

**RECOMMENDATION REPORT OF THE
INDEPENDENT HEARING PANEL (IHP)**

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

25 JANUARY 2024

TABLE OF CONTENTS

INTRODUCTION	- 1 -
REPORT OUTLINE	- 1 -
IHP COMMENTS TO THE PARTIES TO THE PROCEEDINGS.....	- 1 -
REPORT PURPOSE.....	- 1 -
<i>The role of the IHP</i>	- 2 -
<i>The Intensification Planning Instrument</i>	- 2 -
<i>First test - scope of an IPI</i>	- 3 -
<i>Determining "on" the Plan Change (Clearwater)</i>	- 4 -
SECTION 2 - CONTEXT	- 7 -
THE OPERATIVE DISTRICT PLAN.....	- 7 -
<i>Background</i>	- 7 -
<i>Contextual difference between Ōmokoroa and Te Puke</i>	- 7 -
<i>Geo-cultural context</i>	- 8 -
<i>Ōmokoroa</i>	- 8 -
<i>Te Puke</i>	- 8 -
MAIN THEMES OF THE NOTIFIED PLAN CHANGES.....	- 9 -
SUBMISSIONS.....	- 10 -
HEARING.....	- 11 -
RECOGNISING TANGATA WHENUA	- 12 -
<i>Request for advice</i>	- 13 -
CONCLUDING COMMENTS ON CONTEXTUAL ISSUES	- 14 -
SECTION 3 - THE ISSUES	- 16 -
IHP APPROACH TO RECOMMENDATIONS.....	- 16 -
SCOPE CONSIDERATIONS	- 17 -
<i>Providing for the voice of mana whenua</i>	- 17 -
CONSULTATION.....	- 18 -
<i>General</i>	- 18 -
<i>Consultation with tangata whenua</i>	- 19 -
DISCRETE MATTERS.....	- 20 -
<i>General support for the plan</i>	- 20 -
<i>Application of 'Urban Environment' to other areas of the district</i>	- 20 -
<i>Carbon Emissions</i>	- 21 -
<i>Planning Maps: Te Puke Zoning</i>	- 22 -
MANA WHENUA SPECIFIC CONSIDERATIONS.....	- 23 -
<i>The relationship of Pirirākau with Ōmokoroa</i>	- 23 -
<i>Pirirākau cultural values and potential cultural amenity treatments</i>	- 24 -
<i>Pirirākau involvement in the Structure Planning process</i>	- 24 -
<i>Pirirākau presentation</i>	- 25 -
<i>Mana whenua relationships with Te Puke</i>	- 26 -
QUALIFYING MATTERS.....	- 27 -
<i>Power transmission lines as a qualifying matter</i>	- 27 -
<i>Additional setbacks from the rail corridor for future maintenance</i>	- 29 -

Section 6(e) Relationship of Māori	- 29 -
DISCUSSION ON SUBMISSIONS	- 31 -
EXTENT OF PROPOSED MEDIUM DENSITY ZONE TE PUKE	- 31 -
<i>Change to High Density Residential</i>	- 31 -
<i>Request to Change to Commercial or Mixed Use Zone</i>	- 31 -
SUMMARY OF KEY RECOMMENDATIONS:	- 32 -
<i>Key matters and recommendations</i>	- 32 -
<i>Planning Maps: Ōmokoroa Zoning</i>	- 32 -
ŌMOKOROA MDR	- 34 -
<i>Request for High Density Residential</i>	- 34 -
<i>Analysis and considerations</i>	- 34 -
SECTION 4B – TRANSPORTATION, ACCESS, PARKING AND LOADING	- 35 -
<i>Vehicle crossings to Ōmokoroa Road</i>	- 35 -
<i>On-site manoeuvring for emergency vehicles</i>	- 35 -
SECTION 4C – AMENITY	- 36 -
SECTION 8 – NATURAL HAZARDS (INCLUDING MAPPED HAZARD LAYERS)	- 41 -
<i>Liquefaction mapping</i>	- 41 -
<i>Explanatory statement</i>	- 41 -
<i>Flood mapping</i>	- 42 -
<i>Other hazard matters</i>	- 42 -
SECTION 11 – FINANCIAL CONTRIBUTIONS	- 43 -
<i>Submissions on financial contributions</i>	- 44 -
<i>Purpose of FINCOs</i>	- 46 -
<i>Collection at building consent stage</i>	- 47 -
<i>Calculation of FINCOs and rule structure</i>	- 47 -
<i>Retirement Villages</i>	- 48 -
<i>Analysis and recommendations</i>	- 49 -
SECTION 12 - SUBDIVISION	- 52 -
<i>FENZ submissions</i>	- 52 -
<i>Water supply</i>	- 52 -
<i>Stormwater</i>	- 52 -
<i>Road connections</i>	- 53 -
<i>Ōmokoroa Structure Plan - Francis Road Industrial zone</i>	- 53 -
PROVISIONS FOR RETIREMENT VILLAGES	- 53 -
<i>Legal submissions</i>	- 53 -
<i>Medium Density Residential section labelling</i>	- 54 -
<i>Explanatory Statement</i>	- 55 -
<i>Significant issues</i>	- 55 -
<i>Objectives</i>	- 56 -
<i>Urban form (Objective 14A.2.1.4)</i>	- 56 -
<i>Earthworks (Objective 14A.2.1.6)</i>	- 56 -
<i>Policies</i>	- 57 -
<i>Ōmokoroa/ SH2 intersection - overview of transport level of service</i>	- 57 -
<i>Activity status</i>	- 58 -
SECTION 16 - RURAL RESIDENTIAL ZONE	- 62 -
<i>Stormwater</i>	- 62 -
<i>Wastewater connection</i>	- 62 -

SECTIONS 19 & 20 - COMMERCIAL AND COMMERCIAL TRANSITION ZONES.....	- 63 -
<i>Analysis and Considerations</i>	- 64 -
<i>Conclusion</i>	- 65 -
<i>Community Corrections activities</i>	- 65 -
<i>Retirement Villages - Relief sought by RVA/Ryman</i>	- 65 -
SECTION 21 - INDUSTRIAL ZONE	- 68 -
<i>Consultation - Submissions</i>	- 68 -
<i>Outstanding Issues at time of Hearing</i>	- 71 -
<i>Analysis and Considerations</i>	- 71 -
SECTION 24 - NATURAL OPEN SPACE ZONE.....	- 74 -
<i>Consultation - Submissions</i>	- 74 -
<i>Points of Agreement</i>	- 75 -
<i>Outstanding Issues at time of Hearing</i>	- 76 -
<i>Analysis and Considerations</i>	- 77 -
<i>Appropriateness of Natural Open Space Zone</i>	- 77 -
<i>Impact of Designation</i>	- 78 -
<i>Ecological function of the Natural Open Space zone</i>	- 79 -
<i>Conclusion - New Natural Open Space zone</i>	- 79 -
<i>Application of the zone in relation to land within designation D181</i>	- 80 -
SECTION 4 - SUMMARY	- 81 -
ATTACHMENT A.....RECOMMENDATIONS ON ALL TOPICS AND SUBMISSION POINTS	
ATTACHMENT B.....RECOMMENDED CHANGES TO THE DISTRICT PLAN MAPS	
ATTACHMENT C..... RECOMMENDED CHANGES TO THE DISTRICT PLAN PROVISIONS	

INDEX OF ABBREVIATIONS

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

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

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

Proposal Description:

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

Independent Hearing Panel:

Mr Greg Carlyon – Independent Hearing Commissioner, Chair

Ms Pia Bennett – Independent Hearing Commissioner

Ms Lisa Mein – Independent Hearing Commissioner

Mr Alan Withy – Independent Hearing Commissioner

Date of Hearing:

11th – 15th September 2023

Hearing officially closed:

3rd November 2023

INTRODUCTION

REPORT OUTLINE

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

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

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

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

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

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

(c) Section 4 - Summary

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

IHP COMMENTS TO THE PARTIES TO THE PROCEEDINGS

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

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

REPORT PURPOSE

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

- 1.7 The Independent Hearing Panel (“IHP”) was appointed by the Council to hear and consider the officers’ recommendations, as well as submissions and further submissions on PC92. The IHP was appointed under s34 of the Act and makes the recommendation as to whether and which parts of PC92 should be declined, approved or approved with amendments.
- 1.8 The plan change (as notified) seeks to:
- (a) Introduce further medium-density residential areas into the district plan, in both Te Puke and Ōmokoroa;
 - (b) Change the zoning in parts of those urban areas in line with producing well-functioning urban environments, as directed in the National Policy Statement for Urban Development (“NPS-UD”).
- 1.9 Before attending to the substantive material of the plan change, there are some procedural matters to cover, as well as an explanation as to how the report is set out.

The role of the IHP

- 1.10 As noted above, the role of the IHP is to make a recommendation to the Council as to decisions relating to the notified version and matters raised in submissions, further submissions and the Council hearings.
- 1.11 The authority delegated to the IHP includes all the powers necessary under the RMA to hear and make a recommendation to the Council, who then either accept the recommendation or refer it to the Minister.

The Intensification Planning Instrument

- 1.12 Because parts of Western Bay of Plenty are considered to constitute part of the Tauranga urban environment, the Council has been classed as a Tier 1 territorial authority and was required to notify this plan change by August 2022.
- 1.13 The plan change differs from a standard plan change to the district plan, in that it is an Intensification Planning Instrument (“IPI”). The purpose of the IPI plan change is to allow greater intensification and an increased housing supply in a manner that produces well-functioning urban environments.
- 1.14 The scope of the plan change is limited to the implementation of the NPS-UD and the Medium Density Residential Standards (“MDRS”), which were brought in by the Resource Management Amendment Act 2021 (“RMAA”).

- 1.15 This means the plan change process will only address changes to residential zone rules, zoning changes, issues such as financial contributions and subdivision, as well as related and consequential changes in other chapters, for example infrastructure, earthworks and industrial zone provisions. Further explanation of the requirements and scope of the IPI is given in Section 2.
- 1.16 Some of the provisions had immediate legal effect from the time they were publicly notified. Where those provisions differ from the final decision, those provisions fall away upon release of the decision from the Council.
- 1.17 Provisions that implement the density standards inserted by the new the RMAA include allowing up to three dwellings on a site of up to three storeys. More restrictive standards are only possible where qualifying matters (“QMs”) are introduced. Because those standards are set by national legislation, they apply across the country and must be implemented.
- 1.18 In addition to those differences, there is no recourse provided to appeal the decision of the Council, except on points of law. The reason for the lack of appeal rights is to provide certainty and to allow the urgent implementation of the MDRS, which is aimed at delivering more housing (and better housing affordability) to the market.
- 1.19 However, as with all other plan changes, the IHP has carefully considered what is within scope, weighed up the relevant matters, considered the position of Council as well as all of the submissions, and made their recommendations based on the matters set out in the Resource Management Act.
- 1.20 Alongside the notification of the plan change, Council also issued a Notice of Requirement (“NoR”) for land at Ōmokoroa to create an Active Recreation Reserve at the corner of Ōmokoroa Road and Prole Road. The IHP heard evidence on both PC92 and the NoR.
- 1.21 This report only addresses PC92. The IHP will issue a separate recommendation in relation to the NoR, and Council may accept or vary that recommendation.

First test - scope of an IPI

- 1.22 The Council is required to notify an IPI under s80F of the Act. The IPI must contain the following mandatory elements:
- (a) Incorporate the medium density residential standards (MDRS) into all relevant residential zones; and
 - (b) Give effect to Policies 3 and 4 of the National Policy Statement on Urban Development (NPS-UD) in respect of urban environments.

- 1.23 The Act also authorises Council to include any of the following discretionary elements into its IPI:
- (c) Financial contributions;
 - (d) Provisions to enable papakāinga housing in the district;
 - (e) Creation of new residential zones;
 - (f) Provisions that are more lenient than the MDRS;
 - (g) Provisions that are less enabling than the MDRS where qualifying matters apply; and
 - (h) Related provisions that support or are consequential on the MDRS or Policies 3 and 4 of the NPS-UD
- 1.24 For matters which fall within the mandatory or discretionary elements of an IPI identified in above at (a) - (h), the RMA provides for an Intensification Streamlined Planning Process (ISPP) which enables a more expeditious planning process than the usual Schedule 1 process, including the absence of appeals to the Environment Court. However, section 80G makes it clear that only those matters listed at (a) - (h) may be the subject of the ISPP process, and that only one IPI may be notified by the Council. Accordingly, an early question for the IHP is whether the sought relief falls within, or outside of, the mandatory or discretionary elements of an IPI.

Determining "on" the Plan Change (Clearwater)

- 1.25 Submissions on an IPI are made under clause 6 of Schedule 1 of the Act which provides¹:

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

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

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

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

- 1.27 Clearwater, involves a two-limb test:
- (a) Whether the submission addresses the changes to the pre-existing status quo advanced by the proposed plan change; and
 - (b) Whether there is a real risk that people affected by the plan change (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.
- 1.28 The accepted ways of determining whether a submission meets the first Clearwater test is to:
- (a) consider the section 32 report and whether the submission raises matters that ought to be addressed in that report; or
 - (b) consider whether the management regime for a particular resource is altered by the variation.
- 1.29 In considering the first arm of the bipartite Clearwater test, the Court has referred to matters which are assessed, or should have been assessed, in the section 32 report. The legal views on this were varied. In particular, whether it is relevant only to the mandatory aspects of IPIs or whether it equally applied to the discretionary matters listed above at (c) - (h) were not agreed between counsel.
- 1.30 In the situation where no submissions were received, but information from mana whenua seeks to incorporate mandatory elements of an IPI, it is not possible to treat the information as though it were not "on" the plan change, nor would it be possible to determine that information seeking inclusion of any mandatory elements was out of scope as it had not been publicly notified as part of the IPI.
- 1.31 In our view the following principles apply to determining whether a submission is "on" a plan change:
- (a) A determination as to scope is context dependent and must be analysed in a way that is not unduly narrow. In considering whether a submission reasonably falls within the ambit of a plan change, two things must be considered: the breadth of alteration to the status quo proposed in the plan change; and whether the submission addresses that alteration.
 - (b) For relatively discrete plan changes, the ambit of the plan change (and therefore the scope for submissions to be "on" the plan change) is limited, compared to a full plan review which will have very wide ambit given the extent of change to the status quo proposed.

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

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

- (a) Incorporate the Medium Density Residential Standards (MDRS) into relevant residential zones and to give effect to Policies 3 and 4 of the NPS-UD.5
- (b) With regard to the NPS-UD:
 - (i) Policies 3 and 4 refer to: city centre zones; metropolitan centre zones; areas within a walkable catchment of rapid transit stops, city centre zones and metropolitan centre zones; and neighbourhood centre zones, local centre zones and town centre zones (or equivalent). That list applies to all of the land in Ōmokoroa and Te Puke and areas in the immediate vicinity of those centres and of rapid transit stops.
 - (ii) The RMA requires the DP to "give effect to" any NPS including the NPS-UD.
- (c) The obligation to "incorporate the MDRS into relevant residential zones" requires consideration of all urban residential areas within the DP.

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

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

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

SECTION 2 - CONTEXT

THE OPERATIVE DISTRICT PLAN

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

Background

- 2.2 Western Bay of Plenty District Council have identified two areas of their district where the medium density residential standards are appropriate: Te Puke and Ōmokoroa. Te Puke is very close to a population of 10,000 and though Ōmokoroa has far fewer people, it has been identified as an area for growth for many years.
- 2.3 Both Ōmokoroa and Te Puke could, and in the opinion of the IHP should, be considered part of the Tauranga urban environment. Indeed, it is undoubtedly due to the proximity to the high-growth city of Tauranga that WBOPDC was indicated by the Ministry for the Environment to be a Tier 1 Council. Since both settlements are within commuting distance of Tauranga (Te Puke is around 25 minutes to Tauranga in clear traffic and Ōmokoroa is around 20 minutes), it is considered likely that at least a proportion of current and future residents will travel to Tauranga for work and to access goods and services.

Contextual difference between Ōmokoroa and Te Puke

- 2.4 As stated above in section 1 of this recommendation, within Western Bay of Plenty District, the implementation of the Amendment Act and Policy 3 is limited to Ōmokoroa and Te Puke, as these are the only settlements within the district that meet the definition of urban environment within the NPS-UD³.
- 2.5 Council anticipates that the future population of each town will be over 10,000 and for that reason they are considered “urban environments” under the RMAA 2021. However, the Act also points out that “urban environments” are areas of land, irrespective of territorial authority or statistical boundaries that are, or are intended to be, part of a housing and labour market of at least 10,000 people.
- 2.6 However, as the IHP heard, there are distinct differences between these two settlements and the manner in which they have been planned for in the past and approached through PC92. These differences were evident in the site visit the IHP undertook on 12 September 2023. The two settlements are discussed below.

³ Ministry for the Environment, National Policy Statement on Urban Development 2020, Definition of “urban environment” means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- a) is, or is intended to be, predominantly urban in character; and
- b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.

Geo-cultural context

- 2.7 In regard to the Ōmokoroa aspects of PC92, it is acknowledged that within Tauranga Moana, the political landscape is centred around hapū having the mana - authority to deal with matters that affect them, such as this plan change.
- 2.8 In relation to the Te Puke area and proposals under PC92, the IHP understand that mana - authority to input into planning instruments is primarily exercised at an iwi authority level. We have dealt with each geographic tribal area separately.

Ōmokoroa

- 2.9 The IHP heard through the s42A reports and evidence presented by and on behalf of the Council, that Ōmokoroa has long been recognised as a growth area in the Western Bay of Plenty sub-region⁴. Ōmokoroa is projected to be fully developed by 2050, with a resident population of approximately 13,000.
- 2.10 A large part of the Ōmokoroa peninsula was zoned Future Urban in 2010. The IHP understands that since that time, planning for the growth of Ōmokoroa was well underway, and that the Council had formally applied to the Minister for the Environment in 2021 to undertake a plan change under the Streamlined Planning Process (SPP), in order to fast-track the residential expansion of the Stage 3 Structure Plan area of Ōmokoroa.
- 2.11 The Council had already prepared a draft Ōmokoroa Plan Change for the Stage 3 area. However, due to introduction of the Amendment Act, that plan change was not able to progress. The new legislation required for Ōmokoroa the redrafting to apply the MDRS across the whole of the current and proposed residential zones and ensuring other provisions supported the provision of housing in accordance with the Act and NPS-UD. The SPP application was formally withdrawn in May 2022 prior to the notification of PC92 in August.
- 2.12 Through the site visit, the IHP witnessed the recent and widespread growth of Ōmokoroa, including large areas of residential expansion together with development of the main commercial centre.

Te Puke

- 2.13 With a population of approximately 10,000, and projections to grow to 13,000 within the next 10 years⁵, Te Puke is the largest settlement within Western Bay of Plenty sub-region. As stated in the s42A report, Te Puke developed in the late 19th/early 20th centuries as a service town for the surrounding rural area. It is a horticultural hub within the Bay of Plenty,

⁴ PC92 Legal submissions on behalf of Council pp 3.6

⁵ Te Puke Have Your Say Summary Report 2022

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

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

MAIN THEMES OF THE NOTIFIED PLAN CHANGES

- 2.15 Since the plan change is an intensification planning instrument, all of the proposed amendments to the plan either:
- (a) enable intensification of residential development in the two urban environments; or
 - (b) were considered necessary to creating well-functioning urban environments as a consequence of the increasing intensification.
- 2.16 The majority of the revised Ōmokoroa urban area was proposed to be rezoned to medium-density residential zone ("MRZ"), including the area southwest of the rail line in the area zoned "Future Urban" in the operative plan.
- 2.17 The gully systems in the southwestern part of Ōmokoroa were rezoned to Natural Open Space Zone ("NOSZ"), in order to protect those gullies from erosion and to protect the marine environment from the effects of sedimentation. The gully system is also proposed to provide for a network for pedestrians and cycling activity through the base of the peninsula.
- 2.18 An area to the west of the curve on Ōmokoroa Road was proposed to be rezoned to Commercial zone ("CZ") and was also connected to the gully system network.
- 2.19 To the south in Ōmokoroa, areas close to the state highway were proposed to be rezoned to Industrial zone ("IZ"), with some areas around the fringes to be OSRZ.
- 2.20 In Te Puke, with the exception of areas around the state highway and railway line, the majority of the existing urban area was proposed to be rezoned to MRZ.

SUBMISSIONS

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

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

1	Richard Hewison	37	Sylvia Oemcke
2	Lesley Blincoe	38	TDD Limited
4	Robert Hicks	39	Urban Taskforce for Tauranga
6	Tim Laing	40	Vercoe Holdings Limited
7	David Marshall	41	Waka Kotahi, NZTA (FS79)
8	Armada Properties Limited	42	Brian Goldstone
10	Blair Reeve	43	Jacqueline Field
11	Elles Pearse-Danker	44	Ken and Raewyn Keyte
12	Vortac New Zealand Limited	45	Ian Yule
13	Matthew Hardy	46	Summerset Group Holdings Limited
14	Peter Musk	47	The North Twelve Limited Partnership (FS78)
15	Western Bay of Plenty District Council	48	Warren Dohnt
16	Penny Hicks	49	Paul and Julie Prior
17	John Wade	50	Mike and Sandra Smith
18	Fire and Emergency New Zealand	51	Torrey Hilton
19	Pete Linde	52	Maxine Morris
21	Joshua Marshall	53	Liz Gore
22	Heritage New Zealand Pouhere Taonga	54	Christine Prout
23	Frank and Sandra Hodgson	55	Zealandia Trust
24	Ara Poutama Aotearoa - Dept of Corrections	56	Ōmokoroa Country Club Ltd (FS74)
25	Bay of Plenty Regional Council (FS67)	57	Kirsty Mortensen

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

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

26	Classic Group (FS68)	58	Jace Investments & Kiwi Green New Zealand Limited (FS69)
27	David and Diana Bagley	59	Jace Orchards Limited & Kiwi Green New Zealand Limited
28	Foodstuffs North Island Limited	60	David Crawford
29	Kāinga Ora - Homes and Communities (FS70)	61	Paul and Maria van Veen
30	KiwiRail Holdings Limited (FS71)	62	Angela Yule
31	N and M Bruning	63	Dawn Mends
32	New Zealand Housing Foundation (FS73)	64	Ross List
33	Powerco (FS75)	65	Russel Prout
34	Retirement Villages Association of New Zealand Incorporated (FS76)	66	Steve Chalmers
35	Ryman Healthcare Limited (FS77)	MW	Pirirākau Hapū
36	Susan Phinn	MW	Te Kapu o Waitaha
		MW	Tapuika Iwi Authority

HEARING

- 2.23 Twenty-four of the submitters wished to be heard in the hearing in relation to the plan change, with another four wanting to be heard on the Notice of Requirement for the Active Reserve. Council also received one body of tabled evidence for each (from Fire and Emergency NZ in relation to the plan change and from Heritage NZ in relation to the Notice of Requirement).
- 2.24 The IHP notes that further evidence and outcomes of caucusing were presented following the adjournment of the formal hearing. This material is referred to throughout this document.
- 2.25 The key themes to arise from the public process (submissions, further submissions and hearings) were the following:
- (a) Cultural and other matters of concern to mana whenua including qualifying matters and the reliance on future structure plan processes for addressing cultural effects.
 - (b) Effects on amenity – principally a request by KiwiRail to include a buffer from the railway line within which development would be subject to a qualifying matter, requiring acoustic insulation of any noise sensitive activities.
 - (c) Submissions on the proposed natural hazards provisions.

- (d) Submissions favouring changes to the financial contributions calculations.
- (e) A number of matters from Fire and Emergency New Zealand ("FENZ") on providing for firefighting in the medium-density residential areas.
- (f) Submissions on stormwater management, with submissions, in support, supporting in part or opposed.
- (g) Many submissions on the medium density residential zone provisions, including on their consistency with the MDRS and NPS-UD, amendments sought to better accommodate retirement villages, and both opposition to and support for the greater intensity introduced by the plan change.
- (h) Submissions with amendments sought to the Ōmokoroa Structure plan in relation to stormwater and transport connections.
- (i) Zoning changes.

RECOGNISING TANGATA WHENUA

- 2.26 Throughout this report, the IHP has used the terms "tangata whenua" and "mana whenua" to distinguish between broad matters as they relate to Māori more generally, from people at place matters which is where the IHP recognises particular mana whenua groups more specifically.
- 2.27 The IHP received no submissions from tangata whenua generally or mana whenua specifically on PC92 prompting cause for concern early in the process. In light of this, and in the absence of any other material having been produced by tangata whenua/mana whenua groups, the IHP had fundamental concerns about whether it was going to be able to adequately perform its duties and functions under the Act.
- 2.28 The IHP had established the principles it deemed appropriate to underpin the process. They included a commitment to:
- a hearing procedure that is appropriate and fair.
 - avoiding unnecessary formality; and
 - recognising tikanga Māori.
- 2.29 In addition, the IHP was committed to:
- being inclusive and acknowledging the broad range of interests, capability and capacity represented in submissions.

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

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

Request for advice

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

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

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

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

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

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

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

CONCLUDING COMMENTS ON CONTEXTUAL ISSUES

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

- (a) The primary intention of the plan change is to provide for growth and intensification in line with the statutory direction.
- (b) The plan change is limited in scope to Ōmokoroa and Te Puke. The community context for these urban communities is markedly different. They are subject to existing high levels of development (against which the plan change is somewhat retrospective) and critically there is a connection to the broader Tauranga/ Western Bay environment, which cannot be ignored.
- (c) Within Te Puke, Council has a conceptual programme for a broader spatial plan, which may see substantial commercial/industrial growth and a significant increase in population. It is problematic to address the intensification issues associated with PC92 when Council

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

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

SECTION 3 - THE ISSUES

IHP APPROACH TO RECOMMENDATIONS

- 3.1 For the purposes of this section of the report, where possible, we maintain the Council approach of grouping the discussion according to the corresponding chapter of the district plan.
- 3.2 Summaries of the key issues for each section are provided, including legal submissions where relevant, and points raised in submissions and at the hearing. The discussion includes the IHP's recommendation on those issues, along with the reasons for our recommendation to accept, reject or accept in part particular submissions.
- 3.3 The intention is to address all of the issues raised in submissions and orally during the hearings, rather than to address points on a submitter-by-submitter basis. This approach is not to downplay the importance of those submissions. Input from all submitters has been extremely valuable in informing the IHP's deliberations.
- 3.4 Unsurprisingly given the focused nature of the plan change, there was a large degree of overlap between different submissions. We therefore consider it to be most effective for our recommendations to be centred on resolving the contentious issues, rather than addressing each submission point in turn.
- 3.5 Many of the matters raised in submissions resulted in a simple and straightforward recommendation from the Council reporting officer. Not wishing to repeat the material from the Council s42a report, evidence or right-of-reply, the IHP are comfortable accepting the recommendations as set out in these reports, except where directed otherwise in the discussion below. Submission points are only addressed where the IHP felt that there were still matters that needed to be resolved or where the matters required some further discussion.
- 3.6 The IHP has not addressed matters where the Council officer's discussion and recommendation needs no further elaboration, either because there were no submissions in opposition, officers adopted the proposed relief or the reasons for the officers' position in rejecting a submission were clear and unequivocal. For completeness, the following documents are provided to show the IHP's recommendations in full including all responses to submissions and changes to the Operative District Plan:
 - Attachment A – Summary of Recommendations on All Topics and Submission Points.
 - Attachment B – Recommended Changes to the District Plan Maps.
 - Attachment C - Recommended Changes to the District Plan Provisions.

SCOPE CONSIDERATIONS

Providing for the voice of mana whenua

- 3.7 In Section 2, we briefly set out some of the considerations around scope of the Intensification Planning Instrument. Below, we turn to address scope in relation to the specific considerations confronting the IHP in relation to including input from mana whenua.
- 3.8 Under clause 98 of Schedule 1, the IHP has power to regulate its own proceedings. The duties of the IHP on an IPI process (as set out under clause 99 of schedule 1 RMA) are to make recommendations to the territorial authority, such recommendations must be:
- (a) related to a matter identified by the IHP or any other person during the hearing, but
 - (b) are not limited to being within the scope of submissions made on the IPI.
- 3.9 Our reading of clause 99 of schedule 1 RMA, lends the IHP to consider that there is sufficient latitude for it to consider information concerning mana whenua, whether that information exists in the form of a submission, presentation (as we were provided by Pirirākau on day 1 of the hearing), or other form of information. While this latitude may seem fairly wide-reaching, we take onboard Councils legal submissions on the point:
- ... care should be taken in terms of natural justice considerations where the IHP is making recommendations under clause 99(2)(b). While some submitters sought to describe this as a very broad power, in our submission it is not unfettered and needs to be exercised with care⁹.*
- 3.10 With this in mind, other than the information presented by Pirirākau on Day 1 of the hearing, and the records contained in the s32 & s42A reports, we have decided that consideration of any additional information shall be limited to information that only exists on public record.
- 3.11 Section 74 RMA sets out the matters that are to be considered by territorial authorities when making changes to the district plan. S.74(2A) RMA explicitly provides that when preparing or changing a district plan, a territorial authority must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.

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

- 3.12 Clause 95(2) of Part 6 of Schedule 1 to the RMA confirms that clause 6 of Schedule 1 applies to the IPI. Clause 6 entitles the persons described in sub-clauses (2) to (4) to make a submission “on” a proposed policy statement or plan (change).
- 3.13 The meaning of that simple word “on” has been the subject of considerable judicial consideration (which we turn to below), but for present purposes we record that no party contended that submissions on PC92 did not have to satisfy this initial jurisdictional threshold to be considered. Rather, the issue was whether the established “on” jurisprudence was apt for the IPI by which PC92 was being processed.
- 3.14 Ms Stubbing, counsel for WBOPDC, provided opening submissions. Her general advice regarding “scope” was as follows:
- There was a list of submission points in the section 42A report that were identified as being potentially out of scope. From the written evidence received from submitters, we are aware that some of those points are no longer being pursued. However, we comment briefly on each of the submission points that we understand are being pursued and, in our opinion, are not “on” PC92 with reference to the Clearwater tests above.*
- 3.15 The approach by the Council witnesses has been to note where submission points are potentially out of scope but then to assist submitters and the IHP by addressing the relief sought on its merits .
- 3.16 Counsel for BOPRC, Ms Wooler, argued for a wide interpretation and says our recommendations must be related to a matter identified by the IHP or any other person during the hearing. The amendments have been identified as required .
- 3.17 The IHP accepts and embraces that interpretation (which is consistent in principle with those of Ms Stubbing on behalf of WBOPDC) and proceeds to consider all the submissions and evidence on that presumption.

CONSULTATION

General

- 3.18 In relation to consultation on the plan change, three submissions (Robert Hicks, Penny Hicks and Russel Prout) suggested that it was inadequate and that more should have been done to communicate the plan change to affected residents.
- 3.19 Council pointed out that, in order to meet the deadline for notification set out in the RMAA, they had limited time to run community meetings on the plan change. They did have a period of public engagement, however except where we note that consultation with mana whenua has been inadequate, the IHP is satisfied that they have fulfilled the requirements of Schedule 1 of the Act.

Consultation with tangata whenua

- 3.20 From the record of consultation¹⁰ prior to notification, the key issues as expressed by Pirirākau are summarised as:
- (a) original area proposed for MDRZ had increased.
 - (b) proposed height limits and the potential significant adverse effects on cultural viewshafts.
 - (c) capacity of existing wastewater line.
 - (d) lack of greenspace proposed.
 - (e) co-management of reserve areas.
 - (f) cultural sites and the need for avoidance of inappropriate use and activities.
 - (g) visual impacts and changes to the character.
- 3.21 The S.32 evaluation reports consultation as being widespread yet fails to reflect a consultative process (or include any evidence of such) that recognised the unique status of tangata whenua in the context of the minimum obligations for consultation in accordance with Schedule 1 RMA.
- 3.22 The consultation provisions of Schedule 1 RMA are not discretionary, rather they are expressed as an instruction to the local authority concerned to consult the parties listed at clause 3(1)(a) - (e).
- 3.23 For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—
- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
 - (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
 - (c) consults with those iwi authorities; and
 - (d) enables those iwi authorities to identify resource management issues of concern to them; and

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

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

- 3.24 Despite the express statement in its s32 report¹¹ that recognises Pirirākau as mana whenua of Ōmokoroa, and the significance of Ōmokoroa to the hapū, PC92 fails to adequately indicate how the issues of Pirirākau have or will be addressed. In this vein, the Council has relied on the Structure Plan process.
- 3.25 PC92 does not adequately demonstrate (e) how the issues that Pirirākau have articulated (through engagement and in their HMP) have been or are to be addressed. We have seen no evidence that points to any agreements reached between Council and Pirirākau on the identified treatment options. The Council evidence is that the structure planning process will provide for Pirirākau.
- 3.26 The IHP has carefully considered the rights and interests of tangata whenua in the context of this plan change. Without having the status of a submitter, the IHP had to first determine its ability to consider Pirirākau with all the usual rights that go with being a submitter, or as a party with an interest greater than the general public.
- 3.27 The IHP's response to the points raised by Ms Shepherd are discussed in more detail in other areas of this report, in particular where the IHP address FINCOs and natural open space. The IHP also saw the need to address section 6(e) matters in the context of section 77I of the RMA. We have attempted to do this in Section 2 under Qualifying Matters.

DISCRETE MATTERS

General support for the plan

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

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

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

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

- 3.30 Council put forward its position that urban areas in the district were treated as being 'subject to their own housing and labour markets', and therefore only Te Puke and Ōmokoroa have or are likely to have markets of at least 10,000 people within the scope of the plan change.
- 3.31 The IHP takes a different view to both parties on this question. It is our view that urban areas within a commuting distance of Tauranga are effectively part of the 'urban environment' of Tauranga. Indeed, the reason for which WBOPDC was judged to be a Tier 1 Council was that it lies at the periphery of Tauranga, which is growing rapidly.
- 3.32 The direction of the NPS-UD and MDRS is to provide for intensification so that urban growth is provided for less through peripheral greenfield expansion and more through development within the existing urban area, ensuring the infrastructure is used efficiently and realising the benefits of 'well-functioning urban environments'.
- 3.33 It is noted that the townships of Katikati and Waihi Beach are a considerable distance beyond Ōmokoroa and are unlikely to attract a large number of commuters to Tauranga. The IHP do not consider them to be part of the 'housing and job market' of Tauranga and for that reason, agrees that the only areas of the district that should be subject to the MDRS and NPS-UD are Te Puke and Ōmokoroa.

Carbon Emissions

- 3.34 One other matter generally in relation to the plan is the issue of carbon emissions. It is disappointing that neither the Council nor Waka Kotahi have given serious attention to the impact on carbon emissions resulting from development of a large volume of additional housing, in particular in Ōmokoroa. Waka Kotahi raised it as a matter of concern in their submission and the Council view was that no action was required.
- 3.35 The NZ government is now legally bound to deliver on its carbon reduction commitments. In the NPS-UD, one of the characteristics of "well-functioning urban environments" is a reduction in carbon emissions resulting from planning decisions around urban form and development.
- 3.36 The location of Ōmokoroa, 20km from Tauranga, means that large numbers of residents will commute to the larger city. The analysis of Waka Kotahi in terms of traffic generation implies this, and the submission by Kāinga Ora acknowledges that Ōmokoroa could be seen as a part of the Tauranga urban environment. Experience from the development of a satellite town on the periphery of other big cities, in NZ and abroad, would also support that conclusion.
- 3.37 The Beca traffic model suggests that projected traffic movements to and from Ōmokoroa (not including through movements on SH2) would be around 3,700 vehicles per day. They did not supply observed traffic data currently, but since the population of the peninsula is

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

- 3.38 Since the majority of trips can be assumed to be to Tauranga (the distance being 20km), and that other trips will be shorter, and some longer, 1,850 additional trips x 20km (distance to Tauranga) means approximately 37,000km/day increase to VKT, in excess of 10 million additional kilometres per annum.
- 3.39 We also note that a cursory glance at the state highway between Ōmokoroa and Tauranga reveals a number of locations that would not be considered satisfactory for safe cycling, and especially not the perception of safe cycling, to enable residents of Ōmokoroa to make the trip by cycle. However, it is noted that a cycleway between Ōmokoroa and Tauranga is part implemented and being pursued.
- 3.40 In any case, the distance means that journey by cycle would likely take around an hour each way. Active transport connections between these two connected areas is therefore not considered practical.
- 3.41 There are currently 6 buses per day each way between Ōmokoroa and Tauranga, with a bus roughly every 1h 45m in each direction between 7am and 4.20pm towards Tauranga and between 7.55am and 5.10pm towards Ōmokoroa.
- 3.42 The provision of a location to be used as a Park-and-Ride is insufficient to offset the increase of thousands of VKTs per day that will result from the settlement. Therefore, charging of development contributions, targeted rates, congestion charging, subsidisation of the bus service and other economic instruments are considered appropriate to drive more economic use of private vehicles.
- 3.43 It is suggested that Council policy staff investigate, and where possible implement, actions to offset the additional emissions that this plan change will enable.

Planning Maps: Te Puke Zoning

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

- 3.45 The rationale the Council reporting officers have given for the conservative approach to intensification of Te Puke, is that the timeframes restricted its ability to carry out thorough consultation with the Te Puke community. The extent of proposed MDR within Te Puke represents only what is required to instate the MDRS provisions within the urban extent of the township.
- 3.46 At the hearing the IHP heard that Council intends to embark on a more fulsome review of the spatial extent and provisions of Te Puke through the district-wide plan review process, commencing with a spatial plan for Te Puke that will enable a more thorough analysis and understanding of the social and economic infrastructure requirements. The IHP understands the Council intends to embark on early engagement and option identification and analysis for Te Puke with targeted engagement and release of a draft Spatial Plan in the middle of 2024.

MANA WHENUA SPECIFIC CONSIDERATIONS

- 3.47 The conspicuous lack of participation of mana whenua, and Pirirākau in particular, was an issue for the IHP. In this respect the missing voice of mana whenua and the action that was taken to remedy that is later discussed in this section.
- 3.48 The IHP notes that the engagement with mana whenua expected for the scale of impact generated by the plan change has not concluded satisfactorily. It is expected that Council will ensure mana whenua are fully engaged in the implementation of the plan change as a whole and including the associated spatial planning processes underway.

The relationship of Pirirākau with Ōmokoroa

- 3.49 Pirirākau, a hapū with affiliations to Ngāti Ranginui, one of the three iwi of Tauranga Moana, have longstanding associations with their tribal estate with four operating marae - Tawhitinui, Poututerangi, Tutereinga and Paparaoa.
- 3.50 The Ōmokoroa peninsula area is located in the heart of the rohe of Pirirākau, It is identified in the Pirirākau Hapū Management Plan (HMP) as a significant landscape for the hapū¹². The HMP includes specific mention of Ōmokoroa and explains that the relationship of Pirirākau with their rohe is expressed “by maintaining marae, retaining remnant reserves, protecting our natural environment, and keeping the identity, the customary rights, and practices of Pirirākau alive”¹³.

¹² Pirirākau Hapū Management Plan [2017] at page 23

¹³ Pirirākau HMP [2017] page 12

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

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

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

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

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

Pirirākau cultural values and potential cultural amenity treatments.

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

Pirirākau involvement in the Structure Planning process

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

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

¹⁴ Pirirākau HMP [2017] page 16

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

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

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

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

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

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

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

Pirirākau presentation

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

- 3.63 The IHP heard that Pirirākau seeks the following:

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

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

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

Urban development will result in a significant modification of the environment and landscape which could further alienate Māori and particularly Tangata Whenua from their association with the land¹⁵.

Mana whenua relationships with Te Puke

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

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

3.67 Both iwi have also prepared and formally lodged iwi management plans¹⁶. The Waitaha Plan, Ko Waitaha Ahau, was lodged in 2014 and the Tapuika Environmental Management Plan 2014 - 2024. Both plans set out clear expectations in regards to when engagement by Councils is triggered. No submission was received from either iwi, but notes from engagement suggested that Tapuika and Waitaha representatives were comfortable with the direction of the plan change, and saw benefits for their iwi members as a result – mainly around the possibility of building a second and third dwelling on residential sections. It

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

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

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

QUALIFYING MATTERS

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

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

Power transmission lines as a qualifying matter

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

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

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

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

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

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

- 3.75 The NPSREG is clearly directed at providing for the harnessing of natural forms of energy (wind, solar etc) to generate electricity. Despite Powerco's contention, there is nothing to suggest that the NPS should apply to transmission or distribution.
- 3.76 Similarly, the NPSET provides for the transmission network rather than local electricity distribution. As Powerco's submission acknowledges, the national direction does not make specific reference to distribution, but instead recognises and protects the national grid as a matter of national significance. It does recognise the risks posed by third parties, and while that is very relevant to their submission point, the IHP does not accept the assertion that the direction of the NPSET applies to local distribution.
- 3.77 Powerco also asserts that the entire electrical supply network should be considered nationally significant infrastructure, and therefore be regarded a QM under s77(e).
- 3.78 Finally, the submission from Powerco argues that s77(j) applies to the overhead powerlines in Ōmokoroa and acknowledges that this clause is subject to an assessment set out in s77L. Neither the submission nor the evidence presented at the hearing make an assessment directed by s77L.
- 3.79 S77L directs that a matter is not a QM unless the evaluation report referred to in s32:
- (a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and
 - (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and
 - (c) includes a site-specific analysis that—
 - i identifies the site to which the matter relates; and
 - ii evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;
 - iii evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics
- 3.80 While Powerco present a compelling argument that perhaps satisfies (a) and (b) of s77L (except that the argument was not set out in an assessment under s32 of the Act), no site-specific analysis has been done and no recommended amendments to the plan provided. On that basis, the changes sought and the evidence to support that change, fail to satisfy

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

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

Additional setbacks from the rail corridor for future maintenance

- 3.82 KiwiRail has submitted on what they perceive as a need for a greater setback from the rail corridor than what is prescribed in the MDRS. In order for that increased setback to be accommodated, because that would be more restrictive than the MDRS, the rail corridor would need to be included in the plan as a qualifying matter.
- 3.83 KiwiRail argues that the setback is necessary to provide space on those properties to maintain the buildings without the need to encroach on the rail corridor. They have requested a setback of 10m to allow for scaffolding, support structures and to allow for a reasonable distance to ensure that dropped objects do not fall into the rail corridor.
- 3.84 However, the scope of this plan change is contained to Te Puke and Ōmokoroa. Through Ōmokoroa, the rail corridor is particularly wide, with the adjacent medium density residential zone (MDRZ) at least 20m from the train tracks, and in most places at least 30m. In Te Puke, the majority of the rail line is adjacent to the Industrial Zone or public road, and only Gordon St, Stock Road and King St have an area directly adjacent to the rail corridor.
- 3.85 As the scope of this plan change is limited in geographic extent, it is not considered practical or appropriate to provide a carve out for a small area of Te Puke. In addition, developers will understand that encroachment onto the rail corridor in future (even if only for maintenance activities) would require KiwiRail approval and there are health and safety regulations to protect against people or objects falling into the rail corridor.
- 3.86 Even if only the minimum setback is provided on a site adjacent to the rail corridor, scaffolding for future maintenance can be secured to the building with scaffolding wrap on the rail side to prevent items from falling into the rail corridor. This is considered the likely outcome of any health and safety assessment. Therefore we regard the inclusion of a greater setback from the Rail corridor, as per the KiwiRail request, to be unnecessary. We do however agree with the setback being reduced from 10m to 5m.

Section 6(e) Relationship of Māori

- 3.87 The range of 'Qualifying Matters' are set out at section 771 of the RMA and include section 6 RMA Matters of National Importance.
- 3.88 Despite the express statement in its s32 report that recognises Pirirākau as mana whenua of Ōmokoroa, and the significance of Ōmokoroa to the hapū, PC92 fails to adequately

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

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

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

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

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

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

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

DISCUSSION ON SUBMISSIONS

EXTENT OF PROPOSED MEDIUM DENSITY ZONE TE PUKE

- 3.94 One submission was received on the spatial extent of Te Puke, from Armadale Properties (submission #8.1) in relation to 22 Landscape Road, which is currently zoned Rural and adjacent to a small area of residential zoned land. The submitter supports the application of the MDR zone on the residential zoned land and would like that expanded to include 22 Landscape Road. The submitter included a master plan concept for the site.
- 3.95 The Council's reporting officer considered the submission to be out of scope because PC92 only included land already zoned for residential or anticipated for urban expansion, and the rezoning sought is not an incidental or consequential extension of the proposed plan change zoning. This was confirmed in paragraphs 5.12 and 5.13 of the opening legal submissions by Ms Stubbing and we adopt that advice.

Change to High Density Residential

- 3.96 Two submission points, one each from Kāinga Ora (submission #29.6) and Waka Kotahi (submission point #41.2) were received seeking the identification and implementation of a 'high density residential zone', based on walkable catchments surrounding the centre of Te Puke. These submission points were supported by further submissions from KiwiRail (FS71.9) and Kāinga Ora (FS70.24) respectively.
- 3.97 The Council's reporting officer noted that there are no city centres or metropolitan areas and no existing or planned rapid transit stops within the WBOP district, therefore Policy 3(c) of the NPS-UD is not directly relevant to Te Puke. The reporting officer stated that the Council did consider higher density and walkable catchments for Te Puke but considered that the appropriate mechanism for pursuing locations for higher density may be through the upcoming spatial planning process. We agree.

Request to Change to Commercial or Mixed Use Zone

- 3.98 Vercoe Holdings supported in part the proposed zoning for Te Puke but sought (submission point #40.1) that the area identified for future commercial development within the subdivision resource consent be rezoned to Commercial.
- 3.99 The Council's reporting officer was of the opinion that there was insufficient justification as to why that would be the most appropriate option for the land, and considered that the types of mixed use activities sought would be better suited to a resource consent process. No representation was provided for this particular submission point at the hearing and we adopt the advice.

SUMMARY OF KEY RECOMMENDATIONS:

Key matters and recommendations

- 3.100 Notwithstanding that the Council deemed the submission point to be out of scope, submission point 8.1 was considered in the interests of providing information both to the submitter and the IHP. The IHP acknowledges that including the property within the MDRZ could support the ongoing growth of Te Puke as anticipated by the NPS-UD. However, given that the majority of the land at 22 Landscape Road is classified as LUC 3 (highly productive land), the NPS-HPL would also need to be considered with respect to any proposed rezoning. The IHP therefore accepts the recommendation within the s42A report to retain the existing rural zone for this land.
- 3.101 In relation to a high-density residential zone in Te Puke, subsequent to the drafting of the s42A report, Kāinga Ora advised through evidence of Ms Susannah Tait, that a high-density residential zone in Te Puke is no longer being pursued in favour of greater height within the town centre. The latter is discussed in greater detail in relation to Section 19 - Commercial Zone in paragraphs 3.268-3.278 of this recommendation. Similarly walkable catchments do not appear to be further pursued by Waka Kotahi. In this regard, the IHP defers to the officers' recommendation to retain the proposed MDR as notified.
- 3.102 With regard to the change of zone request, the IHP accepts that the MDR may enable the types of locally based commercial or mixed use activity, without requiring these sites to be zoned commercial.
- 3.103 The IHP accepts the Council Officer's position with respect to the extent of MDR in Te Puke, acknowledging that the proposed forthcoming spatial planning process will provide the appropriate vehicle for a considered and thorough review of the opportunities and constraints within and surrounding the township and therefore does not recommend any changes to the extent of MDR zoning as proposed. However, we do consider Council should advance the spatial planning process for Te Puke with some urgency.

Planning Maps: Ōmokoroa Zoning

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

- 3.105 The proposed zoning map produced by Council shows the new roundabout at the intersection of Ōmokoroa and SH2, as well as a second roundabout providing access to an extended Francis Road. The intersection of Francis Road would then be closed, with the only access to SH2 from Francis Road being via Ōmokoroa.
- 3.106 On the zoning map, the area between the current formation of Francis Road and SH2 is shown as a new area of Industrial Zone. In addition to that, most of the area south of the extension of Francis Road to Ōmokoroa Road is also proposed as Industrial Zone, with the exception of a small area of deep gully, which is proposed as a new Natural Open Space.
- 3.107 South of Ōmokoroa Road from opposite the intersection with Prole Road almost down to the SH2 intersection, there is an area of Light industrial zone. That area is proposed to be expanded slightly to the west and south, and changed to general Industrial Zone. Much of the rest of that area is proposed to be Rural residential, with Open Space zones in two areas at the periphery of the Intensification Plan Change area.
- 3.108 In evidence supporting the submission of N & M Bruning, Mr Aaron Collier argued that changes to the zoning, particularly rezoning of rural land to industrial, rural residential or open space, were out of scope for the plan change. Ms Barry-Piceno, Counsel for the Brunings, endeavoured to persuade us that her submissions and the evidence on behalf of the Brunings supported removal of the proposed open-space annotation on their land adjoining SH2, on the grounds “it is out-of-scope”¹⁷.
- 3.109 Ms Stubbing (for WBOPDC) argued the new zonings “support” the MDRS and greater intensification on the Ōmokoroa Peninsula, and therefore fall within the permissible scope of an IPI under section 80E¹⁸.
- 3.110 Ms Wooler, Counsel for BOPRC, also counters Ms Barry Piceno and Mr Collier’s opposition to Rural Residential and Open Space Zones over part of the Bruning land, saying¹⁹
- “... power to impose an industrial zone must also include the power to amend its imposition – including by alternative zoning as the case requires [and]... urban non-residential zone means any zone in an urban environment that is not a residential zone”
- 3.111 She also cites the definition of urban environment as given in Section 1 of this report.
- 3.112 Ministry for the Environment guidelines make it clear that establishing new industrial or open space zones, consequential to changes to implement the MDRS, are within scope for an intensification planning instrument (IPI).

¹⁷ Barry-Piceno, s36

¹⁸ Stubbing, s4.16 & s4.18

¹⁹ Wooler, Para 52

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

ŌMOKOROA MDR

Request for High Density Residential

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

3.115 Two submission points were received in relation to this. Kāinga Ora²⁰ was generally supportive of the extent of area identified for rezoning in Ōmokoroa, including the additional intensification provisions. However, rather than an overlay within Section 14A, Kāinga Ora are seeking to rezone the areas identified as Ōmokoroa 3C to a new 'High Density Residential Zone' (HRZ). Kāinga Ora included proposed provisions for this new zone. The Waka Kotahi submission point 41.2, discussed above in relation to Te Puke, also sought high-density residential zones within the walkable catchment of Ōmokoroa town centre in order to give effect to the intent of the NPS-UD. These submissions points were supported by further submissions from KiwiRail (FS71.9) and Kāinga Ora (FS70.24) respectively.

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

Analysis and considerations

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

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

²⁰ Kāinga Ora submission point #29.5

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

SECTION 4B – TRANSPORTATION, ACCESS, PARKING AND LOADING

Vehicle crossings to Ōmokoroa Road

- 3.121 One submission was received, from Jace Investments, on the proposed non-complying activity status for vehicle crossings to Ōmokoroa Road, where written approval from the Council is not obtained. The activity status if permission is obtained would be controlled if the proposal meets all relevant standards and restricted discretionary if it does not.
- 3.122 The IHP has some sympathy for the position of the Council and the need to reduce friction on the main road of Ōmokoroa and ensure a safe and efficient transport network for the town. Notwithstanding the view of the IHP to accept Option 1 (status quo), we suggest that Council needs to address the concern associated with a third party influencing activity status for resource consent through a future plan change.
- 3.123 The other submission on the transport chapter related to on-site manoeuvring. Fire and Emergency NZ (FENZ) have submitted in support of the requirement in s4B.4.6 to provide for onsite manoeuvring where there is direct access off a strategic road for the Medium density residential area. This would align this new, higher density zone with the current rule for the general residential zone. FENZ is also seeking that a matter of discretion be added for non-compliance with that standard, which is a restricted discretionary activity under s4B.6.2.

On-site manoeuvring for emergency vehicles

- 3.124 FENZ seek the addition of the following matter of discretion:
- (h) the ability for emergency vehicles to manoeuvre on-site effectively and safely.
- 3.125 The purpose of the on-site manoeuvring rule is to ensure that vehicles do not create a hazard by backing out onto a busy road. In this context, "on-site manoeuvring" is understood to be the ability of vehicles to make a three-point turn and exit the property facing forward. As pointed out in further submissions by The North Twelve Limited

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

- 3.126 There are other controls to ensure that emergency vehicles have access to all residential properties. In the s42a report, Mr Taunu Manihera, the reporting officer explains that the Development Code provides minimum design standards to ensure access for emergency vehicles. The Code also requires applicants to provide that access if an alternative design is proposed.
- 3.127 The IHP agrees with the officer's assessment that the proposed provisions as notified are appropriate.

SECTION 4C – AMENITY

- 3.128 The only submissions for this section related to the noise provisions and the need to protect sensitive activities from frequent high levels of noise and vibration.
- 3.129 KiwiRail has made a submission, supported by evidence at the hearing, that a rule should be inserted requiring any application for a noise sensitive activity within 100m of the rail corridor to be accompanied by an acoustic assessment and, based on the recommendations of that assessment, acoustic attenuation. They submit that this is in order to provide an appropriate level of indoor noise for those noise sensitive activities and protect rail operations from reverse sensitivity effects.
- 3.130 They have also submitted recommended amendments to the content of the plan, including requirements for ventilation and technical guidance relating to noise levels, as well as a definition for noise-sensitive activity, which the operative plan does not provide.
- 3.131 In their further submission in response, Kāinga Ora, NZ Housing Foundation, RVA and Ryman argued that acoustic and vibration controls should not be a qualifying matter and that acoustic insulation could only be accepted on a case-by-case basis.
- 3.132 RVA also made a primary submission against the requirement for new noise sensitive activities in the residential zone needing an acoustic design certificate to show that the building will have an appropriate indoor noise environment.
- 3.133 As the Council reporting officer has pointed out, there already exists in the plan a performance standard (4C.1.3.2(c)) requiring proposals for noise sensitive activities to ensure that internal noise levels are not exceeded, including providing alternative means of ventilation.
- 3.134 This performance standard applies for any noise sensitive activity across the district. It appears the consents team are known to waive that requirement for areas where there are no recognised noise issues, and not require the acoustic design certificate. This happens

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

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

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

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

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

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

(2) The attenuation over distance being:

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

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

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

- (b) For habitable rooms for a residential activity, achieves the following requirements:
 - (i) provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code and that provides at least 1 air change per hour, with relief for equivalent volumes of spill air;
 - (ii) provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and
 - (iii) does not generate more than 35 dB LAeq(30s) when measured 1 metre away from any grille or diffuser. The noise level must be measured after the system has cooled the rooms to the temperatures in (ii), or after a period of 30 minutes from the commencement of cooling (whichever is the lesser).
- (c) For other spaces, a specification as determined by a suitably qualified and experienced person.
- (d) A commissioning report must be submitted to the Council prior to occupation of the building demonstrating compliance with all of the mechanical ventilation system performance requirements in subclause (b).
- (e) The requirements of (a) to (d) to not apply where the building(s) within 100m of the railway designation boundary:
 - (i) Is in a location where the exterior façades of the bedroom(s) or habitable room(s) is at least 50m from the formed railway track and there is a solid building, fence, wall or landform that blocks the line of sight from all parts of all windows and doors of those rooms to all points 3.8m directly above the formed railway track; or
 - (ii) Is in a location where it can be demonstrated by way of prediction or measurement by a Suitably Qualified and Experienced Acoustic Consultant that the rail noise level at all exterior façades of the bedrooms or habitable rooms is no more than 15 dB above the relevant internal noise levels in (a).
 - (iii) Written certification from a Suitably Qualified and Experienced Acoustics Consultant demonstrating compliance with either (e)(i) or

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

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

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

4C.1.4.3 Restricted Discretionary Activity – Indoor Railway Noise

Matters of discretion

- (a) *location of the building;*
- (b) *the effects of any non-compliance with the activity specific standards;*
- (c) *special topographical, building features or ground conditions which will mitigate noise impacts;*
- (d) *the outcome of any consultation with KiwiRail.*

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

“Noise sensitive activity” means any lawfully established:

- (a) *activity, including activity in visitor accommodation or retirement accommodation, including boarding houses, residential visitor accommodation and papakāinga;*
- (b) *educational activity;*
- (c) *health care activity, including hospitals;*
- (d) *congregation within any place of worship; and*
- (e) *activity at a marae.*

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

- 3.141 Unlike noise, these effects cannot be shielded from other activities by buildings or other above-ground structures, since the vibration travels through the land.
- 3.142 In his evidence, Dr Chiles suggests that it would be pragmatic and sensible to implement the vibration controls within a standard 60m of the rail corridor, to which the IHP agrees.
- 3.143 Kāinga Ora and others submitted in opposition to a standard to require mitigation of vibration effects, arguing that it would add unnecessary cost to housing in the area. However, the provision of a safe and health indoor environment is consistent with the direction of s5 of the Act, requiring:
- the use, development, and protection of natural and physical resources in a way... which enables people and communities to provide for... their health and safety*
- 3.144 In her evidence, Ms Heppelthwaite has also provided an assessment of the efficiency and effectiveness, the costs and benefits and the risk of not acting, with which the IHP agrees.
- 3.145 The IHP therefore recommends the inclusion of the following standard in the plan. For clarity, this replaces the need for a vibration alert layer to be added as an information only layer to Council's District Plan.

Indoor railway vibration

- (1) *In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 60m of the railway designation boundary, which contains a dwelling, accommodation facility, education facility, place of worship or marae, or medical or scientific facility, shall be protected from vibration arising from the nearby rail corridor.*
- (2) *Compliance with standard 1 above shall be achieved by a report submitted to the Council demonstrating compliance with the following matters:*
- (a) *the new building or alteration to an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or*
- (b) *the new building or alteration to an existing building is a single storey framed residential building with:*
- (i) *a constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and*
- (ii) *vibration isolation separating the sides of the floor slab from the ground; and*
- (iii) *no rigid connections between the building and the ground.*

4C.1.4.4 Restricted Discretionary Activity – Indoor Railway Vibration

Matters of discretion

- (a) *location of the building;*
- (b) *the effects of any non-compliance with the activity specific standards;*
- (c) *special topographical, building features or ground conditions which will mitigate vibration impacts;*
- (d) *the outcome of any consultation with KiwiRail.*

SECTION 8 – NATURAL HAZARDS (INCLUDING MAPPED HAZARD LAYERS)

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

Liquefaction mapping

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

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

Explanatory statement

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

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

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

Flood mapping

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

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

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

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

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

Other hazard matters

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

SECTION 11 – FINANCIAL CONTRIBUTIONS

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

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

Section 77E – Local authority may make rule about financial contributions

...

- (2) A local authority may make a rule requiring a financial contribution for any class of activity other than a prohibited activity.
- (3) A rule requiring a financial contribution must specify in the relevant plan or proposed plan—
 - (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and
 - (b) how the level of the financial contribution will be determined; and
 - (c) when the financial contribution will be required.
- (4) To avoid doubt, if a rule requiring a financial contribution is incorporated into a specified territorial authority's district plan under section 77G, the rule does not have immediate legal effect under section 86B when an IPI incorporating the standard is notified.
- (5) In this section and section 77T, financial contribution has the same meaning as in section 108(9).

Section 77T – Review of financial contributions provisions

Each specified territorial authority may, if it considers it appropriate to do so, include financial contributions provisions, or change its financial contributions provisions (as applicable) in the district plan, and, if it does so, may notify them in the IPI required to be notified in accordance with section 80F.

- 3.160 The addition of the requirement to identify when the financial contribution will be required (s.77E(3)(c)) reflects that financial contributions can now be imposed in respect of permitted activities and, in these circumstances, cannot be imposed as a condition of a resource consent. This has implications for PC92 which are summarised further below.
- 3.161 The financial contributions framework is layered and can easily become confusing. In addition to its function as set out in the RMA, the principles of the LGA relating to charges being fair, equitable and proportionate are appropriate guidelines for developing a formula for FINCOs. However, as observed by the Environment Court in *Remarkables Park Ltd v Queenstown Lakes District Council*, it would be inappropriate for these principles to be reflected in the District Plan.
- 3.162 Currently the only restrictions around the use of financial contributions under the RMA are that the purpose and level of contribution must be specified in the district plan. Notwithstanding both a financial contribution and development contribution (under the Local Government Act ("LGA")) can be charged for a single development, the purpose for applying both instruments must not be the same. Concerns about Councils' charging under the two regimes, especially when contributions are charged under both regimes for the same development, has been a long-standing issue. Not surprising, this issue was one raised by submitters through the PC92 process.

Submissions on financial contributions

- 3.163 Mr Gardner-Hopkins, acting as Project Manager for the North Twelve Limited Partnership (North Twelve), raised various legal and evidential arguments that "additional FINCOs burden on developers should not be entertained."
- 3.164 He argued against the proposals on a 'jurisdictional' and 'logical' basis particularly in relation to Te Puke. He referred to a lesser relief of including Te Puke in the FINCO Table row with Waihi Beach, and Katikati, thus keeping the FINCOs effectively unchanged for Te Puke and not disturbing the balance of WBOPDC's changes, which do not directly impact North Twelve .
- 3.165 Having carefully considered all the relevant submissions and evidence regarding the proposed financial instruments, the IHP is convinced it is within scope of submissions and addresses this issue in a separate section below, making specific recommendations regarding the existing and proposed regimes.
- 3.166 The submissions from North12 related in the main to the changes proposed to be applied in the Te Puke area. The submitter expressed particular concern with the proposals for FINCOs, challenging the veracity of the assumptions, inputs, models, and formula underpinning the development of the FINCO proposals.

- 3.167 North12 presented helpful submissions in respect to the framework for FINCOs, noting the strict directive requirements of section 108(2)(a) and 108(10) RMA concerning conditions of resource consents and the specificity within the provisions that is required for district plan purposes. The submitter stressed the importance of the FINCO framework, emphasising the technical and legal challenges involved in developing and updating FINCOs.
- 3.168 North12 submitted that FINCO provisions can only occur by the process prescribed in Schedule 1, clause 31 of the RMA and the proposals before the IHP run contrary to that prescribed approach. Instead, the submitter asserts that the approach taken by Council is unlawful, and undemocratic as it steps outside the bounds of the RMA by incorporating material that is not permissible or prescribed by the Act and further that it evades proper procedure and opportunity for examination and scrutiny.

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

- 3.169 The submitter contended that the overarching test for FINCOs was whether the Council was able to evidentially demonstrate that there is additional planned new or improved infrastructure required, over and above what was previously planned when existing FINCOs were determined. If the Council could not satisfy this test, in its submission, North12 argued that the proposed changes to FINCOs had no lawful basis²¹. The submitter's view is that the Council did not meet this test and accordingly the FINCO proposals have no basis.
- 3.170 North12 considered the proposals were legally flawed and it urged the IHP to be mindful of making a recommendation that further compounded the submitters concerns, stating:

While it may be outside the scope of PC92 to resolve these issues, the IHP should be aware of those concerns and, if it shares those concerns, should not compound them. Put another way, the IHP should not make an existing unlawful state of affairs more unlawful²².

- 3.171 The submitter suggested that a forensic examination was needed to fully understand the consequences of the FINCO provisions, and that expert conferencing should follow such examination.
- 3.172 Ms Stubbing for the Council argued that Council witnesses (Mr Clow on basis and rationale; Mr Manihera on infrastructure schedules; and Mr Barnett on population projections and growth proportion recovery model) established that Western Bay of Plenty District Council

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

²² Representations for North12, Page 3, Para 7

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

- 3.173 Financial contributions are collected for the specified purpose and are done in accordance with the assessed changes to both Section 11 and the structure plans. Inputs to the formula are updated annually through the Annual or Long Term Plan processes (and are subject to the consultation requirements of the LGA). Council maintains that it is important to ensure the proposed provisions are most appropriate for the collection of the required financial contributions.
- 3.174 We accept and adopt that argument and deal with the detail of the PC92 FINCO proposal below.
- 3.175 The IHP's overarching view is that the opposition to proposals relating to FINCOs was not insurmountable. Submissions received were on the following themes:
1. Purposes of collecting FINCOs;
 2. Collection of FINCOs at building consent stage;
 3. Calculation of FINCOs and rule structure; and
 4. Retirement villages.

These topics are summarised below:

Purpose of FINCOs

- 3.176 The proposed plan recommended the collection of financial contributions at building consent stage, departing from the operative plan approach, where they are collected as part of the resource consent process.
- 3.177 The notified plan change included proposed changes to the criteria for the assessment of financial contributions, including amendments to the description of the infrastructure networks and ecological values that the FINCOs would protect.
- 3.178 Through the presentation at the hearing, the protection of cultural values in the Ōmokoroa peninsula were raised by Pirirākau. The potential for adverse cultural impacts is likely to increase with intensification of residential development on the peninsula and the relief sought relates to the mitigation of those impacts. The IHP therefore deliberated on the inclusion of the protection of cultural values as part of the purpose for which FINCOs are collected.

Collection at building consent stage

- 3.179 The notified plan change also proposed amending the provisions for the Ōmokoroa and Te Puke area such that FINCOs were collected for specific infrastructure needs (water supply and an intersection upgrade). FENZ and Waka Kotahi submitted in support of that approach.
- 3.180 As pointed out by the reporting officer in their s42a report, due to the new rules introduced by the MDRS, a second and third dwelling on the same site will no longer require resource consent. It is therefore necessary to collect contributions from those developments as part of the building consent process. This rule would apply only to one or two additional residential units on the same site and not to other activities for which FINCOs are collected.
- 3.181 Kāinga Ora pointed out in their submission that some of the provisions are effectively duplications of other provisions in the plan. In their view, the note explaining that the first unit does not pay financial contributions (as that contribution is collected as part of the subdivision consent)(11.5.3(a)(i)), as well as the clauses stating that FINCOs are assessed and imposed at building consent stage and payable prior to issue of consent (11.5.3(b)(vii) and(viii), respectively), are unnecessary and may be removed.
- 3.182 The Council reporting officer has agreed with that view and recommended that those clauses be deleted from the amended plan and we concur.

Calculation of FINCOs and rule structure

- 3.183 Under the operative plan, FINCOs were charged based on an expected density of around 12 dwellings per hectare. There was concern that development that exceeded 15 dwellings per hectare would put significant pressure on the existing infrastructure, which had not been designed for the higher densities. The plan therefore provided for a 'special assessment' for applications where the density was 16 dwellings/ha or greater. This allowed Council to consider the capacity of the existing infrastructure and whether an upgrade would be necessary to accommodate the increased density and to recuperate that cost through development contributions.
- 3.184 The proposed plan sought to increase that density to 15 dwellings per hectare, or up to 30 dwellings per hectare in certain parts of the Ōmokoroa Structure Plan. It proposed to also collect financial contributions based on a per hectare rate for development of one or two dwellings on the same site and for larger developments. Council included in the amendments a new calculation for FINCOs based on the new expected residential densities and anticipated requirements for infrastructure to service those areas.

- 3.185 An additional rule (11.5.4) sought to apply a flat rate of one household equivalent (“HHE”) for “One or two additional lots not for the purpose of the construction and use of residential units from sites of less than 1,400m² in the Ōmokoroa and Te Puke Medium Density Residential Zones”.
- 3.186 A range of submissions was received on the topic. Jace Investments submitted in support of a per hectare application of financial contributions, with Ōmokoroa Country Club, RVA and North Twelve Ltd submitting in opposition. FENZ submitted in support of increased financial contributions where intensification increases above the anticipated level.
- 3.187 In addition, Kāinga Ora submitted that the structure of the rules relating to financial contributions could be difficult to interpret and should be redrafted to make the rules clearer and simpler.
- 3.188 A number of submissions were also made on the definition of ‘developable area’. These submissions requested that the definition exclude local purpose stormwater, neighbourhood reserves and internal public roading.
- 3.189 The recommendation from the Reporting Officer, Mr Tony Clow, remains to apply FINCOs based on a per hectare anticipated yield. As discussed in submissions, the IHP agrees with Council’s legal position that it has the mandate to vary rules about FINCOs, as they apply to the Ōmokoroa peninsula and Te Puke.
- 3.190 In response to those submissions, Mr Clow has recommended a change to the rule structure (though not to the thresholds and formulae for calculation of FINCOs). The structure clarifies the suite of rules and removes unnecessary duplication. Mr Clow has recommended retaining the calculation on a per hectare basis, now including subdivision of lots under 1,400m². A new table shows anticipated yields (the basis for the per hectare FINCO calculation) for the different zones.
- 3.191 Mr Clow also explained that the thresholds set in the calculation of new site area allow for 25% of the gross area to be allocated for roads, water infrastructure and reserves while still meeting the anticipated densities. Therefore, those areas have already been excluded in the calculation and to exclude them again in the definition of “developable area” would affect densities and total financial contributions and would result in a shortfall in financing of the necessary Council infrastructure.

Retirement Villages

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

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

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

Analysis and recommendations

Purpose and Formula for FINCOs

- 3.194 The IHP considers there to be a deficiency within the formula that determines the levels of FINCOs to be charged, specifically the ecological protection FINCO. The current overarching approach to the formula has a strong focus on hard metrics such as yields and lot sizes. This is perhaps partly the reason why FINCOs have been traditionally used as a mechanism to fund infrastructure despite the opportunity to include applying contributions to things such as the protection of ecological values. However, the IHP notes there may be benefit in extending that framework to include Māori values or offsetting the full spectrum of adverse effects. It is noted that scope is not available to address this matter within these recommendations. However, the IHP would suggest consideration of these issues in any future decisions or subsequent plan changes addressing financial or development contributions.
- 3.195 The deficiency in FINCO provision is that it lacks adequate consideration of ecological values, or the services that a well-functioning environment provides to communities. Authorities have a duty to achieve integrated management. In the context of FINCOs, robust understanding of factors such as ecological deficit and how to quantify such loss, as well as quantifying the cost associated with repairing such outcomes will become more and more urgent.
- 3.196 The IHP suggests that the ecological FINCO be amended to quantify and account for ecological services impacted by intensification.
- 3.197 The IHP suggests widening the scope of the "ecological protection" purpose of financial contributions to incorporate the cultural and ecological priorities of mana whenua into the purposes of financial contributions, in order to mitigate the effects of growing urbanisation on the values of mana whenua.

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

11.4.3 ~~Ecological~~ Protection of ecological values

- (a) Financial contributions for protection of ecological values ~~protection~~ shall be charged on;
- subdivisions in the Rural, Rural Residential, Lifestyle, Future Urban, Residential and Medium Density Residential Zones;
 - land use consents for additional dwellings or minor dwellings
 - building consents for one or two additional residential units in the Ōmokoroa and Te Puke Medium Density Residential Zones.

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

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

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

Except that:

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

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

Collection at building consent stage

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

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

Calculation of FINCOs and rule structure

- 3.201 Having reviewed the revised rule structure for financial contributions as set out in the s42a report, the IHP agrees that the new structure represents an improvement, making the rule suite easier to navigate and easier to understand. Although the rules being amended also relate to other parts of the district, the thresholds and calculations as they relate to those other areas remain unchanged.
- 3.202 After deliberations, the IHP also agrees with the officer's view that a per hectare application of FINCOs is lawful, efficient and practical. The calculation of appropriate levels of finance for infrastructure were based on the anticipated densities enabled by the plan. The per hectare calculation both reinforces the anticipated densities and ensures that sufficient development contributions have been collected to cover the cost of the necessary infrastructure. Where the anticipated densities are exceeded, the IHP agree that the special assessment is still appropriate, to ensure that there is not a shortfall between the contributions collected at the cost of the upgrade to infrastructure.
- 3.203 The IHP also agrees with Mr Clow that the thresholds for FINCOs in the plan have allowed for the allocation of space for roads, reserves and other infrastructure. The restructure of the FINCO rules has also removed reference to developable areas in Section 11. The IHP therefore agree that the reference to Section 11 in the definition of 'developable area' can now be removed.

FINCO for Retirement Villages

- 3.204 Following substantial discussion in the hearings and subsequent discussion, the IHP accepts that it is appropriate for retirement villages, having a lower occupancy rate per dwelling, to pay a lower level of financial contributions. The incentives remain for retirement villages to use space efficiently, in whatever zone they are located in, but the IHP is satisfied that the demand for Council services per dwelling in a retirement village is substantially lower than for a standard dwelling.
- 3.205 The IHP therefore agrees that the FINCO rate for retirement villages should be set at 0.5 household equivalents (HHE) per dwelling.

SECTION 12 - SUBDIVISION

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

FENZ submissions

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

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

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

Water supply

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

Stormwater

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

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

Road connections

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

Ōmokoroa Structure Plan - Francis Road Industrial zone

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

PROVISIONS FOR RETIREMENT VILLAGES

Legal submissions

- 3.215 Mr Hinchey argued for specific and comprehensive provisions for "retirement villages". There was no direct legal challenge to that request. However, Mr Hextall in rebuttal evidence for WBoPDC identified a 'philosophical difference' between the Council Officers and the RVA and Ryman experts as to whether "specific age-based" provisions are necessary"²³.
- 3.216 Mr Hinchey opined "The IHP is not tasked with choosing a philosophy. Rather, the IHP is tasked with implementing the NPS-UD and Enabling Housing Act, in light of the evidence presented to it PC92 must provide clear directions to decision-makers, and minimise the issues to be resolved at the consenting stage.
- 3.217 The RVA and Ryman team have presented extensive evidence on the ageing population, the desperate need for appropriate housing and care for older persons and the consenting challenges that retirement villages face. In that sense, a significant resource management problem affecting a large proportion of the district's older population has been identified that the planning system needs to address.

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

- 3.218 The question is what is the appropriate planning response. It is submitted that the amendments sought by Ryman and the RVA directly address the problem. In doing so, they will better achieve the NPSUD objectives, including enabling all people and the community to provide for their social, economic and cultural wellbeing and in particular the health and safety of older people. The IHP must provide specific planning provisions for retirement villages in PC92²⁴.
- 3.219 The IHP accepts that specific provision should be made for retirement villages.
- 3.220 We conclude it is open to us to include the proposed rule in our recommendations on PC92, and deal with this matter (including an appropriate “trigger mechanism”) under a specific heading later in this report.

Medium Density Residential section labelling

- 3.221 The IHP has considered the issue of the duplication of zone names in the proposed plan. The use of two ‘Medium-density residential zones’ in two separate sections of the plan is potentially confusing and unnecessary, as submitted by Kāinga ora and supported by KiwiRail in further submissions.
- 3.222 The reason that the issue has arisen is that there is currently a ‘Medium-density residential zone’ in the plan. This zone applies to land in Ōmokoroa and Te Puke, as well as Katikati and Waihi Beach. The use of this zone in the Western Bay of Plenty predates the MDRS, and the zone provisions therefore do not align with the MDRS and NPS-UD.
- 3.223 A submission by RVA requests that a single MRZ be adopted and applied across the region, which would apply the rules and standards of the MDRS to Katikati and Waihi Beach as well as Ōmokoroa and Te Puke. That request was opposed by Waka Kotahi in further submissions.
- 3.224 As pointed out by Mr Hextall in the s42a report²⁵, applying the new standards to Katikati and Waihi Beach would not be consistent with the principle of natural justice, since residents in those towns would not have anticipated the change applying to them and have not been given a reasonable opportunity to engage in the plan-making process.
- 3.225 In the 2018 census, Katikati and Waihi Beach had populations of less than 5,000 people. According to MfE guidance, they are therefore not considered to be “relevant residential zones’ and there is therefore no compulsion to apply the MDRS to those towns, unless the local authority intends them to become part of an urban environment).

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

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

- 3.226 It is the position of Council that Katikati and Waihi Beach are not considered to be 'urban environments' under the MDRS as they do not constitute current or anticipated housing and labour markets of more than 10,000 people. As discussed elsewhere, the IHP has a slightly different view, but comes to the same conclusion. In our view, those towns cannot be considered to be part of the 'urban environment' of Tauranga in the way that Ōmokoroa and Te Puke can, because they are too far away for considerable proportions of residents to commute to Tauranga regularly.
- 3.227 In relation to the use of two differing sets of provisions for the MRZ, the IHP agrees with the recommendation from Mr Hextall that the plan should contain two subsections of Chapter 14 Medium Density Residential, but that the names be amended to make the distinction clearer. The provisions of the MDRS are not to apply to Katikati and Waihi Beach.
- 3.228 This may result in only a minor change to the structure, since the two sets of provisions are completely different. The two sub-sections will both sit below the overarching Chapter 14. Beyond that however, the sub-sections will be separate from one another.

Explanatory Statement

- 3.229 Seven parties made 13 submissions or further submissions on the explanatory statement to Section 14A. Mr Hextall has made recommended changes based on those submissions. The IHP notes that the changes are minor and consistent with (or mostly consistent with) the changes sought in submissions.
- 3.230 The IHP accepts Mr Hextall's recommended amendments as provided in the s42A report²⁶.

Significant issues

- 3.231 At notification, the position of the Council was that the significant issues for the existing medium density residential zone were equally applicable to the specific medium density residential zones in Ōmokoroa and Te Puke.
- 3.232 Following submissions from five parties, the recommendation in the s42a report is to include a new set of 'Significant issues' specific to the Ōmokoroa and Te Puke MRZ, with draft issues based on submissions as set out in the report²⁷.

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

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

Objectives

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

Urban form (Objective 14A.2.1.4)

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

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

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

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

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

Earthworks (Objective 14A.2.1.6)

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

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

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

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

Policies

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

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

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

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

Ōmokoroa/ SH2 intersection - overview of transport level of service

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

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

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

Activity status

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

3.250 Waka Kotahi provided some useful maps in this regard, including a proposed future plan for the grade separation at the Ōmokoroa/ SH2 intersection²⁸.

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

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

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

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

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

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

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

with the accepted planning principle that “... an activity should be regulated to the least extent necessary to address the environmental effect of concern”²⁹.

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

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

- (a) the parties have agreed that it would be appropriate for there to be a rule that requires resource consent once the maximum capacity of the SH2/ Ōmokoroa Road intersection is reached.
- (b) The proposed rule raises a potential legal issue in terms of whether the state highway should be considered as a qualifying matter. Waka Kotahi requested the intersection improvements be included as a qualifying matter to address safety concerns.
- (c) It is open to the IHP to consider that it has sufficient evidence (as required by section 77J) to provide for the state highway to be a qualifying matter.
- (d) It is important that potentially affected parties have the opportunity to address qualifying matters through the IPI process. In addition to the Waka Kotahi submission requesting a new qualifying matter, the relief sought to address traffic safety issues associated with the SH2/ Ōmokoroa Road intersection attracted a number of further submissions which opposed a rule restricting development³⁰.

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

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

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

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

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

Objective 4B.2.1 (existing)

- (a) To provide an integrated, efficient, safe and sustainable transportation network that supports the social and economic wellbeing, and land use pattern of the sub-region as defined in this District Plan and that maintains or enhances the regional strategic linkages.
- (b) To provide for more efficient land use, development and subdivision of existing areas in a way that recognises and integrates with the functions of different road types, transport modes and the defined transportation network.

Policy 14A.2.2.19:

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

Restricted Discretionary Activity Rule 14A.3.3(g)

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

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

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

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

Matters of discretion

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

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

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

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

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

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

Objective 4B.2.X [new]

A high level of land use and transport integration, including active modes and public transport, supported by a safe and efficient transport network.

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

SECTION 16 - RURAL RESIDENTIAL ZONE

Stormwater

- 3.265 Mr Hicks made a submission opposing a blanket 15% impermeable surfacing for all lots in the Rural residential zone, pointing out that this would be very restrictive for small properties in the zone.
- 3.266 Council officer has agreed that allowance should be made for small lots and considered using a 30% impermeable area or a fixed 450m² area for those lots under 3000m².
- 3.267 The IHP agrees that the fixed 450m² is both practical and addresses inequities between properties on either side of the 3000m² threshold.

Wastewater connection

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

16.4.2 - Subdivision and Development (See also Section 12)

c. Ōmokoroa

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

SECTIONS 19 & 20 - COMMERCIAL AND COMMERCIAL TRANSITION ZONES

- 3.269 Kāinga Ora, through the planning evidence of Ms Tait, supported by the economic evidence of Mr Osbourne, sought to increase the height in the Te Puke Commercial Zone from 12.5m to 24.5m. In her opinion this height adjustment will increase the feasibility of development in the centres, which is the most efficient location for development, including residential development, to occur. The IHP notes this request for additional height in the Commercial zone deviates from Kāinga Ora's original submission, which was seeking a High Density Zone for Te Puke. The latter is no longer being pursued for Te Puke.
- 3.270 Ms Tait elaborated on this in paragraphs 10.2 – 10.7 of her evidence, where she considered that the Ōmokoroa and Te Puke centres are a “NPS Town Centre Zone equivalent”. This has not been disputed by Council reporting officers, who consider that Policy 3(d) of the NPS-UD is relevant for Plan Change 92 as there are equivalent town centre zones in Ōmokoroa and Te Puke. While both Kāinga Ora and the Council appear to be in agreement that Policy 3(d) is relevant, in Ms Tait's opinion, the Council has failed to determine the commensurate levels of building heights and densities, as required by the NPS-UD, and apply these to the centre and surrounding land.
- 3.271 Mr Osbourne, on behalf of Kāinga Ora, appears to consider that PC92 is not enabling enough development opportunity through constraining height, particularly around Te Puke centre, as that has a population of approximately double that of Ōmokoroa. At paragraph 24 of his evidence, he states that the zone height of 12.5m in Te Puke places a significant constraint on the ability for residential activities to be located within the Town Centre. At paragraph 26, he suggests that in order to give effect to Policy 3(d), the heights and building densities within and around commercial centres (including town centres) need to be considered as part of this plan change process. At paragraph 28 he goes on to state that without the increase in height, the Te Puke Town Centre would essentially have the same enablement as the residential zone which is contrary to the objectives and purpose of the NPS-UD.
- 3.272 Both Ms Price and in particular Mr Hextall, for the Council, address the request for an increase in building height in their rebuttal evidence. Leaving issues of scope aside, at paragraphs 150-151 of his rebuttal evidence, Mr Hextall notes the Council has commenced the Te Puke Spatial Plan project, with a community-led engagement process planned for the last quarter of 2023. It is likely this will result in an additional plan change to the District Plan. While at paragraph 155, Mr Hextall appears to consider there is merit in enabling more intensive development within urban centres, he concludes at paragraph 157 that he does not support the proposed changes for Te Puke, because he considers it more appropriate that this be addressed through the Te Puke Spatial Plan project and any subsequent plan change(s).

- 3.273 Ms Stubbing, in her opening submissions for the Council, was of the view that PC92 did not alter the status quo for the Commercial Zone as it relates to Te Puke. In her view, the changes sought by Kāinga Ora, if approved, would be to permit a planning instrument to be amended without real opportunity for participation by those potentially affected.
- 3.274 In her reply submissions, Ms Stubbing reiterated that position, stating that even if Mr Matheson was correct in his view that increase in building heights could be considered “on the plan”, natural justice considerations are important. In her view, there are a number of parties Kāinga Ora failed to consider in their request to increase the building heights and those potentially affected parties should be allowed the opportunity to participate in terms of what is appropriate for the town centre.
- 3.275 Mr Matheson for Kāinga Ora contradicted Ms Stubbing’s view that higher height limits and greater intensification in Te Puke’s town Centre was out-of-scope. Ms Stubbing argued that because greater density in the town centre was not specifically included within PC92 as notified, they were out-of-scope due to natural justice considerations, the general public not having had the opportunity to consider the greater heights and make submissions. She also pointed out that a spatial plan was being prepared and any changes coming out of that spatial planning process would be introduced later. Mr Matheson argued for a wider interpretation relying on s80 and Clause 99, saying the IHP should recommend greater height and intensification provisions in the town centre³¹.

Analysis and Considerations

- 3.276 The IHP has considered this request in light of:
- (i) whether the request is “on the plan” and the IHP has scope to recommend changes;
 - (ii) the natural justice aspects of the request given it was made through evidence, rather than in a submission;
 - (iii) whether not increasing the height of the Te Puke Commercial zone would prejudice development potential within the town centre in advance of a spatial plan and subsequent plan change.
- 3.277 There were no submissions to PC92 seeking additional height to the Commercial Zone in Te Puke prior to the request set out in the evidence of the planning and economic witnesses for Kāinga Ora. Notwithstanding that Mr Matheson, representing Kāinga Ora, argued that the request to increase the height is “on the Plan Change”, based on the IPI as defined by s80E. Mr Matheson argued for a wider interpretation relying on s80 and Clause 99, saying the IHP should recommend greater height and intensification provisions in the town centre (Matheson, s2.e). Furthermore, in Mr Matheson’s view, s80G(1)(a) makes it

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

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

Conclusion

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

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

Community Corrections activities

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

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

Retirement Villages - Relief sought by RVA/Ryman

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

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

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

- 3.284 Council witness Tony Clow explains that the definition of retirement village is a matter that is contemplated by the National Planning Standards for introduction into district plans by 2026. In the IHPs mind, there is some benefit to revisiting this issue with RVA/Ryman closer to that 2026 timeframe. The IHP expand on this further below when we address the retirement village planning framework relief sought by RVA/Ryman.
- 3.285 The IHP have given careful thought to the specific relief sought by the submitters (R&R) involving an entire planning framework specifically for retirement villages. The inclusion of any planning provision that involves providing a particular group of people, which may be regarded as seeking a form of priority based on the status of that group of people, for instance, elderly people with a preference for retirement village living, requires careful examination. The tests that the IHP applied in our deliberations were: (1). what is the resource management principle that underpins the provision and what is the issue the provision serves to address. (2). does the Act preclude such provision. (3). would accepting the provision result in the creation of a priority for the particular group or end-user. Put another way, does the provision turn off the status of the activity and turn on the status of an applicant, and (4). has the proper procedure been followed for its inclusion (if it were accepted).
- 3.286 In the end, the IHP take the view that, procedurally, an entire framework is not appropriate to incorporate into the district plan by way of an IPI and therefore it does not form part of the IHP's recommendations to retain or accept such. Underpinning our recommendation is the strong view that the public should have an opportunity to articulate their views on adding what is effectively a whole new framework to the DP and that is best achieved via the next review of the DP. The IHP also found that the provision ought to be subjected to the full ambit of plan making processes and legal tests to ensure the creation of a prioritised right does not inadvertently become a consequential product of any decision, particularly one made in the context of an IPI.
- 3.287 That said, the IHP sees merit in the concept and has recommended that parts of the RVA/Ryman relief form part of the PC92 provisions and outcomes. As the IHP sees it, recommending some incremental steps towards a framework such as that sought by RVA/Ryman is appropriate to do by way of this IPI and a positive solution to going part-way to tackling a fundamental aspect of the RVA/Ryman relief and wider objective for a national consistent planning approach. RVA/Ryman representatives should not be overly disappointed with this outcome. The IHP wish to make it very clear that it sees significant merit in bespoke frameworks, and in particular where the architecture of such frameworks

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

SECTION 21 - INDUSTRIAL ZONE

- 3.289 The Industrial zone is an existing zone in the Operative District Plan that provides for industrial and ancillary activities in a number of settlements throughout WBOP District. In the context of PC92 there is further land proposed to be rezoned to Industrial in Ōmokoroa but no changes proposed for Te Puke.
- 3.290 The structure plan for Ōmokoroa shows a proposed Industrial zone on the southwestern side of Francis Road with a medium-density residential zone on the northeastern side. In line with the Structure Plan PC92 proposes an extensive area to be zoned Industrial on the south-western side of Francis Road and on some areas of land owned by Norm and Maureen Bruning adjacent to existing Industrial zoned land.
- 3.291 As notified, there were some limitations put on the industrial zone by way of existing applicable performance standards from the industrial zone and general sections. However, the IHP is of the view that these existing standards were not adequate with respect to matters such as noise, dust or traffic. The structure plan for Ōmokoroa would also allow for development of that industrial zone to access Francis Road along most of its length.

Consultation - Submissions

- 3.292 A small number of submissions and one further submission were received in relation to the proposed extent of Industrial Zone in addition to specific submission points relating to rules within the zone. Two of the submission points were in support of the application of the zone to their landholdings:
- 3.293 Foodstuffs North Island Limited (submission #28.1) supports the Industrial zone as it relates to their landholding at 492 Ōmokoroa Road.
- 3.294 Norm and Maureen Bruning (submission #31.1) also support the retention of Industrial zone over part of their land as shown on the planning maps. The IHP notes that Mr and Mrs Bruning also submitted for removal of the new Natural Open Space zone and replacement with the Industrial zone (submission #31.3).
- 3.295 Other submissions opposed the industrial zone, many of those making specific reference to the issue of conflicting land uses on Francis Road. These are as follows:
- 3.296 Robert Hicks (submission #4.8) has pointed out that locating Industrial opposite medium density residential is both uncommon and inconsistent with best practice urban development. In his view, while a physical buffer of plantings has been included in the structure plan, this would not address noise or traffic effects on the residents across the road.

- 3.297 Penny Hicks (submission #16.2) opposes the Industrial zone adjacent to the MDR zone along Francis Road, citing poor planning practice together with concerns about amenity, traffic, noise, pollution and safety. She suggests relocating the industrial zone or mitigating its impacts through a linear park on the residential side of Francis Road and a single point of entry to the Industrial zone from the Ōmokoroa Road end to minimise conflicts with residential land uses.
- 3.298 David and Diana Bagley (submission #27.1) and Susan Phinn (submission #36.1), oppose the extent of the Industrial zone on the south-western side of Francis Road. Similar to Ms Hicks, they cite traffic and pollution as key factors. The relief sought is to expand the area of industrial land along the southern side of Ōmokoroa Road to encompass the retail shop and yards developed by ITM. They do not explicitly state what alternative zoning is sought for the land on the southwestern side of Francis Road
- 3.299 Sylvia Oemcke (submission #37.1) similarly opposes the Industrial zone opposite MDR on Francis Road, specifically on 21 and 51 Francis Road, as this will generate adverse effects on ecological and water quality values as well as create traffic, noise pollution and safety concerns for existing and future residents. She seeks that these 21 and 51 Francis Road retain their Rural Residential zoning, offering instead that 467, 467A and 425 Ōmokoroa Road be rezoned Industrial. This is supported by BOPRC (FS #67.36), who also seek specific setbacks from watercourses or wetlands for buildings within the Industrial zone.
- 3.300 Ian Yule (submission #45.1) opposes the proposed additional Industrial Zones within Ōmokoroa. It is not explicitly stated what alternative zoning is being sought.
- 3.301 Angela Yule (submission #62.1) opposes the proposed additional Industrial Zone on the south-western side of Francis Road. Her submission includes a marked up map, which suggests new alternative areas on Ōmokoroa Road located at 476, 474, 468, 454 and 452 Ōmokoroa Road and 7 Prole Road (extrapolated from map provided in support of the submission). It is not explicitly stated what alternative zoning is being sought for the Industrial Zone at the south-western side of Francis Road.
- 3.302 Christine Prout (54.1) opposes the proposed Industrial Zone on the south-western side of Francis Road. Relief sought is the rezoning to Industrial of new areas on the south east side of Ōmokoroa that is currently “rural land” or additional land on Ōmokoroa Road instead. She also requests that the proposed Francis Road Industrial Zone area is changed to “future commercial” and recreational open space.
- 3.303 Russell Prout (65.2) opposes the proposed Industrial Zone on the south-western side of Francis Road. It is not explicitly stated what alternative zoning is being sought.
- 3.304 The section 42A report does not recommend any changes to the proposed Industrial zone boundaries as notified.

- 3.305 The IHP heard evidence from Mr Matthew Norwell on behalf of Foodstuffs North Island Limited in support of the Industrial zone on their landholding at 492 Ōmokoroa Road, which is located opposite existing industrial zoned land. In his opinion the proposed industrial zone over this site will support a number of components of a well-functioning urban environment including:
- Enabling an increase in land that is available for industrial business sectors;
 - Promoting good accessibility between housing, jobs, community services and open spaces by enabling more people to work in accessible locations, which also supports a reduction in greenhouse gas emissions through reduced car dependence;
 - Supporting the competitive operation of land and development markets by providing a broad enabling zone framework and providing flexibility for the market to take up those opportunities; and
 - Being resilient through the likely current and future effects of climate change through flooding and promoting a compact and efficient urban form.
- 3.306 There was general agreement between the Council and the submitter that this site retain the proposed Industrial zoning and that was not in dispute by any other parties.
- 3.307 The section 42A report gives consideration to the submission by Sylvia Oemcke with respect to the impact of Industrial zones on ecology especially the Waipapa river. This was supported by a further submission by BOPRC seeking a 10m setback of all buildings, structures and impervious surfaces from permanent watercourses and wetlands. The Council's reporting officer notes that the extent of the Natural Open Space zone has been reviewed and increased in the vicinity of the Waipapa river, which creates an increased buffer between potential industrial activities and the watercourse. However, it is acknowledged that PC92 does not include a setback to address the interface of the Natural Open Space zone with the Industrial zone. Accordingly, the Council's reporting officer recommends a new rule in 21.4.1.b – Yards and Setbacks of Minimum 10m where a property adjoins a Natural Open Space zone.
- 3.308 The s42A report also responds to a primary submission point by BOPRC (submission #25.22) to add a specific reference to "treatment" within rule 21.6.4(b).
- 3.309 The recommended amendments to 21.4.1(b) and 21.6.4(b) appear to be acceptable to the submitters and therefore the IHP agrees with those amendments as outlined in purple and underline below:

Section 21.4 Activity Performance Standards

21.4.1 b. Yards and Setbacks

All buildings/structures

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

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

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

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

Outstanding Issues at time of Hearing

Bruning Land

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

Francis Road

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

Analysis and Considerations

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

- 3.313 The IHP considers there is significant potential for conflict between the industrial and residential land uses. It was not satisfied during the hearing that the conflicts could be adequately mitigated in favour of the broader Ōmokoroa community.
- 3.314 In particular, the pinch point within the Industrial Zone at the location of the Challenge Ōmokoroa service station would more than likely require industrial traffic to both enter and exit Francis Road, generating conflict and potentially significant risks to the community.
- 3.315 On this basis, and having heard the views of submitters, the IHP has formed a view that the Industrial Zone advanced by Council to the west of Ōmokoroa Road be reduced in scale to encompass only the area from Ōmokoroa Road to the existing intersection of Francis Road and State Highway 2.
- 3.316 Additionally, the entry and exit to the Industrial Zone shall only occur from the Ōmokoroa/Francis Road roundabout. This allows almost complete separation of industrial and residential traffic, the ability to appropriately buffer the Industrial Zone from urban communities without creating severance issues and is at a scale commensurate with the activities needed to support the Ōmokoroa community and surrounding area.
- 3.317 The remainder of the zone proposed by Council to the west of Ōmokoroa Road (specifically, the land to the west of the existing Francis Road intersection with State Highway 2 including Challenge Ōmokoroa service station) shall remain Future Urban Zone. This does not preclude a future plan change process which fully considers the impacts and issues associated with expanded industrial activity. The IHP notes the definition of 'industry' in the district plan as being very coarse. It effectively allows for a range of industrial use from heavy industrial through to those activities that are likely to be compatible with the Ōmokoroa community. The IHP does not have scope to address that definition, but suggests Council addresses this matter in future plan change processes. It is the view of the IHP that Council cannot rely on the view expressed by Council officers (at the hearing) that incompatibly heavy industrial activity is unlikely to occur.
- 3.318 The IHP supports the creation of a buffer on Francis Road for the purposes of separating the Industrial Zone for amenity purposes, particularly in relation to visual, noise and safety effects. There is a clear expectation that a bund and associated landscaping is established and maintained to address the effects identified prior to development for industrial purposes. For clarity, the IHP's recommendation to revert the land to the west of existing Francis Road intersection back to future urban would mean that the buffer would no longer be required along that portion of Francis Road.
- 3.319 It is important to the IHP that the establishment of an expanded Industrial Zone in Ōmokoroa is subservient to and provides for the needs and interests of the Medium-density Residential Zone.

- 3.320 The IHP note that this recommendation to revert some of the proposed Industrial Zone back to Future Urban and reducing the portion of Francis Road subject to the buffer, would require a number of consequential amendments. This includes revising the Planning Maps, Appendix 7 and rules within Section 12 – Subdivision and Section 15 – Future Urban. With regard to the latter, the IHP sees merit in retaining the proposed changes that generalised the Future Urban explanatory statement, issues, objectives and policies to apply to all relevant locations of the District but see it as necessary to revert to the operative rules specific for Ōmokoroa for access and stormwater management.
- 3.321 For the Bruning land, the Industrial Zoning is recommended to be as shown on the map entitled “Plan Change 92 – Zone Amendments – Lot 3 DPS 28670 – Natural Open Space to Industrial, Natural Open Space to Rural-Residential, Rural-Residential to Natural Open Space” dated 11/08/2023. This map is included in Attachment F – Supporting Maps under the heading of Plan Change 92 Rebuttal Evidence on Council’s Plan Change 92 webpage.

SECTION 24 - NATURAL OPEN SPACE ZONE

- 3.322 As stated in the s42A report, the Natural Open Space zone is a proposed new zone and section within the District Plan, applied to land within Ōmokoroa deemed as generally unsuitable for urban development due to constraints associated with topography and natural hazards.
- 3.323 The land included within the Natural Open Space zone comprises the gully system throughout the undeveloped part of Ōmokoroa. This is primarily zoned Future Urban. While much of this was identified in the Stage 3 Structure Plan, there are some areas zoned for Natural Open Space that were previously identified as Rural Residential, Industrial, or that are included within the NZTA designation for the proposed interchange and associated works.
- 3.324 The Natural Open Space zoned land as proposed generally aligns with and has been informed by the Ōmokoroa Gully Reserves Concept Plan, prepared by Boffa Miskell Ltd to inform the Structure Plan Stage 3 and included as Appendix 10 to PC 92. The Stage 3 concept plan identifies natural open space for the gully systems throughout the western part of what is known as the Stage 3 area. Notably, this does not include the gully systems on the eastern side of Ōmokoroa Road, nor does it include the gully systems within the area proposed by Waka Kotahi for the future interchange.
- 3.325 As stated within the concept plan, the stormwater management is the primary purpose of the gully reserve network, but it will also have value for open space recreation, pedestrian connectivity and habitat restoration. The IHP understands from the s32 and s42A reports that the land within the zone will primarily have stormwater management and/or coastal inundation functions but will also provide open space, natural character, ecological corridors, cultural values and potential public recreation opportunities.

Consultation - Submissions

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

- 3.328 Peter Linde (submission # 19.20, 19.31, 19.32 and 19.33) supported in part Section 24, but requested text changes to the Explanatory Statement, Significant Issues, Objectives and Policies to more accurately reflect the purpose of the Natural Open Space zone without unduly setting barriers and limitations to what can be considered appropriate use and activity within it. Jace Investments [FS 69.26] supported the submission to amend policies 24.2.2. BOPRC [FS 67.32] opposed the relief sought to Policy 24.2.2 seeking to retain 24.2.2.1 as notified and redraft 24.2.2.3 to confine to matters that can be controlled through district plan rules. Mr Linde (submission #19.34, 19.35, 19.36, 19.37) also supported in part, but requested specific wording changes to triggers for RD activities 24.3.3(a)(i) and deletion of 24.3.3(a)(iii) and sought wording changes to Matters of Discretion 24.5.2 and 24.5.3, but opposed 24.3.5 and sought its deletion.
- 3.329 In its own submission BOPRC (submission #25.46, 25.47, 25.48) supported in part the intent of policy 24.2.2.3, RD activities 24.3.3(a)(iv) and Matters of Discretion 24.5.2(b) but suggested redrafting to confine matters to obstruction, modification and diversion of overland flow paths and flood plains, which can be controlled through district planning rules.
- 3.330 Robert Hicks (submission #4.11) opposed Restricted Discretionary Activities within a floodable area and sought removal of 24.3.3. This was supported by Jace Investments [FS 69.27], in particular in relation to relaxing the earthworks limits.
- 3.331 Jace Investments and Kiwi Green NZ Ltd (submission #58.8) and Jace Orchards and Kiwi Green NZ Ltd (submission #59.1) opposed 24.3.5 non-complying activities and sought its deletion, instead making non-compliance with the structure plan a discretionary activity.

Points of Agreement

- 3.332 The s42A report outlines proposed text amendments to the provisions of the new Natural Open Space zone, in response to submissions. This includes greater clarity to the explanatory statement setting out the purpose of the zone, significant issues, objectives and policies, to better reflect the intent and function of the zone. Amendments to the activity list and matters of discretion are also proposed to both provide greater clarity and more practical provisions for existing rural land uses.
- 3.333 The provisions as recommended to be amended within the s42A report, have been largely agreed by submitters, with the exception of further amendments being sought by BOPRC as detailed below.

Outstanding Issues at time of Hearing

Bruning Land

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

Waka Kotahi

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

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

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

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

Analysis and Considerations

Cultural considerations

- 3.339 The Ōmokoroa Structure Plan Urban Design Cultural Overlay, prepared for the Ōmokoroa Structure Plan Stage 3, forms Appendix 6 to PC92. The intention of this was to reclaim and reinstate a Pirirākau cultural presence into Ōmokoroa. Retention and restoration of the gully systems are considered important for the practical application of cultural value and for strengthening the connection of Pirirākau to their Turangawaewae. The cultural overlay report outlines how the cultural values could be translated into practical amenity treatments including using the natural gully systems as passive reserves, opportunities for pedestrian and cycle connections, and restoring the natural environment, including indigenous vegetation.
- 3.340 While Pirirākau did not lodge a submission on PC92, as discussed elsewhere in this recommendation, the hapū holds mana whenua status over Ōmokoroa. The IHP heard in Ms Shephard's verbal presentation, on behalf of Pirirākau, that these gullies, or Awatere, have an important stormwater function and Pirirākau seeks protection of the gully system. Ms Shepherd considered that to date the gully systems have not been managed as intended, so Pirirākau seeks a comprehensive stormwater management plan that protects and enshrines mahinga kai as a compulsory value of the NPSFM.

Appropriateness of Natural Open Space Zone

- 3.341 Mr Collier, on behalf of the Brunings, is of the opinion that, by including matters ordinarily included in a standard 1st Schedule Plan Change process, PC92 goes beyond what Parliament intended when it required Council to adopt medium density residential standards (MDRS) necessary to fulfil the Council's obligations as a Tier 1 Council under the NPS-UD .
- 3.342 In Mr Collier's opinion, the Industrial, Open Space and Rural Residential zones are not relevant Residential zones under Section 77G and Policy 3 of the NPS-UD, because they do not provide for any residential dwellings .
- 3.343 Legal submissions by Ms Barry Piceno on behalf of Mr and Mrs Bruning support Mr Collier's thesis and contend that the ...Open Space zoning is not a relevant residential urban zone and is not consequential on a MDRS and that the IPI plan change process does not allow the Council to include a new open space zone .
- 3.344 Mr Collier does note at paragraph 5.14 of his evidence that Section 80E(1) provides for related provision (including new zones) to be included, but only in instances where these support or are consequential on medium density residential standards or policy 3 outcomes.

- 3.345 In his analysis, at paragraph 6.10 of his evidence he considers that Section 80E (b)(iii)(A) and (B) clearly set out that there must be a causal nexus between the outcomes of achieving MDRS or Policy 3.
- 3.346 Ms Stubbing in her opening legal submissions for the Council, was of the view that the circumstances in Ōmokoroa are unique in terms of the background and setting for the IPI. She submits that Section 80E(1)(b)(iii) allows Council to “amend or include ...zones, that support or are consequential on the MDRS or policies 3, 4 and 5 of the NPS-UD”. In her view, because there is no case law on the meaning of “support” or “consequential” in section 80E, using the ordinary meaning of these terms, the new zonings do “support” the MDRS and the greater intensification on the Ōmokoroa peninsula. Therefore, she considers the Natural Open Space zone falls within the permissible scope of an IPI under section 80E of the RMA.
- 3.347 Mr Hextall, as Council's reporting officer, is also of the opinion that the evidence of Mr Collier takes a narrow interpretation of the scope of the IPI. In his opinion, there is a rational relationship between supporting zones that, combined with the new medium-density residential zone, overall contribute to a well-functioning urban environment.
- 3.348 Ms Stubbing goes on to state at paragraph 4.13 that section 80E should be interpreted broadly and the list of “related provisions” specifically includes stormwater management, which is identified as a key purpose of the Natural Open Space zone.
- 3.349 At paragraph 4.17 Ms Stubbing draws reference to page 125 of the section 32 report noting the proposed Natural Open Space zone is described as being the “green lungs” to the urbanisation, zoned to “provide appropriate identification and direction to the areas of constrained land and considering their role in supporting the urbanisation of the area primarily through having a storm water management function, coastal interface role and potential public recreation capabilities”.
- 3.350 At paragraph 4.18 Ms Stubbing submits that the proposed Natural Open Space zone is a key support for, and complementary to the new MDR zone, because it provides storm water management, recreational opportunities and a buffer between other zones and the coast.

Impact of Designation

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

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

Ecological function of the Natural Open Space zone

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

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

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

Conclusion - New Natural Open Space zone

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

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

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

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

- 3.360 However, we agree with Mr Hextall that inclusion of “hydrological” in matters of discretion is unnecessary to enable WBOPDC to fulfil its functions in relation to stormwater reserves.
- 3.361 The IHP therefore accepts in part the relief sought by BOPRC, and recommends that the following provisions replace the proposed policy 24.2.2(3)

24.2.2 Policies

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

Application of the zone in relation to land within designation D181

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

SECTION 4 - SUMMARY

- 4.1 There exists a level of disappointment among the IHP in relation to the way in which tangata whenua matters were dealt with from the outset for PC92. In this regard, the IHP considered it necessary to reiterate its strongly held views concerning the rights and interests of tangata whenua, and mana whenua values and concerns.
- 4.2 In summary, the IHP express that the starting point must be from the position that recognises that in Aotearoa, New Zealand, tangata whenua have rights protected by Te Tiriti o Waitangi and that consequently the RMA accords tangata whenua with a special status distinct from that of interest groups, and members of the public. Perhaps more important is the need for Council and Council processes (such as PC92) to be responsive to tangata whenua. The outcomes of engagement need to be reflected within the planning provisions. Being able to demonstrably point to the way in which a process has recognised and provided for tangata whenua beyond a set of meeting notes would be an achievement that is reflective of a more meaningful, robust process and would assist Council both strategically and relationally.
- 4.3 The IHP has made a series of recommendations in regard to PC92. These recommendations are concluded within the statutory direction that required WBOPDC to address intensification within the urban communities of Ōmokoroa and Te Puke. This was a requirement set by national direction as WBOPDC is a Tier 1 Council.
- 4.4 The IHP addressed a number of reasonably complex issues, but considered the key matters requiring deep analysis to include:
- (a) financial contributions
 - (b) extent of the industrial zoning
 - (c) recognition of the broad range of values provided for with respect to the remaining Open Space
 - (d) addressing sensitivity for residential communities potentially impacted by other land uses, e.g. transport corridors, industrial land use etc.
 - (e) ensuring safety in the context of intensified residential land use adjacent to the state highway network and rail corridor. In this context, avoiding reverse sensitivity associated with pre-existing activities was an important consideration.
 - (f) future recognition and provision for Māori rights and interests within financial policy and operational frameworks.
 - (g) acknowledging the relationship between PC92 and the subsidiary Notice of Requirement for the Ōmokoroa Active Reserve.

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

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

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

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



Greg Carlyon



Pia Bennett



Lisa Mein



Alan Withy