

**Before Western Bay of Plenty District Council Hearings Commissioners**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of Plan Change 92 to the Western Bay of Plenty  
District Plan

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**STATEMENT OF EVIDENCE OF AARON COLLIER  
FOR N & M BRUNING (SUBMITTER 31)  
23 August 2023**

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## 1. Qualifications and Experience

1.1 My full name is Aaron Mark Collier.

1.2 I am a Consultant Planner and a Director of Collier Consultants Limited. Prior to establishing Collier Consultants in 2019 I was a Principal and Technical Director of Aurecon.

1.3 My qualifications are Masters' degree with Honours and a Post Graduate Diploma in Resources and Environmental Planning from the University of Waikato. I am a full member of the New Zealand Planning Institute (NZPI).

1.4 I have 28 years' experience working as a Local Authority and Consultant Planner. My predominant experience has been in the area of plan policy development and land use planning. I have prepared numerous Private and Council Plan Changes. I have provided planning evidence and advice in relation to a number of second-generation District Plans, including those for the Taupo, Tauranga, Rotorua, Thames-Coromandel, Western Bay of Plenty and Waikato Districts as well as the Auckland Unitary Plan. I was heavily involved in Council hearings and subsequent appeal processes for a number of these Plans. More recently I have been involved in a number of Intensification Planning Instrument Plan Changes (IPIs) introducing changes under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (the RMA Amendment Act 2021), to set new medium density residential standards (MDRS) and make other amendments that are set to change the future of housing development. My work includes submissions, expert conferencing and hearings on changes to the Hamilton City, Waikato District, and the Tauranga City Plans. In addition, I have also been involved in changes to the Bay of Plenty Regional Policy Statement (RPS) as Part of Change No.6 to the RPS.

1.5 In relation to Ōmokoroa, I was previously involved in Plan Change 62, 73, & 69 (Ōmokoroa urbanisation) along with subsequent appeals and associated designation processes. I am familiar with Ōmokoroa having been involved in a number of plan change processes as well as numerous large scale residential projects in the existing urban area and its surrounds over the last 25 years.

1.6 I regularly present evidence as an expert planning witness at other Council hearings the Environment Court, High Court and Boards of Enquiry.

1.7 I confirm I have read the "Code of Conduct for Expert Witnesses" contained in the Environment Court Consolidated Practice Note 2011. In particular, unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to

consider material facts known to me that might alter or detract from the opinions I express.

## **2. Scope of Evidence**

- 2.1 I was asked by N & M Bruning in July 2022 to assist them with preparing a submission on Plan Change 92.
- 2.2 My evidence addresses the key points as set out in the submission by N & M Bruning in relation to Council applying a Rural Residential, an Open Space, and an Industrial zone over the Bruning's land. My evidence also responds to a number of matters raised in the Section 42A Staff Report on Plan Change 92.
- 2.3 In preparing this evidence I have reviewed N & M Bruning's original submissions. I have also reviewed a number of similar submissions including those from NZTA and Kāinga Ora which have raised similar concerns. I have also reviewed redacted legal advice received by the Council on the scope of Plan Change 92.
- 2.4 The nature of the submission by N & M Bruning is that they have opposed or opposed in part the inclusion of a Rural Residential zone over part of their land along with the inclusion of an Open Space Zone over part of their land. They have supported the continued Industrial zoning.
- 2.5 My evidence considers whether any of the changes to zones proposed are provided for under Plan change 92 as an Intensification Planning Instrument.
- 2.6 I have also assessed and considered whether the Council can use an ISPP to amend or include provisions relating to financial contributions, papakāinga and related provisions in relation to the Brunings land, given that these must support or be consequential on the MDRS, and Policy 3 of the NPS-UD.

## **3. Background and Context**

- 3.1 N & M Bruning own land on the corner of State Highway 2 and Ōmokoroa Road. The site is legally described as Lot 3 DPS 28670 and is 20.2173ha in area. A plan showing the Brunings land is included as **Attachment A** to my evidence.
- 3.2 The site has a split zoning under the Operative District Plan, being a mix of Industrial Zone and Future Urban zone.
- 3.3 The site is currently part of a dairy farm and there are 2 Designations over the land as follows:

- D234 -identified as a Ōmokoroa Stormwater Management Reserve. The Requiring Authority is the Western Bay of Plenty District Council.
- D181 - identified as Roding, proposed State Highway 2 four laning. The Requiring Authority is NZTA/Waka Kotahi.

3.4 These Designations have been in place for many years and were rolled over from previous District Plans. The stormwater area includes a number of small gully areas which contain some wetland features although these have never been categorised as Significant Natural Areas (SNA's) There is a small area identified as a significant ecological feature (U14/135) located in the far eastern corner of the site adjacent to Tauranga Harbour.

3.5 NZTA/Waka Kotahi are currently in the process of widening their designation over more of the Brunings land, however an application for either a new or variation to the existing, Notice of Requirement has not yet been sought for this.

3.6 The sites zoning, designations, and the location of U14/135 are shown on the planning map included as **Attachment B** to my evidence.

3.7 There are no acquisition negotiations or agreements either with NZTA/Waka Kotahi or the Western Bay of Plenty District Council to acquire the land under either of the existing designations.

#### **4. Bruning's Submission**

4.1 The submission by N & M Bruning was in direct response to a change in the lands zoning on the planning maps notified as part of Plan Change 92. A copy of the planning map as notified is included as **Attachment C** to my evidence.

The Bruning's submission opposed or opposed in part the following:

- i) In relation to the proposed Rural Residential zone and the Industrial zone, the Bruning sought to retain the current Industrial zone but to delete the Rural-Residential zone within the structure plan area and replace it with a Residential zone. The reason for this is the Industrial zone shown is the same as the Operative District Plan. The rural residential zone is not an urban zone and therefore in my opinion is also not able to be a change which is enabled under the RMA Amendment Act 2021 or the NPS-UD. This will be further covered in the legal submissions of Kate Barry-Piceno on behalf of N & M Bruning.

- ii) The planning maps also show an area of Open Space (a new zone introduced through Plan Change 92), which again is not an urban zone or a related (such as a Residential or Commercial) zone that supports or is consequential to Medium Density Residential outcomes required by both the RMA Amendment Act 2021 and the NPS-UD.
- iii) The Brunings submission states also that it is inappropriate to apply this zone because it conflicted with the existing NZTA designation (D181), which is designated for roading purposes.

4.2 Prior to Plan Change 92 being notified and following the closing of submissions, I have had discussions with Council staff in relation to the incorporation of changes to zones on the Brunings land and the Council's scope to make these changes.

## 5. Relevant Statutory Considerations

5.1 The NPS-UD provides direction in relation to Tier 1 Council's to enable further growth through the creation of well-functioning urban environments. The NPS-UD requires that sufficient development capacity to meet housing and business land needs to support the wellbeing of people and communities.

5.2 The RMA Amendment Act 2021 requires medium density residential standards (MDRS) to be applied to specified urban areas so as to enable a wider variety of housing choice. The RMA Amendment Act 2021 requires the Western Bay of Plenty District Council as a Tier 1 Council to apply the MDRS to existing residential areas. In this instance the Council has chosen to apply MDRS to Ōmokoroa and Te Puke<sup>1</sup>. The MDRS requires that the Council enables intensification through those standards as set out in the Act for up to four dwellings, and for a restricted discretionary activity consent pathway for more than four dwellings. The RMA Amendment Act 2021 introduced what is effectively a new planning process that supports Council's implementing the intensification policies under the NPS-UD by giving effect to Policies 3 and 5 of the NPS-UD.

5.3 The key legislative requirements for Council's to apply the MDRS and to give effect to Policy 2 and 5 of the NPS-UD are set out in Section 77G of the Act as follows:

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<sup>1</sup> Despite reviewing all s.32 Analysis and the s.42A assessment, I have been unable to locate any supporting economic analysis which has determined development capacity for the District and in particular Omokoroa.

**77G Duty of specified territorial authorities to incorporate MDRS and give effect to policy 3 or 5 in residential zones**

- (1) *Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.*
- (2) *Every residential zone in an urban environment of a specified territorial authority must give effect to policy 3 or policy 5, as the case requires, in that zone.*
- (3) *When changing its district plan for the first time to incorporate the MDRS and to give effect to policy 3 or policy 5, as the case requires, and to meet its obligations in section 80F, a specified territorial authority must use an IPI and the ISPP.*
- (4) *In carrying out its functions under this section, a specified territorial authority may create new residential zones or amend existing residential zones.*
- (5) *A specified territorial authority—*
  - (a) *must include the objectives and policies set out in clause 6 of Schedule 3A:*
  - (b) *may include objectives and policies in addition to those set out in clause 6 of Schedule 3A, to—*
    - (i) *provide for matters of discretion to support the MDRS; and*
    - (ii) *link to the incorporated density standards to reflect how the territorial authority has chosen to modify the MDRS in accordance with section 77H.*
- (6) *A specified territorial authority may make the requirements set out in Schedule 3A or policy 3 less enabling of development than provided for in that schedule or by policy 3, if authorised to do so under section 77I.*
- (7) *To avoid doubt, existing provisions in a district plan that allow the same or a greater level of development than the MDRS do not need to be amended or removed from the district plan.*
- (8) *The requirement in subsection (1) to incorporate the MDRS into a relevant residential zone applies irrespective of any inconsistent objective or policy in a regional policy statement.*

5.4 In my opinion, section 77G deals with the incorporation of MDRS into the District Plan, requiring the Council to give effect to Policy 3 of the NPS-UD in residential zones.

5.5 A Residential zone is defined in Section 2 of the 2021 RMA (Enabling Housing Supply and Other Matters) Amendment Act as follows:

*“Means all residential zones listed and described in Standard 8 (Zone Framework Standard) of the National Planning Standard or an equivalent zone”.*

5.6 In the case of Section 77G, every relevant Residential zone is again defined as per Section 2 of the Amendment Act as:

(a) *means all residential zones; but*

(b) *does not include*

(i) *a large lot residential zone;*

(ii) *an area predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000 unless a local authority intends the area to become part of an urban environment;*

(iii) *an offshore island;*

(iv) *to avoid doubt a settlement zone.*

5.7 Section 77I sets out that the Council may make the MDRS and the relevant height or density requirements under Policy 3 less enabling where there are qualifying matters that are present. Plan Change 92 has identified a number of qualifying matters that apply to the development of the MDRS.

5.8 The District Council had been working for some time on a plan change for Omokoroa, which has been identified in both Smartgrowth and UFTI as an Urban Growth Area.

5.9 It appears that Council has tried to use Plan Change 92 which has been notified as an IPI under the RMA Amendment Act 2021 to merge a number of matters which are ordinarily required to be included in a standard 1st Schedule Plan Change process. The requirements of the IPI process, which require the incorporation of MDRS into the Plan, are very narrow which is logical given that the RMA Amendment Act 2021 takes away the rights of appeal to the Environment Court, for any submitter.

5.10 In my opinion the resultant plan change is outside of scope and goes beyond what Parliament intended when it required Council to adopt medium density residential standards (MDRS) necessary to fulfill the Councils obligations as a Tier 1 Council under the NPS-UD, i.e., to provide sufficient residential development capacity.

- 5.11 The Medium Density Residential zone along with the Commercial zone proposed at Ōmokoroa are relevant residential zones for the purposes of the IPI. However, I do not agree that the Industrial zone, the Open Space zone, and the Rural Residential zone are relevant Residential zones under Section 77G and Policy 3 of the NPS-UD for the reason that these zones do not provide for any residential housing as relevant Residential zones.
- 5.12 The Rural Residential zone also logically equates most closely to a Large-lot Residential zone under Section 2 of the RMA Amendment Act 2021 and Section 8 of the National Planning Standards (Western Bay of Plenty District Council has not adopted the NPS zones yet). This zone is specifically excluded by Section 77G of the RMA Amendment Act 2021.
- 5.13 I refer the Committee to Section 80E of the RMA Amendment Act 2021, as follows:

***80E Meaning of intensification planning instrument***

- (1) *In this Act, intensification planning instrument or IPI means a change to a district plan or a variation to a proposed district plan—*
- (a) *that must—*
- (i) *incorporate the MDRS; and*
- (ii) *give effect to,—*
- (A) *in the case of a tier 1 territorial authority, policies 3 and 4 of the NPS-UD; or*
- (B) *in the case of a tier 2 territorial authority to which regulations made under section 80I(1) apply, policy 5 of the NPS-UD; or*
- (C) *in the case of a tier 3 territorial authority to which regulations made under section 80K(1) apply, policy 5 of the NPS-UD; and*
- (b) *that may also amend or include the following provisions:*
- (i) *provisions relating to financial contributions, if the specified territorial authority chooses to amend its district plan under section 77T:*
- (ii) *provisions to enable papakāinga housing in the district:*
- (iii) *related provisions, including objectives, policies, rules, standards, and zones, that support or are consequential on—*
- (A) *the MDRS; or*



(B) policies 3, 4, and 5 of the NPS-UD, as applicable.

(2) *In subsection (1)(b)(iii), related provisions also includes provisions that relate to any of the following, without limitation:*

(a) *district-wide matters:*

(b) *earthworks:*

(c) *fencing:*

(d) *infrastructure:*

(e) *qualifying matters identified in accordance with section 77I or 77O:*

(f) *storm water management (including permeability and hydraulic neutrality):*

(g) *subdivision of land.*

5.14 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.

5.15 Section 80G Also sets clear limitations on what IPIs and ISPPs can be used for which links these to Section 80E of the Act, as follows:

### **80G Limitations on IPIs and ISPP**

#### *IPIs*

(1) *A specified territorial authority must not do any of the following:*

(a) *notify more than 1 IPI:*

(b) *use the IPI for any purpose other than the uses specified in section 80E:*

(c) *withdraw the IPI.*

## **6. Analysis**

6.1 Having considered Plan Change 92, I have no concerns with the Council's application of the MDRS in relation to Residential zones and I support the extent of the Residential zoned land at Omokoroa. This gives effect to Policy 3 of the NPS-UD.

6.2 The s.42A report recommends that for the Bruning's land, the proposed planning map should be modified. A copy of the Council's revised planning map and a color coded map showing the changes from those originally proposed, is included as **Attachment D** to my evidence. These changes are summarised as follows:

1. The area shown in green on the Planning Map is identified as Open Space.
  2. The extent of the Industrial zone has been expended to encompass part of what was previous shown as Open Space.
  3. An area of Rural Residential zone has been incorporated at the southeastern end of the site.
  4. The small ecological feature in the north-south eastern corner of the site remains unchanged.
- 6.3 An attempt has been made through the above to narrow up the extent of the Open Space zone to align with gullies on the land, to provide a strip of Rural Residential zone at the harbour end of the site and to widen the Industrial zone to incorporate land which is suitable for development.
- 6.4 The key question for determination by the panel is whether the Council are legally able to amend the existing zones and include new zones as proposed by the Council on the Bruning's land, and that is a matter that will be addressed through legal submissions. It is understood through the submission of Kainga Ora, that these same concerns were raised in regard to seeking through notification, the introduction of a Rural Residential zone in an urban area as part of an IPI plan change. The Rural Residential zone is not a relevant residential zone. The Rural Residential planning standards relate to the creation of allotments which are 2,000m<sup>2</sup> or greater and this is not consistent with the intensification outcomes sought by Policy 3, the RMA Amendment Act 2021 or the NPS-UD.
- 6.5 The Rural Residential zone is not a relevant residential zone under the National Planning standards it best aligns with the definition of a Large Lot Residential zone. defined as follows:
- “Areas used predominantly for residential activities and buildings such as detached houses on lots larger than those of the low density residential and general residential zones and where there are particular landscape characteristics, physical limitations, or other constraints to more intensive development.
- 6.6 Within the National Planning Standards, there is also a definition of Rural Lifestyle zone but that is clearly a zone for a rural environment which is smaller than those of the General Rural and Rural Production zones.
- 6.7 The Industrial zone is also not considered to be a relevant residential zone as there is no provision for residential activities to be provided under the rule framework.

Residential activities are a non-complying activity. I therefore consider that any changes to the Industrial zone are outside the scope of what can be included and considered as part of an IPI Plan Change process.

6.8 In considering whether the Open Space zone may be appropriate on the Bruning's land, in my view, Section 80E (1)(b)(iii) only allows the Council to include "related provisions" including zones "that support or are consequential" on:

(A) the MDRS; or

(B) policies 3, 4, and 5 of the NPS-UD, as applicable.

6.9 As set out in Section 80E (2) these related provisions may include those which are listed such as (d) *infrastructure* and (f) *storm water management (including permeability and hydraulic neutrality)*.

6.10 For the Brunings land, 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

6.11 No medium density residential development is provided for by the zones on the Brunings land. The Open Space zone is over stormwater areas which are identified under designation D.181 and D.234, and do not drain, adjoin, or have any relationship with any Medium Density Residential zoned land. In my opinion the areas identified on the Brunings land as Open Space zone are generally steeper gully areas which do not offer the characteristics of usable public open space, nor are they easily walkable or accessible from the Medium Density Residential zone. At the most, the relationship of these areas is with the industrial zone (including for future stormwater management under the existing designation). This was planned as part of the earlier Stage 2 Omokoroa Urbanisation.

6.12 Given the limitations under Section 80E, an Open Space zone is not a zone which is able to be applied to the Brunings land as there is no consequential relationship with the MDRS or the outcomes required under Policy 3.

## 7. Conclusions

7.1 The adoption of an Industrial, Open space or a Rural Residential zone for the Brunings land is contrary to Section 80G (1)(b) of the RMA Amendment Act 2021 which specifies limitations on Intensification Planning Instruments and ISPP's.

7.2 My assessment is that the creation of the Open Space zone is not able to occur given that the consideration relating to "related provisions" under Section 80E (1)(b)(iii) only relates to the MDRS or Policy 3. As the area in question does not service any MDRZ

land there is no consequential effect to enable the creation of such a zone. The zone would service industrial land only.

- 7.3 This lack of any consequential effect therefore means that an Open Space zone can not be applied to the Bruning's land. In my opinion, the existing Future Urban zone should be retained.
- 7.4 Similarly, the Rural Residential zone is not a relevant residential zone under the RMA Amendment Act 2021. In my opinion, the existing Future Urban zone will need to continue to apply to the area identified as Rural Residential.
- 7.5 Changes to the Industrial zone are not provided for in an IPI process. In my opinion the plan change process can only be used to incorporate the MDRS and NPS-UD intensification policies in District Plans. The extent of the Industrial zone identified in the Operative District Plan should therefore remain unchanged.
- 7.6 I conclude overall that the IPI Plan Change should not have applied to the Bruning's land as no residential zone development or residential intensification of any existing zone have been proposed on the land or adjacent to the site.
- 7.7 I therefore recommend to the Hearings Panel that the Council decline the rezoning of the land as sought through PC92, which will mean the Future Urban Zone, existing industrial zone and existing designations will continue to apply over the Bruning's land until such time as a Schedule 1 Plan Change and/or a Public Works acquisition is completed.



**Aaron Collier**  
Planner  
23 August 2023

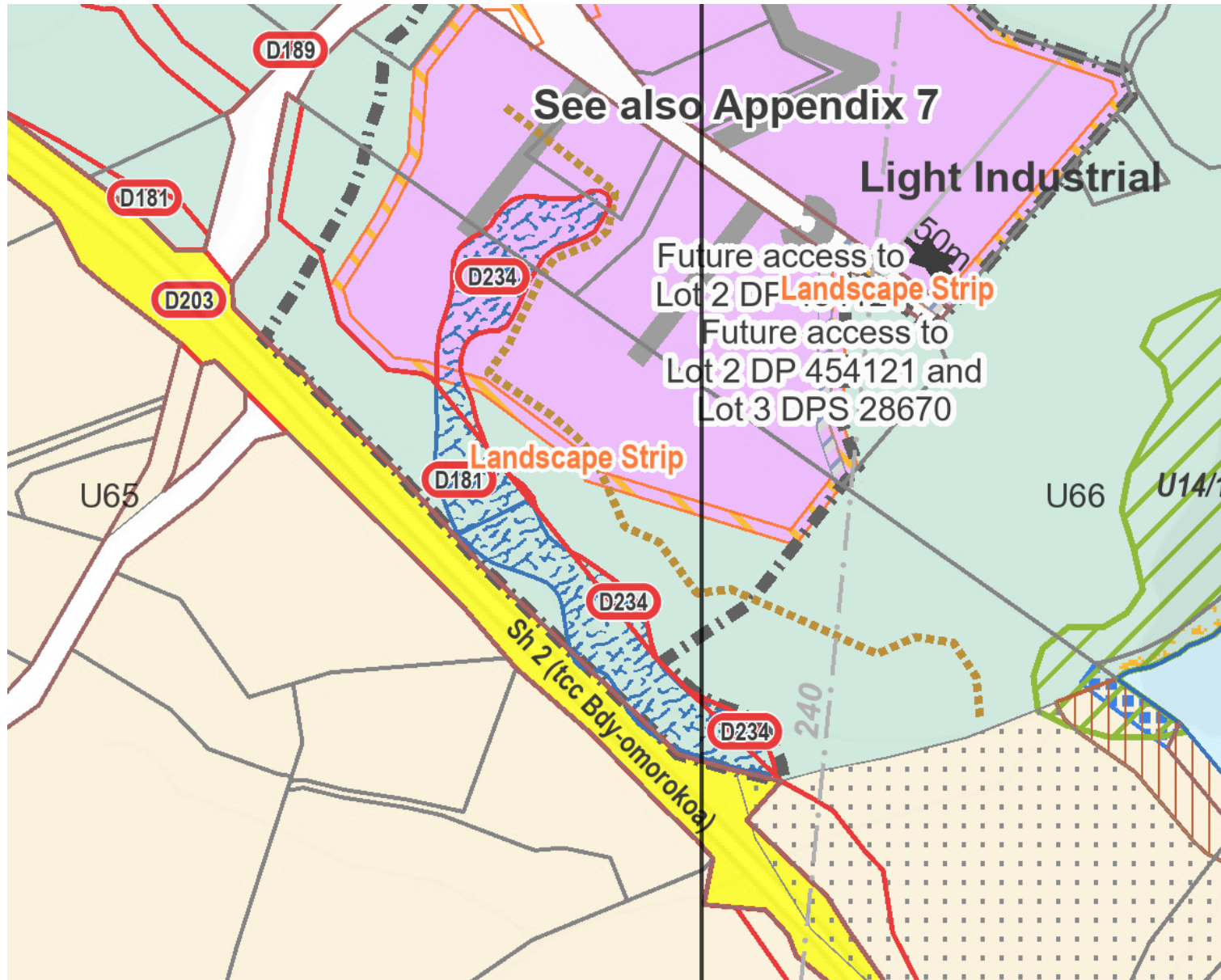
# **ATTACHMENT A**

Site Plan



# **ATTACHMENT B**

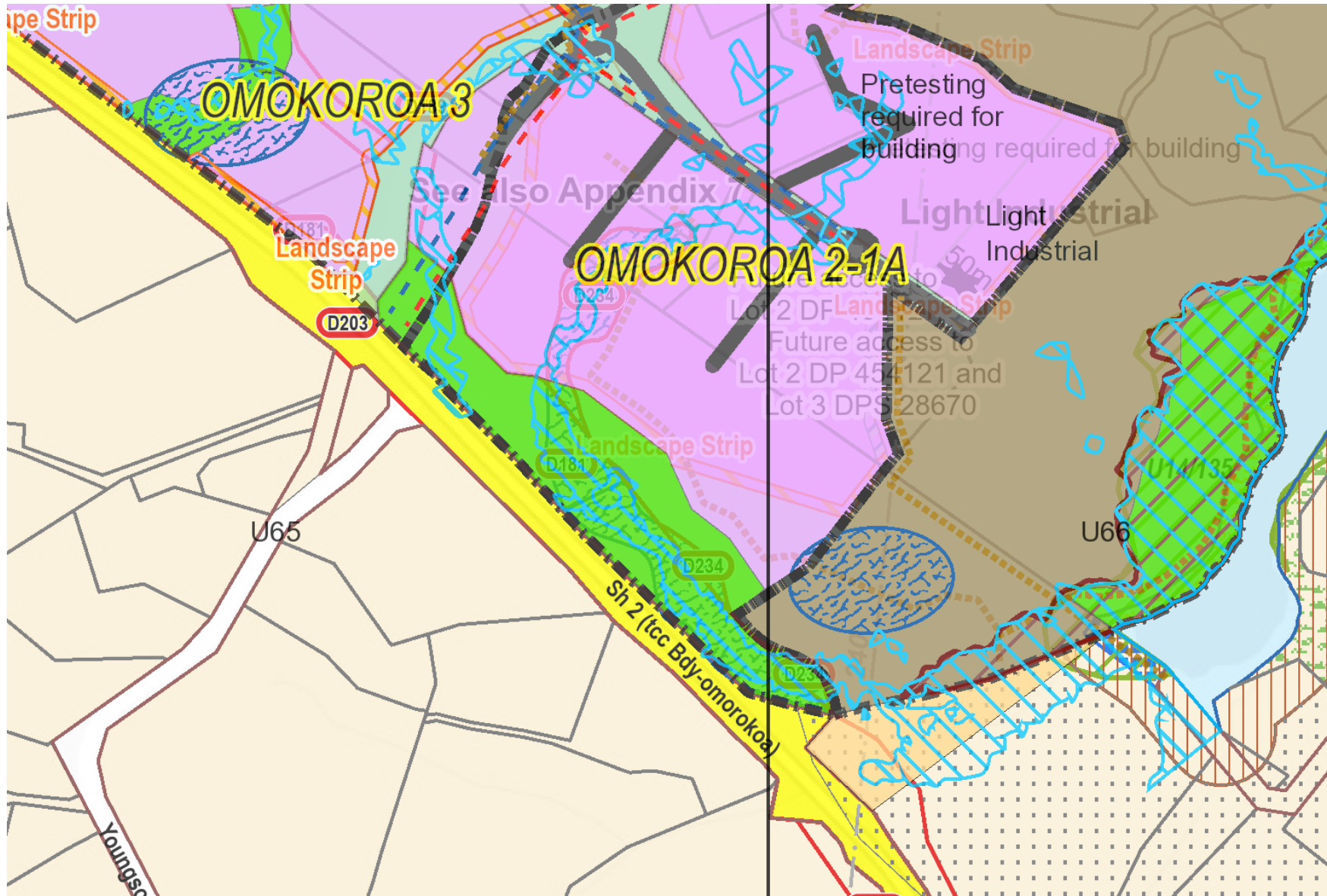
Existing Zoning Operative District Plan





# **ATTACHMENT C**

PC 92 Zoning as Notified



## **ATTACHMENT D**

Zoning Proposed in S.42A Report

