

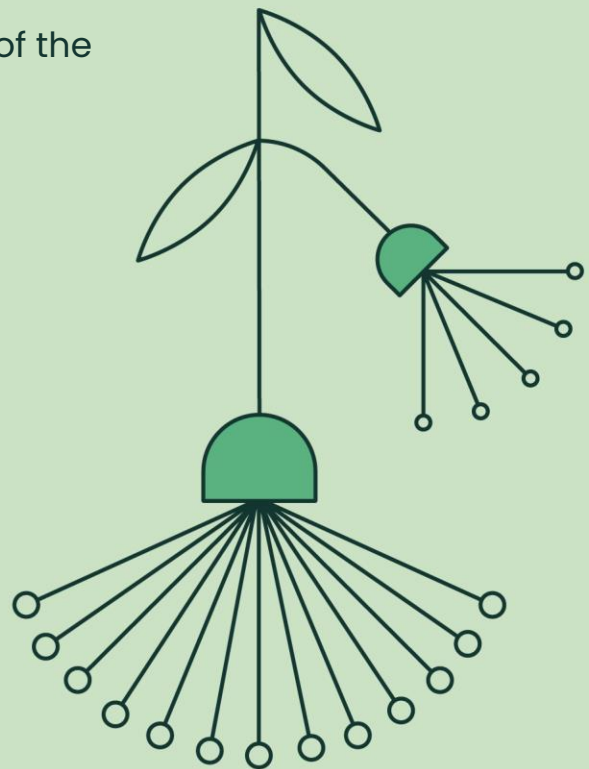
Mā tō tātou takiwā
For our District

District Plan Committee

Komiti Kaupapa-ā-Rohe

DP23-1

Thursday, 26 October 2023, On conclusion of the
Council meeting starting at 9.30am
Council Chambers, 1484 Cameron Road,
Greerton, Tauranga



District Plan Committee

Membership:

Chairperson	Deputy Mayor John Scrimgeour
Deputy Chairperson	Cr Murray Grainger
Members	Cr G Dally Mayor James Denyer Cr Anne Henry Cr Margaret Murray-Benge
Quorum	Three (3)
Frequency	As required

Role:

To enable effective decision making with regard to Resource Management Act 1991 matters, including district plan changes, private plan changes and resource consent matters.

Scope:

- All functions, duties and obligations as set out in the Resource Management Act 1991 relevant to plan changes, private plan changes and district plan reviews and any other matter processed under Schedule 1 of the Resource Management Act 1991, including hearing submissions and making recommendations to Council for the approval of plan changes, private plan changes and plan reviews.
- All functions, duties and obligations as set out in the Resource Management Act 1991 relevant to hearing of submissions and making decisions on notified resource consent applications.
- To make decisions on any other Resource Management Act 1991 matter referred to the Committee by the General Manager Regulatory Services or General Manager Strategy and Community.
- To receive reports on appeals to the Environment Court on Committee or Independent Hearings Commissioner decisions made in relation to plan changes, private plan changes, and notified resource consent applications, and to provide guidance to staff authorised to negotiate and settle appeals on Council's behalf.

Power to Act:

- To hear and make decisions on plan changes, private plan changes and district plan reviews and any other matter processed under Schedule 1 of the Resource Management Act 1991 and to recommend to Council decisions on submissions and approval of plan changes and private plan changes or any other matter, as required.

- To hear and make decisions on notified resource consent applications where submissions have been received.
- The power to co-opt expert advice on an 'as required' basis.
- The power to appoint Independent Hearings Commissioners and to appoint Hearings Panels of appropriately qualified members and/or Independent Hearings Commissioners in accordance with the Appointment of Independent Hearings Commissioner Policy, or any other relevant legislative requirement.
- The power to conduct joint hearings with other local authorities where necessary and expedient to do so, including the power to appoint members and/ or Independent Hearings Commissioners to Joint Hearings Committees.
- To make decisions on any resource consent application where the reporting officer is recommending that the application be refused.
- To make decisions on section 357 objections to conditions under the Resource Management Act 1991 where the reporting officer is recommending that the application be declined (either in whole or in part).
- To make decisions where draft consent orders would represent a minor change in policy direction from the District Plan and to authorise settlement of those consent orders with the Environment Court by Council's solicitors acting on behalf of Council.
- The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings-related matters in accordance with the applicable legislation and the principles of administrative law and natural justice.
- To make decisions on any other Resource Management Act 1991 matter referred to the Committee by the General Manager Regulatory Services or General Manager Strategy and Community.

Chairperson's Delegations:

Should there be insufficient time for staff to consult with the Committee on any appeal to the Environment Court in relation to a decision made pursuant to the Resource Management Act 1991, the Chairperson or Deputy Chairperson (where the Chairperson is not available) may provide guidance to staff, and report back to the next scheduled meeting of the Committee.

Notice is hereby given that a District Plan Committee Meeting will be held in the Council Chambers, 1484 Cameron Road, Greerton, Tauranga on: Thursday, 26 October 2023 on conclusion of the Council meeting starting at 9.30am

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- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 DECLARATIONS OF INTEREST**

5 REPORTS

5.1 PRIVATE PLAN CHANGE 95 – PENCARROW ESTATE: DECISION TO ADOPT, ACCEPT OR REJECT THE PLAN CHANGE REQUEST OR DETERMINE IT AS A RESOURCE CONSENT

File Number: A5766066

Author: Anna Price, Senior Environmental Planner

Authoriser: Rachael Davie, Deputy CEO/General Manager Strategy and Community

EXECUTIVE SUMMARY

1. The purpose of this report is to provide a recommendation on the Private Plan Change Request – PC95 – Pencarrow Estate (PPC Request) received from Kevin and Andrea Marsh to rezone land from Rural to Residential at Pongakawa.
2. It also provides an assessment of the options available to the Committee to make a decision under Clause 25 of Schedule 1 of the Resource Management Act 1991 (RMA) on whether to accept, adopt or reject a private plan change request, or to treat it as an application for resource consent.

RECOMMENDATION

1. That the Senior Environmental Planner's report dated 26 October 2023 titled 'Private Plan Change 95 Pencarrow Estate: Decision to adopt, accept or reject the plan change request or determine it as a resource consent' be received.
2. That the report relates to an issue that is considered to be of low significance in terms of Council's Significance and Engagement Policy.
3. That Council makes decisions on either of the below options:
 - a. That Council accepts the private plan change request in accordance with clause 25(2)(b) of schedule 1 of the RMA.
 - i. That the private plan change then be publicly notified and that notification commence as soon as practicable.Or,
 - b. That Council rejects the private plan change request in accordance with clause 25(4) of schedule 1 of the RMA.

BACKGROUND

3. PC95 is a request for a private plan change (PPC) to the Operative District Plan. It is spatially confined to a small parcel of land at Pongakawa. The effect of the plan change would be to provide for rezoning of 12.37ha of land from Rural to Residential

with a small Commercial Zone pocket, provide an onsite wastewater treatment and disposal area, stormwater reserve, roads and village green. The developable area will be 8.15ha and an expected residential yield of 120-130 dwellings.

4. The proposed PPC area is shown in Figure 1 below:



Figure 1: Aerial photo and structure plan area shown in blue outline.

5. Under the RMA the Council must process the private plan change request under Schedule 1 of the RMA. The first step in the Schedule 1 process requires Council to decide whether to reject the request, adopt the request as its own plan change, accept the request as a private plan change or to deal with the request as if it were an application for a resource consent.
6. The purpose of this report is to outline the Private Plan Change request, the process to date, the statutory requirements, and to make a recommendation as to how the Council should deal with the request.

Plan Change Requests

7. The request describes the overarching purpose of the plan change is to provide additional residential land for the Pongakawa/ eastern District area. This includes an update to the zoning maps, a new structure plan, and updates to the residential and commercial zone text.

8. The site is currently zoned Rural under the Operative District Plan with a Floodable Area overlay. Directly adjoining the site to the south are smaller 'rural-residential' sized lots, zoned Rural. Across Arawa Road to the south is a small area zoned Residential. The wider surrounding environment is zoned Rural.
9. The nearest residential settlements are Paengaroa and Pukehina Beach, both 5–10 minutes drive. The larger township and rural service centre of Te Puke is a 15 minute drive, while Papamoa East is a similar distance. Tauranga CBD is 40 minutes drive north of the site.
10. The Pongakawa area has some social infrastructure including the primary school, community hall and the sports action centre associated with the school, which is located 1.8km away, on the opposite side of SH2 on Pongakawa School Road.
11. The site is currently serviced with potable water reticulation only, there is no Council reticulated stormwater and wastewater is disposed of to individual on site effluent treatment.
12. Figure 2 below shows the operative zones.

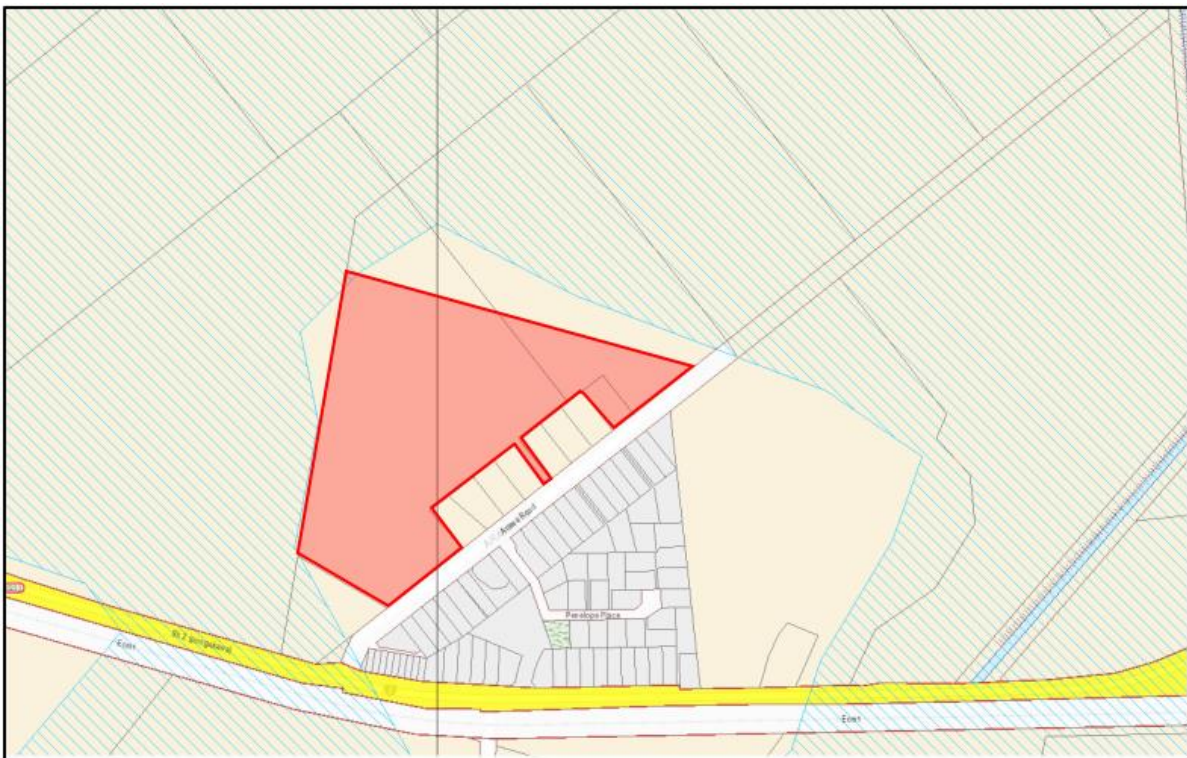


Figure 2: Proposed Plan Change area shown in red with current District Plan zoning context. Rural zone is beige, residential is grey and blue dash is floodable overlay.

13. The site is located primarily on land within the farm property of 1491 State Highway 2 (SH2), Pongakawa. The larger dairy farm land holding of 76.7ha has frontage to both SH2 and Arawa Road. The site is a working dairy farm and contains a primary dwelling, two ancillary sheds in the south western area of the property. A milking

shed, ancillary sheds and effluent ponds are located further north of the primary dwelling and a second dwelling is located further east.

14. The PPC Request site also includes 53 Arawa Road, zoned rural, but utilised as a rural-residential type lot.
15. The topography of the site is generally flat, with farm drains running through the land to manage the water table and ensure the site is suitable for farming throughout the year. The applicant has provided an Assessment of Ecological Effects prepared by Wildland Consultants which explains the watercourses, natural and ecological features of the site.
16. The site contains highly productive Class 2 land as shown on Figure 3 below.



Figure 3: Map showing Highly Productive Land on the plan change site. Purple is Class 2 and yellow is class 3 soil.

Plan Change Proposal

17. The Proposed Plan Change Request seeks to deliver a more intensive development for the site. Currently the site is zoned rural and is largely undeveloped, the proposal is to intensify development on the site to 120-130 dwellings over the 9.52ha of developable land (12.6-13.6 dwellings per ha) development through a mix of small scale commercial activities and residential development.
18. In preparing the PPC a Section 32 analysis has been undertaken by the applicant to ensure appropriate consideration of how to achieve the purpose of the RMA and the proposed method of doing so. The Section 32 analysis sets out the objective of the PPC is *“to respond to a local resource management issue, being a lack of*

consistency between current zoning and the current local market demand of land uses, as well as proactively preparing to accommodate expected and planned growth in proximity to Paengaroa”.

19. The application states the PPC is being pursued to give effect to the landowners vision to consolidate and improve amenities available to the residential community of Pongakawa, and to address housing supply shortages relative to demand increasing from the quickly expanding horticulture land-uses within the Pongakawa area.
20. The vision includes creating a high-quality residential village environment that integrates and enhances the existing Pongakawa settlement through the provision of reserves, reticulated services, a small commercial area and playground area.
21. A diversity of residential section sizes to as low as 350m² is proposed in the PPC. The application considers this is necessary to ensure that a considerable proportion of the land to be re-zoned can be developed whilst being affordable for full-time workers in the horticulture sector seeking to locate in Pongakawa.
22. The PPC request includes a structure plan for the proposed development which has been designed to take into consideration the site's characteristics, the stormwater approach, the on-site wastewater disposal approach and the interface between the rural zone and the proposed residential zone.
23. The Structure Plan provides for:
 - Approximately 2.28ha of 'higher density' (350m² per lot) Residential area, and 4.2ha of 'lower density' (500m² per lot) Residential Zone to yield 120-130 dwellings
 - 1600m² commercial zone
 - Indicative roading layout
 - Residential height restriction area
 - New 100mm water main
 - Private playground & reserve adjacent to Commercial Zone
 - Stormwater pond, overland flow path and reserve
 - Wastewater disposal area and reserve (rural zone)
24. The Structure Plan is proposed to be staged into 3 general stages as outlined below:
 - Stage 1 – 2.85ha developable land. Includes low-density and higher-density development areas, road connection in from Arawa Road, widening of Arawa Road to intersection, and upgrade of SH2/Arawa Road intersection. Includes formation of central overland flowpath and stormwater pond, and reserve area around these features. Reverse sensitivity measures include re-locating effluent ponds currently in the PPC site.
 - Stage 2 – 3.78ha developable land. Includes local roads within the PPC to serve the Stage 2 areas, low-density and higher-density areas. Includes formation

of reserve next to commercial area, and lodgement of a building consent for a commercial building within the commercial area to realise community benefits intended at this location. Reverse sensitivity measures include de-commissioning of the milking shed from its current location.

- Stage 3 –1.52ha developable land. Includes local roads within the PPC to serve the Stage 3 areas, and remaining low-density developable areas.

Consultation

25. In preparing the PPC Request the applicant has engaged and consulted with hapū and iwi with a cultural interest in the area, in addition to infrastructure providers, consenting authorities and other important community representatives including Pongakawa School.
26. Bay of Plenty Regional Council (BOPRC) – the applicant undertook early discussion with BOPRC, and a letter was provided by BOPRC in May 2022 to the applicant stating the proposal was beyond the scope of the growth strategy and policy framework of the Regional Policy Statement (RPS). Following receipt of the PPC Request, which included the letter from BOPRC, the application was forwarded to BOPRC for further review. A response was received in March 2023 from BOPRC outlining how the PPC Request was considered contrary to policies in the RPS and with the National Policy Statement for Highly Productive Land (NPS-HPL). This response was included in a further information request to the applicant to engage further with BOPRC on these matters. Further meetings and correspondence has been provided between the applicant and BOPRC, however at this time, no further agreement has been reached between the parties. The applicant does not agree with the BOPRC assessment, and BOPRC does not agree with the applicant's assessment and remain of the view that the PPC Request is contrary to the RPS and the NPS-HPL.
27. Waka Kotahi – Early discussions were held with Waka Kotahi, and following receipt of the PPC Request the application was forwarded for comment. Feedback on the PPC Request was received and this was included in a further information request. The applicant has now undertaken further work with Waka Kotahi on intersection design and safety. The feedback from Waka Kotahi also included comments regarding planning and policy, including comment on the National Policy Statement-Urban Design (NPS-UD), the Urban Form and Transport Initiative (UFTI), Housing and Business Assessment (HBA) and comment on vehicle kilometres travelled (VKT). The response stated *"Other opportunities exist to meet the housing need and achieve better integration between land use and transport e.g. the indicative eastern town near Paengaroa, where there could be better potential for public transport, walking and cycling outcomes. Meeting housing need through ad hoc plan changes and developments could undermine opportunities for development at scale with the critical mass to support the connected centres*

approach set out in UFTI, and well-functioning urban environments (NPS-UD Policy 1)."

28. An additional response provided from Waka Kotahi to the applicant in October stated that:
- (a) the settlement would be heavily reliant on private motor vehicles, with limited public transport available;
 - (b) the settlement would not have a population base sufficiently high to support the range of services and amenities required to avoid substantial travel beyond the immediate locality. While some mixed use is provided which could reduce the need to travel for some services there is still a need to travel to reach a wider range of services; and
 - (c) the proposed site is not identified as a growth location in The Urban Form and Transport Initiative and is therefore considered out of sequence. For the reasons outlined above, it is not clear that the Plan Change would meet the criteria set out in Section 3.8 of the NPS-UD (Unanticipated or out-of-sequence developments).
29. The applicant has provided a detailed response to Waka Kotahi's concerns, including a reduction in VKT due to providing for housing demand in the immediate area for horticultural workers, the small commercial zone to provide for local services, location close to emerging employment locations and enabling accessibility to public transport.
30. Neighbours – The applicant has consulted with the directly adjoining neighbours on Arawa Road. These properties were also offered the opportunity to be included in the PPC Request to rezone their properties to Residential Zone. However only the property at 53 Arawa Road requested to be included. Feedback from the owners was mixed and minutes from the meetings were included in the application.
31. Iwi and Hapū – The applicant has engaged with Ngāti Makino, Ngāti Pīkiao, Ngāti Rangitīhi and Ngāti Whakāhemo. Several hui were held with Ngāti Whakāhemo, followed by written support for the proposal subject to water quality being appropriately managed. The applicant also met with Ngāti Pīkiao who expressed desire for a meandering watercourse rather than channelized and expressed interest in stormwater disposal to improve water quality. Ngāti Pīkiao was also interested in wastewater management for the development.

Relevant Statutory Planning Document

Bay of Plenty Regional Policy Statement

32. The PPC Request includes an assessment against the Bay of Plenty Regional Policy Statement (RPS). The assessment considers the proposal is in accordance with the RPS Objectives and Policies, in particular:

- Objective 7 – Appropriate management of adverse effects of infrastructure including reverse sensitivity effects;
 - Objectives 13, 15, 17, 21 and 27 concerning recognition of kaitiakitanga, hapū and iwi involvement in resource management decisions, and mauri of resources;
 - Objectives 23 and 24 concerning sustainable and efficient urban form and growth, safety and efficiency of transport networks;
 - Objective 25 regarding land development being integrated with long-term planning and funding and having regard to the growth plans of relevant industry sector group;
 - Objective 26 concerning sustaining the productive potential of the rural land resource; and
 - Objective 27 regarding water quality.
33. Under Objective 25 Policies UG 5A, UG 6A and 7B apply, relate to the sequencing of growth occurring within defined urban limits within the RPS, and UG 14B seeks to restrict urban activities to within urban limits. The PPC site is not within the urban limits. There is therefore inherent inconsistency with some of the policy direction under this objective.
34. The feedback received from BOPRC on the PPC Request is that the plan change is contrary to Objective 25 and its policies (rather than inconsistent with) for the following reasons.
- The PPC 95 area is not within an existing defined urban management or growth area in RPS Appendix E, nor any urban environment as defined by the NPS-UD1: the adjacent existing residential area is considered a rural settlement (without reticulated wastewater services) rather than an urban environment;
 - Residential urban growth is not provided for outside defined urban limits (in RPS Appendix E) in the western Bay of Plenty sub-region;
 - The proposed development area is not identified as an area with demand for growth; and
 - The PPC 95 area does not achieve strategic integration of infrastructure services because the area has no existing reticulated wastewater services.
35. BOPRC also considers the application misinterprets the purpose of the RPS Change 6 (to give effect to the NPS-UD), to remove urban limits and provide for responsive planning decisions on new urban growth areas. The applicant's section 32 report concludes that the RPS PC6 will remove the urban limits and therefore enable the plan change. However, the NPS-UD and RPS PC6 enable out of sequence development only in urban environments. Pongakawa is not defined as an urban environment under the NPS-UD. As such BOPRC consider the NPS-UD and RPS PC6 do not enable the PPC Request.

National Policy Statement – Urban Development

36. The PPC request includes an assessment against the NPS-UD and considers that the application is consistent with the objectives and policies of the NPS-UD. Council's Strategic Advisor Resource Management has reviewed the PPC Request and has provided comments on the application, including consideration against the HBA. A summary of the comments are:
37. *"In terms of the HBA 2022, the applicant is correct in that there is a housing shortfall. However, the work being undertaken by SmartGrowth (as set out below) is centred around coordinated and planned growth which is underpinned by the connected centres philosophy. In other words, we don't want growth just for growths sake. It needs to be appropriately planned.*
- *Within the sub-region (TCC and WB) we need an additional 37,000-43,000 homes over the next 30 years. Tauranga City demand makes up a significant proportion of this, (30,000-34,000) and an additional 7,000-9,000 new houses are needed within WB.*
 - *There is an existing housing shortfall of 2,500 homes within Western Bay and of up to 5,300 within TCC.*
 - *The housing system has for decades only been able to supply a limited range of housing options, in terms of affordability, typology and tenure. In other words this is not a new problem.*
 - *In response to the housing needs of the subregion, a SmartGrowth Housing Action Plan 2021 was developed, it identifies gaps and lays out a clear set of actions. One of these is supporting the connected centres settlement pattern for the sub-region. It also aims to accelerate growth in priority development areas. Within Western Bay this includes the Eastern Corridor being Te Puke.*
 - *SmartGrowth has identified the following Priority Development Areas for growth, these include Ōmokoroa, Te Kainga, Tauriko West, Te Papa, Te Tumu / Wairakei, Rangiuru Business Park.*
 - *The Urban Form and Transport Initiative (UFTI) identified Connected Centres as the preferred approach for the sub-region to manage growth, through consideration of different spatial scenarios and testing against criteria that reflect the growth challenges.*
 - *Two core concepts are critical to the Connected Centres programme:*
 - *Increasing the number of dwellings by intensifying existing urban and planned new growth areas. This is to maximise the land available for development and support a well-functioning multimodal transport system.*
 - *Being able to access local social and economic opportunities within a 15-minute walk or bike ride, and sub-regional social and economic opportunities*

within 30–45 minutes. These concepts encourage strong local centres and connected neighbourhoods.

- *The Draft SmartGrowth Strategy 2023 is also underpinned by the Connected Centres urban settlement pattern and supporting transport system that will enable people to continue living, learning, working, playing, and moving in the western Bay of Plenty in a way that is both desirable and sustainable.”*

38. A key issue is whether the application can meet policy 3.8(2) of the NPS-UD (Unanticipated or out of sequence developments) for example is it a well-functioning urban environment, well connected along transport corridors, and whether it will add significantly to development capacity (relates back to the RPS). Additionally, whether this locality can be considered a natural extension to the UFTI settlement pattern which is entirely underpinned by a connected centres approach as outlined above.

National Policy Statement for Highly Productive Land (2022)

39. The site is mapped as containing class 2, high quality soil. This means that the land is highly productive land for the purposes of the NPS. The NPS came into effect on 17 October 2022 (prior to lodgment of the PPC request).
40. The PPC Request provides an assessment against the NPS-HPL and states the plan change area is an *“extremely small proportion of the land in the locality and would not inhibit practical use of the remaining farm for primary productive purposes in the future”*. Under the NPS-HPL, section 3.6 addresses rezoning proposals within Tier 1 territorial authorities (of which Council is a Tier 1 authority). Section 3.6 states that WBOPDC may allow urban rezoning of productive land only if:
- a) the urban rezoning is required to provide sufficient development capacity to meet demand for housing or business land to give effect to the National Policy Statement on Urban Development 2020; and
 - b) there are no other reasonably practicable and feasible options for providing at least sufficient development capacity within the same locality and market while achieving a well-functioning urban environment; and
 - c) the environmental, social, cultural and economic benefits of rezoning outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.
41. The PPC request considers that the eastern area of the district near Te Puke is underprovided with plan-enabled and infrastructure ready residential land and this plan change would provide significant development capacity to meet the shortfall identified in the HBA. However, the NPS-HPL also states that there needs to be no other reasonably practicable and feasible options for addressing the housing

shortfall. There is a recommendation in the HBA that there is a need for growth in Te Puke and the Eastern Corridor, however this is in planned and anticipated growth areas / priority development areas. The application does not include an assessment of other potentially feasible options, rather assesses why the subject site is considered to be the most reasonably practicable and feasible option in relation to section 3.6.

42. From a coarse scale view it appears that the PPC request will be inconsistent with the NPS-HPL but the question is whether the test in section 3.6 of the NPS can be met and this will require an assessment of whether the applicant can demonstrate that each of the (a), (b) and (c) can be met.

Consideration of the Private Plan Change Request

43. The PPC Request was received on 15th December 2022 and it has since been assessed by a number of Council specialists. Further information has been requested under Clause 23 of Schedule 1 of the RMA and subsequently provided on 23 August 2023. Several Council specialists have assessed this additional information.
44. Clause 25 of Schedule 1 of the RMA requires the District Council to consider the request and make a decision on one of the four options available:
 - 'adopt' the plan change which then becomes a Council or public plan change;
 - 'accept' the plan change in which case it remains a private plan change;
 - 'reject' the plan change with limited reasoning; or
 - 'change' the plan change into a resource consent.
45. The options to either 'adopt' or 'accept' do not mean that Council has approved the plan change. Notification of the PPC Request and hearings still has to be undertaken before the matter is presented to Council for a decision to approve or decline the plan change.
46. The decision now required from the Committee is to enable the process to continue or the request to be rejected at this point. This decision can be appealed by the applicant to the Environment Court. Therefore, the four options must be considered and analysed against information received from the applicant and the legal requirements of the RMA.
47. Consideration has been given to the level of examination of the proposed plan change in relation to Clause 25, which is not intended to require a detailed merits examination of the proposed plan change. The High Court describes the threshold on clause 25(4) as requiring only a "coarse scale" merits assessment. I have taken this into account in the below assessment in relation to Clause 25 and my recommendation.

48. **Option 1 – ‘Adopt’** the request, or part of the request, as if it were a proposed plan made by the Council itself. The Council is able to decide to adopt the request, and process it, as though it were a Council initiated proposed plan change. A decision to adopt triggers the process set out in Part 1 of Schedule 1, which would then require the Council to consult as required in clauses 3 to 3C of Part 1. Following consultation, the Council would then need to notify the proposed plan change for submissions and conduct a hearing into submissions, if required. Council would be able to make changes to the Request as it sees fit.
49. The request does not address a gap in the Operative District Plan’s planning provisions. The PPC Request is not a matter under consideration in Council’s policy work programme. The plan change seeks to change the zone of part of a single property taking into consideration the characteristics and advantages of the site and the surrounding environment. The proposed rezone is localised and would not have broad application across the district.
50. If adopted, all costs associated with the plan change would rest with the Council. Council should not carry these costs if the request is primarily of direct benefit to the applicant, rather than the wider public, or is absent of any other public policy benefits. The request is a site-specific proposal. The most immediate or direct benefit, if any, is to the applicant.
51. It is also relevant to note that the applicant has not requested that the Council adopt the PPC.
52. For the above reasons, I recommend that the private plan change **not** be adopted.
53. **Option 2 – ‘Accept’** the private plan change request, in whole or in part, and proceed to notify the request, or part of the request, under Clause 26.
54. The private plan change mechanism is an opportunity for an applicant to have their proposal considered between a council’s ten-yearly plan review cycle. The subject matter of this private plan change request is not a priority matter in Council’s work programme, and is not presently being considered. The private plan change process is a means by which this matter can be considered before the next plan review.
55. If the Council accepts the request, in whole or in part, it must then proceed to notify the request, or part of the request under clause 26. After the submission period has closed, the Council would need to hold a hearing to consider any submissions, and a decision would then be made by the Council in relation to the request in accordance with Schedule 1 of the RMA. All costs associated with the request (including notification and any hearing) would rest with the applicant.
56. **Option 3 – ‘Reject’** the private plan change request, in whole or in part (clause 25(4)). The Council has the power to reject a private plan change request, in whole or in part, in reliance on one of the limited grounds set out in clause 25(4). If the

private plan change request is rejected by the Council, the applicant can appeal that decision to the Environment Court under Clause 27 of Schedule 1.

57. The grounds for rejection under Clause 25(4) are as follows:
- a. the request or part of the request is frivolous or vexatious; or
 - b. within the last two years, the substance of the request or part of the request
 - i. has been considered and given effect to, or rejected by, the local authority or the Environment Court; or
 - ii. has been given effect to by regulations made under Section 360A; or
 - c. the request or part of the request is not in accordance with sound resource management practice; or
 - d. the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
 - e. in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than two years.

Is the request frivolous or vexatious?

58. The PPC contains a comprehensive section 32 report evaluation, including an assessment of the objectives and policies, and a sufficiently detailed assessment of environmental effects. The request is also accompanied by a range of specialist assessments in relation to the key matters considered to be material to the request, including transport, three waters, economic, ecology, geotechnical, urban design and landscape.
59. The request enables the nature of the plan change and its effects to be reasonably understood. It is therefore recommended that the Council **not** reject the private plan change request on the basis that it is frivolous or vexatious.

Has the substance of the request been considered and been given effect, or rejected by the council within the last two years?

60. No plan change request nor any Operative District Plan provisions were developed within two years from the receipt date of the PPC. It is therefore recommended that the Council **not** reject the request on the basis of this ground of rejection.

Has the substance of the request been given effect to by the regulations made under Section 360A?

61. The substance of the PPC or part of the request, being rezoning land from rural to residential does not relate to section 360A of the RMA which refers to regulations for

amending regional coastal plans pertaining to aquaculture activities. It is therefore recommended that the Council **not** reject the request on the basis of this ground of rejection.

Is the request in accordance with sound resource management?

62. "Sound resource management practice" is a frequently used term but is not defined in the RMA. Case law indicates that "sound resource management practice" relates to scale of effects and alignment of any PPC to Part 2 of the RMA i.e. the purpose and principles. Consideration of this should involve a coarse scale assessment of the merits of the PPC Request, noting that if the request is accepted the full merits assessment will be undertaken when the plan change is determined.
63. The applicant has considered the zoning options for the site and concluded that the proposed rezoning along with the introduction of new provisions will result in a residential style development comparable to the existing residential environment. A section 32 evaluation report supports the PPC Request along with a number of specialist reports, and Council has engaged its own specialists and relevant staff to review these.
64. Having reviewed the applicant's planning and specialist reports and taking the purpose and principles of the RMA into account, the PPC is considered to be in accordance with sound resource management practice. It is therefore recommended that the Council **not** reject the PPC on the basis that it is contrary to sound resource management practice.

Would the request or part of the request make the policy statement or plan inconsistent with Part 5 of the RMA?

65. Part 5 of the RMA sets out the role and purpose of planning documents created under the RMA, including that they must assist a local authority to give effect to the sustainable management purpose of the RMA. Regional and district plan provisions must give effect to the regional policy statement and higher order RMA documents, plus not be inconsistent with any (other) regional plan. The relevant sections in Part 5 are determined by the nature of the private plan change: The plan change proposes to amend district plan provisions.
66. The objective of the private plan change is to rezone the property to respond to a local resource management issue being a lack of consistency between current zoning and current local market demand for land uses, as well as proactively preparing to accommodate expected and planned growth in proximity to Paengaroa.

67. This objective could make the District Plan inconsistent with Part 5 of the RMA. The proposal to intensify the use of the property in Pongakawa is outside of areas marked considered appropriate for residential growth by the Bay of Plenty Regional Policy Statement (and also by SmartGrowth).
68. As set out in the District Plan Section 13 (Residential Zone), the larger residential settlements of Te Puke, Katikati and Ōmokoroa have been identified for residential growth. Growth is limited to areas within existing Residential Zone boundaries so as to avoid potential negative impacts on the natural environment, versatile soils, existing infrastructure and to maintain existing character. Expansion of these areas is not provided for.
69. Objective 13.2.1.3 states “Concentration of new urban development within urban growth areas identified in the Bay of Plenty Regional Policy Statement”.
70. The District Plan defines *urban growth areas* “means Waihi Beach (including Athenree, Bowentown and Island View), Katikati, Ōmokoroa and Te Puke”.
71. Policy 13.2.2.1 States “Residential/urban expansion should be provided for only in areas that have been identified for future urban development and which are contiguous with existing residential/urban areas”
72. As outlined above feedback received from the Bay of Plenty Regional Council is that the PPC Request is contrary to Objectives 25 (and related policies), Objective 26 and Objective 10. The Regional Council also considers the PPC request does not meet Policy UG14B (under Change 6 of the RPS).
73. Regional Council also consider the Request to be contrary to the NPS-Highly Productive Land in relation to Policy 3.6.
74. I note that the applicant has provided a response which states they do not agree with the assessment of the RPS and NPS-HLP provided by BOPRC.

Has the plan to which the request relates been operative for less than two years?

75. The Operative District Plan was made operative on 16 June 2012. The provisions have therefore been operative for more than two years. I recommend the private plan change request **not** be rejected on this ground.

Summary

76. Council may consider rejection of the PPC request under clause 25(4)(d) if it determines that the PPC request is “inconsistent with Part 5”. In similar cases, the Courts have confirmed that the threshold of “inconsistent with Part 5” of the RMA does not require a full assessment of the merits of the private plan change, but that a “coarse scale” assessment is required to determine whether or not to reject the PPC request under clause 25(4)(d). If there is doubt as to whether the threshold has

been reached, the Courts have endorsed a cautious approach where the matter proceeds through the public and participatory process envisaged by a notified plan change.

77. In giving consideration to the matters assessed above, a “coarse” view has been taken, and it is seen that while there are concerns raised regarding consistency, on balance it is practical to consider the PPC and those matters further through the public process.
78. As such, in relation to both option 2 and 3 detailed above my recommendation is that Council **accept** the application.
79. **Option 4 – Resource consent** the Council may decide to deal with the PPC request as if it were an application for a resource consent. If Council were to make this decision then Part 6 of the RMA would apply accordingly. The Council could decide to deal with the PPC Request as if it were an application for resource consent, however in this case the request seeks to rezone parts of the site and introduce a structure plan and provisions to manage use and development. It is considered that the most appropriate process for considering rezoning of the site is through a plan change process.
80. I recommended that the request **not** be deferred to an application for resource consent.

SIGNIFICANCE AND ENGAGEMENT

81. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council’s Significance and Engagement Policy. In making this formal assessment there is no intention to assess the importance of this item to individuals, groups, or agencies within the community and it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.
82. The Policy requires Council and its communities to identify the degree of significance attached to particular issues, proposals, assets, decisions, and activities.
83. In terms of the Significance and Engagement Policy this decision is considered to be of low significance because of the following reasons:
 - The decisions or matters of this report are considered to have a low degree of significance as the RMA does not provide for public consultation in clause 25 of Schedule 1 decision.
 - The applicant has undertaken significant engagement with the Arawa Road community along with community representative, iwi/hapū groups, Waka Kotahi and Bay of Plenty Regional Council. The Section 32 Report of the Private

Plan Change Request also provides detailed information on the community engagement that has been undertaken to date.

- If the Plan Change Request is accepted by Council, formal public notification will be undertaken in accordance with the requirements of the Resource Management Act.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

Interested/Affected Parties	Completed/Planned Engagement/Consultation/Communication		
Affected Landowners and local community	The applicant's Section 32 Report details the engagement and consultation undertaken prior to the lodgement of the plan change request. If the Council accepts the plan change request for processing it will be publicly notified and follow the Resource Management Act requirements for submissions, further submissions and hearing.	Planned	Completed
Tangata Whenua	As per above		
General Public	As per above		

ISSUES AND OPTIONS ASSESSMENT

Option A Accepts Private Plan Change 95 for processing & notification	
Assessment of advantages and disadvantages including impact on each of the four well-beings <ul style="list-style-type: none"> • Economic • Social • Cultural • Environmental 	The main purpose for the Private Plan Change Request is to rezone rural land to residential to make provision for residential development in the Pongakawa area. By accepting the plan change this will allow the process to run through public submissions, further submissions and a hearing. With a decision on the plan change made by a Hearing Panel.
Costs (including present and future costs, direct, indirect and contingent costs).	The applicants have covered the costs to develop the Plan Change Request. Council may cover the processing costs, but will request the applicants cover the costs of

	notification and any technical evidence required. Cost of applicant preparing plan change.
Other implications and any assumptions that relate to this option	Accepting the application does not imply that the application will be approved following submissions and hearing.
Option B Rejects Private Plan Change 95	
Assessment of advantages and disadvantages including impact on each of the four well-beings <ul style="list-style-type: none"> • Economic • Social • Cultural • Environmental 	Does not allow public submissions, or hearings process to determine the outcome of the plan change.
Costs (including present and future costs, direct, indirect and contingent costs).	If Council chose to either reject the private plan change or to treat it as a resource consent application, the applicant may appeal this decision to the Environment Court. This could lead to reputational risk for Council as well as financial costs. No costs involved on Council preparing the Plan Change. Cost of applicant preparing plan change.
Other implications and any assumptions that relate to this option	

STATUTORY COMPLIANCE

84. The Private Plan Change Request has been prepared in accordance with Section 32 of the Resource Management Act.

FUNDING/BUDGET IMPLICATIONS

Budget Funding Information	Relevant Detail
Operational Budget	Staff time plus consultant assistance