

UNDER

the Resource Management Act 1991 ("**the Act**")

AND

IN THE MATTER

of a submission pursuant to Clause 6 of Schedule 1 of the Act in respect of **PRIVATE PLAN CHANGE 93** to the **WESTERN BAY OF PLENTY DISTRICT PLAN**

STATEMENT OF EVIDENCE OF SIMON CHILDS

1. INTRODUCTION

- 1.1 My name is Simon Childs. I am a Senior Planner at Hayson Knell, which is a specialist planning consultancy based in Tauranga.
- 1.2 This evidence is given in respect of the submission by The D C Kirk Family Trust ("DCK") ("Submitter") on proposed Plan Change 93 ("PPC 93") by Te Puna Springs Estate Limited ("Te Puna Springs" or "Applicant") relating to the proposed rezoning of the land at 17-23 Te Puna Road, Tauranga ("Application Site").

Qualifications and experience

- 1.3 I hold the qualifications of Planning Masters (MPLAN)] (2009) and Graduate Diploma in Law (PGDL) (2008) from the University of the West of England and a Bachelor of Science (BSc Hons) (2006) in Geography from the University of Manchester. I am an Associate Member of the NZPI.
- 1.4 I have over 10 years' experience in resource management and planning in the UK, Australia and New Zealand, most of which was spent in various local authorities. I have 2 years' private practice experience in the UK and New Zealand.
- 1.5 My recent New Zealand based experience encompasses a wide variety of projects throughout the country. My work for Hayson Knell ranges from project scoping and feasibility reports, project management and coordination and resource consent preparation and processing. In addition, during the past year I have been involved in district plan formulation and process review projects for Hayson Knell's local government clients.

Involvement in project

- 1.6 I was engaged by DCK in May 2022 to provide planning advice in respect of the implications of PC93 for DCK's land.
- 1.7 DCK is the owner and operator of the Okaro Orchard, which produces gold kiwifruit for export. Okaro Orchard is located at 35 Armstrong Road, Te Puna and adjoins the plan change area, which is immediately to the south.
- 1.8 DCK also owns a property at 49 Armstrong Road. The beneficiaries of the Trust, Douglas and Leslie Kirk, reside in the dwelling on that site.

Site visits

- 1.9 I visited the DCK sites at 35 and 49 Armstrong Road on 1 June 2022 and revisited the sites and surrounding area on 2 June 2022. I observed portions of the Application Site from the DCK land and surrounding public interface on Te Puna Station Road and Te Puna Village shopping centre on the opposite side of the road.

Purpose and scope of evidence

- 1.10 The purpose of my evidence is to provide a planning assessment of the proposed plan change, specifically relating to the effects of the proposal on 35 and 49 Armstrong Road.
- 1.11 Specifically, my evidence will address the following:
 - (a) The broader context for the plan change, including the lack of a masterplan for Te Puna (Section 3);
 - (b) The boundary interface issues for the Application Site and the Okaro Orchard and visual amenity issues (Sections 4);
 - (c) The PPC93 development standards (Section 5);
 - (d) A proposed alternative interface design (Section 6); and
 - (e) Water quality and volume degradation issues within the Wairakei Stream tributary (Section 7).
- 1.12 A summary of my evidence is contained in Section 2.

Expert Witness Code of Conduct

- 1.13 I have read the Code of Conduct for Expert Witnesses, contained in the Environment Court Consolidated Practice Note (2014) and I agree to comply with it. I can confirm that the issues addressed in this statement are within my area of expertise and that in preparing my evidence I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SUMMARY OF EVIDENCE

Context for PPC93

- 2.1 A significant concern about PC93 is that it represents a spot zoning proposal for part of a wider growth area. Smartgrowth's UFTI¹ report includes Te Puna as a growth area and transportation hub, with an anticipated growth of 5000-8000 new dwellings within a thirty year period.
- 2.2 In my opinion, a master planning process is required to properly and coherently provide for Te Puna's growth over the long term. The risk with piecemeal development proposals such as PPC 93 is that the outcomes of a future structure plan process may be pre-empted or undermined. In the absence of a structure plan, *ad hoc* spot zoning proposals like PPC 93 are likely to continue, potentially resulting in disjointed and poor quality planning outcomes.
- 2.3 A key theme through all of the strategic planning work undertaken in Te Puna to date has been the need to maintain Te Puna's rural character. For example, in 2018, the Council held a community consultation event on the future of Te Puna. More than 80 people shared their views and the findings included the key messages that: ²
- (a) The local community "*value this area providing local services to local community*"³ and the overriding wish of the community was that the existing 'local centre' amenity associated with the Te Puna Village be maintained; and
 - (b) A comprehensive approach to the long-term planning and development of Te Puna was needed through appropriate tools, "*such as a Structure Plan.*"

1 Urban Form and Transport Initiative, SmartGrowth.

2 2018 Te Puna Community Consultation, Issue 3 Commercial Zone, page 10.

3 Above n 2 – Issue 3 Commercial Zone, page 6.

- 2.4 In my opinion, there is a question about whether PPC 93 appropriately responds to the existing character of the local area. In particular, a 12 metre height limit will not maintain a “*small-scale*” character and “*village-feel amenity*”. The blanket adoption of commercial zoning does nothing to protect Te Puna’s small-scale, local rural centre character. “Big box” retail would be enabled by PC93 but in my opinion this would not be a good fit for the site or surrounding area.
- 2.5 In my opinion, the plan change request has not provided a compelling rationale for the increased building height, which will have adverse effects on the orchard as well as being out of character with the surrounding area. I agree with Ms Price’s conclusion⁴ that the permitted nine metre height limit for the Commercial Zone should be adopted in the event the plan change is approved.

Effects on Okaro Orchard

- 2.6 In my opinion, the interface between the Application Site and Okaro Orchard to the north has not been adequately addressed in PPC 93. PPC 93 proposes the adoption of the Commercial Zone provisions on the Application Site, including a 3m setback from the boundary for buildings, plus an increased height limit of 12 metres, instead of the 9 metres permitted under 19.4.1(a)(v)⁵.
- 2.7 Kiwifruit vines are currently located 5m from the boundary on the orchard side, but could potentially be located closer. Therefore, PPC93 potentially provides for 12m high buildings, including “big box” concrete tilt-panel retail/commercial buildings to locate 8m or less from the kiwifruit vines.
- 2.8 The boundary treatment that the Applicant proposes for the northern boundary is uncertain. Some of the plan change documents⁶ suggest that it is proposed to reinstate a natural shelterbelt along the northern boundary in order to mitigate the adverse effects. The most recent version of the structure plan appended to Mr Collier’s evidence identifies a 4m landscaped buffer area on the western boundary, but no buffer at all on the northern boundary. The label indicating the addition of natural shelterbelt has also been removed.
- 2.9 Therefore, it appears that at present there is no proposed solution to mitigate the potential effects of development enabled by PPC93 on Okaro

4 Council Officer’s Report – Anna Price, Topic 16 (Height), page 43.

5 WBPDP – Chapter 19 (Commercial),
<https://eplan.westernbay.govt.nz/eplan/#Rules/0/14/1/0/0>

6 Including the Spray Drift Report, ITA and Infrastructure Servicing Report.

Orchard. These potential effects are addressed in detail in the evidence of Mr Kirk and Mr England. By way of summary, they comprise:

- (a) Frost damage as a result of the creation of frost pockets, resulting from large buildings blocking air flow;
- (b) Complaints arising from spraying activities, resulting in spraying contractors being unwilling to service the site;
- (c) Dust incursion, causing damage to the fruit;
- (d) Pest incursion as a result of pest species being attracted to inappropriately selected landscaping species in the development area.

2.10 These issues demonstrate that the adoption of the Commercial Zone built form standards for the site, without appropriate restrictions in place along the boundary shared with the orchard, will not appropriately manage adverse effects.

2.11 Additional provisions are also proposed to specifically address this boundary and the commercial / rural conflict that will likely arise if the unaltered Commercial Zone standards are adopted for the Application Site.

2.12 In my opinion, these additional provisions should be included in a separate section of Chapter 19 (Commercial) of the District Plan, specifically addressing the Te Puna Springs Structure Plan, similar to the specific provisions relating to the Te Puna Business Park in Chapter 21 (Industrial) of the District Plan.

2.13 In addition, an associated landscape design for this shared boundary is proposed comprising the following:

- (a) First, the landscape strip along the western boundary should be extended along the northern boundary as well. To manage the effects of spray drift and dust incursion and provide a solid barrier between the orchard and the commercial area, the existing berm on the application side of the boundary should be extended at its current height along the entire shared boundary with Okaro Orchard.
- (b) On top of this berm, which has an approximate height of 3 metres at present, a row of appropriate trees/hedging would be planted, thus providing a secondary natural screen that would aid in visually

screening any built form on the Application Site and allowing air flow to continue to circulate while reducing the risk of spray drift. A minimum 6 metre height for the natural vegetation screen on top of the apex of the berm is proposed, thereby providing a full height of berm and planting of 9 metres, matching the maximum permitted height limit within the Commercial Zone.

- (c) A 10 metre setback from this shared boundary is proposed for any future buildings on the Application Site. This setback would provide sufficient space to allow the extension of the berm along the orchard boundary and any maintenance/access space required between the berm and any buildings, and reduce the likelihood of air flow disruption and associated frost issues.

Effects on freshwater

- 2.14 A tributary of the Waiarakei Stream flows from the Application Site to Mr Kirk's property. Mr Kirk's evidence indicates that the health of this stream has deteriorated over time, as a result of earthworks activities on the site.
- 2.15 As notified, the plan change request did not include any assessment of the network of streams on the site and the only reference to waterways on site was the reference to a "small drain." The structure plan identified the stream area for urban development.
- 2.16 The request was therefore clearly not consistent with the National Policy Statement for Freshwater Management 2020 and it is positive that the Applicant has now amended the structure plan to accommodate the stream. However, in my opinion, the plan change request could do more to enable reinstatement of the waterways on the site to reverse the adverse effects caused by historic earthworks.
- 2.17 It is likely that for the water quality within the stream system to be improved, the natural path of the stream should be reinstated. The fill in the northwest corner of the Application Site could be repurposed on-site for the proposed berm along the boundary shared with 35 Armstrong Road, thereby avoiding the need for it to be transported off-site. This proposal is therefore an efficient use of existing fill on-site, repurposing it into a boundary interface design that satisfies the concerns of DCK with respect to effects on the orchard.

3. **CONTEXT FOR PC 93 – ABSENCE OF WIDER MASTER PLAN FOR TE PUNA**

3.1 A significant concern about PC93 is that it represents a spot zoning proposal for part of a wider growth area. Smartgrowth’s UFTI report includes Te Puna as a growth area and transportation hub, with an anticipated growth of 5000-8000 new dwellings within a thirty year period.

3.2 In the recent past significant effort has been put into community consultation and strategic planning for the future of Te Puna. One of the main issues raised through consultation has been that of the “*bigger picture*” for Te Puna, including that: ⁷

“the commercial area is too separated and disjointed, with ad hoc development undertaken to date, ...and...the whole area lacks cohesiveness and needs better layout.”

3.3 In my opinion, a master planning process is required to properly and coherently provide for Te Puna’s growth over the long term, including defining the extent of the village area and identifying a coherent land use. The risk with piecemeal development proposals such as PPC 93 is that the outcomes of a future master plan process may be pre-empted or undermined by the approval of spot zonings. In the absence of a master plan, ad hoc spot zoning proposals like PPC 93 are likely to continue, potentially resulting in disjointed and poor-quality planning outcomes.

Retention of rural character

3.4 A key theme through all of the strategic planning work undertaken in Te Puna to date has been the need to maintain Te Puna’s rural character. For example, in 2014/2015 a plan change was proposed to rezone land at Te Puna to “light industrial”. The Council’s Policy and Strategy Committee ultimately elected not to proceed with the plan change having received submissions from the local community that such development would be entirely inappropriate for the village.⁸

3.5 Subsequently, the Te Puna Community Plan was released in 2017 (updating the previous 2007 version). The plan recognised the importance of the commercial areas for the resilience of Te Puna but stated that commercial/retail activity within Te Puna should be limited as follows:⁹

7 Policy Committee Report – Attachment B – Policy Committee Report Te Puna Village Commercial Area.pdf, dated 8 February 2019.

8 Te Puna Land / SH2 Intersection – Proposed Plan Change.

9

<https://www.westernbay.govt.nz/repository/libraries/id:25p4fe6mo17q9stw0v5w/hierarchy>

"Te Puna is to be kept an essentially rural area by limiting industrial and commercial areas to current locations and focusing on local services;

*This involves recognising the existing commercial activity at Te Puna Village and Clarke Road and consolidating any future development at these locations to serve the local catchment."*¹⁰

3.6 In 2018, the Council held a community consultation event on the future of Te Puna. More than 80 people shared their views with council on the future development of the Te Puna Village commercial area through online engagement and at two open days. Meetings were also held with local hapu and key stakeholders.¹¹ The findings of this consultation were reported to the Western Bay of Plenty District Council's Policy Committee at their formal meeting on 21 February 2019¹² and included the key messages that: ¹³

(a) The local community *"value this area providing local services to local community"*¹⁴ and the overriding wish of the community was that the existing 'local centre' amenity associated with the Te Puna Village be maintained; and

(b) A comprehensive approach to the long-term planning and development of Te Puna was needed through appropriate tools, *"such as a Structure Plan."*

3.7 The council's record¹⁵ of the Policy Committee meeting noted above reports that after hearing the consultation feedback from the Council Senior Policy Analyst:

"the Elected Members expressed concern that if the land area was increased, it would create a precedent for continued expansion, when the public and Community Plan had made it clear that Te Puna residents wished to keep the 'village' amenity to the area."

3.8 The local community has identified this village amenity as fundamental to the character of the village. Residents' views were that any *"new business on-site should be focused on providing services to the local community."*¹⁶.

/council/projects/documents/Policy%20Committee%20Report%20-%20Attachment%20B%20-%20Policy%20Committee%20Report%20Te%20Puna%20Village%20Commercial%20area%20issues%20and%20options.pdf

10 See reference 2 above – Key Considerations – Te Puna Community Plan, page 11.

11 <https://www.westernbay.govt.nz/council/news-and-updates/news?item=id:25ts5s6dk1cxbyg3zwk1>

12 Policy Committee Report – Attachment B – Policy Committee Report Te Puna Village Commercial Area.pdf, dated 8 February 2019.

13 Above n 2 – Issue 3 Commercial Zone, page 10.

14 Above n 2 – Issue 3 Commercial Zone, page 6.

15 Above n 11.

- 3.9 While this consultation took place outside the PPC 93 process, it provides recent clear feedback from the community on how Te Puna should be developed in the future. There is a reported concern within the local community that large scale development would not be a good fit and would result in a loss of that existing small-scale, local village character.
- 3.10 In my opinion, there is a question about whether PPC 93 appropriately responds to the existing character of the local area. For example, a 12 metre height limit will not maintain a “*small-scale*” character and “*village-feel amenity*”.
- 3.11 Mr Collier points to Objective 19.2.1.4 of the District Plan as being supportive of the proposed 12 metre height limit.¹⁷ However, this provision would only be supportive of a change to the maximum height limit if the future commercial development was “*of a scale that is appropriate for the location.*”¹⁸ PPC 93 does not adequately assess this appropriateness or otherwise.
- 3.12 I agree with Ms Price’s conclusion¹⁹ that the permitted nine metre height limit for the Commercial Zone should be adopted in the event the plan change is approved.
- 3.13 I also consider that clearer guidance is required on what commercial activities are permitted on-site. The blanket adoption of commercial zoning does little to protect Te Puna’s small-scale, local rural centre character. “Big box” retail would be enabled by PC93 but in my opinion this would not be a good fit for the site or surrounding area.

4. **RURAL BOUNDARY INTERFACE ISSUES - EFFECTS ON OKARO ORCHARD**

- 4.1 In my opinion, the interface between the Application Site and Okaro Orchard to the north has not been adequately addressed in PPC 93. The evidence of Doug Kirk and Ethan England identifies potentially significant adverse effects on the Okaro Orchard arising from the location of commercial development immediately adjacent to it.
- 4.2 The kiwifruit industry has a critical role in the Bay of Plenty economy and employs a significant proportion of those engaged in primary production, both seasonally and full-time. 81% of New Zealand-grown kiwifruit comes

16 Above n 2 – Issue 3 Commercial Zone, page 6.

17 Statement of evidence of Aaron Collier, RMA s32AA evaluation – ‘Include 12m Height Limit.’

18 Objective 19.2.1.4, Chapter 19 (Commercial), Western Bay of Plenty District Plan.

19 Council Officer’s Report – Anna Price, Topic 16 (Height), page 43.

from the Bay of Plenty²⁰. The Western Bay of Plenty District Plan (“the Plan”) states that:

“rural production is the primary economic driver and the district is reliant on the efficient use of the rural land resource to sustain this production²¹.”

- 4.3 Given this acknowledged role, the Plan anticipates that kiwifruit production is protected from adverse effects of development within the region:²²

“As the District is predominantly rural, protection of the values and resources existing within the rural environment is essential.”

- 4.4 Nevertheless, PPC93 is silent on most of the adverse effects potentially arising from the location of large buildings close to metres from the shared boundary.
- 4.5 PPC 93 proposes the adoption of the section 19 Commercial Zone provisions on the Application Site, including a 3m setback from the boundary for buildings, with an increased height limit of 12 metres, instead of the 9 metres permitted under 19.4.1(a)(v)²³.
- 4.6 Because of the need to accommodate the waterways on the site, the bulk of the development area is now focussed on the northern part of the site, and it is therefore likely that the largest scale development would locate in this area.
- 4.7 Kiwifruit vines are located 5m from the boundary on the orchard side. Therefore, PPC93 potentially provides for 12m high buildings, including “big box” concrete tilt-panel retail/commercial buildings to locate only 8m from the kiwifruit vines.

PPC93 interface with Okaro Orchard

- 4.8 Currently, an artificial shelterbelt is located on the southern boundary of the orchard.
- 4.9 The boundary treatment that the Applicant proposes for the northern boundary is uncertain. Some of the plan change documents suggest that it is proposed to reinstate a natural shelterbelt along the northern boundary

20 NZKGI - <https://www.nzkgi.org.nz/industry/>

21 WBPDP – Chapter 18 (Rural), <https://eplan.westernbay.govt.nz/eplan/#Rules/0/15/1/0/0>

22 WBPDP – Chapter 2 (Issues Overview), Issue 6
<https://eplan.westernbay.govt.nz/eplan/#Rules/0/34/1/0/0>

23 WBPDP – Chapter 19 (Commercial),
<https://eplan.westernbay.govt.nz/eplan/#Rules/0/14/1/0/0>

in order to mitigate the adverse effects. As noted in Mr Kirk's evidence, the original application states that:²⁴

"the Applicant has decided that additional shelter belts are to be included in the Structure Plan in order to ensure that there is minimal risk of spray drift and has proposed a non-complying activity status for sensitive activity(ies) within Area A. Please refer to the Spray Drift Report in Appendix H for more detail."

4.10 The spray drift report prepared by Fruition states:

It is recommended to get the burnt shelter of Okaro orchard replaced. Natural shelter is the best protection against spray drift leaving the property.

4.11 Versions of the structure plan included in the ITA and Infrastructure Servicing Report²⁵ show shelter belt along the boundary but the most recent version of the structure plan appended to Mr Collier's evidence identifies a 4m landscaped buffer area on the western boundary, but no buffer at all on the northern boundary. The label indicating the addition of natural shelterbelt has also been removed.

4.12 Mr Hugo's evidence notes that the landscape buffer is only shown along the western boundary of the Application Site due to the presence of the stormwater management area²⁶ and the stream.

4.13 It appears therefore that the landscape buffer on the western boundary is not a conscious choice on the part of the Applicant to provide landscape mitigation for the adjoining land. However, as PPC 93 is presenting the western boundary landscape buffer as a rural character and visual amenity protection, it would be appropriate to apply this to the northern boundary as well.

4.14 It appears, however that at present there is no proposed solution to mitigate the potential effects of development enabled by PPC93 on Okaro Orchard. These effects are addressed in turn below.

Creation of Frost Pockets

4.15 Frost is a risk to kiwifruit from budbreak (late August) until mid-October. Without frost protection, when a frost occurs and the air temperature drops below 0°C, it causes the intracellular and extracellular water in the plant to freeze. This causes death of the plant cells and irreversible physiological

24 Plan Change Request, Aurecon, page 29.

25 Integrated Transport Assessment page 2 and Infrastructure Servicing Assessment, page 6.

26 Statement of Evidence of Morne Hugo, paragraph 8.24.

damage to the plant. The effects of frost damage to kiwifruit have been described as follows:²⁷

"Even minor frost damaged cells reduces the surface area of the plant available for photosynthesis, which limits plant growth, ultimately reducing crop yield and orchard returns."

4.16 As explained in Mr England's evidence, "*frost pockets can occur in areas where the air movement is restricted and the cold air can sit and build up in height. This often happens in in depressions and gullies.*"²⁸ It can also occur where large buildings are located close to the vines.

4.17 At Okaro Orchard, large commercial buildings close to the boundary could restrict cold air from flowing out of the orchard further into the gullies to the west, resulting in the cold air settling in the lower portions of Blocks 1 and 2 and in the process causing damage to the vines. There is no way to effectively mitigate the potential air flow restriction and resulting damage.

Reverse Sensitivity / Spray Drift

4.18 Spraying kiwifruit is a critical part of the production process. Mr England states that during the 2022 harvest season, Okaro Orchard applied a total of 16 sprays, some of which are deemed harmful to humans and animals.²⁹ While Okaro Orchard follows the NZKGI best practice guidelines to support safe spraying on-site, the weather can be unpredictable, with sudden changes to wind direction and velocity.

4.19 When there are residential or rural neighbours to an orchard, it is clear who needs to be notified prior to a spray event. For a commercial site, such as that proposed under PPC 93, there is no way for all members of the public visiting a commercial premises to be informed of a spray event.

4.20 The provision for a 30 metre setback for 'sensitive activities' does little to avoid, remedy or mitigate any of these potential adverse effects. As both Mr Kirk and Mr England observe, the primary risk associated with spray drift is from complaints rather than actual harm, leading to reluctance from spraying companies to service the orchard. The sensitivity of the receivers is largely irrelevant to that issue.

27 Southern Cross Horticulture, "Frost Protection in Kiwifruit," <https://www.southerncrosshorticulture.co.nz/news/frost-protection-in-kiwifruit#:~:text=This%20causes%20death%20of%20the,crop%20yield%20and%20orchard%20returns.>

28 PPC 93 Statement of Evidence of Ethan England, Seeka Ltd, section 5.1, page 4.
29 Statement of evidence of Ethan England, paragraph 4.4.

- 4.21 The Applicant has also previously proposed a no complaints covenant in favour of Okaro Orchard. While that would be of some benefit, such an approach is of less use where members of the public, who will not be constrained by the covenant, are frequently accessing the site.
- 4.22 I also understand that in terms of the legal position, the Environment Court has expressed concerns regarding the efficacy of no complaints covenants when not accompanied by measures to mitigate cross boundary effects.

Use of shelterbelt to control spray drift

- 4.23 As noted above, some of the plan change documents suggest that the Applicant proposes a natural shelterbelt along the northern boundary of the site. At section 4 of his evidence, Mr England describes why he disagrees with the recommendation in the Applicant's spray drift report that natural shelterbelt should be installed to mitigate the effects of spray drift. Mr England outlines the disadvantages of a natural shelterbelt, including potential competition with the kiwifruit vines for water resources, annual maintenance requirements and greater shading of the lower part of Block 2 of the Okaro Orchard.
- 4.24 This low part of the site is a gully that requires greater airflow. The current artificial shelter allows for a more even airflow onto the vines and removes the risk of high gusts of wind through a natural shelter damaging the vines. Artificial shelters are known throughout the industry as being superior to natural shelters. However, the cost of replacing a natural shelter is usually prohibitive. Due to the natural shelter in this location burning down, an opportunity was presented for the installation of an artificial shelter along the boundary. With the high cost of this artificial shelter installation, it would be counterproductive to now reinstate a natural shelter, which is an inferior outcome for the growing conditions of the kiwifruit within Blocks A and B.
- 4.25 While the existing artificial shelterbelt could be upgraded to provide a 'heavy micron screen,' which would potentially reduce the risk of spray drift onto the Application Site, the smaller pore size associated with this option would nullify the benefits of the artificial screen, which are increased sunlight and uniform, high airflow.
- 4.26 Therefore, Mr England suggests that the only real solution is an additional physical buffer on the development site to capture any spray from the orchard, including vegetation and construction of a berm. This interface design is outlined in Section 6 below.

Dust Incursion

- 4.27 Mr Kirk's evidence explains in detail the risks associated with dust incursions into kiwifruit orchards. In summary, if dust is found on the fruit during grading, the whole crop may be rejected for export.
- 4.28 Mr England outlines appropriate measures to minimise the risk of dust incursion during construction onto the orchard site. Any construction management plan for building works on the Application Site should include provisions for reducing the risk of dust incursion onto the orchard site to the north. Ideally, this would involve no building work being carried out within a specified distance from the orchard boundary during particularly important periods of the growing cycle (identified by Mr England as mid-August and early-November.) The following rule is proposed:

'All construction site management plans (CSMP) for the Application Site shall detail measures to avoid dust spread onto the Okaro Orchard site to the north at 35 Armstrong Road. Construction shall not take place within 25 metres of the boundary with 35 Armstrong Road during mid-August and early-November, for a minimum period of 2 weeks in both cases.'

- 4.29 In addition, the provision of an additional planted buffer area (discussed in Section 6 below) would limit the amount of dust which settles in the orchard.³⁰

Insect Incursion

- 4.30 Pest incursion is another potential risk associated with locating new development alongside a kiwifruit orchard, as a result of landscaping species encouraging pests to the site. Pest incursion can significantly reduce productivity, as well as requiring more spray treatments to be applied.
- 4.31 Mr England's evidence explains that Zespri has produced a guidance document entitled "Plants with Purpose" identifying species which are of particular concern.
- 4.32 Given the potentially significant impacts on orchard productivity, in my opinion, this is therefore a relatively straightforward issue to resolve, by way of a requirement that suitable planting species (identified with reference to the Zespri guidance document) are chosen for any new natural screen/shelter, as well as any gardens or borders created around commercial buildings on the Application Site.

30 Statement of evidence of Ethan England, paragraph 7.1(c).

- 4.33 In order to address pest incursion into the orchard, the following provision is therefore proposed:

'In order to avoid potential pest incursion into Okaro Orchard any native plant species for the Application Site must be chosen from those listed as appropriate for planting nearby to an orchard in the Zespri document entitled 'Plants with Purpose,' dated 2021.'

Visual amenity issues

- 4.34 Mr Kirk's evidence details the potential adverse amenity issues for residents at 35 and 49 Armstrong Road associated with future built form on the Application Site.
- 4.35 The existing dwelling at 49 Armstrong Road is oriented towards the southern boundary shared with the Application Site. Figure 4 in **Attachment A** shows the potential building site of a future dwelling on 35 Armstrong Road. This future dwelling would likely be oriented towards the south. Due to its elevated position, relative to the shared boundary, any future buildings on the Application Site would be clearly visible without additional extensive boundary planting. As well as the potential adverse visual amenity effects of buildings constructed to the permitted Commercial Zone standards, there are also potential noise and light spill adverse effects that should also be considered.
- 4.36 Figure 5 in **Attachment A** shows a current view of the shared boundary and the existing buildings on the Application Site. While the existing mature vegetation along parts of this shared boundary to the west of the orchard provides some screening of potential built form, this is not sufficient to screen 12-metre-high buildings at a relatively close setback from the boundary. Extensive boundary planting is therefore needed to mitigate any potential amenity effects for the residents at 49 Armstrong Road.

5. PPC93 DEVELOPMENT STANDARDS

- 5.1 As noted above, the 'worst-case' scenario under PPC 93 would result in a 12-metre-high concrete box building located only 3 metres from the shared boundary, as per the Commercial Zone permitted standards.
- 5.2 In my opinion, the scenario described above does not align with the following sentence from the introductory explanatory statement of the District Plan Rural Zone chapter 18:

*"careful management of the various demands on the rural land resource can allow the range of legitimate demands made on it to be accommodated in a balanced manner which minimises inter-activity conflict and which is consistent with Council's statutory resource management responsibilities."*³¹

5.3 The blanket adoption of the Commercial Zone bulk and location permitted standards, as they relate to the shared boundary, does not achieve this need for a balanced approach to accommodating competing demands on the rural land resource.

5.4 The only specific protection the Commercial Zone chapter provides for adjoining rural activities is via the permitted activity standards. Although the Commercial Zone chapter does not provide any specific reference to the protection of agricultural activities on adjoining rural land, beyond the relevant permitted activity standards, the the Rural Zone provisions do identify that, the protection of agricultural production is a key objective of the Plan: ³²

"urban expansion into rural areas can also have negative effects on infrastructure, create increased transportation costs and result in a reduction in rural amenity values."

5.5 Therefore, in my opinion any adverse effects that a newly introduced commercial activity could create for an established adjoining rural activity must be carefully considered.

Maximum Building Height

5.6 Although PPC 93 requests a maximum building height limit of 12 metres, no compelling reason is provided as to why future buildings should be permitted to extend past the 9 metre limit for the Commercial Zone. While 9 metre high buildings on the Application Site still present challenges to the visual amenity of residents at 35 and 49 Armstrong Road, the screening requirements associated with 12 metre high buildings would be more difficult to achieve.

5.7 I note that while Mr Hugo agrees with the Applicant that a 12 metre height limit is acceptable, he has not specifically referred to the northern boundary of the Application Site shared with 35 Armstrong Road.³³ As Mr Hugo's evidence relates solely to visual amenity, the potential adverse effects that the future commercial built form on the Application Site is likely

31 Western Bay of Plenty District Plan, Chapter 18, 18.0 Rural Explanatory Statement.

32 Above n 21.

33 Statement of Evidence of Morne Hugo, paragraph 8.21.

to have on the orchard (including frost effects) have not been adequately addressed under PPC 93.

- 5.8 The RMA s32AA evaluation template appended to Mr Collier's evidence³⁴ states that *"a 12 metre height limit will result in efficiencies in relation to the use and development of the site providing for a wider range of uses other than small scale retail."*
- 5.9 With reference to Section 3 above, the consensus of recent community feedback was for the maintenance of a small-scale, village character to this commercial hub area. While larger 'big box' commercial development would clearly benefit the Applicant, there is no assessment of how this will affect the existing rural character of Te Puna in the long term.

Bulk and location standards

- 5.10 At paragraph 8.3 of Mr Collier's evidence, justification for the adoption of the Commercial Zone bulk and location standards along the boundary shared with the orchard is provided by stating that *"it is not unusual for larger buildings to be located in proximity to Kiwifruit orchards, such as packhouses, cool stores and postharvest facilities."*
- 5.11 No examples of this are given, but even if they were, it is not a helpful comparison. The positioning of large buildings close to any orchard is never ideal. Site constraints or historical construction on unnamed orchards elsewhere should not be relied upon as justification for ignoring the potential conflicts the plan change presents for Okaro Orchard.
- 5.12 The positioning of packhouses or cool stores on orchard land requires a compromise through a maximisation of the efficiency of the ground area on-site. Placing large buildings close to orchard vines is a hindrance to the ideal growing conditions, but it is choice that some orchards need to make in order to maximise the efficiency of their land area. That is an entirely different scenario to the present, in which the adverse effects associated with the close proximity of buildings is chosen for them by an adjoining landowner.

6. PROPOSED ALTERNATIVE INTERFACE DESIGN

- 6.1 Given the significant potential adverse effects detailed above restrictions on built form along the northern boundary are required. While DCK has indicated that commercial rezoning may be sought for 35 Armstrong Road

34 Statement of Evidence of Aaron Collier, s32AA evaluation – 'Include 12m Height Limit.'

in the future, there is no definite timeframe for such an application. Therefore, in my opinion PPC 93 must provide for the protection of the adjoining orchard as an ongoing agricultural production activity.

- 6.2 First, the landscape strip along the western boundary should be extended along the northern boundary as well. To manage the effects of spray drift and dust incursion and provide a solid barrier between the orchard and the commercial area, the existing berm on the application side of the boundary should be extended at its current height along the entire shared boundary with Okaro Orchard. The unused fill located throughout the Application Site and in particular within the northwest corner, could be repurposed for this.
- 6.3 The berm could potentially be extended to the west to protect the visual amenity of residents at 35 and 49 Armstrong Road. However, protection of visual amenity could also potentially be achieved through adding to the existing mature boundary vegetation. The key interface in respect to the proposed extended berm and vegetation screen is the shared boundary with the orchard.
- 6.4 On top of this berm, which has an approximate height of 3 metres at present (Figure 3, Appendix A), a row of appropriate trees/hedging would be planted, thus providing a secondary natural screen that would aid in visually screening any built form on the Application Site and allowing air flow to continue to circulate while reducing the risk of spray drift. A minimum 6 metre height for the natural vegetation screen on top of the apex of the berm is proposed, thereby providing a full height of berm and planting of 9 metres, matching the maximum permitted height limit within the Commercial Zone.
- 6.5 A 10 metre setback from this shared boundary is proposed for any future buildings on the Application Site. This setback would provide sufficient space to allow the extension of the berm along the orchard boundary and any maintenance/access space required between the berm and any buildings.
- 6.6 By utilising an existing land feature on the Application Site, the potential adverse effects of PPC 93 for DCK that are outlined in previous sections of this evidence can be avoided, remedied or mitigated to a reasonable degree.
- 6.7 In my opinion, this interface solution is a pragmatic solution which enables the mitigation of spray drift and dust incursion while also allowing adequate levels of airflow and sunlight to reach the kiwifruit. This mitigation method

also allows for the visual amenity of any residents at 35 and 49 Armstrong Road to be maintained.

- 6.8 To provide for the proposed alternative interface design outlined above, the precinct plan would need to be updated to show the setback, berm and landscaping and the following additional provisions would be added to a new 'Te Puna Springs Structure Plan' section within the Commercial Zone chapter of the Plan:

'The minimum setback for any buildings from the boundary with 35 Armstrong Road shall be 10 metres.'

'The minimum height of the berm along the boundary with 35 Armstrong Road shall be 3 metres.'

'A final landscape plan for the berm and landscape screen along the boundary with Okaro Orchard at 35 Armstrong Road shall be provided to the Western Bay of Plenty Environmental Planning Manager for approval prior to the commencement of works.'

'The minimum height of the natural planting screen on top of the berm shall be 6 metres. Species to be included within the planting screen shall be provided to DCK for approval prior to planting.'

7. REINSTATEMENT OF WATERWAYS

- 7.1 A tributary of the Waiarakei Stream flows from the site to Mr Kirk's property. Mr Kirk's evidence indicates that the health of this stream has deteriorated over time, as a result of earthworks activities on the site.
- 7.2 As notified, the plan change request did not include any assessment of the network of streams on the site and the only reference to waterways on site was the reference to a "small drain." The structure plan identified the stream area for urban development.
- 7.3 The request was therefore clearly not consistent with the National Policy Statement for Freshwater Management 2020 and it is positive that the Applicant has now amended the structure plan to accommodate the stream. However, in my opinion, the plan change request could do more to enable reinstatement of the waterways on the site to reverse the adverse effects caused by historic earthworks.
- 7.4 Policy 13 of the NPSFM requires that action is taken where freshwater is degraded, in order to reverse deteriorating trends, as follows:

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.

7.5 In addition, Policy WL 7B³⁵ (Minimising the effects of land and soil disturbance) of the Bay of Plenty Regional Council Regional Policy Statement requires the minimisation of silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained. Policy WL 7B is as follows:

Achieve regional consistency by controlling land and soil disturbance activities to:

- a) *Avoid accelerated erosion and soil loss; and*
- b) *Minimise silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.*

7.6 During the past decade, large amounts of fill have been brought onto the Application Site.³⁶ As Figures 6 and 7 in Appendix A show, there is substantial fill in the northwest corner of the Application Site. In my opinion, the sedimentation effect of this fill on the stream system has not been sufficiently investigated.

7.7 Figure 10 in **Attachment A** demonstrates the significant change in landscape on the Application Site during the period between 2007 and 2019 as a result of extensive earthworks. While the AEE for the 2018 Memorial Hall resource consent (RC11181) on-site acknowledges that “the south-western portion of the site has been subject to recent earthworks by Te Puna Springs, with a large area of spoil deposited / pushed into the south-western portion” of the site, there is no mention of the fill deposits located in the northwest corner, as shown in Figures 6 and 7. Although there have been district and regional council resource consent approvals that include various volumes of earthworks onsite, including the recent example given above, it is uncertain whether the fill in the northwest corner has been properly deposited. The fill appears to not be carrying out a clear function in this location.

7.8 I note that the Bay of Plenty Regional Council requested in its submission, “*ecological assessments be provided in line with the NPS-FM to identify and assess the values of any stream or wetland within or immediately adjacent to the plan change areas.*”³⁷ Ms Wilcox’s evidence satisfies this request to a degree, but there is no assessment of the potential effect the earthworks in the northwest corner of the Application Site has had on the stream system.

35 Bay of Plenty Regional Policy Statement, Policy WL 7B, page 164.

36 Statement of Evidence of Doug Kirk, paragraph 6.2.

37 Submission of Bay of Plenty Regional Council (ref ZA417370, dated 4 February 2022).

- 7.9 While Ms Wilcox's evidence³⁸ notes that the northern reach of the Wairakei Stream tributary on site does not appear to have been artificially modified, the down-stream system at 35 Armstrong Road has clearly been degraded by works on the Application Site during the past decade. The degradation has corresponded to this recent period of earthworks being carried out on-site. Figures 8 and 9 in **Attachment A** show the current extent of the stream on the 35 Armstrong Road side of the boundary. Mr Kirk's observation is that the sedimentation of the stream system as a result of the filling of gullies has had a noticeable detrimental effect on the native freshwater ecosystem and the species that depend on it.
- 7.10 It is likely that for the water quality within the stream system to be improved, the natural path of the stream should be reinstated. The repurposing of the fill on-site for the proposed berm along the boundary shared with 35 Armstrong Road would allow for this, while also avoiding the need for this fill to be transported off-site. This proposal is therefore an efficient use of existing fill on-site, repurposing it into a boundary interface design that satisfies the concerns of DCK with respect to effects on the orchard.
- 7.11 Even if it is determined that the fill is not adversely affecting the downstream flow of the stream onto 35 Armstrong Road, I consider that the repurposing of this fill into the proposed interface berm is still appropriate. The berm would aid in mitigating the adverse effects on the orchard and visual amenity concerns detailed in above sections of this evidence.

Simon Childs

1 July 2022

38 Statement of Evidence of Fiona Joyce Wilcox, paragraph 16.

**ATTACHMENT A
SITE PHOTOGRAPHS**

Boundary Interface



Legend:






-  - Potential future dwelling site.
-  - Shared boundary between Application Site and Okaro Orchard.
-  - Shared boundary between Application Site and balance of 35 Armstrong Road (with 49 Armstrong Road to the north).
-  - Existing berm on Application Site.
-  - Proposed extension to berm.

Figure 1: Alternative Northern Boundary Interface Design



Figure 2 – Existing Artificial Shelterbelt on boundary shared with Okaro Orchard



Figure 3 – Existing Berm along Northern Boundary of Application Site

Visual Amenity



Figure 4 – View south of Proposed Building Site for Future Dwelling at 35 Armstrong Road



Figure 5 – View south from 35 Armstrong Road of gap in Boundary Vegetation

Water Quality



Figure 6 – View of Earthworks in Northwest Corner of Application Site



Figure 7 – View of Earthworks in Northwest Corner of Application Site



Figure 8 – View of current Stream on 35 Armstrong Road side of boundary shared with Application Site



Figure 9 – Close up view of Stream as it enters 35 Armstrong Road



February 2007 (Source: Google Earth)



July 2019 (Source: Google Earth)

Figure 10 – Historic Earthworks On-site