Proposal. Section 7(ba) as it speaks of the 'efficiency of the end use of energy' while section 7(j) requires

that the 'benefits derived from the use and development of renewable energy' be recognised and provided for.

312. PPC95 seeks to enable urban development and form.

313. Energy is to be delivered to the Site via power lines. We have heard that such delivery is possible. How that energy is used is not a matter that we can readily determine however. At a broader level, some submitters have argued that the expansion of the residential enclave in the manner enabled by PPC95 would serve to increase the use of private vehicles. It is possible to extend that line of argument to the point that by doing so, PPC95 would increase the consumption of things such as hydrocarbons. We accept that this is a possibility. It is not, however, a matter that we heard any expert evidence on. We also have no evidence before us to determine if the transition to electric vehicles or hybrid vehicles would offset any increase in the consumption of hydrocarbons that could be generated by PPC95, and indeed how that compares with the tractors and machinery used on a farm and/or bringing supplies into the farm. As a consequence, is it not something that we can quantify or robustly assess.

314. Similarly, Section 7(j) requires that particular regard be given to the benefits derived from the use and development of renewable energy. While the development of the Site will be provided with electricity, the majority of which comes from renewable sources in New Zealand, we do not consider this to be especially notable or helpful (or even especially relevant) to our assessment of the Proposal. We record, for completeness, that PPC95 in no way precludes resource consent applications being made for notable renewable energy development (other than within the Site), although it could be argued that having a larger residential enclave would increase the risks for reverse sensitivity to be raised as an issue in any application proceeding. We consider this prospect to be speculative and thus is not a matter we consider should attract any weight or further attention in our consideration of the merits of PPC95.

315. Sections 7(a) and (aa) highlight the importance of kaitiakitanga and the ethic of stewardship to sustainable management in New Zealand. Kaitiakitanga, as defined by the Act, means the exercise of guardianship by Tangata Whenua in relation to natural and physical resources and includes the ethic of stewardship. The separate mention of the ethic of stewardship in section 7(aa) recognises, in our opinion, that parties who are not Tangata Whenua (whakapapa Māori / Māori heritage) have an ongoing role to play in the management of natural and physical resources.

316. We are satisfied that by providing opportunities for Tangata Whenua to become involved in, and to contribute (in a significant, enduring and meaningful way) to the design and content of the PPC95, the Applicant has sought to act in accordance with section 7(a). We considered if further provisions needed to be incorporated into PPC95 to require such engagement to continue. On balance, however, we are satisfied that this will be achieved should any resource consents for the realisation of the residential and commercial development necessitate such engagement. As we have also stated earlier, we consider it is reasonable to assume that any relevant hapū and iwi resource management plans would also be considered during such application processes. Put another way, we are of the opinion that it would be inappropriate for us to prejudge that such engagement is required when the only engagement in PPC95 was a written submission in conditional support.

317. Equally, we are satisfied that PPC95 contains sufficient provisions to ensure that the stewardship demonstrated by the Applicant (which is demonstrated by the care taken to understand and respond to the actual and potential environmental effects and to include measures within PPC95 to manage those effects to appropriate levels) will be carried through to the form of Proposal as it is constructed.

318. Section 7(b) highlights the efficient use and development of natural and physical resources. As we noted when we discussed the Proposal's actual and potential positive effects, we have received expert evidence (from two different experts) asserting both a positive economic effect, and negative economic effect should PPC95 be advanced.

319. For the reasons we have discussed, we consider that the economic benefits of the Proposal are likely to outweigh the economic costs, and that, as a consequence, the Proposal is economically efficient whilst delivering the desired outcome of housing supply in the Western Bay sub-region. As we have previously advised, we are satisfied that PPC95 contains the provisions necessary for that beneficial effect to be achieved.

320. We have also heard that a larger urban centre would likely improve public transportation and can be efficiently serviced with infrastructure, and would benefit the other settlements that are relatively close (such as Te Puke). Suffice to say, however, that we have also heard evidence questioning these outcomes.

321. At a broader level, we are satisfied that the PPC95 would enable the efficient use of rural land, whereby a large portion of a 76.7ha rural land parcel is retained in rural production, and that the smaller PPC95 portion, which is in proximity to an existing residential enclave, will deliver further housing and a needed neighbourhood commercial centre. The policy direction that applies to the protection of highly productive soils leads us to the opinion, however, that the highly productive soils in this 10 hectare block should be retained for primary production. This is a matter that we return to shortly. Suffice to say, however, we can not reasonably conclude a change of land use from rural to urban is efficient when a policy directive suggests that the best and highest value for those soils is primary production.

322. Section 7(c) states that the maintenance and enhancement of amenity values must be given particular regard in the consideration of PPC95. While we accept that there will be amenity impacts associated with the realisation (via construction) of the development that would be enabled by PPC95, we consider that provisions within PPC95 and within the District Plan, alongside the planning instruments of the BoPRC, contain sufficient controls to ensure that any such impacts are not unacceptable, and that amenity will ultimately be maintained once the construction activities are complete.

323. We also accept that the expansion of the residential enclave will change the amenity that exists within and immediately adjacent to the Site. We accept that some (including some of the residents of the existing residential enclave) will consider any change to be adverse. We have considered this matter carefully, and do not consider that the change anticipated by PPC95 will unacceptably impact on the amenity levels. In this regard, we consider that a combination of the rules that will apply in the District Plan and the requirements included within PPC95 (regarding setbacks, graduated height controls, planting and the provision of additional reserves) will ensure that amenity levels will be maintained, and in some instances, protected.

324. Given these conclusions, we are satisfied that the Proposal is consistent with section 7(c) of the Act, insofar as the level of amenity that will be maintained. It is also important for us to acknowledge that amenity and rural character are, in our opinion, interrelated but separate considerations. Were section 7(c) to apply solely to rural character considerations, our finding would be different, insofar as we consider that the PPC95 will significantly impact on the rural character of the Site and the immediately adjacent environs.

325. Section 7(d) highlights the importance of the intrinsic value of ecosystems, while section 7(f) states that the maintenance and enhancement of the quality of the environment is a matter to which particular regard shall be had.

326. We understand that section 7(d) requires that due regard be paid to the value of ecosystems in their own right, including their biological and genetic diversity, and the characteristics that are essential to the ecosystems integrity, form, functioning and resilience. We are satisfied that the Applicant has sought to understand the ecological values that exists, and has drafted PPC95 so as to respond appropriately to the ecosystems (including the various values they support) that are present within and adjacent to the areas that are to be disturbed, and can be managed to generate a limited number of adverse effects. As a consequence, we are of the opinion that the PPC95 accords with the direction that is advanced by section 7(d) of the Act.

327. Due to the extremely broad definition of the term 'environment' within the Act, we understand that regard needs to be paid to all of the information that is before us in order to assess the Proposal against the requirement of section 7(f). As is apparent from the preceding sections of this decision, the information before us is that both adverse and positive effects are anticipated as a consequence of the changes that would be enabled by PPC95. When, however, we stand back and consider the effects of the Proposal as a whole, we are of the opinion that the quality of the environment will both be maintained and, in some instances, improved should PPC95 be granted and development occur in accordance with it.

328. Section 7(g) states that particular regard needs to be given to the finite characteristics of natural and physical resources. When considering section 7(g), we understand that particular regard needs to be paid to the finite nature of the 'highly productive soils' in New Zealand. We have considered this issue when we discussed the NPSHPL and concluded that there is no avenue available to consider even the the loss of 10 hectares of highly productive soils to the urban land uses that would be enabled by PPC95. Indeed, the policy direction is clear that rezoning from rural to urban may not be allowed in this instance.

329. The protection of the habitat of trout and salmon is highlighted under section 7(h) of the Act. The evidence before us is that PPC95 will improve the water quality and contribute to an improved reach of aquatic habitat in the Puanene Stream. We are satisfied that the provisions of PPC95 are appropriate and adequate to achieve this outcome.

330. Section 7(i) requires that the Council have particular regard to the effects of climate change. Some submitters questioned if the Applicant had considered the implications of climate change when advancing PPC95. We understand the expert evidence before us to be that climate change was considered, and that it has been factored in to the structure plan that forms a substantial part of PPC95. Further, we understand the expert advice to us to be that PPC95, when coupled with the other provisions of the District Plan, will enable development on the Site to occur in a manner that is resilient to the effects of climate change.

Section 8

331. Section 8 of the Act states that the Council shall take the principles of the Treaty of Waitangi into account when determining PPC95. While not defined by legislation, we consider the relevant principles are the:

a. Duty to act in good faith;
b. Duty to make informed decisions through consultation; and
c. Principle of mutual benefit.

332. We have assessed the applicable principles of the Treaty of Waitangi against PPC95 and consider that they have been achieved in this instance. In that regard:

a. We are satisfied that the Applicant has acted in good faith by engaging with / seeking to engage with Tangata Whenua, as has sought to both understand their values and relationships, and respond to the same within PPC95;
b. We are comfortable that we have sufficient information before us and the necessary expertise to make the decision that is required. This is especially the case when regard is had to the feedback provided as a consequence of the consultation undertaken by the Applicant with Tangata Whenua; and
c. While the main beneficiaries of PPC95 are the Applicant, and then the parties that purchase and / or occupy the landuses that can be constructed, there are benefits for Tangata Whenua should PPC95 be granted and implemented. These are principally associated with the improvements to the water quality of Puanene Stream and the broader catchment. While appearing nominal, these benefits are aligned with the available hapū and iwi managagement plans and the submission that was lodged to the PPC95 by a Tangata Whenua entity.

Section 5

333. Section 5(1) states that the Act's purpose is *"to promote the sustainable management of natural and physical resources"*. Section 5(2) defines the term sustainable management. We understand that the application of the Act's purpose involves an overall broad judgement of whether a proposal would promote the sustainable management of natural and physical resources. In making such a judgement, we further understand that conflicting considerations may be compared and their relative significance assessed. We have approached our assessment of section 5 on this basis.

<u>People and Communities</u>

334. A key plank of sustainable management is, in our opinion, enabling people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety. We have already recorded that we expect PPC95 to generate a number of beneficial effects for those who would reside within the Site, and indeed for those already resident in the broader Arawa Road area. While we accept that the development of the Site as envisaged by PPC95 would generate an array of adverse effects, we consider that PPC95 and the array of other statutory planning instruments would ensure that those effects are generally acceptable. We say 'generally acceptable' deliberately, as there is two categories of effect which we consider cannot be reduced to this level. Being the Proposal's impact on rural character and the loss of highly productive soils from primary production. This second category of effect is of particular note given that a very high level planning instrument precludes us from enabling the rezoning of highly productive soils from rural to urban in this instance.

335. While the impact on the existing level of rural character is a notable adverse effect of the Proposal, we consider that it is not sufficient in of itself for PPC95 to be declined. In reaching this conclusion, we are mindful of the measures that the Applicant has incorporated within PPC95 to minimise the impact on rural character and the absence of any directive policy direction in the higher order planning instruments requiring that rural character is to be preserved or protected (or significant adverse effects on the same are to be avoided).

336. We note in relation to the actual and potential economic effects of the Proposal, that we expect the beneficial effects of PPC95 to outweigh the adverse effects.

337. We also note that culturally, that those advancing PPC95 have sought to understand the values and associations that Tangata Whenua have with the Site and the surrounding land and have sought to develop PPC95 so that it responds appropriately to those considerations.

338. In summary, and in our opinion, social, cultural and economic wellbeing requires an environment (including all of its component parts, biophysical and metaphysical) that enables people to function as they would normally, in a safe, enjoyable and fulfilling way. We are satisfied that care has been taken by the Applicant to understand the environment that exists, to predict the environmental effects that could arise, and to develop appropriate avoidance, remediation and mitigation measures to ensure that environmental quality is maintained, if not enhanced for most aspects of the environment. The loss of 10 hectares of highly productive soils, and the directive policy framework that applies to that loss, however, weighs significantly against the grant of PPC95. Indeed, it leads us to the opinion that the Proposal can not be advanced so as to enable people and communities to provide for their social and economic wellbeing.

339. We record, for completeness, that submitters felt that enabling the type and density of development envisaged by PPC95 would cause the Arawa Street / SH2 intersection to become more unsafe, that increasing the size of the residential enclave would heighten the risk for school children heading to and from school (which requires that they cross SH2) and that the anticipated wastewater discharges would impact on water quality to the point that is presents a health risk. The expert evidence before us is that while these concerns are valid, measures are proposed and, where necessary, built into PPC95 to ensure that they do not arise. Given this evidence, we are satisfied that PPC95 will not threaten the health and safety of either people existing in and adjacent to the Site, or those that will be if the Proposal is approved.

Reasonably Foreseeable Needs of Future Generations

340. Section 5(2)(a) is, in our opinion, clear that when enabling people and communities to provide for their wellbeing, health and safety, the potential of natural and physical resources must be sustained to *"meet the reasonably foreseeable needs of future generations"*.

341. As is apparent from the foregoing analysis, we are of the opinion that the Proposal can be advanced in a manner that maintains most of the natural values that are presently supported by, and in close proximity to, the area that will be disturbed, and will, in a few discreet areas, enhance them. For the reasons that we have set out earlier in this decision, the loss of highly productive soils as a consequence of PPC95 is something that we need to consider as an adverse outcome that would reduce an important natural value present on the Site.

342. There is no doubt in our minds that additional housing is needed in the Western Bay of Plenty. If granted, PPC95 will enable a localised response to that need. We record, for

completeness, that the contribution is, in our opinion, minor. We also are not convinced that the housing will, as the Applicant asserted, primarily service those working in the horticultural industry. In that regard, we were persuaded by the line of argument that the housing is likely to be out of reach of most of the seasonal workers in that industry. That said, the residential enclave and the evidence given by submitters, satisfies us that there is demand for housing in this locale.

343. The key issue that is before us is whether the reasonably foreseeable needs of people and communities are serviced by enabling this development, by granting PPC95, or by, as many submitters suggested, declining it on the basis that growth will occur in keeping with the strategic direction that is set out in the voluminous applicable statutory and non-statutory planning instruments that address how growth is to be advanced in the Western Bay of Plenty. Having closely considered the actual and potential effects of the PPC95 and assessing it in light of the higher order statutory planning instruments that apply, we are of the opinion that the Proposal cannot be advanced in a manner that will enable the reasonably foreseeable needs of people and communities to be met in every instance. In this regard, the loss of highly productive soils is notably adverse and something that directive policy states we may not approve.

344. Given the foregoing, we are of the opinion the Proposal cannot achieve section 5(2)(a) of the Act.

Safeguarding Life Supporting Capacity

345. Section 5(2)(b) requires that in achieving the purpose of the Act *"the life-supporting capacity of air, water, soil and ecosystems"* are to be safeguarded.

346. When assessing a proposal against section 5(2)(b), the appropriate approach, in our opinion, is to consider whether it will result in a significant reduction in the life-supporting capacity of one of the resources listed.[194] Should a significant reduction be likely, the Proposal is in all probability (and again, in our opinion) contrary to section 5(2)(b). In determining what is significant, the magnitude of all related adverse effects is relevant, as is the relative scarcity of the resource.

347. Having considered all of the information that is before us, it seems very unlikely that development envisaged within PPC95 will cause a significant reduction in (or loss of) the life-supporting capacity of the water, air or ecosystems. Indeed, for two of those resource types (water quality and ecosystems), a net benefit is expected. While we do not expect PPC95 to impact on the life supporting capacity of the soils on the Site, it is highly probable that the development proposed will remove productive soils from being used to a productive (primary) purpose. While the area is small, the acceptability of this loss is dictated by the NPSHPL and the RPS. As is apparent from the preceding sections of this decision, having closely considered the provisions of the NPSHPL and the RPS, we consider that both, but most notably the NPSHPL, preclude the loss of the highly productive soils to the development that is enabled by PPC95.

348. Given the foregoing advice, we are of the opinion that PPC95 does not accord with section 5(2)(b) of the Act.

[194] In this case, the relevant considerations are water and ecosystems

Avoidance, Remediation or Mitigation

349. Section 5(2)(c) of the Act makes it plain, in our opinion, that adverse effects on the environment must be avoided, remedied or mitigated. Section 5(2)(c) does not, in our opinion, enable a weighing of positive and adverse effects, or suggest that minor adverse effects are automatically acceptable (or, for that matter, that significant adverse effects are automatically unacceptable). Rather, it requires, again in our opinion, that due regard be given to all adverse effects, and that they be avoided, remedied or mitigated to the extent that is acceptable when regard is had to the circumstances of each case.

350. We have assessed the actual and potential environmental effects of granting PPC95. For the reasons already set out, we consider that appropriate measures are available to either avoid, remedy or mitigate the adverse environmental effects that are anticipated. We understand that this approach will neither eliminate all adverse effects, nor result in a 'no net effect' outcome. Rather, it will reduce the effects to a level we consider appropriate, while maintaining the Proposal in a form where it will be able to occur. As we have already foreshadowed, however, there are two adverse effects that cannot, in our opinion, be managed to the point whereby they will be minor (or less). The first is the loss of productive soils. The second is the marked loss of rural character. While we are satisfied that the loss in rural character is not, in of itself, sufficient to prevent PPC95 from being approved, the same is not true for the loss of the highly productive soils that the Proposal would cause. In this regard, the directive policy framework leads us to the opinion that this loss would be unacceptable and is not something that we can entertain.

351. This, in our opinion, does not accord with section 5(2)(c).

Section 32AA

352. Section 32AA of the Act states that a further evaluation (under sections 32(a) to (4) of the Act) is required if changes are proposed to PPC95 since the intial evaluation was completed for the Proposal. For reasons that will shortly become apparent, no further evaluation is required in this instance, and no changes are proposed to PPC95 as it was orginally publically notified. In that regard, our decision is to decline the application for a private plan change. We now set out our substantive conclusions, give our decision and provide the reasons for reaching our determination.

Substantive Summary, Decision & Reasons

353. The substantive summary of our analysis follows. We then provide our decision and give our reasons for the same.

Substantive Summary

354. PPC95 would, in our opinion and in summary, enable urban subdivision and development that would:

a. Logically expand an existing residential enclave in a manner that would make this small settlement more complete and self sustaining. In this regard, it would provide opportunities for commerical activities to establish to service those residing in both the residential enclave and the Site, and would add reserve networks and recreation opportunities;

b. Help to address, albeit in a relatively minor way, a projected short to medium shortfall in housing supply in the Western Bay of Plenty;

c. Address some existing adverse environmental conditions in a way that would benefit the ecological values present within the Puanene Stream and, to a lesser extent the terrestial ecology values that are present within the Site. As a consequence, an ecological benefit in all probability would be provided;

d. Tred relatively lightly on the earth for a development of this scale. In this regard, while an array of actual and potential environmental effects could arise, PPC95 contains provisions which would, we consider, ensure that most of these adverse effects are avoided, remedied or mitigated to an appropiate and acceptable degree; and

e. Respond appropiately to the values and outcomes that Tangata Whenua set out in its engagement with the Applicant, and indeed in the culturally focussed submission lodged to the PPC95. PPC95 also would give effect to most of the outcomes sought in the two hapū and iwi managagement plans which apply to the Site and its surrounding environs.

355. We note, also, that while it faces some natural hazard challenges, the geological and geotechnical conditions, and topography of the Site can accommodate the scale and type of development that is envisaged by PPC95. Importantly, we consider that all of the services and infrastructure required to serve the type and size of development proposed can also be provided.

356. In summary, we consider that there is much to like about the Proposal, and the framework of structure plans and rules that have been largely agreed by the planners who assisted us with the consideration of PPC95.

357. We consider that two (2) actual and potential effects will arise from the PPC95 that are of particular note.

358. The first is a notable and enduring impact on the rural character of the Site and its surrounds, even after the measures that have been incorporated into PPC95 to address such an effect. While notable, we conclude that this effect does not present a barrier to the develoment of the Site in keeping with PPC95. In that regard, there is no policy context which suggests that such an impact is unacceptable, and we consider that such an impact would arise from any development of this scale in a rural environment.

359. While this effect, on its own, does not, in our opinion, lead us to a conclusion that PPC95 can not be granted, it certainly contributes to our finding that the Site and its surrounding environs are not an urban environment, and thus not something that can be advanced with the assistance and guidance of the NPSUD. This finding has significant implications for the assessment of PPC95 against the NPSHPL.

360. The NPSHPL sets a very high bar for proposal's seeking to rezone highly productive soils from rural to urban. As we have noted, clause 3.6(1) sets what amounts to three thresholds; all of which must be traversed for highly productive soils to be rezoned for urban land uses. At a substantive level, we are satisfied that PPC95 can achieve the types of outcomes and tests embodied within all three of the thresholds. PPC95 comes unstuck, however, as it does not give effect to the NPSUD. In that regard, and again put concisely, we do not consider that a Proposal can give effect to a planning instrument that is not relevant to it. Having reached this conclusion, the only finding that we can then make is that the loss of the highly productive

soils is an unacceptable consequence of PPC95, and not one that we are able to entertain. The directive nature of the NPSHPL's relevant objective and policies make that outcome clear.

361. Our finding in relation to the NPSHPL has consequential impacts for our analysis of the RPS and, indeed, Part 2 of the Act. Fundamentally we find that while the PPC95 can give effect to many aspects of the RPS's policy framework, it fails in relation to some directive policies applying to the protection of versatile soils and urban growth.

362. We make a similar finding in relation to Part 2 of the Act, where our finding in relation to the NPSHPL leads us to a corresponding conclusion that PPC95 is not consistent with the Act's purpose, as interpreted with the assistance of the 'other matters' set out within section 7.

363. Ultimately, we consider that while the type of development that would be enabled by PPC95 as considerable merit, it is not something that we can grant due to its impact on the highly productive soils present within the Site, and the directive policy setting that applies to such an impact.

Decision & Reasons

364. That pursuant to Clauses 10 (Part 1) and 29 (Part 2) of the First Schedule to the Resource Management Act 1991, the Western Bay of Plenty District Council **declines** the application (proposed plan change 95) made by Pencarrow Estate (Kevin and Andrea Marsh) to rezone land from Rural to a combination of predominantly Residential, with a small areas of Commercial and reserve zoning in the operative Western Bay of Plenty District Plan (First Review).

365. The submissions and further decisions to the proposed plan change are granted or declined in the manner set out in **Annexure A** to this decision.

366. The reasons for our decisions are:

a. The proposed plan change would cause a loss of highly productive soils from primary production that is unacceptable. A significant adverse effect would arise as a consequence;

b. The proposed plan change would cause the rural character of the Site and its surrounding environs to be significantly adversely affected. The rural character that is apparent means that neither the Site nor the surrounding environs can be deemed to be an urban environment. The Site is not intended to be an urban environment in any of the statutory or non-statutory planning instruments that apply and are relevant;

c. The proposed plan change does not give effect to the National Policy Statement for Highly Productive Land, and thus is contrary to section 75(3)(a) of the Resource Management Act 1991;

d. The proposed plan change does not give effect to directive policies of the Bay of Plenty Regional Policy Statement to the point that it offends the outcomes sought by this statutory planning instrument as a whole. Consequently, granting the proposed plan change application would be contrary to section 75(3)(c) of the Resource Management Act 1991; and

e. The proposed plan change does not, when all matters are considered, give effect to the Purpose of the Resource Management Act 1991 when the interpretation of section 5 is informed by the matters contained within sections 6 to 8.

James Whetu
Commissioner

Gavin Kemble
Commissioner (Chair)

11th of June 2025

Annexure A

Approach to Our Decisions

A1. We have considered whether the submissions and further submissions have sought that PPC95 be granted or declined. Where a submitter has sought that PPC95 be granted, we have declined those submissions and further submissions. Equally, where a submitter has sought that PPC95 be declined, we have granted their submissions and further submissions. Given our decision, we have not sought to break down the key outcomes sought in relation to the provisions of PPC95.

A2. We have declined all neutral submissions / further submissions as they sought changes to the provisions of PPC95, which do not, given our decision, need to be made.

A3. The reasons for our decisions are set out in the body of this report, and are summarised in paragraph 367.

Granted Submissions & Further Submissions

A4. Table A1, which follows records the submissions and further submissions that we have granted.

Submission	Point Number	Name
7	7.1-12	Julian Clayton
8	8.1-5	Craig Green & Lisa McArthur
9	9.1-9.7	Graeme Gillespie
12	12.1-18	Michael Maassen
14	14.1-9	Rachel Sexton
15	15.1-6	Cyndi and Troy O'Reilly
16	16.1-2	Jordan and Ian O'Malley
17	17.1-7	Joseph and Victoria Phillips
18	18.1-5	Jurgen Delaere
19	19.1-5	Alan & Patricia Birley
20	20.1-4	Hamish Henderson
23	23.1-5	Karen Summerhays & Nicola Cooke
27, FS39	27.1-31 FS39.1-9	Bay of Plenty Regional Council
31	31.1-7	Rebecca & Cameron Black
33	33.1	Gaye Allan
34	34.1	Jodi Ahfook
35	35.1	Tai Ahfook
36	36.1	Gina & David Brookes
37	37.1-5	Jo Delaere
FS38	FS38.1-21	Hayden Dugmore
FS40	FS40.1-2,4	Waka Kotahi

Table A1: *Accepted submission points*

Declined Submissions & Further Submissions

A5. Table A3, which follows, sets out the submissions and further submissions we have declined.

Submission	Point Number	Name
1	1.1	Craig Haggo (Pongakawa School)
2	2.1	Maketu Volunteer Coastguard
3	3.1	Shane Beech
4	4.1	Maketu Volunteer Fire Brigade
5	5.1	Dianne Boothby
6	6.1	Robert Allcard
10	10.1-3	Robin Simmons
11	11.1-4	Neville and Jill Marsh
13	13.1-7	Mark Boyle (Te Puke Economic Development Group)
21	21.1-3	Chris Elmsly (Paengaroa Community Association)
22	22.1-3	Peter Cooney
24	24.1	David Hamilton
25	25.1-4	Kirsten Jefferson
26 & FS40	26.1-7 & FS40.3	Waka Kotahi
27	27.32-33	Bay of Plenty Regional Council
28	28.1	Stu Mallasch (Pukehina Ratepayers & Residents Association Incorporated)
29	29.1	Tania Turner (Ngāti Whakahemo)
30	30.1-2	Paul Hickson
32	32.1-3	Scott Adams
FS41	FS41.1	Robyne Cooper

Table A2: *Declined submissions & further submissions points*