

**MINUTES OF WESTERN BAY OF PLENTY DISTRICT COUNCIL
EXTRAORDINARY COUNCIL MEETING NO. CL24-2
HELD AT THE COUNCIL CHAMBERS, 1484 CAMERON ROAD, TAURANGA
ON WEDNESDAY, 6 MARCH 2024 AT 1.00PM**

1 KARAKIA

WHAKATAU MAI TE WAIRUA
WHAKAWĀTEA MAI TE HINENGARO
WHAKARITE MAI TE TINANA
KIA EA AI NGĀ MAHI

ĀE

SETTLE THE SPIRIT
CLEAR THE MIND
PREPARE THE BODY
TO ACHIEVE WHAT NEEDS TO BE
ACHIEVED.
YES

2 PRESENT

Mayor J Denyer, Deputy Mayor J Scrimgeour, Cr T Coxhead, Cr R Crawford, Cr G Dally, Cr M Grainger, Cr A Henry, Cr R Joyce, Cr M Murray-Benge, Cr D Thwaites and Cr A Wichers

3 IN ATTENDANCE

J Holyoake (Chief Executive Officer), R Davie (Deputy CEO/General Manager Strategy and Community), A Henderson (General Manager Corporate Services), A Curtis (General Manager Regulatory Services), C Crow (General Manager Infrastructure Group), E Watton (Strategic Policy and Planning Programme Director), N Rutland (Environmental Planning Manager), G Golding (Governance Manager), T Clow (Principal Policy Lead: Environmental Planning), G Allis (Senior Manager), L Balvert (Communications Manager), J Duncan (Governance Support Administrator), H Wi Repa (Governance Systems Advisor) and P Osborne (Senior Governance Advisor)

1 member of the Media

4 APOLOGIES

APOLOGY

RESOLUTION CL24-2.1

Moved: Cr A Henry

Seconded: Cr M Grainger

That the apology for absence from Cr A Sole be accepted.

CARRIED

5 CONSIDERATION OF LATE ITEMS

Nil

6 DECLARATIONS OF INTEREST

Nil

7 PUBLIC EXCLUDED ITEMS

Nil

8 PUBLIC FORUM

Nil

9 REPORTS

9.1 RECOMMENDATIONS BY THE INDEPENDENT HEARINGS PANEL FOR PLAN CHANGE 92 AND THE NOTICE OF REQUIREMENT FOR ŌMOKOROA ACTIVE RESERVE

Council considered a report dated 6 March 2024 from the Environmental Planning Manager. The report was taken as read, with the below points noted:

- The report contained the information received from Council's Independent Hearings Panel for Plan Change 92, and the Notice of Requirement for Ōmokoroa Active Reserve.
- The Panels recommendations were brought to the Council hui held 22 February 2024 for decision, noting that the recommendation of staff was to accept the recommendations of the panel.
- Upon receiving the comments and the concerns raised at the hui, it was Councils decision to let the report lie on the table.
- Staff had since provided further detail and analysis to address the concerns raised, and had taken advice on alternatives to accepting the recommendations, in particular the implications and risks associated with rejecting the panels recommendations outright or in part.
- A workshop was held with Council on Friday 1 March, noting that the notes from the workshop had been attached to the report.
- At the workshop, staff went through the issues raised and the risk of Councils current and future position, should the recommendations be rejected, or should the Plan Change be accepted only over greenfield portions over both Ōmokoroa and Te Puke.
- Staff provided advice that not accepting the Plan Change or only applying the Plan Change over portions would present considerable risk to Council.

- With that information in hand, the workshop concluded in providing direction to staff on those recommendations from the panel that Council was not in agreement with. These were recommendations the panel made in respect to;
 - Provisions for Vibration Standards;
 - For reverting a portion of Francis Road back to Future Urban zoning; and
 - For a portion of land (Brunning Land) currently proposed as Natural Open Space, to be revert back to Future Urban zoning.
- The report had sought to reflect the views and direction provided. Staff have recommended that the recommendations from the Independent Hearings Panel be accepted, except for the provisions set out in Table 1 relating to the above matters.
- Table 1 also included alternative options and reasons for the decisions to reject the recommendations, noting that these were the matters that would be passed to the Minister for the Environment for a decision.
- The remainder of the accepted recommendations will become legally operative within the District Plan, subject to the decisions made at the meeting.
- The report included an additional recommendation that would allow staff to address any minor editing or subsequential changes to rules required to fully reflect the recommendations Council may wish to reject. Staff sought to identify those subsequential changes within the table, however note that there may be a provision that required adjusting accordingly. The proposed recommendation was added to provide practical means to address that.
- With respect to the Notice of Requirement for the Ōmokoroa Active Reserve the recommendation to accept the Independent Hearings Panel's position, which was to confirm the Notice of Requirement with modified conditions, remained unchanged.
- As signalled at the Council hui held 22 February 2024, these plan making processes, in particular Plan Change 92, were a critical step to unlocking urban land to enable greater housing supply in the district.
- While Central Government continued to set its own direction on addressing the housing crisis, including the recently released information regarding the 'Going for Housing Growth' Policy, the legal requirements to deliver on the plan change remained.
- Central Government had signalled that MDRS would continue to be a housing option for councils in the future. Conversely, it may be an option that councils could move away from, however Government signalling ahead of having a policy in place, indicated that this would only apply to councils who could demonstrate it had at least 30 years of development capacity for housing available, to which Western Bay of Plenty District Council did not have.

- As it stood, both the Plan Change and the Notice of Requirement had been through a thorough legislative process with public involvement. The commissioners appointed to the Independent Hearings Process were qualified and experienced across a range of components of the plan change.
- For the most part, commissioners had upheld staff advice across the majority of their recommendations, many of which were subject to negotiations between different submitters.
- There had been a significant investment to date in progressing this work, which was both complex in its nature and process.
- Not only did the plan change re-zone existing residentially zoned land for medium density scaled development, but it also provided for the re-zoning of greenfield in Te Puke and future urban stage 3 land in Ōmokoroa. It was this stage 3 land that unlocked over 2,600 new homes, as well as associated roading and infrastructure networks.
- Critically the plan change was a necessary deliverable to fund the much needed and long signalled infrastructure projects, namely the State Highway / Ōmokoroa Road roundabout.
- It was staffs intention that the information provided since the Council hui held 22 February 2024, addressed concerns and reconfirmed the position Council was in, particularly drawing attention to the risks and implications held.
- Further to this, it had been staffs intention to better reflect Councils preferred position in the recommendation, which set out the matters Council may have wished to reject.

Staff responded to pātai as below:

- The Medium Density Residential Standards (MDRS) was notified as part of Plan Change 92 in August 2022, at which time the nine density standards took immediate legal effect. This meant that if developers complied with the nine density standards, they were considered a permitted activity.
- Council was required, through legislation to give effect to the MDRS rules through Plan Change 92.
- The rationale for both Ōmokoroa and Te Puke being included was dictated through the Resource Management Act (RMA). This stated that relevant residential zones were areas predominately urban in character that had populations of 5,000 or more people at the 2018 Census or that were intended by Council to grow to at least 10,000 people.
- This plan change enabled Council to have better control over developments as it provided more certainty and better urban design outcomes, such as: controls over enabling different types of housing; better interface between private and

public areas; better connections; requirements around outdoor living; and increasing privacy.

- There was no current practical opportunity to only apply the Plan Change to Ōmokoroa Stage 3, due to the high risk or how this would be legally interpreted.
- Central Government had signalled a potential for the MDRS rules to become optional for urban areas in time, however until a formal policy was created it was unclear how this would be implemented.
- A Plan Change could take around two years to be implemented.
- Council was aware of the application to the Infrastructure Acceleration Fund (IAF), noting that the fundamental government premise behind that fund was to enable infrastructure for the purpose of unlocking land for housing. This was the rationale for Kāinga Ora administering the fund.
- Council secured the IAF for Stage 3 Ōmokoroa which was developer-led housing.
- Central Government provided additional funding toward infrastructure to Kāinga Ora to support their efforts to free up housing nationally. Kāinga Ora was a conjugate for a national bid process where they had \$1 Billion to allocate for infrastructure to free up housing. This was due to identifying infrastructure as a barrier to developing housing/affordable housing. Council applied to the IAF and were awarded one of the bigger allocations.
- Kāinga Ora had signalled that they would object to the additional housing in Ōmokoroa if the Ōmokoroa intersection issues were not resolved, however did not have the funds to apply to the roundabout themselves at that stage.
- The Ōmokoroa interim roundabout, deemed to have a 10-15year life, was to provide safety and capacity improvements required to unlock the housing as part of the Ōmokoroa Stage 3 project. The work required as part of the Tauranga Northern Link (TNL) Stage 2, meant that this work could take 6 years at a minimum to be enabled.
- The Ōmokoroa Roundabout would be unlikely to be funded from a different funding source under the new government, unless specifically noted under the GPS.
- A large part of the funding of the roundabout was in relation to Council infrastructure that Council would own in the future.
- As the premise of the IAF funding was to enable housing, the application outlined the work Council had undertaken with SmartGrowth regarding the unlocking of Ōmokoroa Stage 1 and 2 as well as the Plans for Stage 3.
- The total funding from Kāinga Ora was \$38 Million, noting that the total funding package, including Councils contribution (land and dollars), as well as Waka Kotahi's contribution was \$46 Million.

- There were several components that made up the total package for the interim roundabout. The first component (the round about with four-laning to Francis Road) was estimated at \$10 Million. The second component of the project was four-laning from Francis Road to Prole Road was estimated at \$12 Million. On top of those works there would be costs for: professional fees; land acquisition; service relocation; and park and ride investigations. The current total costs for the project sat just under the allocated funding.
- The work being undertaken by PowerCo was in relation to the relocation of powerlines to overhead or underground. There were also investigations into supplying land to PowerCo for a new substation in Ōmokoroa.
- Local developers provided what they knew the market wanted, noting that dwellings with a garage of some sort were most attractive in the market. For this reason the current market offerings across the western bay continued to include, for the most part, a garage.
- As part of the planning for developments, Councils land engineers work closely with the developer engineers to ensure accessibility for services, such as Fire and Emergency New Zealand and Refuse trucks are able to navigate the streets. It was noted that private roads could have there own rules in relation to this.
- Stage 3 Ōmokoroa contemplated a variety of densities in relation to dwellings.

The Mayor went through the alternative recommendations to determine a sense of comfort from Councillors.

Alternative Recommendation A

All Councillors in attendance expressed a level of comfort with this alternative recommendation.

Alternative Recommendation B

All Councillors in attendance expressed a level of comfort with this alternative recommendation, following the removal of the 'coolstore' provision which was currently included.

Alternative Recommendation C

Following discussions there was a level of discomfort with this alternative recommendation, due to the designation process that Waka Kotahi would be undertaking and how the re-zoning may affect that.

Alternative Recommendation D (Tabled Item 1)

All Councillors in attendance expressed a level of comfort with this alternative recommendation.

RESOLUTION CL24-2.2

Moved: Cr M Grainger

Seconded: Cr R Joyce

1. That the Environmental Planning Manager's report dated 6 March 2024 titled 'Recommendations by the Independent Hearings Panel for Plan Change 92 and the Notice of Requirement for Ōmokoroa Active Reserve' 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.

CARRIED**RESOLUTION CL24-2.3**

Moved: Mayor J Denyer

Seconded: Cr A Henry

3. That Council accepts the recommendations of the Independent Hearings Panel for Plan Change 92 in accordance with clause 104 of Schedule 1 of the Resource Management Act 1991 (RMA), with the exception of the following Independent Hearings Panel recommendations identified in Table 1 below, with reasons for doing so, and any alternative recommendations in accordance with clause 102 (1)(b) and (c):

Table 1. Rejected Independent Hearings Panel Recommendations

	Recommendation rejected	Alternative recommendation (if any)
A	Introduction of new indoor railway vibration rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.6 (indoor railway vibration standards) and Rule 4C.1.4.4 (matters of discretion for indoor railway vibration) ¹ .	Delete Rules 4C.1.3.6 (indoor railway vibration standards) and 4C.1.4.4 (matters of discretion for indoor railway vibration).

¹ References:

IHP Recommendations Report – paragraphs 3.140 – 3.145.

IHP Recommendations Report Attachment B – Summary of Recommendations – Section 4C – Amenity – Topic 2 (page 15).

IHP Recommendations Report Attachment C – District Plan Provisions – pages 60–61.

KiwiRail submission points: 30.4 & 30.5.

	Reason The vibration rules are overly onerous and time-consuming to implement and present a significant or even unbearable cost to landowners. Based on KiwiRail's own evidence, this includes for a single dwelling, the need for a vibration expert to carry out an assessment (\$3-4k), the likelihood of needing to find an expert outside of the region due to the limited number of experts, a railway vibration assessment (\$5-8k), the possibility of needing to isolate the building from the ground vibration (\$100k + GST) or a heavy masonry construction ("high risk" and "high cost") or for landowners to abandon a project due to cost. These are over and above the normal building costs. These measures seem unreasonable to impose on individual landowners simply to avoid KiwiRail's perceived concerns regarding possible reserve sensitivity. Council is not aware of any complaints about vibration from those already living within 60m of rail corridors in the District nor was evidence of complaints provided by KiwiRail.	
B	Recommendation rejected	Alternative recommendation (if any)
	Proposed industrial zone to the west of the existing Francis Rd intersection with State Highway 2 being retained as Future Urban². 51 Francis Rd (Lot 2 DPS 76152) 21 Francis Rd (Lot 3 DPS 76152) 1362 SH2 (Lot 1 DPS 5073) 1 Francis Rd (Lot 2 DPS 5073)	Rezone the land to Industrial Zone on the District Plan Maps, as proposed by Plan Change 92. As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 Road and Walkway/Cycleway map in Appendix 7 – Structure Plans of the District Plan as

² References:

IHP Recommendations Report – paragraphs 3.214 and 3.289 – 3.321.

IHP Recommendations Report Attachment B – Summary of Recommendations – Ōmokoroa Zoning Maps – Topic 5 (page 8).

IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”). See area of land shown as “Future Urban” at Francis Rd.

recommended in Council's right of reply (29 September 2023). This includes deleting the industrial zone access and roundabout from the far western end of this land and changing it to a right hand turn only, and adding a new east to west structure plan road.

As a consequential change, amend the proposed Ōmokoroa Structure Plan Stage 3 map in Appendix 7 – Structure Plans of the District Plan to show that the "Francis Road structure plan area typical 25m cross section" shall also apply to the existing Francis Road where it adjoins the land Plan Change 92 proposed to be rezoned as Industrial. This is the cross section recommended to be added as part 4.8 of Appendix 7 – Structure Plans. Also make associated changes in proposed Rule 12.4.11.8 (b).

As a consequential change, delete the following wording from proposed Rule

		12.4.11.8 which was recommended by the IHP in support of their recommendation: Alternatively, prior to this intersection being closed, access into the Industrial Zone from Francis Road at or beyond it's intersection with State Highway 2 shall be prevented by way of an appropriate legal mechanism to Council's satisfaction. Add the words "Light Industrial" over the proposed Industrial Zone on the District Plan Maps so that this land becomes subject to existing rules for the Ōmokoroa Light Industrial Zone in Section 21 – Industrial of the District Plan.		
	Reason Ōmokoroa has approximately 18ha of existing Industrial Zoned land on the south-eastern side of Ōmokoroa Rd (the only land currently available for industrial use). Plan Change 92 proposed to rezone a further 10ha of Industrial land (from its current Future Urban Zoning) on the south-eastern side of Ōmokoroa Rd and to the west and east of the existing Francis Rd intersection with State Highway 2. These additional areas are required to meet the demand for Industrial land in the western part of the District and to provide employment for those living in the area. This meets SmartGrowth's objective to provide employment opportunities within growth areas and aligns with its			

vision for the Western Bay sub-region to be a great place to live, learn, work and play. These additional areas are also required because an existing Industrial Zone further north on Ōmokoroa Rd has been developed for housing under the Housing Accords and Special Housing Areas Act 2013 and is therefore no longer available for industrial use. Further, the location of the additional areas would provide a buffer between the Stage Highway and properties being rezoned to Medium Density.

A number of submitters living in the Francis Road area opposed the Industrial Zone at Francis Rd due to concerns such as noise, traffic and effects on the natural environment. There are existing provisions in the District Plan in Sections 4C – Amenity and Section 21 – Industrial which manage effects relating to noise, setbacks, screening and urban design e.g. avoiding large blank walls through use of glazing, varied materials and use of vegetation. In response to submissions, Council reporting officers also recommended a rule to ensure that Francis Road would need to be closed before industrial development could occur, and a 25m Francis road reserve (including noise bund) be completed between the proposed Industrial Zones and Medium Density Zones. Despite these measures, the IHP recommended that the proposed Industrial Zone to the west of the existing Francis Radd intersection with State Highway 2 be retained as Future Urban. The IHP's remaining concern being that the definition of "industry" in the District Plan is "very coarse" and "effectively allows for a range of industrial use from heavy industrial through to activities that are likely to be compatible with the Ōmokoroa community.

As an alternative, proceeding with rezoning the land to Industrial but marking it as "Light Industrial" on the District Plan Maps would allow existing Light Industrial rules to apply. These rules prevent "industry" (manufacturing, processing, packaging, dismantling activities and engineering workshops) and "storage, warehousing, coolstores and packhouses" from being permitted and make them non-complying along with waste management activities specifically. The rules would only permit activities such as commercial services (e.g. banks, post offices and laundromats etc), takeaway outlets, service stations, medical facilities, veterinary clinics and emergency services etc. The rules would also reduce the height limit from 20m to 9m and provide stricter noise requirements than the general Industrial Zone. This is an existing method within the District Plan in response to similar issues and is considered to resolve the remaining concern of the IHP.

C	Recommendation rejected	Alternative recommendation (if any)
	Proposed Natural Open Space Zone (as modified by Council officer recommendations) on Bruning land (Lot 3 DPS 28670) being retained as Future Urban³.	Rezone the land to Natural Open Space Zone on the District Plan Maps, as proposed by Plan Change 92 and as modified by Council officer recommendations. For clarity, this is the part of the property shown as Future Urban on the following map: IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”). As a consequential amendment, show a landscape strip on the Industrial Zoned land where it adjoins the land requested to be rezoned to Natural Open Space.

³ References:

IHP Recommendations Report – paragraphs 3.334 – 3.363.

IHP Recommendations Report Attachment B – Summary of Recommendations – Ōmokoroa Zoning Maps – Topic 6 (page 11).

IHP Recommendations Report Attachment D – District Plan Maps – “Ōmokoroa Plan Change 92 Zoning Map – January 2024”). See area of land shown as “Future Urban” on the eastern side of Ōmokoroa Road and adjoining State Highway 2.

Bruning submission point: 31.3.

Reason

Plan Change 92 proposed for an area of this property to be rezoned from Future Urban to Natural Open Space due to having one or more characteristics that aligned with the purpose of such a zoning. The purpose of the zone being to identify land generally unsuitable for development which instead has ecological, cultural, recreation or amenity values and provides for the likes of open space, maintenance and restoration of natural character, green corridor links and visual separation between areas planned to be urbanised.

The Council officer (in a Section 42A Report) recommended changes to the proposed boundary of the Natural Open Space Zone on this property following an additional site visit. The Council officer then confirmed their view (in rebuttal evidence) that a Natural Open Space Zoning was most appropriate for this particular property "from a planning perspective". However, the Council officer also offered the IHP an alternative option of retaining this part of the land as Future Urban given "unique and exceptional circumstances" relating to the property. This being an existing State Highway designation (D181) over part of the property and plans by Waka Kotahi to alter this designation and expand it further into the property. The reason given for this option was "for simplicity the option to retain the operative zoning could be followed with consequential rezoning as may be appropriate once the designation process is complete and there is more certainty around residual property boundaries and the like".

Waka Kotahi's submission sought for the proposed Natural Open Space Zone within the footprint of designation D181 be removed (and revert to Rural Zone) as Natural Open Space Zoning is incompatible with the urban infrastructure of a grade-separated interchange and may hinder Waka Kotahi in its ability to construct the intersection.

Bay of Plenty Regional Council sought for the land to be retained for Natural Open Space due to the need to protect streams, wetlands and freshwater ecosystems for the purpose of the Plan Change and the National Policy Statement for Freshwater Management.

Council agree that the land in question, being a wetland, has characteristics which make it most suitable for a Natural Open Space Zoning. The land is not suitable for urban purposes (residential, industrial and commercial) and should not be a Future Urban Zone.

D	Recommendation rejected	Alternative recommendation
	Introduction of new indoor noise level rules for Ōmokoroa and Te Puke in Section 4C – Amenity (sub-section 4C.1 – Noise and Vibration) of the District Plan. Specifically Rule 4C.1.3.2.c.iii (indoor railway noise standards).	Amend Rule 4C.1.3.2.c.iii (noise sensitivity) to reduce the applicable area of the requirements from 100m to 50m as follows: “In Ōmokoroa and Te Puke, any new building or addition to an existing building located within <u>50m</u> 100m of the railway track 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:”.
	Reason The applicable area of the noise rules (100m from a railway designation boundary) is potentially much wider than required to manage the actual effects of railway noise on buildings (holding noise sensitive activities). The acoustic evidence from Kāinga Ora considers that the 100m area is too large, will apply controls to land that is not affected by noise to the degree that rules are necessary, and ignores a range of factors that may lead to a smaller applicable area such as railway cuttings, train speed and screening by topography and buildings. Kāinga Ora recommended using computer noise modelling now to significantly reduce the spatial extent of the controls overall, which would have been especially likely where there is more complex topography and screening effects. In Kāinga Ora’s view, such modelling would have been relatively straightforward given the easily accessed and reliable LIDAR terrain and other digital spatial data. The IHP did not accept this option and retained the applicable area as 100m. We recognise that it would not	

be practicable to revisit the option of doing computer modelling now to spatially identify the applicable area before the rule becomes operative. However, it seems clear from Kāinga Ora's evidence that the 100m area is over-conservative, would create an unnecessary burden on many landowners and should be reduced in size. On that basis, we request that the applicable area be reduced in size from 100m to 50m. This will avoid the need for landowners to pay for acoustic assessments unnecessarily.
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4. That by rejecting the Independent Hearings Panel's recommendations identified in Table 1 above, that these matters will be referred to the relevant Minister for a decision in accordance with clause 101(2) and 105 of Schedule 1 to the Resource Management Act.
5. That the public be notified of the decisions by Council in accordance with clause 102 of Schedule 1 of the Resource Management Act by 13 March 2024 including the recommendations of the Independent Hearings Panel that it rejects and the reasons for doing so and any alternative recommendation that it has provided for a rejected recommendation.
6. That staff be delegated the authority to make minor editorial changes and consequential changes (if any) to the recommended decision of the Council in consultation with the District Plan Committee Chairperson.
7. That Council accepts the recommendations of the Independent Hearings Panel for the Ōmokoroa Active Reserve and confirms the Notice of Requirement with modifications in accordance with section 168A of the Resource Management Act.

A division was called and recorded as follows:

In Favour: Crs R Crawford, G Dally, M Grainger, A Henry, R Joyce, J Scrimgeour, D Thwaites, A Wichers and Mayor Denyer

Against: Crs M Murray-Benge and T Coxhead

CARRIED 9/2

The Meeting closed at 3.11pm.

Confirmed as a true and correct record at the Council meeting held 4 April 2024.

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Mayor J Denyer

CHAIRPERSON / MAYOR