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

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

A N D

IN THE MATTER Proposed Private Plan Change 95 to the Western Bay of Plenty District Plan: Pencarrow Estate Pongakawa

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MEMORANDUM OF COUNSEL FOR THE BAY OF PLENTY REGIONAL COUNCIL

DATED 28 March 2025

BAY OF PLENTY REGIONAL COUNCIL TOI MOANA

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MAY IT PLEASE THE COMMISSIONERS:

1. This memorandum provides comments in relation to the recent Environment Court decision *Gardon Trust & Ors v Auckland Council* [2025] NZEnvC 058, and its relevance to Proposed Plan Change 95 (**PPC95**), on behalf of the Regional Council.

2. In *Gardon Trust* the Environment Court overturned the decision of Auckland Council to decline a private plan change for land adjacent to Waiuku, concluding that the "*minor extension, which will allow the development of 30 hectares directly adjacent to the Waiuku township, is an exception and also forms a sound planning approach to an existing well-functioning urban area*".[1]

3. The circumstances of the case are quite different, with the most fundamental of these differences being the population of Waiuku (already at or close to 10,000 people) resulting in it itself being without doubt an "urban environment" and the adjacency of the private plan change land to that urban environment. This means that a number of findings have limited relevance to PPC95. However, in my submission the Court's comments in relation to the application of the NPS-UD and of NPS-HPL clause 3.6 are helpful in guiding the approach to PPC95.

4. One aspect the Court's decision of relevance to PPC95 is the issue of whether Pongakawa is an "urban environment" to which the NPS-UD and therefore the NPS-HPL exception apply. In that regard, the Court said:

> [146] To suggest that surrounding rural areas, villages and other areas such as Clarks Beach and Patumahoe form part of this urban environment is patently incorrect. The widespread areas of rural land between these areas make it clear that they do not form part of a well-functioning urban environment as envisaged under the NPS-UD.

5. This supports the Regional Council's argument that Pongakawa itself, or it in combination with other rural settlements, cannot be considered an urban environment for the purposes of the NPS-UD.

[1] *Gardon Trust & Ors v Auckland Council* [2025] NZEnvC 058 at paragraph 15.

6. Further, that these rural settlements cannot be "pulled in" for the purposes of analysing the locality and market. The Court said at [222]:

> (c) The Court disagrees strongly with the spatial extent adopted by Dr Fairgray and Ms Trenouth of the 'same locality and market' being the West Franklin area, principally because it seems to be totally blind to the important requirement that any urban growth promoted under the NPS-UD should provide for a well-functioning urban environment. Therefore, **if it is to provide for urban growth to meet demand for Waiuku, it needs to be contiguous with Waiuku's existing urban zoning**; (my emphasis added).

7. If Pongakawa is not in the same locality and market as Te Puke, that has a bearing on whether it could be considered an urban environment.

8. In my submission *Gardon Trust* supports the submissions made by Regional Council at the PPC95 hearing that Pongakawa is not an "urban environment" under the NPS-UD, and so the exceptions under clause 3.6 cannot be met. This is not a case involving highly productive land contiguous with Te Puke's existing urban zoning, in which strong parallels could be drawn, and which would have a much stronger prospect of consistency with the directions under the NPS-UD and NPS-HPL.

Change 6 to the Regional Policy Statement

9. By way of update, the Environment Court has now issued the consent order for Change 6 to the RPS in the terms sought in the draft consent documents, and the Council resolved on 27 March 2025 to make it operative. It will be made operative on 16 April 2025.

DATED this 28th day of March 2025

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R M Boyte
Counsel for the Bay of Plenty Regional Council