Tauranga City Council

Variation 1: Tauriko West Urban Growth Area

TO PROPOSED PLAN CHANGE 33 TO THE TAURANGA CITY PLAN

RECOMMENDATIONS OF THE INDEPENDENT HEARING PANEL

Date: 21 February 2025

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Executive Summary

1. This Recommendation Report and its associated decisions on submissions is made by the Independent Hearing Panel (IHP or Panel) established by Tauranga City Council (Council) pursuant to clause (cl.) 96 of Part 6 Schedule (Sch.) 1 of the Resource Management Act 1991 (RMA). It relates to Variation 1 (Var 1): Tauriko West Urban Growth Area (TWUGA), a variation to proposed Plan Change 33 – Enabling Housing Supply (PC33). It, like PC33, is an Intensification Planning Instrument (IPI) under subpart 5A of the RMA.

2. The statutory requirements relating to an IPI were introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act).

3. Our approach to the interpretation of the Amendment Act's requirements has followed the approach set out in our PC33 decision. That is, to err on the side of caution rather than to be as expansive as some submitters sought – particularly when it comes to the issue of what is within scope of an IPI plan change. In the absence of a merit appeal and given the judicial direction of *Clearwater* and similar authorities, we consider a more conservative reading is appropriate.[1] In determining what is within scope of Var 1, we have also been mindful of the High Court's direction in *Waikanae* that any amendments must not limit the level of development currently provided for in the operative Tauranga City Plan (City Plan or ODP).[2] Accordingly some submissions that may otherwise have had planning merit have been deemed out of scope and will, if further pursued, need to undertake a separate Sch.1 process path.

4. We have also taken a 'real world' approach to these recommendations – as the superior courts have often urged with respect to planning matters.[3] While we acknowledge the fact that the City has a significant housing shortage and the policy thrust of Var 1 is to enable a more intensive form of residential development to address the housing supply constraints, we see little point in producing a result that would seem to resolve that matter on paper only.

5. We appreciate the effort that the Council, landowners, developers, affected parties and other submitters made to reduce the areas of disagreement requiring our determination. That approach bore fruit, and meant that by the time of the hearing, there remained just a handful of discrete issues for us to determine. This has also meant that we have been able to accept and adopt most of the recommendations made by the Council through its final hearing responses and reply.

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1 Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290 (Clearwater); Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290 (Motor Machinists); Bluehaven Management Limited v Western Bay of Plenty District Council [2016] NZEnvC 191 (Bluehaven); and Albany North Landowners v Auckland Council [2017] NZHC 138 (Albany North).

2 Kāpiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654 (Waikanae), at [56].

3 Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd [2012] NZRMA 552 (HC).

6. The key matters on which we do not agree with Council's final position, and have recommended changes, relate to:

    a) the upper bound for the initial lower dwellings per hectare (dph) at 1,000 dwelling units rather than the proposed 800;

    b) a density reduction for the first 1,000 dwellings at 20 dph rather than the proposed 22 dph;

    c) the activity status for out-of-sequence development with respect to transport infrastructure being discretionary (DIS) rather than restricted discretionary (RDIS) so that the full range of matters can be considered under s.104 RMA; and

    d) additions to Policies 12A.1.1.2 and 12B.1.3.1 to clarify/strengthen the intent of those policies.

7. These matters and our reasons are discussed in detail in the text of this decision.

8. References, and where relevant links, have been provided to key documents referred to in this report to avoid having to append those documents, and to avoid unnecessarily increasing the length of this report. All key documents can also be found on the Council's website.[4] We have also included a glossary of abbreviations in **Appendix 1**.

9. We note that, per cl.99(2)(b) Schedule 1 RMA, we have generally not exercised our discretion to make recommendations beyond the scope of submissions – in large part because of the position we took and refer to above in paragraph 3. The one exception relates to a change we have made to Appendix 12I.1: Transport Staging and Sequencing Schedule (Appendix 12I.1) to clarify that the land use prerequisite relates to when residential activity commences (i.e. when new dwellings are occupied), which we discuss at subsection 5.4.4 below.[5]

10. We are aware that on 17 December 2024 the Government introduced the Resource Management (Consenting and Other System Changes) Amendment Bill. One of the key purposes of the Bill is to allow councils a discretion regarding the inclusion of the Medium Density Residential Standards (MDRS) requirement, subject to satisfying the requirement for sufficient housing for the long-term. That Bill is at an early stage, (with submissions closing on 10 February 2025), and is not expected to pass into law until mid-2025,[6] being after our recommendations are made. We are therefore unable to take that matter into account.

11. Finally the Panel wishes to thank all those who assisted in the smooth running of this process, as well as all those who participated - whether successful or not in terms of the relief sought. The issues were not easy and, indeed, were strongly contested. The Panel has endeavoured to accommodate both concerns and aspirations where that

[4] Council's website.
[5] A change requested by Kāinga Ora but supported by the Council.
[6] RMA Amendment Bill status.

was possible or practicable under the amending legislation, whilst making appropriate provision for the expected enablement of increased housing supply.

E pari atu nei te tai o mihi ki a koutou katoa.

1 Introduction

1.1 Intensification Planning Instrument and Intensification Streamlined Planning Process

1. Council notified Var 1 to PC33 on 8 March 2024. Var 1 was notified to amend PC33 to rezone land and propose specific provisions within the City Plan to enable urban development to proceed within the TWUGA.

2. As Var 1 was notified prior to the public notification of Council's decisions on PC33 (which occurred on 19 June 2024), it qualifies as a variation to that IPI (notwithstanding that PC33 became operative on 17 July 2024).[7]

3. Var 1, as an IPI is required to follow the Intensification Streamlined Planning Process (ISPP). This process has a number of key differences to a 'standard' RMA plan change process. We provide a summary of these differences in sections 1.3 to 1.10 below. That summary should be read in conjunction with cls.96-108 of Sch.1 of the RMA to appreciate all relevant procedural matters and legal requirements.[8]

1.2 Appointment of IHP

4. As required under cls.99-100 of Subpart 6, Sch.1 of the RMA, councils must appoint an IHP to make recommendations on the submissions received and the content of an IPI using the ISPP.

5. The IHP is made up of the following independent accredited RMA hearings commissioners, who also comprised the IHP for PC33:

    a) David Hill (Chairperson);

    b) Vicki Morrison-Shaw;

    c) Richard Knott; and

    d) Fraser Campbell.

1.3 Powers and Functions of IHP

6. The IHP is acting under delegated authority from the Council[9] in accordance with cl.96 of Sch.1 of the RMA, and has the duties and powers set out in cl.98 of Sch.1 of the RMA.

7. The Panel is required to provide its recommendations on Var 1 in one or more written reports to the Council, after it has heard submissions, in accordance with

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[7] As per cl.95(2)(p) of Sch.1 which applies cl.16A to IPIs.

[8] A summary of the process that the Council followed in the lead up to the Var 1 hearing is summarised in the s.42A Report, sections 2 and 4.

[9] cl.93(3) of Sch.1 of the RMA required the Council to delegate all necessary functions to the IHP for the purpose of the ISPP.

the provisions of cls.99-100 of Sch.1 of the RMA. For that purpose, the report:

a) may group submissions by provision or topic;

b) must (among other things) identify any recommendations that are outside the scope of submissions made;

c) must include a s.32AA further evaluation where that is considered necessary; and

d) may include alterations to the IPI arising from consideration of submissions or other relevant matters.

8. This report, together with its 3 Appendices, and the 3 Directions we issued,[10] have been prepared to discharge these requirements.

1.4 Amendment Act Requirements and Discretions

9. The Amendment Act (ss.77G and 77N) requires Tier 1 territorial authorities to use the IPI and ISPP to:

a) incorporate the MDRS into every relevant urban residential zone within its district plan; and

b) amend every residential and non-residential zone in any urban environment to give effect to Policy 3 of the National Policy Statement for Urban Development 2020[11] (NPS-UD) to enable the specified heights and densities.

10. In addition, the Amendment Act (s.77G(4)) provides councils with a discretion to create new (relevant) residential zones, such as what Var 1 proposes here (seeking as it does to rezone the majority of the rural-zoned land[12] of the TWUGA to MDRS).

1.4.1 MDRS

11. Where a new (relevant) residential zone is proposed as part of an IPI (or variation) the provisions set out in Sch.3A (the MDRS Schedule) must be inserted into the IPI.[13] In addition, there is discretion to include:

a) more lenient provisions (i.e., more enabling of development);[14]

b) less enabling provisions - but only if a relevant qualifying matter (QM) applies and then only to the extent necessary to accommodate that matter;[15] and

c) "related provisions" that support or are consequential on the MDRS.[16]

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10 Refer to the Council's website for a copy of these three directions.
11 As updated in 2022.
12 Under the Western Bay of Plenty District Plan.
13 s.42A Report, at [10.1.3].
14 RMA s.77H.
15 RMA, ss.77I and s77O.
16 RMA, s.80E(1)(b)(iii)).

1.4.2 NPS-UD Policy 3

12. Policies 3(a)-(c) of the NPS-UD impose height and density requirements for city centre zones, metropolitan centre zones, and areas located within a walkable catchment of existing and planned rapid transit stops, or on the edge of city centre or metropolitan centre zones.

13. Policy 3(d) relates to areas within and adjacent to neighbourhood, local and town centres and requires the enablement of building heights and densities commensurate with the level of commercial activity and community services.

14. There appeared to be general acceptance that Policy 3(d) was the relevant provision for Var 1.

1.4.3 Application and assessment of QMs

15. The Council is able to make the requirement to give effect to Policy 3 of the NPS-UD less enabling of development in relevant urban residential and non-residential zones via the QMs,[17] provided specified evaluative requirements are met.[18]

16. There are two types of QMs:

    a) existing QMs being those contained within the operative City Plan at the time the IPI was notified, which are to be evaluated in accordance with s.77K; and

    b) new QMs being those introduced through an IPI process, which are to be evaluated in accordance with s.77J, and must include the additional information set out in s.77L.

17. Var 1 as notified proposed three QMs (Wairoa River Important Amenity Landscape Area, Flooding, and Neighbourhood Reserves).[19] The initial assessments were set out in the s.32 ER, with refinements proposed through the process.

18. We record that while there may have been some dispute around the edges of the QMs (in terms of their extent or application, for instance) there was no material challenge to their status as QMs. Where relevant those matters are discussed further in our key issues section (section 7) below.

1.5 Sections 80E and 80G Limitations

19. The scope of matters to be included in an IPI are specified in s.80E. This section states:

> **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—

[17] RMA, ss.77G, 77I, 77O and 77R.
[18] RMA, s.77L.
[19] s.32 ER, pp.96-118.

(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.

20. There are some limitations on what a territorial authority can do with an IPI. In particular (as per s.80G):

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.

ISPP

(2) A local authority must not use the ISPP except as permitted under section 80F(3).

21. The IPI can also include "related" provisions (being provisions that support or are consequential on the MDRS or Policy 3).

22. The Council's position was that the scope of the matters it had included in the IPI

and the use of the ISPP were in accordance with the limitations and requirements of ss.80E and 80G of the RMA. That was not disputed by submissions – although some considered a standard Sch.1 plan change process would have been more appropriate in the circumstances.[20] Some scope issues arose, which we address in later sections of this report.

23. While we note that unlike the 'standard' plan change process, the IHP is not limited in making its recommendations by the scope of submissions,[21] any recommendation must still fall within the permissible scope of an IPI. What is within the scope of the IPI was therefore an important fundamental to establish, and we received a range of submissions on that point. As we note later in this report, we are satisfied that all of our recommendations fall within the scope of submissions, with one exception, namely changing the wording within Appendix 12I.1 to clarify that the land use prerequisite relates to when residential activity commences.

24. Other than this one discrete exception, we have not considered it necessary to make recommendations going beyond the scope of submissions.

1.6 Var 1 Rules - No Immediate Legal Effect

25. Section 86BA provides for a rule in an IPI to have immediate legal effect if certain criteria are met, those criteria include that the rule does not apply to a "new" residential zone (s.86BA(1)(c). As Var 1 rezones TWUGA from rural to a residential zone, its rules do not have immediate legal effect.

1.7 Financial Contributions

26. Section 77E enables the Council to make rules requiring a financial contribution (FC) for any class of activity other than a prohibited activity, and ss.77T and 80E(1)(b)(i) enable the Council to include new FC provisions or change existing FC provisions as part of its IPI. This power is discretionary and there is no legislative requirement to include such provisions.

27. The Council chose not to include new FC provisions or amend the existing FC provisions in Var 1. However, as one submitter requested changes to the FC provisions,[22] we address the scope for this request later in this decision report.

1.8 Papakāinga

28. While s.80E(1)(b)(ii) of the RMA provides Council with a discretion to use its IPI to amend or introduce provisions to enable papakāinga housing within the city, Var 1 did not contain any such provisions.[23]

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20 Tauriko Property Group Ltd Legal Submissions, at [14].
21 RMA, Sch.1 cl.99(2)(b).
22 Classic Group (#49.19).
23 The discretionary nature of the power was noted in the Council closing legal submissions, 30 November 2023, at [32].

29. While the Council did not explicitly address the reasons for not including papakāinga provisions, the IHP decision report for PC33 notes (at paragraph 31) that:

    a) the City Plan already includes provisions enabling papakāinga; and

    b) the Council had agreed with tangata whenua that any changes to further enable papakāinga housing would be better addressed through separate plan change(s) and other non-regulatory support (such as through the Grants for Development Contributions on Papakāinga Policy).

30. Accordingly, we do not consider papakāinga issues further in this report.

1.9 Protected Customary Rights

31. In formulating our recommendations, we must be satisfied that ss.85A and 85B(2) of the RMA (which relate to protected customary rights) will be complied with.[24]

32. No protected customary rights were identified to us, and we heard no submissions on this issue. While the provision requires that the IHP be *satisfied*, we are not able to take this matter any further.

1.10 Council Decision, Timing, Appeals and Judicial Review

33. Following the receipt of our recommendations, the Council is required to decide whether to accept each recommendation. The Council may provide an alternative recommendation for any recommendation that the Council does not agree with.[25] However, where the Council rejects a recommendation, it is required to refer this to the Minister for the Environment (the Minister) together with:

    a) the Council's reasons for rejecting the IHP's recommendation; and

    b) any alternative recommendation the Council has provided.[26]

34. When making its decisions on the IHP's recommendations, the Council must not consider any submission or other evidence unless it was made available to the IHP before the IHP made its recommendations. However, the Council may seek clarification from the IHP on a recommendation to assist in making any such decision.[27]

1.10.1 If the Council accepts all recommendations

35. If all IHP recommendations are accepted by the Council, Var 1 is deemed to be approved and becomes operative upon Council publicly notifying its decisions.[28]

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[24] RMA, Sch.1, cl.99(3).
[25] RMA, Sch.1, cl.101(1)(a) and (b).
[26] RMA, Sch.1, cl.101(2)(a) and (b).
[27] RMA, Sch.1, cl.101(4)(b) and (c).
[28] RMA, Sch.1, cl.103.

1.10.2 If the Council accepts some, or none, of the recommendations

36. If the Council does not agree with one or more of the IHP's recommendations it must follow the procedures set out in cls.104 to 106 of Sch.1 of the RMA. In summary, all affected parts of the variation that are accepted are deemed approved and become operative upon public notification, and only those recommendations that are rejected (along with the reasons and any proposed alternative recommendation(s)) are referred to the Minister for decision.

37. Upon receipt of that information, the Minister must decide whether to accept or reject any or all of the contested IHP recommendations. For any IHP recommendation that the Minister rejects, the Minister must then decide whether to adopt any alternative recommendation referred to the Minister by the Council.[29] The Minister may make minor amendments to any recommendation. The Minister's decision with reasons is then provided to the Council, which must then publicly notify it and the City Plan as altered is deemed approved and becomes operative.

1.10.3 Timeframe for making a decision on Var 1

38. The timeframe for completion of Var 1 is governed by Ministerial directions made under s.80L of the RMA. Originally the Council was directed to notify decisions on the IHP's recommendations for Var 1 by 30 June 2024.[30] In response to a request from the Council, the Minister granted an extension of that timeframe to 31 December 2025.[31]

39. Notwithstanding that, the Council informed us during the hearing that Var 1 needed to be made operative by June 2025, or it would have implications for funding agreements (which were based on Var 1 being operative by that time).[32] While we are not bound by those funding agreements, we have worked to ensure our recommendations are released to enable Council to meet that deadline.

1.10.4 Appeals and judicial review

40. Unlike a 'standard' plan change process, there is no right of appeal to the Environment Court against any decision of the Council or the Minister on Var 1, however the right of judicial review is retained.[33]

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29 RMA, Sch.1, cl.105(1)(a) and (b).

30 The Resource Management (Direction for the Intensification Streamlined Planning Process to Tauranga City Council and Wellington City Council) Amendment Notice 2022, published in the New Zealand Gazette on 16 December 2022.

31 The Resource Management (Direction for the Intensification Streamlined Planning Process to Tauranga City Council and Wellington City Council) Amendment Notice 2023 (No.3), published in the New Zealand Gazette on 7 September 2023.

32 Oral Evidence of Andrew Mead, 4 December 2024.

33 RMA, Sch.1, cls.107-108.

2 Var 1 Overview

41. The opening statement of Mr Richard Harkness, Principal Planner: Structure Planning at the Council, provided an overview of Var 1. He noted:[34]

    a) Var 1 forms part of the Council's response to the housing shortfall within the City, and is intended to assist in meeting the City's development capacity requirements under the NPS-UD.

    b) Tauriko West is an area with rich cultural and historical significance. It is bordered by the Te Awa o Wairoa, a river with spiritual and cultural significance, and there are a number of key culturally and historically significant sites located close to that awa.[35]

    c) While the land has been used for rural activities since the late 19th Century, it was identified as a greenfield urban growth area (UGA) through the regional SmartGrowth Strategy in 2016.

    d) Te Kauae a Rōpū was formed in 2017 as a hapū-centric forum to partner with local authorities and the New Zealand Transport Authority – Waka Kotahi (NZTA) to oversee the steps required to enable urban development in TWUGA, being:

        (i) an extension of the urban limits in the Bay of Plenty Regional Policy Statement (BOPRPS) to include Tauriko West (completed 2018);

        (ii) a boundary reorganisation to include the southern area of Tauriko West within Tauranga City (completed 2021);

        (iii) rezoning of the area (the subject of this variation); and

        (iv) NZTA's roading improvements to SH29/SH29A (enabling works currently underway, with the business case for long term upgrades endorsed in August 2023).

    e) The planning process for TWUGA involved extensive landform optioneering since 2017, considering various iterations to maximise developable land while protecting important cultural and historical values, and managing environmental and hazard risks. Option 5 was ultimately selected, with Var 1 proposed to give effect to the rezoning.[36]

    f) The land is in private ownership, and while there are a few small property holdings, the three main landowners comprise:

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34 Opening Statement of Richard Harkness, 4 December 2024, at [2.2], and [3.1]-[3.10].

35 We note that while cultural and heritage significance matters were not explored in any detail before us, such matters are likely to remain relevant matters for consideration at the time consents are sought.

36 Noting that this was for the best-fit concept, assessment purposes only and is not proposed as the final definitive landform.

(i) Tauriko Property Group Ltd and Classic Group Ltd (together, TPG) (approximately 132 hectares (ha));

(ii) Tauriko West Ltd (TWL) (approximately 68 ha); and

(iii) Kāinga Ora (approximately 98 ha).

g) In terms of zoning:

(i) MDRS is proposed to cover the majority of the TWUGA;

(ii) A very wide river margin is proposed as Passive Open Space Zone to address matters of cultural, amenity and landscape importance;

(iii) A Conservation Zone is extended along the 20m esplanade reserve river margin;

(iv) The Rural Zone applies to a small area south of Redwood Lane;

(v) At Tauriko Village, the current zones/designations remain as Commercial for the Caltex site, Passive Open Space for the community hall/play centre site and Designation ME24 for Tauriko Primary School; and

(vi) No greenbelt zone or other open space zone is proposed to control flood risk, since Proposed Plan Change 27 – Flooding from Intense Rainfall (PC27) has legal effect.

42. While the TWUGA was estimated for some 3,500 – 3,900 dwelling units overall,[37] a significant milestone ceiling was placed at 2,400 new units - being the assessed absorption capacity of the wider transport network once the Tauriko West Enabling Works (currently under construction) are completed – beyond which further development is discouraged until the future SH29 alignment and upgrade is completed.

43. As notified, Var 1 proposed changes to the following Chapters of the City Plan:

a) Chapter 4, Section 4C (Earthworks Provisions);

b) Chapter 6 (Natural Features and Landscapes);

c) Appendix 6G (TWUGA Visual Mitigation and Landscaping Specifications);

d) Chapter 12:

(i) Section 12A (General Subdivision Provisions);

(ii) Section 12B (Subdivision in Residential Zones);

[37] Evidence of Andrew Mead, 4 November 2024, at [6.7].

(iii) Appendix 12I (TWUGA Infrastructure Statement and Staging and Sequencing Schedule); and

e) Chapter 14, Section 14G (MDRZ).

44. While Council recommended amended provisions in response to matters raised and discussed at the hearing, the above provides sufficient context at this point.

3 Procedural Matters

3.1 Submissions and Further Submissions

45. As the Council s.42A Report notes:[38]

a) 52 submissions were received, all were filed within time, and none have been withdrawn; and

b) 9 further submissions were received, again all were filed within time and none have been withdrawn

3.2 Directions

46. In order to respond to matters arising before the hearing the Panel issued a total of three Directions.[39] The Directions related to:

a) timetabling for the s.42A Report, evidence and legal submissions;

b) hearing procedures and directions; and

c) expert conferencing.

47. The Panel wishes to record its appreciation to Council, submitters, their respective counsel and experts for the constructive and timely manner in which they responded to the Directions.

3.3 Section 42A Report

48. In advance of the hearing, the Council provided its s.42A Report (102 pages) together with its seven appendices. This report covered all of the substantive issues raised in submissions and provided us with an updated set of provisions along with supporting documentation.

3.4 Expert Conferencing

49. Expert conferencing on development yield occurred on 11 November 2024. This was facilitated by an Independent Facilitator (Marlene Oliver) and involved a range of

[38] s.42A Report, section 3.
[39] Our Directions are available on the Council's website.

development, economic, urban design, and planning experts for the Council and submitters, as noted in the below table:[40]

Experts Name and Expertise	Party
Mathew Lagerberg (Director) Peter Cooney (Director) Kevin Hill (Engineer/Project Manager)	TPG
Aaron Collier (Planner)	TPG Urban Task Force for Tauranga (Urban Task Force)
James Paxton (Urban Designer)	Reset on behalf of TPG
Adam Thompson (Economics)	Urban Economics on behalf of TPG
Grant Downing (Land Development Manager)	Element IMF on behalf of TWL
Craig Batchelar (Planner)	Cogito Consulting on behalf of TWL
Matthew Lindenberg (Planner)	BECA on behalf of Kāinga Ora
Mark Arbuthnot (Planner)	Tauranga Crossing Ltd (TCL)
Michael Kemeys (Development Manager)	Veros on behalf of Council
Ayvron Greenway (Planner)	Council
Alistair Talbot (Planner)	Council

50. The conferencing resulted in a Joint Witness Statement dated 11 November 2024 (JWS Yield), which assisted in clarifying the areas of agreement and disagreement.[41] We express our thanks to all those who participated in conferencing.

3.5 Hearing and Site Visit

51. The Var 1 hearing was held on 4-5 December 2024 at the Bay of Plenty Regional Council (BOPRC) chambers.

52. A list of submitters/persons appearing for submitters, and the persons appearing for the Council at the hearing is set out in **Appendix 2**.

53. The Panel undertook a site visit following the adjournment of the hearing on 5 December 2024. The purpose of the site visit was to familiarise ourselves with the TWUGA and surrounds.

54. The Panel found the site visit helpful and expresses its thanks to Alistair Talbot and Richard Harkness who both arranged and chauffeured us around on the site visit.

4 Legal Framework

55. This section outlines the following matters relevant to the legal framework:

    a) relevant legislation;

[40] Joint Witness Statement – Yield, 11 November 2024 (JWS Yield), Section 4, Excerpt from Table.
[41] A copy of the JWS – Yield is available from the Council's website.

b) relevant policies, plans and strategies;

c) relevance of commercial arrangements;

d) scope of related provisions; and

e) PC27 as a QM.

4.1 Relevant Legislation

56. The Amendment Act sets out the key elements of the legal framework that we must apply in reaching a decision on Var 1. In short, it requires the Council to amend the City Plan to accelerate the implementation of the NPS-UD and increase housing supply through the implementation of the MDRS.[42]

57. The Amendment Act does not however stand alone. The s.32 Evaluation Report identified the relevant legislative framework as comprising:[43]

a) RMA ss.5-8, 30-31, and 75-76;

b) Amendment Act ss.77G, 77I, 77O, 80E, 80L, 86BA, Sch.1, cl.102, Sch.3A; and

c) Climate Change Response Act 2002.

58. The Council Opening Legal Submissions also confirmed that the standard RMA requirements for district plan changes continue to apply - unless and except to the extent they are altered by the Amendment Act. Those submissions summarised these requirements as follows:

> *29. In summary, the ordinary statutory requirements include whether the proposed provisions:*
>
> *(a) Are designed to accord with and assist the Council to carry out its functions, so as to achieve the purpose of the Act [ss.31, 72 and 74(1)];*
>
> *(b) Are in accordance with any regulations (including national environmental standards) [s.74(1)];*
>
> *(c) Give effect to a national policy statement, the New Zealand coastal policy statement and a national planning standard [s.75(3)(a), (b), and (ba)];*
>
> *(d) Give effect to the regional policy statement [s.75(3)(c)];*
>
> *(e) Are not inconsistent with an operative regional plan for any matter specified in section 30(1)20 and have regard to any proposed regional policy statement or regional plan on any matter of regional significance [s.74(2)(a)];*
>
> *(f) Have regard to any relevant management plans and strategies under other Acts, any relevant entry in the New Zealand Heritage List to the extent their*

[42] Opening Legal Submissions for the Council, 29 November 2024, (Council Opening Legal Submissions), at [2].

[43] Operative City Plan Section 32 Evaluation Report: Variation 1 to Plan Change 33 – Tauriko West Urban Growth Area, Tauranga City Council (s.32 Evaluation Report or s.32 ER), at [4.2].

content has a bearing on the resource management issues of the region [s.74(2)(b)];

(g) Have regard to the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities [s.74(2)(c)]; and

(h) Take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district [s.74(2A)].

30. Section 32 of the RMA requires an evaluation of a number of matters when determining plan provisions. Under s 32 the key questions include whether:

(a) The objectives are the most appropriate way to achieve the purpose of the RMA; and

(b) The policies and other provisions that implement or give effect to the objectives are the most appropriate way to achieve the objectives, including assessing their efficiency and effectiveness by:

(i) Identifying and assessing and, if practicable, quantifying the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated (including opportunities for economic growth and employment); and

(ii) Assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

31. The key modifications made by the Amendment Act to these statutory tests relate to the requirement to give effect to the regional policy statement under s 75(3)(c) and the matters to be considered as part of the s 32 evaluation.

32. Section 77G(8) addresses potential conflict between the requirement to incorporate the MDRS into relevant residential zones and the requirement to give effect to a regional policy statement under s 75(3)(c). It provides for the MDRS to prevail over the regional policy statement as follows:

(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.

33. Sections 77J, 77K and 77L (relating to residential zones) and ss 77P, 77Q and 77R (relating to non-residential zones) set out additional requirements for the evaluation of qualifying matters under s 32. The requirements for evaluating qualifying matters are set out in ss 77J and 7P. There are also alternative or additional evaluation requirements as follows:

(a) Existing qualifying matters that are operative in the relevant district plan when the IPI is notified may follow an alternative evaluation process; and

(b) Other qualifying matters under ss 77I(j) or 77O(j) must be evaluated in accordance with the additional site-specific matters required by ss 77L or 77R.

4.2 Relevant Policies, Plans and Strategies

59. The s.32 Evaluation Report identified the relevant policies, plans and strategies as including:[44]

    a) Climate Change Plans comprising:

        (i) Emissions Reduction Plan 2024;

        (ii) National Adaption Plan 2022;

    b) National Policy Statements, comprising:

        (i) NPS-UD 2020;

        (ii) National Policy Statement on Freshwater Management 2020 (NPS-FM);

        (iii) National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB);

        (iv) Proposed National Policy Statement for Natural Hazard Decision-making 2023;

    c) National Planning Standards 2019 (NPStds);

    d) BOPRPS 2014 (updated 2023);

    e) BOPRC Regional Plans comprising:

        (i) Regional Natural Resources Plan 2017 (updated 2023);

        (ii) Bay of Plenty Regional Land Transport Plan (RLTP) 2021 – 2031;

    f) Western Bay of Plenty (WBP) District Plan 2012 (updated 2024);

    g) Iwi and Hapū Management Plans;

    h) Tauranga City Strategies and Policies;

    i) WBP Transport System Plan 2023; and

    j) Government Policy Statements.

60. One issue the Panel raised with the Council was whether the National Policy Statement for Highly Productive Land 2022 applied to the TWUGA. Council addressed this issue in its Closing Statement as follows:[45]

> *3.1 At the hearing, the IHP questioned if the restrictions on highly versatile soils applied to TWUGA under the NPS-HPL. I note that under Clause 3.4(1) NPS-HPL, highly productive land is to be mapped by regional councils, however, this does*

[44] s.32 Evaluation Report, at [4.3]-[4.10].

[45] s.42A Addendum, Council Closing Statement, 23 December 2024 (Council Closing Statement), at [3.1]-[3.2].

not include land identified for future urban development under Clause 3.4(2) NPSHPL.

3.2 TWUGA is identified as a planned urban growth area in the SmartGrowth UFTI Connected Centres Program, as well as being identified more recently as a Priority Development Area under the Future Development Strategy (Part 4 of the SmartGrowth Strategy 2024-207413).

61. No party appeared to contest the Council's view on the relevant legislative and policy and planning framework, however views differed on the weight to be given to some aspects of that framework. We address those issues in more detail when considering specific submission issues later in this decision.

Findings

62. We accept the Council's summary of legislation, policies, plans and strategies comprising the relevant legal framework as set out in sections 4.1 and 4.2 above. There are two points that require further brief comment.

63. First, we note that as the Proposed National Policy Statement for Natural Hazard Decision-making is still at an early stage and is not yet operative, very little if any weight can be given to it. We also note that based on the current wording, it is not proposed to apply to IPI plan changes.[46]

64. Secondly, for completeness we note that the operative City Plan also forms part of the relevant planning framework.

4.3 Relevance of Commercial Arrangements

65. An issue that arose during the course of the hearing was the extent to which the commercial arrangements (including funding agreements) entered into between the three major landowners and the Council were relevant considerations for us.

66. While the commercial arrangements were mentioned by a number of parties (in their submissions and evidence), the documents themselves were not provided to us, other than a table noting the document name, status, parties to it, confidentiality restrictions, and whether it mentioned density or other requirements.[47]

67. Kāinga Ora submitted that while the commercial arrangements do not "legally fetter or bind" the Panel:

    a) they are relevant to the Panel's determination of the most appropriate provisions (including zone) that should apply to TWUGA; and

    b) the relevance arises from the following provisions to which Var 1 must give effect:

[46] Proposed NPS Natural Hazard Decision-making 2023, at [1.5].
[47] Cooney Lees Morgan, Summary of Agreements Table.

(i) NPS-UD, Objective 6; and

(ii) BOPRPS UG9B, UG10B and Method 18.

68. The Council agreed with Kāinga Ora that the evidence given about the contractual arrangements (and in particular the funding agreements) were relevant considerations as:[48]

a) the funding agreements are a necessary mechanism to successfully urbanise Tauriko West;

b) they are relevant to the sustainable management purpose of the RMA and the s.32 assessment of benefits and costs; and

c) the issue of funding is addressed in the higher order documents that the City Plan must give effect to, including:

(i) Objective 6 of the NPS-UD; and

(ii) Objective 25, Policies UG 6A, UG 9B, 10B and Method 18 (structure plans).

69. No other submitters expressly addressed this issue.

Findings

70. We accept for the reasons given by Kāinga Ora and the Council above (paragraphs 67 and 68 respectively), that evidence on the contractual arrangements are relevant but not determinative considerations. Accordingly, we have taken that evidence into account in reaching our recommendations on Var 1.

4.4 Scope of Related Provisions

71. As noted, the Amendment Act provides the Council with a discretion to include "related provisions", being provisions that "support or are consequential on" the MDRS or Policies 3, 4 or 5 of the NPS-UD.[49] Such provisions can relate to any of the matters set out in s.80E(2) i.e., district wide matters, earthworks, fencing, infrastructure, QMs, stormwater management and subdivision of land.

72. While the phrase "support or consequential" is not defined in the Amendment Act, the High Court has provided guidance as to the meaning of these terms in its decision *Kāpiti Coast District Council v Waikanae Land Company* (*Waikanae)*,[50] being an appeal from an Environment Court decision regarding the scope of an IPI.[51]

73. In reaching its decision the High Court explained the intention, effect and scope of the IPI provisions as follows:

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48 Council Closing Legal Submissions, 23 December 2024, at [54]-[58].
49 RMA, s.80E(b)(iii).
50 Kāpiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.
51 Waikanae Land Company Ltd v Kāpiti Coast District Council [2023] NZEnvC 056.

[52] However, the intention of the new provisions is clear. As stated at [2] above, it was "to rapidly accelerate the supply of housing in urban areas where demand for housing is high". The provisions were designed to result, promptly and permanently, in the incorporation of a generally more permissive set of density standards applicable to residential zones, subject to recognition by territorial authorities that such standards might require amendment so as to protect natural and physical resources in accordance with the Act's broader purposes.

[53] In line with the above discussion of the two modes of incorporation:

(a) Prompt incorporation would be assured by requiring authorities to notify Intensification Instruments incorporating prescribed Density Standards, subject only to amendments for relevant matters, including qualifying matters, that support or are "consequential on" the Density Standards, using a process for incorporation that avoided the usual degree of appellate oversight.

(b) And permanent incorporation would be assured by requiring authorities to incorporate prescribed Density Standards, albeit those Density Standards might be less enabling of development in relation to an area within a residential zone where qualifying matters justify limiting the effect the Density Standards would otherwise have.

[54] In this way, the new provisions were clearly intended to override the implicit, historic inclination of territorial authorities not to establish district plans which provide sufficiently, in Parliament's view, for more intensive residential housing development. A narrow interpretation of the phrase "consequential on" is consistent with the intention of the new provisions to effect prompt and discernible change. A broad interpretation of the phrase would have reserved for territorial authorities a discretion to amend the Density Standards being incorporated simply "in response" to the incorporation of the Density Standards.

[55] On this basis, it is apparent that Parliament, if not the individual territorial authorities, considered the purpose of the new provisions to coincide with, rather than override or constrain, the Act's purpose.

Conclusion on meaning of s 80E(1)

[56] In my view, it is appropriate in light of the relevant text of s 80E(1), its purpose and context, to interpret it to mean that territorial authorities were required to notify Intensification Instruments which changed district plans:

(a) by incorporating the Density Standards; and

(b) by amending existing provisions or including new provisions that:

(i) support the Density Standards; or

(ii) are "consequential on" the Density Standards — using that phrase in the sense that requires such amendments or inclusions strictly to be such as to moderate the effect upon the status quo that the Density Standards would otherwise have, not to limit the level of development previously permitted.

> *[57] To interpret s 80E(1) otherwise would undermine its purpose, by permitting territorial authorities to take the opportunity of notifying Intensification Instruments which not only did not incorporate the Density Standards in certain respects, but which were intended to undermine housing intensification.*

74. No party disagreed with that approach. However, TPG contested whether some of the provisions proposed by Council or submitters fell within the scope of related provisions. We address those issues in the scope section (section 5) below.

4.5 PC27 as a QM

75. In its submissions, Council explained the status, relevance and approach of PC 27 to addressing flooding from intense rainfall. In summary:[52]

    a) PC 27 contains objectives, policies and rules to manage floods from intense rainfall;

    b) requirements for resource consents are triggered by activities which fall within one or more of the relevant flood area definitions (overland flow pathways and flood plains);

    c) flooding maps sit outside the City Plan so that they can be updated as further information comes to light or development occurs; and

    d) while PC27 is not yet operative:

        (i) the rules have legal effect (as per s.86B) and so have been used by the Council for several years now; and

        (ii) consent documentation was filed with the Environment Court on 29 November 2024 which, if granted, would settle appeals on PC27 (noting that the settlement leaves intact the approach of maps sitting outside the City Plan).

76. No party contested the status, relevance or eligibility of PC27 as a QM. The issues instead were whether PC27 provisions were sufficient for TWUGA or whether additional flooding and stormwater provisions were required. We address those issues later in this report.

5 Scope Issues

77. In this section we address the law relating to scope, the bounds of our power to make recommendations beyond the scope of submissions, some preliminary scope matters, other contested scope issues that arose during the course of the hearing, and cl.16(2) minor changes.

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[52] Council Opening Legal Submissions, at [83]-[86], [88] and [91]; and Council Closing Legal Submissions, at [75].

5.1 Law Relating to Scope

78. During the hearing process the Council and a number of submitters raised questions of scope. In particular, whether specific requested relief was within scope, and how any scope issues ought to be dealt with.

79. In determining those scope matters, we paid careful attention to the line of relevant case authorities – being those colloquially referred to as *Clearwater*, *Motor Machinists, Bluewater* and *Albany North*[53] – and applied the conventional 2-limb test. That is (in summary), a submission needs to be 'on' the plan change, and the plan change must not be appreciably amended without real opportunity for those potentially affected to participate.

80. We also received submissions on the effect and relevance of the High Court's decision in *Waikanae* to issues of scope.[54] There seemed to be general agreement that:

    a) while a territorial authority's powers under an IPI may seem broad they are not unlimited; and

    b) QMs and related provisions can reduce development to pre-MDRS levels but in accordance with *Waikanae* cannot remove or preclude existing/permitted levels of development.

81. Finally, we note that in determining scope matters, while the s.41D strike out powers have been expressly carried over as part of this IPI process,[55] we are mindful that strike out is a power which should be exercised sparingly and only in a clear case – particularly given the public participation provisions of the RMA.

82. We confirm that we have kept these matters front of mind as we have approached the questions of scope.

83. Matters that we determine as being clearly out of scope are not addressed further in this decision. Where the scope issue is not clear-cut, or there remains some uncertainty around scope, we have taken a conservative approach and ruled the matter within scope, so that the merits of the issue can be assessed in later parts of this decision.

5.2 Power to Make Recommendations Beyond Submissions

84. Under cl.99(2)(b) of Sch.1 to the RMA the Panel is expressly empowered to make recommendations which go beyond the scope of submissions. However, that power

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53 Clearwater Resort Ltd v Christchurch City Council [2013] NZHC 1290; Palmerston North City Council v Motor Machinists Ltd [2013] NZHC 1290; Bluehaven Management Limited v Western Bay of Plenty District Council [2016] NZEnvC 191; and Albany North Landowners v Auckland Council [2017] NZHC 138.

54 Kāpiti Coast District Council v Waikanae Land Company Ltd [2024] NZHC 1654.

55 RMA, Sch.1, cl.98(1)(h).

is not unlimited. As the Council submitted:[56]

a) Any recommendations must still be within the permissible scope of an IPI and accord with the principles of natural justice.

b) Careful consideration needs to be given to the position of any persons who may be deprived of the opportunity to participate in the process and be heard e.g. persons who may have submitted had they appreciated that the change was possible.

c) Consideration should be given to:

   (i) the nature and significance of the changes being contemplated (e.g. if they are minor or consequential);

   (ii) the reasons in support of the changes;

   (iii) the persons who are in fact already involved in the process; and

   (iv) the opportunities for participation by those potentially affected, including notification, submissions, summary of decisions requested and further submissions.

d) The test for whether an amendment goes beyond the scope of submissions should be determined by the orthodox scope tests, as per *Albany North Landowners*,[57] i.e.:

   (i) was it "reasonably and fairly raised" in submissions on the plan change;

   (ii) scope is to be approached in a reasonable workable fashion rather than from the perspective of legal nicety;

   (iii) consideration should be given to the whole relief package detailed in each submission; and

   (iv) it is sufficient if the changes can fairly be said to be foreseeable consequences of any changes directly proposed in the submission.

e) While further submissions can be made they cannot extend the scope of the original submission that they support or oppose.

f) Any changes recommended that go beyond the scope of submissions must be separately identified by the Panel.

85. We accept the Council's submissions regarding the bounds of this power, and confirm that we have kept this firmly in mind as we have developed our

[56] Council Opening Legal Submissions, at [31]-[41].
[57] Albany North Landowners v Auckland Council [2017] NZHC 138.

recommendations. We have also specifically recorded where we have used this power and the reasons for that (see sections 5.4.4 and 9.1 below).

5.3 Preliminary Scope Matters

86. In its s.42A Report for the hearing the Council identified a number of submission points from original and further submissions that it considered were not "on" the plan change and therefore out of scope as follows:[58]

Submitter	Submission point
Submissions that are out of scope because they do not address the extent to which the variation alters the status quo	
Mike Woodrow	41.1
Tim Houston	43.1
	43.2
	43.3
George Marriot	33.12
Jacqui Hewson for Winstone Wallboards Ltd	28.1
	28.2
	28.3
Andrew Pratt	32.6
Submissions that are out of scope because the requested relief is ultra vires	
Andre Pratt	32.1
Jason Wright	36.1
	36.3
Submissions that are out of scope because the primary submission is out of scope	
Jason Wright	36.12
	36.38

87. None of the above submitters appeared at the hearing or filed evidence in support of the scope (or merits) of their submissions.

Findings

88. Having reviewed the submission and further submission points, and in the absence of any contrary submissions or evidence, we accept the Council's view that there is no scope for the submission points noted in the above table. They are not "on" the plan change and do not meet the relevant scope tests (as noted at start of this section 5). We therefore exercise our power under s.41D and strike out all of the submission points in the table.

5.4 Other Scope Issues

89. In this section we address and make findings on the other scope issues raised prior to and during the hearing. These comprise:

[58] s.42A Report, section 7.

a) Cambridge Road area zoning;

b) minimum yield;

c) transport constraints;

d) land use and timing of occupation;

e) district plan controls on safe evacuation, refuge, and structural building stability;

f) financial or development contribution mechanism;

g) activity status for schools; and

h) other matters.

5.4.1 Cambridge Road area zoning

90. Var 1 as notified proposed rezoning Kāinga Ora land adjacent to Cambridge Road as MDRZ.[59] This zoning was supported by Kāinga Ora,[60] but objected to by Cambridge Road residents, the majority of whom sought a rural residential zoning,[61] with one submitter seeking an alternative of MDRZ for the whole Cambridge Road area.[62]

91. The Council addressed these requests on both scope and merit grounds. In terms of scope, the Council submitted that:

a) it was doubtful that Var 1 could be used to apply a rural residential zoning to the entire land area as:

(i) while Var 1 can be used to create "new residential zones" (s.77G(4)) as a result of the definition of that term, such zones were limited to "relevant residential zones";[63]

(ii) a "relevant residential zone" only includes "residential zones" as defined in Standard 8 of the NPStds, which does not include "rural residential zones", and nor is such a zone an "equivalent" zone;[64]

b) to the extent that the underlying zoning is currently rural residential (approximately half of the area),[65] the status quo could be maintained, although Council did not support that on merit grounds;[66] and

c) the request to rezone the entire Cambridge Road area MDRZ is out of scope as

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59 This land was shown on Figure 1 of the s.42A Report, p.11.
60 Evidence of Matthew Lindenberg, 29 November 2024, at [1.2]; and Rebuttal Evidence of Lezel Beneke, 29 November 2024, at [1.2].
61 Being those Cambridge Road owners represented by Mark Le Comte at the hearing.
62 Submitter John Smith (#10).
63 Council Opening Legal Submissions, at [74]-[79].
64 Council Opening Legal Submissions, at [79]-[80];
65 Council Opening Legal Submissions, at [79].
66 s.42A Report, at [12.3]; and Council Closing Statement, at [2.4]-[2.10].

it seeks to rezone land outside of the TWUGA, and there had been no assessment, engagement or consultation about such a rezoning.[67]

92. Kāinga Ora also briefly addressed the issue of scope in its oral submissions noting that the Rural Residential Zone was not a relevant residential zone. It however directed most of its submissions to the reasons why it was appropriate that its land be rezoned MDRZ (which we will address in section 7.2 below).

93. The Cambridge Road area submitters were not legally represented and did not address the issue of scope.

5.4.1.1 Findings

94. We are not persuaded that there is scope for rezoning the entire area Rural Residential for the reasons given by the Council (as summarised in paragraph 91 above). However, given that approximately half of the area already has a Rural Residential zoning, we consider that retaining that zoning for that portion is a legally available option. Accordingly, to the extent that the request applies to the existing "Rural" (as opposed to Rural Residential) zoned land, we rule that as being out of scope, and do not consider it further. For the portion of land that is already zoned Rural Residential, we rule the request in-scope, and proceed to consider it on the merits in section 7 below.

95. In relation to the request to extend the MDRZ beyond the TWUGA, we consider this request is out of scope, for the reasons given by the Council (paragraph 91(c) above). It is not "on" the plan change, there has been no s.32 assessment of such a rezoning, and potentially affected parties have not had a reasonable opportunity to have their say. Accordingly, we consider it appropriate to strike out the submission point of John Smith (#10.1) and do so pursuant to our power under s.41D.

5.4.2 Minimum yield

96. TPG objected to the Council's proposed minimum yield standard (12B.3.1.1.b) on both scope and merit grounds. In relation to scope, TPG submitted that the proposed standard went beyond the scope of a related provision under s.80E. This was because, in its submission, "related provisions" can only relate to the mandatory aspects of the Amendment Act (i.e., the incorporation of the MDRS and giving effect to Policy 3 of the NPS-UD), and the minimum yield is not a mandatory aspect. TPG explained it like this:[68]

> *In other words, the matter / provision needs to directly amend the MDRS, or how the plan implements policy 3 and 4 of the NPS-UD, subject to Section 77 Qualifying Matters. Other Plan provision changes are not allowed through an IPI if intended to more widely regulate a relevant resource management matter as allowed for in a*

[67] s.42A Report, at [12.3].
[68] TPG Legal Submissions, at [41].

comprehensive plan change which can address RMA matters in a more integrated way (following the orthodox Schedule 1, Part 1 plan change approach).

97. In support of its position, TPG referred to *Waikanae,* to the (alleged inconsistent) position Council took in its evidence and submissions on PC33, and to the Council's submission on the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (Enabling Housing Supply Bill).[69]

98. In its Closing Legal Submissions, the Council submitted that:[70]

    a) The legally permissible purposes of an IPI under s.80E includes both mandatory (MDRS and Policy 3) and discretionary (related provisions) elements.

    b) While neither the MDRS or Policy 3 require the minimum yield provision, there is a discretionary ability to include provisions that support or are consequential on the MDRS and Policies 3 and 4.

    c) The yield provisions both support and are consequential on the MDRS as:

        (i) they relate to subdivision (being a matter expressed in s.80E(b)(2)(g) as a matter to which related provisions can relate "without limitation";

        (ii) the MDRS includes both objectives and policies and density standards;

        (iii) the s.32 ER assessment demonstrates that the minimum yield standard is required to achieve Objective 2 and Policy 1 of the MDRS (which relate to providing a variety of housing types and sizes and a mix of densities), and is therefore *consequential* on the MDRS; and

        (iv) while cl.2(2) of Sch.3A precludes additional "density standards" (defined as being standards relating to building height, height in relation to boundary, building setbacks, building coverage, outdoor living space, outlook space, windows to street, or landscaped area), the minimum yield standard is not captured by that definition.

    d) *Waikanae* provides little, if any, assistance given:

        (i) the very different factual circumstances;

        (ii) Var 1 is not taking away development potential that exists under the operative plan by introducing a new QM, rather the provisions are providing a framework for the development of an UGA;

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69 TPG Legal Submissions, at [14], [31], [32], [34]-[35] and [42].
70 Council Closing Legal Submissions, at [13]-[50].

(iii) the effect of the provisions is to enable subdivision and development not disenable;

(iv) *Waikanae* considered only what amounted to consequential changes, it did not consider the meaning of changes which would "support" the MDRS or Policy 3; and

(v) unlike *Waikanae*, the Var 1 yield provisions are squarely in accordance with Parliament's intention for more intensive housing development and are not intended to undermine housing intensification.

e) The yield provisions are consistent with the purpose of the Amendment Act "to rapidly accelerate the supply of housing in urban areas where demand for housing is high".[71]

f) TPG has misconstrued the relevant parts of Council's evidence and submissions on PC33 which relate to mandatory not discretionary aspects, and in any event that evidence supports the use of minimum yield thresholds.

g) Council's submission on the Enabling Housing Supply Bill is not relevant for determining how the Amendment Act should be interpreted – instead, and as per s.10 of the Legislation Act 2019, legislation is to be interpreted from its text and in light of its purpose and context.

5.4.2.1 Findings

99. We accept for the reasons given by the Council (as summarised by us at paragraph 98 above), that the minimum yield standard is a related provision, such that there is scope for its inclusion in Var 1. We consider TPG takes an overly narrow approach to the scope of related provisions, which does not accord with the purpose and context of the Amendment Act. We therefore proceed to consider the merits of the minimum yield standard in section 7.1 below.

5.4.3 Transport constraints

100. TPG raised similar scope concerns in relation to the relief sought by TCL regarding a development constraint on the delivery of transport infrastructure and a non-complying activity status (NC).

101. In short, TPG submitted that given the legal constraints of an IPI, TCL's relief went beyond the scope of "related provisions" and offended against *Waikanae*,[72] for the reasons given in its submissions on minimum yield.

102. The Council did not address this issue separately in its submissions.

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[71] Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (83–1) (Select Committee Report), at [2].

[72] TPG Legal Submissions, at [38].

103. No other party commented on this issue.

5.4.3.1 Findings

104. We are not persuaded that the scope of related provisions is as narrow as that advocated for by TPG, for the reasons given in earlier sections (refer sections 4.4 and 5.4.2.1 above).

105. We acknowledge that the nature of the relief sought here is different to minimum yield in that it amounts to a constraint on MDRS development (where it is out of sequence or beyond 2,400 residential allotments). However we do not consider there are likely to be any strict *Waikanae* issues, given the constraints do not appear to disenable development rights under the operative City Plan.

106. In the absence of any detailed submissions to the contrary on this specific issue we are not prepared to strike the relief out on scope grounds. We therefore proceed to consider the relief on its merits in section 7.3 below.

5.4.4 Land use and timing of occupation

107. In his planning evidence for Kāinga Ora, Mr Matthew Lindenberg requested that the reference in the Appendix 12I.1 table to "prerequisite to land use commencing" be clarified, as it was not clear what "land use commencing" meant. In his view, the "key trigger", i.e. the prerequisite for land use, "should be tied to the point at which the first new dwellings would be occupied/lived in". [73]

108. In their rebuttal evidence, Messrs Talbot and Harkness noted that while Kāinga Ora had not raised this matter in its submission, they agreed it was not clear what "land use commencing" meant. They recommended (on the basis that there was scope) that this table be amended to instead refer to "residential activity commencing", as the term "residential activity" is already defined in the City Plan.[74]

109. The issue of scope was addressed in the Council's legal submissions as follows:[75]

a) while the request was not raised in Kāinga Ora's submission, the Panel has "jurisdiction to make out of scope recommendations 'on' the variation";

b) before making any such recommendations, the Panel needed to consider the matters outlined in section 5.2 of this decision, i.e., the nature and significance of the changes sought, the reasons for them, who may be affected by the changes, and the opportunities for participation;

c) in terms of this particular change:

(i) it would avoid uncertainty and interpretation issues in the future;

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[73] Evidence of Matthew Lindenberg, 20 November 2024, at [9.5]-[9.7].
[74] Rebuttal Evidence of Alistair Talbot and Richard Harkness, 2 December 2024, at [4.4].
[75] Council Opening Legal Submissions, at [53]-[54].

(ii) it is a relatively minor clarification;

(iii) persons interested in it would likely already be part of the process; and

(iv) it would be open to the Panel to conclude that natural justice would not be compromised.

110. No other party commented on the proposed change.

5.4.4.1 Findings

111. We accept that there is planning merit in making the change proposed by the Council. Linking the pre-requisite to residential activity commencing will provide a clear trigger for plan users, and employs a term that is already defined in the City Plan.

112. We also accept, that this an appropriate case for the exercise of our cl.99(2)(b) power, given the change is "on" the variation, it is minor and clarifying in nature, and those with an interest in the residential trigger are likely those who submitted and/or participated in this plan change. Accordingly, we have included this change in our recommendations on provisions.

5.4.5 District plan controls on safe evacuation, refuge, and structural building stability

113. BOPRC requested an amendment to proposed Policy 12B.1.3.1 to require applications to demonstrate a safe evacuation route or refuge, including structural stability of buildings, during a 0.2% AEP flood event.[76]

114. In its opening submissions, the Council raised a potential scope issue with this relief, due to the cross-over with the Building Act 2004 as follows:

> *111. The relationship between the RMA and the Building Act was considered by the High Court in Building Industry Authority v Christchurch City Council. The High Court found that:*
>
> > The only sensible and effective way … is to focus on the different purposes of each statute. Reduced to the simplest level relevant to the present case, the Building Act allows a council to control building work in the interests of ensuring the safety and integrity of the structure, whereas the Resource Management Act allows the council to impose controls from the point of view of the activity to be carried out within the structure and the effect of that activity on the environment and of the environment on that activity.
>
> *112. It follows from that case that RMA controls should only be imposed for a resource management purpose which is not a purpose of the Building Act 2004 and the building code. The structural stability of buildings is governed by clause*

[76] Evidence of Lucy Holden, 29 November 2024, at [35].

B1 of the building code and the district plan should not impose requirements for that purpose.

115. The Council did not however seek to have the relief struck out on scope grounds, as it acknowledged that there remained a requirement to give effect to the BOPRPS,[77] and it therefore preferred to address the issue on the merits.

116. TPG however contested there was scope for this relief on the basis that:

a) the changes requested by BOPRC to Policy 12B.1.3 (addition of new clauses (g) and (h)) were not in the BOPRC's original submission; and

b) there was a question as to whether they were "related provisions" for the same reasons noted in relation to the minimum yield issue (section 5.4.2 above).

5.4.5.1 Findings

117. We accept that RMA controls should only be imposed for a resource management (and not a Building Act) purpose. We also accept that the BOPRPS must be given effect to as far as scope exists to do so in the context of this IPI.

118. We do not however accept TPG's submissions in relation to scope as:

a) We are cognisant that scope can arise from the wording of the submission as a whole and not just from the relief section.

b) While BOPRC did not specifically detail the changes it sought to the wording of Policy 12.1.3.1 in its submission, it:

(i) clearly raised concerns regarding ecology, riparian planting and flooding in its submission; and

(ii) requested alternative, similar or consequential amendments.

c) We do not accept that the term "related provisions" is construed as narrowly as TPG claims, for the reasons detailed in section 5.4.2 above.

119. We therefore consider this issue as it affects the TWUGA is better addressed on the merits, rather than on a preliminary scope basis, but confirm that in evaluating this relief in section 7.8.3 below, we have kept firmly in mind whether the relief is required for a resource management purpose.

120. Further, and while it is not entirely clear from the BOPRC submission, we also confirm that to the extent the relief sought is intended to/would affect areas outside of the TWUGA, we consider there is unlikely to be scope for such relief.

[77] Council Closing Legal Submissions, at [70].

5.4.6 Financial or development contribution mechanism

121. In its submission, TPG sought that an FC be introduced into Chapter 11 of the City Plan to apportion some of the financial burden of infrastructure onto minority landowners. TPG did not however suggest the wording of any such FC provisions/rules.

122. The Council in its s.42A Report addressed the issue on both scope and merit grounds. In relation to scope it concluded that introducing an FC now would be unreasonable given:[78]

    a) TPG were given an opportunity to comment on a draft of Var 1 before it was notified and did not raise the need for an FC;

    b) while TPG raised the issue of an FC in its submission it did not provide any details or wording for that FC; and

    c) other parties affected by the proposal, including the Redwood Lane landowners and other main landowners, had not had the same opportunity to comment on the detail of an FC as they would have had it been included in Var 1 as notified.

123. TPG's written legal submissions while noting that Council had a discretion to include FCs in Var 1,[79] appeared to resile somewhat from its request to use Var 1 to introduce FCs, by requesting instead that the Panel make a recommendation to include an FC or development contribution to address the provision of services and infrastructure within indicative timeframes.[80] In response to questioning at the hearing, counsel for TPG confirmed that it was not seeking an FC (or development contribution) be introduced via Var 1 at this stage, but instead was seeking that the Panel make a strong recommendation to Council that such a mechanism should be introduced in future.[81]

124. The Council did not address this issue in its legal submissions and nor did any other party.

5.4.6.1 Findings

125. While we did not receive legal submissions directly on this issue, given the well-settled principles applying to scope (set out in paragraph 79 above), the fact that no FC was proposed or assessed in Var 1 as notified, and that the TPG submission did not provide any wording for its requested FC, we consider that the request is not "on" the plan change, and affected persons have not had a reasonable opportunity

78 s.42A Report, at [20.2.2], p.96.
79 TPG Legal Submissions, at [27].
80 TPG Legal Submissions, at [8].
81 TPG Oral Legal Submissions, 4 December 2024.

to provide their views. Accordingly, to the extent that that request remains "live" we consider there is no scope for it.

126. With respect to TPG's refined request for a "strong recommendation" for an FC or development contribution, in the absence of detailed evidence and assessment of such matters, we consider it is inappropriate to make such a recommendation.

127. We do however recognise that the issues for which the submitters seek FCs/development contributions are important issues, and we encourage the Council to continue to work collaboratively with landowners in the TWUGA on how best to address and fund infrastructure matters.

5.4.7 Activity status for schools

128. In her planning evidence for Te Tāhuhu o te Mātauranga | Ministry of Education (MOE), Ms Emma Howie requested that the activity status for schools within TWUGA be amended from DIS to RDIS. While Ms Howie acknowledged that this request had been "omitted" from the MOE submission, she opined that it would be an appropriate method of achieving the policy that MOE was requesting for better enablement of schools within TWUGA.[82]

129. In their joint rebuttal statement, Messrs Talbot and Harkness, noted that the matter had not been raised in the MOE submission, and while they considered the proposed change lacked planning merit, if the Panel found otherwise it would need to rely on its out of scope recommendatory power.[83]

130. The Council's opening legal submissions noted that before exercising the out of scope recommendatory power the Panel would need to consider the relevant natural justice considerations (as summarised by us in section 5.2 above).[84]

131. In response to a question from the Panel at the hearing, counsel for the Council confirmed that he did not have any "violent natural justice objection" to the change being made, since the request was limited to TWUGA and all relevant parties should be involved.[85] The Council's closing legal submissions confirmed that position, and noted that irrespective of scope, the Council did not support the request on merit grounds.[86]

5.4.7.1 Findings

132. We accept, given the change was not mentioned in the MOE submission, the change could only be made if we were minded to exercise our "out of scope recommendatory power" in cl.99(2)(b).

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82 Evidence of Emma Howie, 20 November 2024, at [4.5].
83 Rebuttal Evidence of Alistair Talbot and Richard Harkness, 2 December 2024, at [4.2].
84 Council Opening Legal Submissions, at [56]-[58].
85 Council Oral Legal Submissions, 4 December 2024.
86 Council Closing Legal Submissions, 23 December 2024, at [61]-[62].

133. We, like the Council, consider there are unlikely to be any natural justice issues arising from the requested change, such that we could use that power were we minded there was planning merit for the change. We therefore proceed to consider this request on the merits in section 7.6 of this decision report.

5.4.8 Other matters

134. There were also a number of other minor scope issues that were raised in evidence that we will address in this section. In particular:

    a) In the JWS Yield it was noted that:

        (i) Alistair Talbot considered Aaron Collier's request for subdivision under Rule 12B.4.g to be non-notified to be out of scope, but invited Mr Collier to explore it further (an invitation that was not subsequently taken up);[87] and

        (ii) Aaron Collier considered there may not be scope to apply the definition of "nett developable area" to the TWUGA (albeit it is an existing definition in the City Plan).[88]

    b) Kāinga Ora noted that a scope issue had been raised regarding the at-grade walking and cycling connection in Appendix 12I.1, but considered there was scope for changes since the Kāinga Ora submission had sought deletion of the connection.[89]

135. No other party addressed these matters.

5.4.8.1 Findings

136. As the request for non-notification of Rule 12B.4.g activities was not pursued further, we are not required to make a formal determination on scope (or on the merits).

137. In the absence of any detailed submissions on the "nett developable area" definition issue, we are not prepared to find that matter as being out of scope – particularly since it is a definition already used in the City Plan.

138. In relation to the changes to the at-grade walking and cycling connection, we accept Kāinga Ora's submission that the request in its original submission to delete the requirement for that connection, provides scope for changes to be made to it. We therefore address the appropriateness of imposing this as a staging prerequisite in section 7.4 below.

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87 JWS Yield, at [3.7.2].
88 JWS Yield, at [3.9.2].
89 Kāinga Ora Oral Legal Submissions, at [3].

5.5 Clause 16(2) Minor Changes

139. Council has proposed a number of minor changes to the Var 1 provisions on the basis of its power under cl.16(2) of Sch.1. This clause enables a council to make changes to its plan or proposed plan (including a variation) where the alteration is of minor effect or is to correct any minor errors.

140. Part 9 and Appendix 7 of the s.42A Report outline the minor changes Council is proposing in reliance on its cl.16(2) power. In summary, these comprise:

    a) renumbering of plan provisions – particularly within chapters 12 and 14;

    b) an amendment to urban growth plan 11 to update its legend to add two new symbols for the proposed local and neighbourhood centres within Tauriko West; and

    c) an amendment to Rule 4C.2.7c to correct a drafting error, namely replacing the reference to the Important Amenity Landscape Plan Area (IALPA) with Important Amenity Landscape Management Area (IALMA).

141. No party raised any issues with the changes the Council was proposing pursuant to cl.16.

Findings

142. We accept that the changes proposed by the Council properly fall within the scope of cl.16(2). We have therefore incorporated those changes except to the extent that they may be affected by other changes we have made.

143. We note that we have also made further minor changes ourselves for other similar reasons.

6 Council's approach to growth

6.1 Background

144. Andrew Mead (Manager, City Planning and Growth) provided evidence about the Council' s strategic approach to Tauriko West; its infrastructure funding approach and agreements with landowners for the growth area; and identified a range of strategic considerations in respect of housing density.

145. The background to Tauranga's growth management issues and responses more generally was covered in the IPI decision on PC33 and is not repeated here. Those Tauranga-wide matters were not in dispute. In short that evidence demonstrated a significant shortfall in all housing typologies across the range; and the urgency, despite the Amendment Act's imperatives, to urbanise its remaining identified greenfield UGAs as well as intensifying wherever practicable. The Amendment Act simply advances that imperative. The Tauranga Business and Housing Assessment (HBA) concluded that Tauranga City would need a further 33,890 dwelling units out

to 2052 with the projected cumulative shortfall of between 5,300 – 6,300 units.[90] Tauriko West was assumed to contribute between 3,500 – 3,900 additional homes at a yield of 25 dph of developable land.

146. This is underscored in the SmartGrowth Strategy 2024-74 (SGS), which recognises Tauriko West as a priority development area.[91]. The SGS records slightly higher shortfall figures for Tauranga, applying the NPS-UD margin, of between 6,600 to 7,600,[92] with Tauriko West shown as providing 3,500 dwelling units out to 2054.[93]

147. The Panel does not consider the difference in those numbers to be significant in terms of the planning for Tauriko West (we discuss the yield question later).

148. Mr Mead also outlined Council's issues with respect to its inability to debt finance core external and internal infrastructure for Tauriko West because the Council is at its prudential limit.[94] That requires alternative funding sources – primarily through NZTA, the Infrastructure Acceleration Fund and direct developer funding. That amounts to some $258m for the external enabling works and in excess of $100m from the developers for internal infrastructure including the main collector road A, three waters, and riverside and neighbourhood reserves. He advised that a range of financial agreements had been concluded with funding partners and landowners, including allocating all of the 2,400 homes in Stage 1 to the three main landowners. Stage 1 is defined by the $258m of enabling works currently under construction.

149. The funding agreements are linked to the timing of Var 1 becoming operative – and to that end Mr Mead expressed the hope to have Var 1 operative by 30 June 2025.

150. Mr Mead noted that Var 1 was predicated on a minimum housing density of 25 dph of nett developable area – which had been calculated at 160 ha of the approximately 323 ha area of Tauriko West, of which 140 ha was calculated as being available for housing (i.e. 140 x 25 = 3,500).[95]

151. Mr Mead also referred us to the Urban Form and Transport Initiative 2020 (UFTI) and Transport System Plan (TSP) which underpins the minimum yield requirement by emphasising the need for sufficient density to encourage the provision of local amenities and services to maximise trip internalisation and ease potential congestion on the wider roading network. Included in that is sufficient patronage to enable high quality alternative transport modes, including public transport.

152. At this point we note a significant disagreement between Council and the three principal developers over: (a) the metric of 25 dph; and (b) whether that should be

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90 Evidence of Andrew Mead, 4 November 2024, at [3,6]- [3.7].
91 Evidence of Andrew Mead, 4 November 2024, at [4.4].
92 SGS, at p.153.
93 SGS, at p.157.
94 Evidence of Andrew Mead, 4 November 2024, at section [5].
95 Section 32, Appendix 7(a), Tauriko West – NPS-UD Development Capacity Assessment, at section [6].

an average or some variant of that. We discuss that particular issue in detail in section 7.1 below.

153. Mr Mead also noted that Tauriko West has even greater strategic importance because Council has had to reduce planned infrastructure investment in two other key development areas at Te Tumu and Keenan Road.[96]

6.2 Feasible and Reasonably Expected to be Realised Development

154. In short, the NPS-UD requires that the housing capacity be based on feasible and reasonably expected to be realised development (RER).[97] While that applies to the City as a whole, it makes little sense not to expect that principle to apply to a smaller subset such as Tauriko West through Var 1.

155. The Panel has therefore had that requirement in front of mind when considering, as we do in the next section, the question of minimum average yield.

7 Key Issues and Other Matters

156. By the time of the hearing, there were nine key issue areas remaining requiring our determination. These related to:

a) Minimum yield/density;

b) Cambridge Road area zoning;

c) Activity status;

d) Staging Prerequisites;

e) Allocation of infrastructure to Area 1 and Area 3;

f) Schools;

g) Size of local centre;

h) Stormwater, flooding and natural hazards;

i) Ecological offset stream; and

j) Visual mitigation buffer.

157. We address each of these in the following sections, followed by a brief explanation of our approach to other matters.

7.1 Minimum Yield/Density

158. The minimum yield/density target provision in Var 1 was originally based upon the more "aggressive" requirements of the notified BOPRPS Plan Change 6 (PC6)[98] and

[96] Evidence of Andrew Mead, 4 November 2024, at [6.9].
[97] NPS-UD, at [3.6] and [3.25].
[98] PC6 being the BOPRC's plan change to give effect to the NPS-UD.

SGS of 30 dph. That target was subsequently removed from PC6 (in the decisions version),[99] and the alternate increased-density policy (UG 7Ax) was confirmed in the sealed consent order issued by the Environment Court.[100] However, the target remains in the SGS for new growth areas as identified by Mr Mead.[101]

159. The now operative BOPRPS Policy UG 7Ax requires:

> ***Policy UG 7Ax: Enable increased-density urban development – urban environments***
>
> *Provide for and enable increased-density urban development in urban environments that:*
>
> *(a) Contributes to a well-functioning urban environment,*
>
> *(b) Encourages increased density in areas of identified demand, and*
>
> *(c) Is adequately served by existing or planned development infrastructure and public transport.*
>
> ***Explanation***
>
> *Increasing density of urban development has a number of benefits, including:*
>
> *1 Increased transport choice and viability of public transport*
>
> *2 Reduced environmental impacts from reduced need for urban expansion*
>
> *3 Reduced per unit infrastructure costs*
>
> *4 More walkable neighbourhoods, supporting active transport modes*
>
> *5 Reductions in greenhouse gas emissions*
>
> *6 Greater housing choice and therefore affordability.*
>
> *Increased density refers to development that is higher density than the existing urban form. Increased density development may not be appropriate in some areas and is relative to different urban environments. City and district plans should enable greater building heights and density where there is high housing and business use and demand.*
>
> *The intention of this policy is to encourage increased density, and compact urban form, but not to set density targets for areas or locations. Density targets and provisions <u>are best set in district or city plans relative to local opportunities and constraints (including infrastructure and transport systems)</u>*
>
> *This policy does not negate the requirement for increased density urban development to give effect to other relevant provisions in this policy statement and in particular Policy UG 8B Implementing high quality urban design and live-work-play principles set out in Appendix B. Urban development will also be directed by Future Development Strategies, which must achieve well-functioning urban environments in existing and future urban areas. Territorial authorities may develop spatial plans to assist achieving high quality urban design and outcomes.*
> [Emphasis added]

160. That policy clearly supports the requirements of the Amendment Act but leaves the detail to be set in the district plan as explained in the text above.

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99 Council Opening Legal submissions, at [104]-[105].
100 Council Closing Legal submissions, at [78].
101 Rebuttal Evidence of Andrew Mead, 28 November 2024, at [2.2].

161. Var 1, as notified, proposed the following:

a) Policy 12A.1.1.2 – Target Yields in Urban Growth Areas is amended by adding a new sub-policy (b) as follows:

b. By ensuring that an average nett yield of at least 25 dwellings per hectare for subdivision within the Tauriko West Urban Growth Area (UG11, Plan Maps (Part B)) is achieved while recognising:

i. Geotechnical constraints and topography; and

ii. Landscape character, the management of interfaces and the special relationship of tangata whenua to the Wairoa River and adjacent land.

b) Policy 12A.1.1.3 – Target Yield shortfalls in Urban Growth Areas is also amended by adding a new sub-policy as follows:

By avoiding shortfalls in the minimum average nett yield within urban growth areas as set out in Policy 12A.1.1.2 – Target Yields in Urban Growth Areas unless the following circumstances apply:

...

g. For Tauriko West Urban Growth Area (UG11, Plan Maps (Part B)), any shortfall in achievement of nett yield can be made up by higher yield development in other land parcels under the same ownership within the Tauriko West Urban Growth Area.

162. The key issue raised in submissions and evidence was the appropriate level for the minimum yield/density. Associated issues were activity status for non-compliance, the viability of a local centre within TWUGA and the appropriate nomenclature (residential dwellings units or residential allotments). We address each of these in turn below, with our findings on all issues collated at the end of this section.

Appropriate level

163. In relation to the appropriate level, TPG (on behalf of the developers) sought to reduce the average minimum yield (if there was to be such) to 20 dph.

164. Michael Kemeys, Development Director at Veros and consultant to Council on this matter, addressed the evidence of TPG on this issue.

165. Mr Kemeys had applied what he termed the Council "nett yield methodology"[102] to a range of greenfield UGA developments in Tauranga, Western Bays, Hamilton, Auckland and Christchurch. He also took into account the TWUGA comparators of market focus, location, typography, developer approach, housing typology and scale, as well as the comparable stage of development.[103] That produced a range from 17 to 28.7 dph. He noted that the Tauranga examples all exceeded 20 dph (although he acknowledged that those examples were primarily small-scale development). Mr Kemeys also acknowledged that it may be more challenging to achieve higher

[102] Nett yield = Number of Dwellings/Nett Developable Area [=Gross developable area less excluded land].
[103] Evidence of Michael Kemeys, 5 November 2024, at [11]-[16].

densities within larger developments on the fringe of the urban boundary.[104]

166. He concluded that:[105]

> *Developments can achieve densities of 20-22 dph with at least 85% of detached housing, and no more than 15% attached housing. However, as density increases to 25 dph, this changes to 40% or less of detached housing.*
>
> *…Based on my analysis I conclude that 25 dph is achievable, subject to the specific physical and market considerations outlined in more detail below, and acknowledging a need to comprise an increasing mix of housing typologies including more attached housing.*

167. Those density "qualifying" considerations included typographical constraints, provision of public open space, viable retail centres, provision of appropriate roading and access, and market conditions (acknowledging his opinion that normal trading conditions are unlikely to improve until 2027).[106]

168. Furthermore, Mr Kemeys opined that:[107]

> *… allowing developers the opportunity to provide a lower density in the short term will allow them flexibility to deliver housing efficiently while establishing the non-residential elements of TWUGA.*
>
> *I see no reason why development of 25 dph could not be achieved in the medium and long term.*

169. Following his analysis of development costs for different housing typologies, Mr Kemeys proposed that detached homes should be prioritised in the short term, townhouses in the medium term, with apartments being a longer term goal.

170. Accordingly he proposed that the first 800-1,000 dwellings should be delivered at the lower density of 22 dph (i.e. 3-4 years of housing delivery) which would be sufficient to enable initial retail centre development, leading to a minimum 24 dph overall – which would likely increase to 25+ dph with later higher density attached housing developments. Mr Kemeys accepted that he held no particular preference for 800 or 1,000 dwellings as the threshold limit and was comfortable with either.

171. Finally Mr Kemeys proposed a 30% cap for roading and access when defining the nett developable area, recognising the clear hierarchy of road designs, as a means of removing any implication for density – and which, he determined, was consistent with achieving a density of at least 22 dph.[108]

172. Mr Kemeys' "stepped" approach was adopted by the Council – i.e. an average nett yield of 22 dph for the first 800 residential allotments created with retention of the 25 dph average target beyond that.

173. That approach was also supported by two of the three major landowners, Kāinga

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104 Evidence of Michael Kemeys, 5 November 2024, at [24].
105 Evidence of Michael Kemeys, 5 November 2024, at [34] and [39].
106 Evidence of Michael Kemeys, 5 November 2024, at [66].
107 Evidence of Michael Kemeys, 5 November 2024, at [70]-[71].
108 Rebuttal Evidence of Michael Kemeys, 28 November 2024, at [2.9].

Ora[109] and TWL.[110] However, TWL did note that it was not clear why 800 had been selected over 1,000 or another number. TWL also confirmed that it would not oppose an overall reduction to 20 dph as sought by TPG.[111]

174. Mr Kemeys' approach was not supported by TPG – for whom evidence was given by Peter Cooney and Matthew Lagerberg (Classic Group directors), Aaron Collier (planner), James Paxton (urban designer), Adam Thompson (urban economist), and Kevin Hill (land development).

175. Based on its 28+ years development experience building over 7,500 houses nationwide, including multiple greenfields developments at scale, it was TPG's evidence that:[112]

> *From past experience navigating property cycles, the way to sell the land during a downturn is to build the homes in advance; Kaha Ake enables Classic Group to do this.*

176. We were informed that Kaha Ake is a partnership with the New Zealand Super Fund that enables TPG to leverage finance as an alternative to banks and therefore independent of market conditions.

177. As we have noted, TPG owns 132 ha of land within Tauriko West, of which 65 ha is considered developable. TPG's position on yield was that:[113]

> *We agree with our experts that the proposed planning rules requiring a minimum 25 Lots/ha average nett density is not appropriate. This yield target is [neither] realistic nor easily achievable in this location and comes with significant financial cost and project risk. It is also not sought after by the market.*

178. TPG considers the Var 1 target to represent a "very significant market swing" unlikely to be realised in the short or medium term. Furthermore, it opposes the initial step of 22 dph for the first 800 dwellings as being "arbitrary". It instead proposes 20 dph based on the master planning exercise undertaken by Mr Paxton,[114] its economic costings and project risk assessment, and a comparison of the 25 dph yield with 20 dph undertaken by Mr Thompson.[115]

179. TPG was also critical of the development examples cited by Mr Kemeys in which it was directly involved, noting significant differences in the ways in which those had been developed to reach the realised densities. For example, TPG noted that whilst the Paradiso development (a 7-stage, 27.5 ha development in Pyes Pa West UGA scheduled for completion in 2025/26) achieved a resultant density of 17.25 lots per ha, it was actually consented at 12.5 lots per ha – underscoring its point that allowing flexibility for maturing markets enables the development to realise a higher

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109 Evidence of Matthew Lindenberg, 20 November 2024, at [7.2]-[7.6].
110 Evidence of Craig Batchelar, 20 November 2024, at [22]-[26].
111 Evidence of Craig Batchelar, 20 November 20224, at [25]-[26].
112 Evidence of Peter Cooney and Matthew Lagerberg, 29 November 2024, at [6.2].
113 Evidence of Peter Cooney and Matthew Lagerberg, 29 November 2024, at [7.9].
114 Evidence of James Paxton, 20 November 2024, Attachment.
115 Evidence of Adam Thompson, 20 November 2024, at [3.2]-[3.11].

density over time.[116] With respect to Kaimai Views, TPG explained that that project was a joint venture with WBP District Council which owned most of the land and set specific conditions relating to affordability price points among other things. That project realised 264 dwellings - of which 239 were detached and only 25 terrace houses. The overall density was 20.7 lots per ha but half the terrace houses, with a break-even starting price of $599k, remain unsold. Further details about the examples given were provided in the evidence of Mr Kevin Hill for TPG.

180. In response to the concerns raised by TPG regarding yield, Council maintained its view that its stepped approach was appropriate. It considered that the matters raised by TPG were adequately addressed by the inclusion of "market conditions" as one of the qualifiers to Policy 12A.1.1.3 which states:[117]

> *Policy 12A.1.1.3 — Target Yield Shortfalls in Urban Growth Areas*
>
> *By avoiding shortfalls in the minimum average nett yield within urban growth areas as set out in Policy 12A.1.1.2 - Target Yields in Urban Growth Areas unless the following circumstances apply:*
>
> *a. The site is subject to topographical, geotechnical and landform constraints that affect the achievability of the minimum average nett yield; and/or;*
>
> *b. There is evidence that current housing market conditions may adversely affect the ability of the subdivision to achieve the minimum average nett yields in Policy 12A.1.1.2 - Target Yields in Urban Growth Areas; and*
>
> *c. The yield shortfall will not compromise the planned provision of cost-effective and efficient infrastructure and services …*
> [Our emphasis]

181. Council also noted that *authorised* yield shortfalls are not required to be made up elsewhere since Policy 12A.1.1.3.g states:

> *g. For Tauriko West Urban Growth Area (UG11, Plan Maps (Part B)), in addition to Policy 12A.1.1.3 a. to c., the following circumstances apply:*
>
> *i. …; or*
>
> *ii. Any shortfall in achievement of nett yield that is not due to the circumstances in Policy 12A.1.1.3 a., b., c., or g. i. can be made up by higher yield development in other areas within the Medium Density Residential Zone in the Tauriko West Urban Growth Area.*

Activity status

182. A further issue raised related to the appropriate activity status for non-compliance with the minimum yield in circumstance where the exceptions in Policy 12A.1.1.3 are claimed. The generally proposed non-compliance provision under Rule 12B.4.g is for a RDIS activity regardless of the size of the shortfall – otherwise compliance appears to be a controlled (CON) activity. However, that is not entirely clear, as there is no explicit reference to those exclusions – and there did not appear to be good reason for an application for subdivision that conforms to the exceptions or

[116] Evidence of Peter Cooney and Matthew Lagerberg, 29 November 2024, at [7.24]-[7.31].
[117] Council Closing Statement, at [4.3].

qualifications provided by the policy not to be a CON. Having considered the matter further, the Panel has concluded that making those exceptions or qualifications the grounds for a CON potentially opens the gate too wide from an administrative point of view (i.e. insufficient clarity for the processing of a consent). It therefore finds the RDIS appropriate, with the policy providing a key ground for considering the extent to which the case for an exception is made out.

Local centre viability

183. A further concern was raised by TPG about the viability of a local centre within the TWUGA. This was due to its proximity to the substantial Tauranga Crossing centre opposite. Mr Kemeys disagreed and considered that the initial step of 800-1,000 dwellings was sufficient to constitute the viability threshold for such a local centre.

Nomenclature

184. A side issue raised by Council was whether the subdivision provisions relating to yield should refer to "residential dwelling units" or "residential allotments". Council's position was that reference to allotments is appropriate since subdivision provides for these, not dwelling units.[118] Furthermore, we were informed that Council practice is not to restrict the interpretation of such to single dwellings per allotment and therefore the term is applicable to MDRS.

Findings

185. While the difference between 20, 22 and 25 dph may seem almost academic, it is significant in the context of Tauranga's housing shortage – and which currently endures throughout the 30-year long-term NPS-UD planning horizon despite recent plan changes (including PC33).

186. As Mr Mead noted, the difference in range is some 700-780 dwellings (with an associated infrastructure cost for providing this quantum at some unspecified alternate location of between $75.25m and $83.65m).[119]

187. The key issue for the Panel to decide is the weight to be given to the considerable practical market experience and submissions of the TPG developer interests against Council's policy target – bearing in mind what is practicable and reasonably expected to be realised.

188. The only point of agreement in that respect is that a lower target than 25 dph is appropriate for seeding the greenfield development, and that this should primarily enable detached dwellings. The primary disagreement is as to whether that should be time and threshold restricted (Mr Kemeys' 3-4 years built supply of 800-1,000 dwellings) or open-ended time wise and set at a lower overall threshold of 20 dph (TPG's preference).

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[118] Council Closing Statement, at [4.13]-[4-19].
[119] Evidence of Andrew Mead, 4 November 2024, at [6.7]-[6.8].

189. With the provisions in place that the Council has proposed (including Policies 12A.1.1.2 b, 12A.1.1.3 b and 12A.1.1.3 g which we have set out in paragraphs 180 and 181 above) the Panel is more confident that what is reasonably expected to be realised in any development period can be appropriately addressed within the overall aspiration for maximising yield.

190. At the same time the Panel is persuaded that reducing the initial minimum yield to 20 dph for the first 1,000 dwellings under these provisions in order to jump-start the development, is unlikely to unduly compromise the overall practically-achieved yield, and agrees that the target beyond that point should remain at 25 dph (subject to the market condition pathway discussed above).

191. We accept the general view that the numbers are somewhat arbitrary and therefore prefer the upper limit of 1,000 dwellings for this seeding step in the absence of firm evidence for the lower number. We believe that the *prompt incorporation* imperative referred to in the High Court's decision is adaptable to this matter in the sense of encouraging rapid development uptake and residential occupation.

192. We do not consider a further s.32AA assessment is required for this change since:

    a) we have adopted a stepped approach using an upper threshold limit suggested by the Council's expert witness; and

    b) since the issue of the difference between 20 or 25 dph was canvassed in some detail by both the Council and interested submitters.[120]

193. In terms of the appropriate activity status we agree, in principle, that what is proposed provides an appropriate consent pathway for yield variations. However we note that the market condition clause is not included in the primary policy unlike the other two exceptions - and we therefore recommend that a third subclause be added to Policy 12A.1.1.2 b to recognise the short-term market conditions, using the 3-year time frame required under the NPS-UD for the HBA cycle[121], as follows:

> *iii. Current and 3-year assessed housing market conditions.*

194. In terms of the local centre viability, we largely accept the evidence of the Council.[122] While we have made changes to the yield provisions to step the minimum yield at 20 dph (rather than 22 dph) for the first 1,000 (rather than 800) dwellings, we do not consider that will undermine the centre viability given Mr Kemeys was comfortable with the step being set from 800 to 1,000, and given that beyond 1,000 we maintain the 25 dph proposed by Council.

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120 For example, refer to: the s.32 ER, the s.42A Report, at section 13, Evidence of Aaron Collier, 20 November 2024, at [1.3]-[1.8], and sections 4 to 7; Evidence of Peter Cooney and Matthew Lagerberg, 29 November 2024, at [7.7]-[7.38]; Evidence of James Paxton, 20 November 2024, at [13], [20]-[24], [40]-[46], [50], [63]-[81]; and Evidence of Scott Adams, 28 November 2024, at [12]-[27] and Attachments.

121 NPS-UD, Subpart 5, section 3.19.

122 For example, refer to: s.42A Report, section 19 and Appendix 6a.

195. In terms of the appropriate nomenclature, we accept the Council's view that residential allotment is appropriate for the reasons given (as summarised by us at paragraph 184 above).

7.2 Cambridge Road Area Zoning

196. As noted in section 5.4.1 above, some of the land adjacent to Cambridge Road is currently zoned Rural Residential under the WBP District Plan and Mr Le Comte, spokesperson for a group of local residents, sought the retention of that zoning (among a wider suite of rural zoning that we have determined out of scope in that section above).

197. Council's position, reflected both in the s.42A Report (section 12.3) and its Closing Statement (section 2), was in support of MDRZ on the basis that:

    a) structure planning for TWUGA confirmed the land's suitability for appropriate urban infrastructure, open space and connectivity (particularly the proposed walking and cycling provisions for the vicinity); and

    a) traffic safety matters will be resolved by the enabling works at the intersection of Cambridge Road and SH29.

198. The s.42A Report considered the request against the NPS-UD, the BOPRPS (Objective 23, and Policy UG 8B and Policy UG 9B), and the ODP (specifically the housing bottom line required by Objective 2A.3). It concluded that this land was better suited for urbanisation. It also noted that the *chapeau* to ODP Objective 15A.1.1, relating to rural residential living, states clearly that:

> *Rural residential living opportunities are provided within the City in identified areas which are not suitable for urban development; are of limited productive capability, or inefficient to service to urban standards.*

199. Those qualifiers, it says, do not apply to this location.

200. That position was supported by Kāinga Ora.[123]

Findings

201. We find that the land in question adjacent to Cambridge Road should be zoned MDRZ not Rural Residential for the reasons given by Council as summarised above. That is consistent with the intentions of the Amendment Act and the relevant RMA policies and plans.

7.3 Activity Status

202. As notified, Var 1 proposed that development which did not accord with the staging and sequencing set out in Appendix 12I.1 be a RDIS activity, and any development

[123] Evidence of Lezel Beneke, 29 November 20024, at section [6]; Counsel's Notes, 4 November 2024, at [4]; and Evidence of Matthew Lindenberg, 20 November 2024, at section [6].

beyond 2,400 dwellings be a DIS activity.

203. In its submission, TCL sought that these activities be NC. TCL also sought other related changes to the provision (such as additional policy support) to account for those activity statuses.

204. Before turning to address the appropriate activity statuses for these activities, we address a preliminary legal issue that arose as to the correct legal approach to determining activity status.

7.3.1 Legal approach to determining activity status

205. In its Opening Legal Submissions, the Council drew our attention to a number of Environment Court cases that set out the principles applicable to determining activity status. In summary:[124]

    a) "where the purpose of the Act and the objectives of the Plan can be met by a less restrictive regime then that regime should be adopted"; [125]

    b) "an activity status should not necessarily be linked to the likelihood of consent being granted";[126]

    c) a higher activity status may be preferable to RDIS where:

        (i) it would avoid an extensive list of matters of discretion;[127]

        (ii) the extent of the activities' effects would not be known in advance of an application;[128] and/or

        (iii) the range of possible circumstances controlled by the rule are too broad.[129]

206. Kāinga Ora also briefly addressed the proper legal approach for determining activity status in its submissions. In short, Kāinga Ora agreed with the Council and submitted that:[130]

> *As a matter of planning principle, an activity status should be the least onerous activity status that achieves the desired environmental outcome: Wakatipu Environmental Society Inc v Queenstown Lakes District Council C153/2004 at [56], applied in Royal Forest and Bird Protection Society Inc v Whakatane District Council [2017] NZEnvC 51, at [59].*

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124 Council Opening Legal Submissions, at [64]-[68].
125 Royal Forest and Bird Protection Society of New Zealand Inc v Whakatane District Council [2017] NZEnvC 051, at [59].
126 Edens v Thames-Coromandel District Council [2020] NZEnvC 013, at [115].
127 Edens v Thames-Coromandel Council [2020] NZEnvC 013, at [113] and [127]; and Advance Properties Group v Taupo District Council [2014] NZEnvC 126, at [43].
128 *Edens v Thames-Coromandel Council* [2020] NZEnvC 013, at [114] and [127].
129 Edens v Thames-Coromandel Council [2020] NZEnvC 013, at [127].
130 Kāinga Ora Legal Submissions, 29 November 2024, (Kāinga Ora Legal Submissions), at [4(b)(ii)].

207. In its evidence and submissions, TCL appeared to advocate for a different approach. In particular, TCL linked the activity status to whether an activity status was anticipated within a zone, or potentially appropriate.[131] TCL appeared to rely (at least in part) on the following excerpt from the Supreme Court's recent decision in *East West Link*,[132] as authority for that approach:[133]

> *[15] … activities are accorded non-complying status where greater scrutiny of the proposed activity is required. This may be because, for example, the activity is not anticipated in the place proposed, it is likely to have significant adverse effects on the existing the environment, the environment is particularly vulnerable or, more generally, the activity is less likely to be considered appropriate in that place.*

208. In its Closing Legal Submissions, the Council submitted that:[134]

a) the paragraph from the Supreme Court decision had been taken out of context with the following opening words excluded:

> *[15] Some of the foregoing activities, and all of the contentious ones in terms of effects, are non-complying under the AUP (plans) in terms of s 87A(5) of the RMA. As the AUP usefully explains…*

b) reading the full paragraph made it clear that the paragraph was simply a factual summary of an explanatory provision in the Auckland Unitary Plan, and it was incorrect to treat it as a "legal test" for determining activity status; and

c) activity status should instead be determined in accordance with the legal principles determined by the Environment Court (and summarised at paragraph 205 above), and the statutory tests set out in ss.31, 32 and 72-77D of the RMA.

Findings

209. We accept that the correct legal approach to determining activity status is as set out in the Council and Kāinga Ora's legal submissions (and summarised by us at paragraphs 205, 206 and 208 above). We confirm that we have applied this approach in determining the appropriate activity status in the next section.

7.3.2 Appropriate activity status

210. In terms of the appropriate activity status for out of sequence development and development beyond 2,400 dwellings, the Council's position was that RDIS and DIS activity statuses should apply respectively. This was because:[135]

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131 Evidence of Mark Arbuthnot, 20 November 2024, at [7.4] and [7.6].
132 Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency [2024] NZSC 26, at [15].
133 TCL Legal Submissions, 29 November 2024, (TCL Legal Submissions), at [4.8]-[4.9].
134 Council Closing Legal Submissions, 23 December 2024, at [7]-[10].
135 s.42A Report, p.46 and Appendix 4b; and Council Opening Legal Submissions, at [71].

a) based on a further s.32 analysis, both activities could be adequately dealt with by:

(i) refusing consent if there were unacceptable effects on the transport network; or

(ii) imposing conditions of consent;

b) making the activities NC and requiring an assessment under s.104D would add little if anything to the assessment under s.104 and is not appropriate;

c) the Council's approach accorded with the principles in the cases regarding how activity status should be determined as it adopted the least restrictive activity status while still achieving the relevant objectives and meeting the s.32 requirements; and

d) the Var 1 policy and rule framework appropriately provided for the assessment and management of transport effects without needing the further restrictions of the s.104D gateway tests.

211. Kāinga Ora submitted in support of the Council's approach to activity status, stating that:[136]

a) The onus was on TCL as the party seeking a NC activity status to identify why a less restrictive activity status (i.e., RDIS or DIS) would not be sufficient to achieve the environmental outcomes desired. TCL's evidence did not do that.

b) The applicable RDIS activity rule (12B.4), standards and terms (12B.4.2.3), and matters of discretion (12B.4.3.7):

(i) are appropriately targeted and encapsulate all realistic adverse effects that might arise from a failure to provide certain infrastructure by a particular date; and

(ii) give ample scope for a consent authority to impose appropriate conditions or if necessary decline consent.

c) The nature of the activity (predominantly residential in a residential zone) is an entirely appropriate activity and one which is generally anticipated in the zone, meaning NC activity status is not appropriate.

212. TCL in contrast submitted that NC activity status was more appropriate for both activities on the basis that:[137]

a) there is the potential for these activities to have significant adverse effects on the surrounding transport network as:

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136 Kāinga Ora Legal Submissions, at [4.1(b)].

137 TCL Legal Submissions, at [4.1]-[4.3], [4.5], ; Evidence of Daryl Hughes, 20 November 2024, at [3.14], [5.14] and [6.6]; and Evidence of Mark Arbuthnot, 20 November 2024, at [7.2] and [7.4].

(i) there are currently poor levels of service across the network servicing Tauriko West; and

(ii) additional development without the required upgrades will exacerbate these issues;

b) there are uncertainties regarding implementation of the new State Highway 29 (SH29), and a lack of modelling and understanding of the potential adverse traffic related impacts, of dwellings/lots beyond 2,400;

c) out of sequence development and development occurring prior to the relevant transport upgrades is clearly not anticipated within the TWUGA planning framework; and

d) a NC activity status provides for increased scrutiny which is necessary here where there is potential for significant adverse transport effects to arise from out of sequence development or development greater than 2,400 dwellings.

213. In terms of other related changes TCL sought:[138]

a) amendments to Policy 12B.1.3.1 to add the following two new policies to avoid inconsistent interpretation and implementation and to ensure there was not a gap in the planning framework beyond 2,400 dwellings:

ab. *Ensure that the provision of transport infrastructure for the first 2,400 allotments or independent dwellings is delivered in accordance with the staging and sequencing requirements set out in Appendix 12I.1: Transport Staging and Sequencing Table.*

ac. *Avoid development, land use and subdivision beyond 2,400 residential allotments or independent dwellings until transport infrastructure linked to the planned State Highway 29 upgrades is delivered.*

a) an amendment to Policy 12B.1.3.1 b to require "sufficient infrastructure available or provided to support the activity", as this was considered more aligned with the objective for TWUGA and the detailed business case.

214. In its Closing Statement the Council agreed with TCL that an amendment should be made to Policy 12B.1.3.1 b and c to reference there being "sufficient infrastructure", but maintained its view on activity statuses, and did not recommend any other changes to the Var 1 provisions.[139]

Findings

215. In terms of activity status, and consistent with our finding above (in section 7.3.1), we are conscious of the need to apply the least restrictive activity status which is appropriate in the circumstances. However, we are also mindful that in terms of out of sequence development there are a number of variables in play, and therefore the

[138] Evidence of Mark Arbuthnot, 20 November 2024, at [1.6]-[1.8].
[139] Council Closing Statement, at [5.1]-[5.2].

nature and scale of effects may not be able to be fully anticipated in advance of an application. This leads us to the conclusion that it would be more appropriate for both activities, i.e., out of sequence development (with respect to transport infrastructure) and development exceeding 2,400 dwellings, to be accorded a DIS activity status. This will ensure that all potential effects, appropriate to the nature and scale of any departure from the provision, can be fully assessed by the decision-maker.

216. In terms of the proposed changes to policies:

a) We do not accept that TCL's proposed new additional policies to Policy 12B.1.3.1 are appropriate. We consider that adoption of those policies would effectively exclude any out of sequence development or any dwellings beyond 2,400 in advance of infrastructure upgrades being completed – irrespective of the scale of the development, or its ability to appropriately address any associated effects. We do however consider that the policy framework could be strengthened by adding a further policy as follows:

> *ab. Discourage subdivision (and its consequential development and/or, land use) which:*
>
> *(i) is not in accordance with the staging and sequencing requirements in Appendix 12I.1; or*
>
> *(ii) exceeds 2,400 residential allotments;*
>
> *unless the effects of such, including cumulative transport effects, can be appropriately addressed.*

b) We accept the amendment proposed to Policy 12B.1.3.1 b and c, as we consider the insertion of the word "sufficient" will clarify the policy intent of ensuring the necessary level of infrastructure is available.

217. With these amendments, we consider the Var 1 provisions appropriately address the potential transport (and other) effects of out of sequence development and development beyond 2,400 residential allotments.

7.4 Staging Prerequisites

218. Kāinga Ora questioned whether at-grade walking and cycling connections should be required prior to houses being occupied, rather than at the consent stage as drafted, and sought deletion or amendment of that provision.

219. Var 1 proposed that such connections be physically provided:[140]

[140] Var 1, Chapter 12- Appendix 12I: Transport Staging and Sequencing Schedule.

a) at-grade between TWUGA and Whiore Avenue (including upgrades to Whiore Avenue) as a pre-requisite to land use commencing for dwelling units requiring access via the Northern Connection; and

b) grade-separated under SH29 in the vicinity of Kaweroa Road and Redwood Lane for dwelling units requiring access via the Southern Connection.

220. In its s.42A Report, Council had noted that such a walking and cycling connection[141]

> *… is an integral part of the Enabling Works to support connectivity and active travel between to and from the TWUGA. A significant component of the walking and cycling connection commenced construction in September 2024 as part of the northern connection improvements. The improvements on Whiore Avenue are included in Councils LTP programme to be delivered in 2026/27. In my view it is appropriate to retain the requirement for this improvement in the staging and sequencing as recommended in the ITA.*

221. In his evidence, Mr Lindenberg for Kāinga Ora proposed that Appendix 12l be amended to clarify that the prerequisite to provide such a connection related to the physical occupation of dwellings.[142]

222. Council agreed that the issue should be clarified as it was not clear what "land use commencing" meant and in its Closing Statement proposed to amend the prerequisite *chapeau* to "residential activity commencing".[143]

Findings

223. We accept that it is appropriate to make this amendment as it will clarify the meaning of the term, and for the reasons we have already set out in our findings in the related scope section (5.4.4) above.

7.5 Allocation of Infrastructure to Area 1 and Area 3

224. This issue relates to the allocation of roading, water supply and wastewater[144] capacity between landowners in Area 1 and Area 3 as described in Appendix 12l.2 Transport Staging and Sequencing Plan. Area 1 relates to the land owned by the three main landowners, TPG, TWG and Kāinga Ora (Main Landowners) and Area 3 is that held by Redwood Lane landowners.

225. Submitters for some of the Redwood Lane landowners sought changes to provisions to enable their land holdings to be developed within the first stage of development (i.e., the first 2,400 dwellings), rather than being caught by the more restrictive provisions for development post that level. The s.42A Report summarised those submissions as seeking:[145]

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141 s.42A Report, at [14.14.1.3].
142 Evidence of Matthew Lindenberg, 20 November 2024, at [9.7].
143 Council Closing Statement, at [5.11]-[5.12].
144 s.42A Report, at [29], Section [14.1.2].
145 s 42A Report, at.[30], Section [14.1.3].

- the deletion of Policy 12B.1.3.1 c;
- the deletion of all references to Area 3; or

alternatively, that Appendix 12I.2 be amended to ensure that Redwood Lane properties are included in Area 1 (not Area 3).

226. In response, Mr Mead for the Council referred to an Enabling Infrastructure: Landowner Funding Agreement Dated: 30 June 2023, which restricted Council from:[146]

a) allocating more than 75 of the initial 2,400 dwellings to the Redwood Lane landowners; and

b) upgrading Redwood Lane to an urban standard (including reticulated services) unless a funding agreement is in place which ensures the Redwood Lane landowners reimburse a share of the infrastructure costs back to the majority landowners).

227. We were also advised by Mr Mead that:

> *In normal circumstances TCC would debt finance core external and internal infrastructure required for a large-scale growth area like Tauriko West and then recoup this cost as development occurs (predominately through development contributions).*
>
> *TCC is at the point where it is unable to hold additional debt for projects like Tauriko West and therefore is unable to use the traditional development contribution funding model. To enable Tauriko West to proceed we have had to identify alternative funding sources.* [147]

228. Mr Talbot in his section of Council's Closing Statement, referred to his oral closing comments where he advised that urban services and improved road access was required to enable urban development of Area 3. He noted that such upgrades would be subject to Council's Long Term Plan; are currently beyond the 10-year programme; and are subject to commitments with the main landowners.[148]

229. We were also advised by Mr Talbot that Council attempts to secure an agreement between Area 1 and Area 3 landowners allocating a "fair share" of dwellings in return for infrastructure contributions had been unsuccessful. Accordingly, Mr Talbot remained of the view that if Area 3 was included in Area 1 it would negatively impact the "effective and efficient delivery of urban development and the achievement of key outcomes sought for TWUGA".[149]

230. The Main Landowners took a similar position to the Council.[150]

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[146] Evidence of Andrew Mead, 4 November 2024, at p.13.
[147] Evidence of Andrew Mead, 4 November 2024, at Section [5.2]-[5.3].
[148] Council Closing Statement, at [5.18].
[149] Opening Statement of Alistair Talbot, 4 December 2024, at Sections [4.17]- [4.18].
[150] For example refer to: Kāinga Ora Legal Submissions, 29 November 2024, at [4.1 (a)]; Evidence of Peter Cooney and Matthew Lagerberg, 29 November 2024, at [9.4]-[9.5].

Findings

231. We accept the submissions and evidence of the Council and Main landowners on this issue (as summarised above), for the following reasons:

    a) Area 1 landowners are funding the extension of roading, water and wastewater services to and within Tauriko West;

    b) Area 1 landowners are contributing towards the roading enabling works on SH29 to provide for up to 2,400 new dwellings to be constructed;

    c) no agreement has been reached between Area 1 and Area 3 landowners on how the costs of the required infrastructure should be shared by landowners in the two areas;

    d) Council does not have a development contribution policy that covers the TWUGA and due to debt limits is not able to fund and recover the cost of infrastructure to serve Area 3; and

    e) there is currently no provision in the 10 year plan for servicing Area 3.

232. Accordingly, we have not accepted the requests by the Redwood Lane landowners and have maintained the proposed allocation of the 2,400 dwelling units to Area 1 only. We also note that should any of the Redwood Lane landowners wish to develop their properties in the first stage, a DIS consenting pathway exists under Rule 12B.5 e for subdivision or land use in Area 3.

7.6 Schools

233. In her evidence for MOE, Ms Howie requested a change of activity status for schools within the TWUGA from DIS to RDIS. She also requested:[151]

    a) a new clause under Policy 14G-P16 anticipating schools to be established in the TWUGA; and

    b) an amendment to cl.14G.32(a) to make reference to schools in the matters of discretion for development within a local or neighbourhood centre.

234. Ms Howie considered that these changes were necessary for the following reasons:

    a) Council has a requirement under the NPS-UD to achieve integrated land use and infrastructure planning and ensure that additional infrastructure to service development capacity is likely to be available;

    b) the expected residential growth within the TWUGA is sufficient to require new school(s);

    c) including enabling provisions for schools within the Precinct aligns with Var 1's vision, which is to "develop a thriving community for people to live, work,

[151] Evidence of Emma Howie, 20 November 2024, at [6.1].

learn and play within", and specifically refers to schools;

d) designations are insufficient to provide for schools; a robust policy framework is essential to support a notice of requirement and the Var 1 vision; and

e) development in Local and Neighbourhood Centres has the potential to adversely affect schools.

235. Ms Howie did not provide proposed matters of discretion to support the activity status change requested in her original written evidence, but did so following the hearing in response to a request from the Panel. Her proposed matters of discretion comprised:[152]

- *Contribute positively to the surrounding urban environment and provide additional infrastructure to support the needs of the community;*
- *Design and location of buildings;*
- *Traffic generation;*
- *The design and location of parking and access for vehicles and pedestrians;*
- *Adequate infrastructure servicing;*
- *On-site landscaping;*
- *Hours of operation; and*
- *Noise.*

236. Messrs Talbot and Harkness disagreed that the above changes and matters of discretion were necessary or appropriate for the following reasons:[153]

a) the City Plan already adequately provides for schools with clear objective and policy direction (in particular Objective 14A.1.3 and Policy 14A.1.3.1.b);

b) providing for schools as a DIS activity within the TWUGA is consistent with the activity status applying to schools in other MDRZ areas within the City Plan;

c) the definition of school in the City Plan is wide ranging (from pre-school through to outdoor education centres, sports training establishments and their ancillary facilities) and therefore the effects of a school could also be wide ranging and not fully known before an application is made;

d) the matters of discretion provided by Ms Howie are insufficient and missing some aspects (such as the intensity and scale of development);

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[152] Email of Emma Howie, 11 December 2024.

[153] s.42A Report, at [19.3.3]; Rebuttal Evidence of Alistair Talbot and Richard Harkness, undated, at [4.2]; and Council Closing Statement, at [11.11]-[11.14].

e) if further matters of discretion were added, an extensive list would result but would still not ensure that all potential effects of a school would be captured; and

f) effects on schools from other activities could be considered through the matters of discretion already proposed through Var 1 and the existing City Plan noise rules, and therefore the amendments sought by MOE to matters of discretion were not necessary.

237. No other parties provided specific evidence or submissions on these requests.

Findings

238. We acknowledge in accordance with the NPS-UD direction that providing for well-functioning integrated developments requires appropriate provision being made for schools. However, we are not persuaded that the changes and additional provisions sought by MOE are necessary or appropriate. Instead, we accept for the reasons provided by the Council (and summarised by us at paragraph 236 above) that Var 1 and the operative City Plan already appropriately provide for schools.

239. Nor are we persuaded that the activity status should be amended from DIS to RDIS. Instead, as Var 1 applies the MDRS to the TWUGA, we consider it is more appropriate for the activity status to be consistent with that applied in other MDRZ areas. No distinguishing features of the TWUGA were drawn to our attention that would make a different activity status for schools more appropriate within that growth area as opposed to in other MDRZ areas. Further, and as the Council noted, given the broad definition of schools, it is not possible to anticipate all potential effects in advance, and therefore a DIS status is more appropriate.

240. Accordingly, and while we acknowledge as we did in section 5.4.7.1 above, that we could have exercised our power under cl.99(2)(b) to change the activity status, we have elected not to do so, for the reasons set out in this section.

7.7 Size of Local Centre

241. As notified the proposed local centre was not to exceed 1.4 ha.

242. TWL sought an increase in the size of the local centre to a land area not exceeding 2 ha. Mr Batchelar opined that this increase in size would provide flexibility to better accommodate outcomes such as:

a) residential mixed use with at-grade parking;

b) larger footprint commercial activities such as medical centres and preschools; and

c) on-site stormwater management.

243. He submitted that providing sufficient space to encourage childcare and medical centre activities in the local centre would create efficiencies, would provide greater

accessibility to public transport, and may contribute to the easier activation of the local centre. This would result in less land being used for non-residential uses, thereby assisting with achieving yield targets. Mr Batchelar provided local examples where these uses are located within or adjacent to a local centre, and also noted that the proposed TWUGA local centre is smaller than other local centres planned in the City.[154]

244. To ensure that there is no change to the gross floor area (GFA) for general commercial activities, he proposed a maximum 5,500m^2 total GFA exclusive of GFA used for childcare and health centre activities.[155]

245. In response to this request, in its s.42A Report, Council agreed to increase the size of the centre to 1.5 ha to provide for on-site stormwater management, while retaining the maximum GFA at the same level. This recommendation relied on the Economic Memorandum provided by Mr Tim Heath which confirmed that the 1.4 ha threshold did not include land for on-site stormwater management (or for non-commercial activities)[156] as part of a centre. The Council accepted the advice of Mr Stephen Hurley that up to 1,000m² could potentially be required for stormwater management,[157] but made no adjustment for non-commercial activities since those were not cited by TWL in support of an increase.

246. TCL opposed TWL's request for an increase in the local centre GFA to 2 ha. TCL's written legal submissions confirmed that TCL supported the notified provisions of Var 1 as those related to local and neighbourhood centres, for the following reasons:[158]

> *(a) The size and scale of the local and neighbourhood centres as notified are already larger than necessary from an economics perspective. Any increase from what is notified is therefore inappropriate and inefficient from an economics perspective.*
>
> *(b) If the centres are sized beyond what is required they could attract external vehicle trips from the wider area, which would result in additional traffic movements beyond what has been modelled. This would further exacerbate the already poor levels of service, which is of particular concern given the instability of the local and wider transport network.*

247. Mr Akehurst, for TCL, clarified that it was his understanding that the proposed 1.4 ha area for the local centre was predicated on the basis that a 3,000m^2 supermarket is required. He maintained that a smaller (1,500m^2) supermarket would be more appropriate, as this would sufficiently serve the local community and not encourage shoppers into the local centre from outside of the area.[159] Accordingly, he recommended that the local centre be smaller than proposed and be limited to 1

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154 Evidence of Craig Batchelar, 20 November 2024, at [49]-[54].
155 Evidence of Craig Batchelar, 20 November 2024, at [56].
156 Such as playground, community facilities, religious buildings and public transport facilities.
157 s.42A Report, at p.91.
158 TCL Legal Submissions, 29 November 2024, at [5.1] and [5.3].
159 Evidence of Gregory Akehurst, 20 November 2024, at [4.20].

ha.[160]

248. However, and notwithstanding Mr Akehurst's evidence, in response to a question from the Panel, counsel for TCL confirmed in oral submissions at the hearing that TCL remained comfortable with the notified 1.4 ha, but had no objection to Council's revised proposal to increase the local centre to 1.5 ha (to provide for on-site stormwater) while retaining the GFA cap.

249. In its Closing Statement the Council confirmed that the calculations for the size of the local centre provided for non-retail commercial service activities and that medical practitioners, doctors and childcare facilities are among the example convenience commercial/professional service activities identified in the Economic Assessment as being appropriate activities for the centres within TWUGA.[161]

Findings

250. We note that there was no support from either of the economic witnesses, Mr Heath and Mr Akehurst, for the further enlargement of the local centre.

251. We accept that there are potential efficiency benefits from providing childcare settings and a medical centre in the local centre. However, these are already provided for in the local centre and in the surrounding MDRZ. A developer could also bring them forward elsewhere, including close to the centre – as Mr Batchelar confirmed has happened at other centres locally.[162]

252. Mr Heath noted that the originally proposed 1.4 ha did not make specific provision for non-commercial activities as part of a centre - and while these can be important facilities to include in a centre, they are not the features for which Mr Batchelar sought the additional land.[163]

253. On the basis of the above, and whilst we support the Council proposition to increase the size of the centre to 1.5 ha to accommodate on-site stormwater management, we do not support any further increase in the size of the local centre.

7.8 Stormwater, Flooding and Natural Hazards

254. Four primary issues arose with respect to stormwater, flooding and natural hazards matters. These related to:

a) appropriate zoning and timing of zoning for flood storage areas;

b) TWUGA specific stormwater objectives and policies;

c) residual flood risk in a 0.2% AEP (500 year) event;

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[160] Evidence of Gregory Akehurst, 20 November 2024, at [4.23].
[161] Council Closing Statement, at [9.9] and [9.11].
[162] Evidence of Craig Batchelar, 20 November 2024, at [53].
[163] Appendix 6a s.42A Report, at pp.2-3.

d) permanently flowing river or stream definition.

255. We address each of these issues in turn below.

7.8.1 Appropriate zoning and timing of flood storage areas

256. Var 1 proposes applying a residential (MDRZ) zoning to flood storage areas, relying on the existing ODP and PC27 provisions to address flooding issues. Council's view was that this was appropriate as the precise location and boundaries of the flood storage areas are not yet known, consents are yet to issue, and cannot therefore be known until development of the area has been completed. At that point, a further plan change process can be undertaken to rezone those areas to open space or some other zone to reflect the intended function and use of those areas at that time.

257. BOPRC objected to this proposal on the basis that it was "*not good practice to manage effects of such large-scale land use change on flood storage capacity on a consent by consent basis*" as this made it difficult to consider cumulative effects.[164] BOPRC therefore sought that these areas be rezoned open space now, i.e. as part of this plan change, to ensure they remained available for flood storage capacity.

258. Kāinga Ora did not support BOPRC's proposal. While it acknowledged that both approaches would be effective in that they would ultimately result in land being rezoned as open space, it considered that the approach proposed in Var 1 was more appropriate given:[165]

a) the large scale land use change and earthworks that needed to occur;

b) applying an open space zoning now would inevitably capture some land that was appropriate for urban development and therefore require a future plan change process to be stepped through before it could be used as such; and

c) applying MDRZ now would "*minimise unnecessary consenting costs and uncertainty, and provide maximum flexibility*", and would therefore be more efficient in planning terms.

259. The Council in its Closing Statement confirmed its view that zoning the flooding storage areas MDRZ now was appropriate as:

a) PC27 addresses the risk of flooding from intense rainfall. Under Chapter 8D subdivision wholly within a floodplain is NC and new residential buildings are DIS activities;

b) there are also rules in the City Plan which control earthworks within a floodplain and any exceedance is an RDIS activity; and

c) work to accurately determine an appropriate boundary for an open space

[164] Speaking Notes of Lucy Holden, 5 December 2024, at [4].
[165] Kāinga Ora Legal Submissions, 29 November 2024, at [4.1 (c)].

zone in the northern gully area has not yet been completed. To zone in advance of that work would result in "*complexities and difficulties for future development*" particularly for residential subdivision where the properties have a mixture of MDRZ and open space zoning.

Findings

260. We acknowledge, as Kāinga Ora did, that both approaches would be effective, in that they would ultimately result in flooding storage areas being rezoned as open space. However, we must also consider which approach would be the most appropriate in s.32 terms.

261. In that regard, we prefer the views of the Council and Kāinga Ora and accept the recommendation of the Council in its Closing Statement. In our view, zoning MDRZ now and undertaking a "tidy-up" plan change later, presents the most efficient and effective outcome due to the uncertainty of the final landforms, the limited number of landowners over the extent of the TWUGA and their willingness to work together, and the various consenting processes required involving both the Regional and City Councils. We also note that the rational boundaries of such areas are not presently, and cannot readily be, well-defined. We have therefore applied an MDRZ zoning for those areas in our decisions-version of the provisions.

7.8.2 TWUGA specific stormwater objectives and policies

262. Var 1 as notified included a number of TWUGA-specific stormwater provisions. The intention of such provisions was to "*give effect to the NPS-FM by addressing water quality which is a current gap in the TCP*".[166] The necessity for these provisions was contested by some submitters.

263. Mr Craig Batchelar, planner for TWL, considered that such provisions were not necessarily required as:[167]

a) the Regional Natural Resources Plan (RNRP) is the primary planning instrument for stormwater management;

b) if the RNRP already comprehensively addresses stormwater management, adding local policies can result in "*unnecessary duplication, increasing complexity for developers and regulators*"; and

c) specific district policies may become redundant if regional rules and consents change creating an ongoing issue of compliance with regional plans.

264. However, if such provisions were to be included, Mr Batchelar considered some changes were required, including:[168]

[166] s.42A Report, at [15.1.3].
[167] Evidence of Craig Batchelar, 20 November 2024, at [31]-[33].
[168] Evidence of Craig Batchelar, 20 November 2024, at [37]-[42].

a) a notation to clarify that, where conflicts arise, the specific objectives and policies for Tauriko West take precedence over the general policy;

b) that Objective 12B.1.4 be amended to clarify what is meant by "*promote positive effects*"; and

c) further changes are required to the proposed wording of Policy 12B.1.4.1.

265. Kāinga Ora sought that Objective 12B.1.4 be deleted since stormwater management would be addressed through the comprehensive stormwater consent (CSC) application currently before the BOPRC.[169]

266. Mr Collier, for TPG, also sought changes to the TWUGA stormwater provisions. A number of these were accepted by or addressed in kind by the Council. By the close of the hearing, the only remaining area of disagreement between TPG and the Council related to the wording of Policy 12B.1.4.1. Mr Collier sought that this policy be amended to:[170]

a) delete reference to meeting the requirements of the relevant stormwater consent; and

b) add that LID practices should minimise the impact on the amount of developable land.

267. A number of submitters also sought that Cambridge Road be upgraded to ensure it had adequate infrastructure to cope with the existing stormwater runoff and runoff created by future development.[171]

268. In response, the Council accepted or made changes to a number of provisions to address concerns raised by submitters. However, the Council did not consider that it was necessary (or appropriate) to:[172]

a) include a provision to address conflicts, as no such inconsistencies had been identified, and if any later arose they could be resolved by having regard to the context and purpose of the relevant provisions and by applying the usual principle of interpretation where specific provisions are interpreted to override the general;

b) delete Objective 12B.1.4 as that objective and its associated provisions were required to give effect to the NPS-FM, and similar provisions had been inserted in the Smith's Farm UGA through PC33;

c) amend Objective 12B.1.4 and its related policy regarding the promotion of positive effects as that wording came from a direction in the NPS-FM; and

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169 Kāinga Ora Submission #24.10.
170 Evidence of Aaron Collier, 20 November 2024, at [8.11].
171 For example refer to submission points, #6.1, #7.1, and #11.1.
172 s.42A Report, at Section 15.1.3.

d) amend the provisions to require an upgrade of Cambridge Road (for stormwater purposes) as stormwater will be addressed by the CSC, the area subject to submissions was in a different catchment, the part which was being upgraded was already consented, and Var 1 was not the appropriate place to address these concerns.

269. The Council position on these matters remained unchanged in its Closing Statement.

Findings

270. As noted, most of the concerns with the provisions had been largely resolved by the end of the hearing. For the remaining live issues we accept the evidence and proposed provisions of the Council for the reasons given by the Council (and summarised by us at paragraph 268 above). Accordingly, we have incorporated those provisions (subject to a few minor typographical tweaks) in Appendix 3 to this decision report.

7.8.3 Residual flood risk in a 0.2% AEP event

271. BOPRC sought changes to Var 1 to address the residual risk (the Annual Individual Fatality Risk or AIFR) in a 0.2% AEP [500 year] event – in compliance with BOPRPS Appendix L - Methodology for risk assessment and to give effect to Policy NH8A). This was because PC27 requires safe evacuation from a 1% AEP event only. However, unlike the existing urban Tauranga urban area, the TWUGA is subject to potential flooding from a large tidally influenced river system.[173] Mark Ivamy, Senior Natural Hazards Planner for BOPRC, explained concern as follows:[174]

> *Although risk to life is addressed in TCC PC 27 through provision for safe evacuation route or refuge (i.e. 8D.1.1.2(f)), the threshold for risk treatment is the 1% AEP flood event.*
>
> *This means existing methods do not address the residual risk issue of a High risk to life in an overdesign event in the TWUGA. For example, a family sheltering in place during a 1% AEP flood event (i.e. safe refuge) could be exposed to up to 3m of additional flood depth in the secondary 0.2% AEP event.*
>
> *Therefore, I support additional provisions to ensure that where a safe evacuation route during a 1% AEP flood event is not provided for in the TWUGA, then safe refuge during a 0.2% AEP flood event must be provided.*

272. While originally BOPRC sought the insertion of a building stability provision for a 0.2% event in the subdivision chapter to address its concern, by the time of the hearing, BOPRC accepted the Council position that such a provision was not appropriate in that chapter.[175] However, BOPRC maintained its view that the City Plan needed to address this issue to appropriately address the BOPRPS.[176]

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[173] Evidence of Lucy Holden, 20 November 2024, at [9].
[174] Speaking Notes of Mark Ivamy, 5 December 2024, at [6]-[8].
[175] Speaking Notes of Lucy Holden, 5 December 2024, at [3].
[176] Speaking Notes of Mark Ivamy, 5 December 2024, at [65]-[70].

273. This relief was objected to by some submitters, including TPG.[177]

274. The Council in its Closing Legal Submissions, acknowledged that Var 1 was required to give effect to the RPS as a whole including the policies and methods – to the extent there was scope to do so.[178]

275. The Council Closing Statement then explained how the flood risk assessment had addressed the BOPRPS requirements. It categorised the 0.2% AEP rainfall event as "*an extreme event*", and one where there were multiple options available through the future development phases to further reduce the risk exposure for such an event. The Council noted that the flood risk of such an event was not limited to Tauriko West and risk reduction measures would therefore be relevant for the wider community. The Council also pointed out that:[179]

    a) there would be "*Civil Defence alerts, emergency warnings, and evacuation procedures for all those at-risk areas of the city should there ever be such an extreme over design storm event*"; and

    b) the BOPRPS acknowledged that options for reducing natural hazard risk can take many forms including how new development can have hazard warning systems and/or evacuation methods.[180]

276. The Council concluded that no changes were required to Policy 12B1.3.1 (or elsewhere) to address this issues as:[181]

    a) the hazard warning systems and emergency measures under Civil Defence were more efficient and effective in s.32 terms than the provisions proposed by BOPRC;

    b) including provisions for the 0.2% AEP event now where landform modification has yet to occur, would:

        (i) require Council or a developer to "*constantly map and update flood hazard details with every subsequent stage of development*"; and

        (ii) result in potential costs, delays and uncertainties for applicants where further flood hazard modelling is triggered.

Findings

277. We accept the Council's advice that we are required to give effect to the BOPRPS to the extent that it is within scope to do so. We have already addressed why we are not prepared to strike out the relief sought by BOPRC for the TWUGA on scope grounds in section 5.4.5 above.

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177 Rebuttal Evidence of Aaron Collier, 28 November 2024, at [3.16]-[3.17].
178 Council Closing Legal Submissions, 23 December 2024, at [65] and [70].
179 Council Closing Statement, at [8.3]-[8.6].
180 Refer Explanation to Policy NH 4B and Appendix M of the BOPRPS.
181 Council Closing Statement, at [8.8]-[8.9].

278. In terms of the merits, we accept the submissions and evidence by the Council (as summarised at paragraphs 275 and 276 above). To the extent there remains any residual concerns about a potential gap in the City Plan, given the effects of such an event would be experienced at a Citywide level, we consider such concerns are best addressed through a separate plan change process. Accordingly, we have not made any changes to the provisions to address these matters.

7.8.4 Permanently flowing river or stream definition

279. The BOPRC in its submission sought an amendment to Diagram 14 of the City Plan to show all permanently flowing streams within the TWUGA.

280. The Council did not agree that Diagram 14 should be amended to include all such streams within TWUGA as:[182]

a) the existing waterbodies are numerous;

b) given the scale of the Plan, the Diagram does not currently show all streams across the wider city either;

c) the TWUGA has a series of modified watercourses and artificial farm drains, many of which are proposed to be changed through large-scale earthworks; and

d) it would be counterproductive and difficult to show such streams, including the proposed recreated central stream, when the final design, alignment and consenting are yet to be completed.

281. However, to ensure consistency with the City Plan approach to other streams, and to ensure any amendment is within scope, the Council recommended that the definition be amended so that it referred to "Wairoa River and associated tributaries within the Tauriko West Urban Growth Area".[183]

282. In response to Council's proposed amendment, Mr Matheson for Kāinga Ora raised a concern about the identification of the tributaries. In his view, if such tributaries were to be included in the definition, then:[184]

> *… it would be preferable to have them identified now. That would avoid subsequent debates about whether any particular part of a stream is, or is[not] ,a tributary, and therefore whether it triggers a particular land use rule.*

Findings

283. We accept the Council's evidence (summarised at paragraphs 280 and 281 above) that Diagram 14 not be amended but, rather, the definition of permanently flowing river or stream be expanded to include after Wairoa River "*and the associated*

[182] s.42A Report, at p.71.
[183] s.42A Report, at p.72; and Evidence of Lucy Holden, 20 November 2024, at [39].
[184] Kāinga Ora Legal submissions, 29 November 2024, at [4.1(d)].

tributaries in the Tauriko West Urban Growth Area". This approach will allow for changes in landform as a consequence of earthworks that support the subdivision process. We conclude that it would be more appropriate to identify permanently flowing rivers or streams (and tributaries) after earthworks have been completed.

7.9 Ecological Offset Stream

284. BOPRC sought changes to Var 1 Policy 12B.1.3 to add a new (g) and (h). These new provisions were intended to ensure that the margins of any constructed ecological offset stream were of an appropriate width to provide for ecological values, unable to be subdivided, and protected and maintained in perpetuity.[185] BOPRC considered such changes were necessary to give effect to the NPS-FM, and were consistent with the wording of (now-operative) Plan Change 35 to the Tauriko Business Estate Stage 4 area.[186]

285. The Council did not agree that it was appropriate to include such provisions as:[187]

    a) the recreated stream is yet to be determined and designed, will require regional consenting, and matters such as riparian planting, use of native species and ongoing maintenance are best addressed through those future processes when design details are available;

    b) under the CSC low impact design measures will address urban stormwater run-off, treatment at source, and extended detention – all matters that can be managed through regional consenting processes;

    c) the draft open space and community facilities masterplan for Tauriko West, which forms part of the Developer Agreements, identifies indicative reserve areas, which will be finalised through a process noted in those agreements and implemented through the respective subdivision consents;

    d) the existing City Plan provisions (such as Rule 12B.3.2.2 and 12B.3.2.8) already provide the consent authority with control over ecological matters;

    e) the BOPRC suggested provisions differ from those applying to the Tauriko Business Estate Stage 4, as they are less flexible; and

    f) BOPRC had not adequately evaluated these matters and nor had it provided a s.32AA assessment.

286. The expert planner for TPG, Mr Collier, raised some concerns with aspects of the relief sought by BOPRC on both scope and merit grounds. He indicated that if the Panel considered there was scope to include the new policy, changes needed to be made to provide greater discretion to proposed policy (g) - relating to the legal mechanism to protect the area, the requirement to plant the offset area, and the

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185 Evidence of Lucy Holden, 20 November 2024, at [19].
186 Evidence of Lucy Holden, 20 November 2024, at [23]-[25].
187 Rebuttal Evidence of Alistair Talbot and Richard Harkness, undated, at [5.2].

width of any vested area; and to remove proposed policy (h) - relating to the 0.2% flood event.

287. The expert planner for TWL, Mr Batchelar, in contrast, supported BOPRC's general approach, given it was one that had been found to be appropriate in a similar nearby setting (Tauriko Business Estate), and could provide additional certainty. However, he considered some amendments were required to be consistent with the approach in Tauriko Business Estate.[188]

288. In his Opening Statement for the Council Mr Harkness reiterated Council's view (as summarised above) and referred to other plans indicating how Council was also providing for ecological areas and vegetation through the Nature and Biodiversity Action and Investment Plan, and the Tauranga Taurikura 2022-2032 draft Environment Strategy. Taking into account all of these matters, Mr Harkness did not consider that further policy provisions were necessary.[189]

289. The Council reaffirmed that this remained its position in its Closing Statement.

Findings

290. We accept the Council's evidence and submissions on this matter for the reasons they gave (and as summarised by us at paragraphs 285 and 288 above). We consider that the existing City Plan provisions supported by the mechanisms described by the Council are adequate to provide for riparian planting, native species and protection.

291. While the provisions suggested by the BOPRC may provide greater certainty, they are less flexible than the nearby Tauriko Business Estate provisions. Further, and as the design and location of the recreated stream needs to await significant landform changes, we consider that adopting those proposed changes at this stage may lead to process inefficiencies and consenting complexities – particularly if it were to effectively direct an outcome which is not appropriate once the final design and location are known. In the absence of a fulsome s.32AA assessment for the BOPRC relief which fully assesses and addresses these matters, we find it more appropriate to adopt the Council's provisions, and confirm we have done so in the provisions included in **Appendix 3**.

7.10 Visual Mitigation Buffer

292. Var 1 as notified proposed a Visual Mitigation Buffer (VMB) along the boundary of the Important Amenity Landscape Plan Area (IALPA) and the MDRZ to mitigate effects of built form on the Wairoa River.

293. Rule 12B.3.1.15 d – Specific Urban Growth Area Requirements – TWUGA, requires that any subdivision adjoining the IALPA meet the requirements of Appendix 6G and the delivery of the VMB. Appendix 6G provides detail on how the VMB is to be

[188] Rebuttal Evidence of Craig Batchelar, 29 November 2024, at [7]-[8].
[189] Opening Statement of Richard Harkness, 4 December 2024, at [6.5]-[6.6].

provided, including mapped details for the position of the VMB and a planting species list, planting density and so forth.

294. Kāinga Ora raised concerns that the requirement cannot be achieved through a land use or subdivision consent. It argued that the delivery of the planting buffer should instead be included through vesting requirements for the riverside reserve as part of a Development Agreement between Council and landowners.

295. Mr Lindenberg, for Kāinga Ora, confirmed that:[190]

> *The key point, in my opinion, is to seek to clarify the wording of the rule to be clear that the timing of the delivery of the VMB should be specifically tied to the creation of a residential allotment, rather than tied to the creation of allotments generally (noting, that initial subdivision applications may first seek to establish / create 'superlots' and or lots for new roads / access etc through the TWUGA). For this reason, I consider that Rule 12B.3.1.18(d) could be further amended, to specifically clarify that the requirement relating to the s224c certificate relate directly to the creation of residential allotments...'*

296. He suggested the following short amendment to 12B.3.1.15(d), adding the words "… *for a residential allotment*" to the final sentence.

297. In response to Kāinga Ora's submission the Council recommended those changes to 12B.3.1.15(d).

Findings

298. We consider that it is important that there is clarity around this matter and consider that the updated wording provided by Mr Lindenberg provides this. As set out in our updated provisions, we adopt the recommended wording for 12B.3.1.15 d provided by Mr Lindenberg and supported by Council.

7.11 Other Matters

299. While the majority of the issues have been addressed in the above sections of this decision report, to the extent that any issues are not specifically mentioned, we confirm that we accept the position taken by the Council on those matters for the reasons set out in the s.42A Report, Council evidence, and Council Closing Statement.

300. In that regard, we particularly note the transport-related matters raised by the Redwood Lane submitters – and which were addressed directly in the Council Closing Statement.[191] We are satisfied that Council has appropriately addressed those matters as they stood at the close of the hearing. No consequential amendments are therefore required.

301. We also confirm our acceptance of the cl.16 minor error amendments proposed by

[190] Evidence of Matthew Lindenberg, 20 November 2024, at [9.2].
[191] Council Closing Statement, 23 December 2024, at [5.17]-[5.23].

Council as previously noted.[192]

302. Further, except to the extent modified above, we also adopt the Council's recommendations on submissions made (to be accepted, accepted in part, or rejected) as summarised in Appendix 3 to the Council Closing Statement.[193]

8 Statutory Assessment

303. The RMA sets out a range of matters that must be addressed when considering a plan change. These matters have been identified, correctly in our view, in the Council's Opening Legal Submissions, and the s.32 ER. A summary of those requirements is set out in sections 4.1 and 4.2 above. We note that Var 1 was considered to satisfy those requirements.

304. We also note that s.32 clarifies that the analysis of efficiency and effectiveness is to be at a level of detail that corresponds to the scale and significance of the effects that are anticipated from the implementation of the proposal.

305. Having considered the evidence, submissions, legal submissions, and relevant background documents, we are satisfied that, overall, Var 1 has been developed in accordance with the relevant statutory and policy matters with regard to the Council's s.31 functions and the Amendment Act. Var 1 incorporates the MDRS, gives effect to Policy 3(d) of the NPS-UD, and only reduces such development to the extent necessary to provide for QMs.

9 Summary of Conclusions and Recommendations

9.1 Summary of Conclusions

306. The full text of our recommendations is attached as **Appendix 3**.

307. For the reasons given earlier in this report, we have largely accepted the Council's final version of the Var 1 proposed provisions. The further amendments made by the Panel are therefore primarily editorial apart from the following:

a) the upper bound for the initial lower dph at 1,000 dwelling units rather than the proposed 800;

b) a density reduction for the first 1,000 dwellings at 20 dph rather than the proposed 22 dph;

c) the activity status for out-of-sequence development with respect to transport infrastructure being DIS rather than the proposed RDIS so that the full range of matters can be considered under s.104 RMA;

d) additions to Policies 12A.1.1.2 and 12B.1.3.1 to clarify/strengthen the intent of

[192] Council Closing Statement, 23 December 2024, at section [10].
[193] Council Closing Statement, 23 December 2023, Appendix 3, Summary of Decisions Requested.

those policies; and

e) changing the wording within Appendix 12I.1 to clarify that the prerequisite for land use is when residential activity commences.

308. We note that of the amendments we have made, only one (being the last one noted in the paragraph immediately above), goes beyond the scope of submissions, and is therefore made pursuant to our power in cl.99(2)(b) of Sch.1.

9.2 Recommendations

309. Having considered all of the submissions, presentations, evidence and legal submissions before us, and for the reasons we have set out above, we recommend (pursuant to cl.99 of Sch.1) that the Council:

a) accept our recommendations on Variation 1;

b) accept, accept in part, or reject the submissions on Variation 1 consistent with our recommendations; and

c) approve Variation 1 as set out in **Appendix 3**.

310. The reasons for the decision are that Variation 1:

a) will assist the Council in achieving the purpose of the RMA;

b) is consistent with the provisions of Part 2 of the RMA;

c) implements the MDRS and gives effect to the Amendment Act, Policy 3 and the other relevant provisions of the NPS-UD, as well as other relevant higher order RMA policy and plans;

d) is supported by the necessary evaluation in accordance with s.32;

e) accords with s.18A of the RMA; and

f) will better assist the effective implementation of the Tauranga City Plan.

David Hill
IHP Chairperson

21 February 2025

and on behalf of:
Commissioners Vicki Morrison-Shaw, Richard Knott and Fraser Campbell.

Appendix 1 – Glossary of Abbreviations

Amendment Act means the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

Appendix 12I.1 means Appendix 12I.1: Transport Staging and Sequencing Schedule.

AVL means audio visual link.

BOPRC means Bay of Plenty Regional Council.

BOPRPS means the Bay of Plenty Regional Policy Statement 2014.

City Plan means the operative Tauranga City Plan.

Cl. means clause.

CON means controlled (activity status).

Council means the Tauranga City Council.

Council Opening Legal Submissions means legal submissions on behalf of Tauranga City Council dated 29 November 2024.

Council Closing Legal Submissions means legal submissions on behalf of Tauranga City Council dated 23 December 2024.

CSC means Comprehensive Stormwater Consent.

DIS means discretionary (activity status).

dph means dwellings per hectare.

Enabling Housing Supply Bill means the Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill.

ER means the Evaluation Report required under s.32 and ss.77J and 77P RMA.

FC(s) means financial contribution(s).

FENZ means Fire and Emergency New Zealand.

GFA means gross floor area.

ha means hectare.

HBA means the Tauranga Housing and Business Development Capacity Assessment.

IALMA means important amenity landscape management area.

IALPA means important amenity landscape plan area.

IHP or Panel means the Independent Hearing Panel.

IPI means the Intensification Planning Instrument.

ISPP means Intensification Streamlined Planning Process.

JWS Yield means the Joint Witness Statement of experts on Yield dated 11 November 2024.

KiwiRail means KiwiRail Holdings Ltd.

LGA means the Local Government Act 2002.

LTP means the Council's Long Term Plan 2021-2031.

Main Landowners means the main owners of the land located within Area 1 as shown on Appendix 12I.1 comprising Tauriko Property Group Ltd and Classic Group Ltd, Tauriko West Ltd, and Kāinga Ora.

MDRS means the Medium Density Residential Standards.

MDRZ means the Medium Density Residential Zone.

Minister means the Minister for the Environment.

MOE means Te Tāhuhu o te Mātauranga | Ministry of Education.

NC means non-complying (activity status).

NPS means National Policy Statement.

NPStds means the National Planning Standards 2019.

NPS-FM means the National Policy Statement for Freshwater Management 2020.

NPS-IB means the National Policy Statement for Indigenous Biodiversity 2023.

NPS-UD means the National Policy Statement for Urban Development 2020.

NZTA means New Zealand Transport Agency – Waka Kotahi.

ODP means the operative Tauranga City Plan.

ONFLs means outstanding natural features and landscapes.

PC33 means Tauranga City Council's Plan Change 33 – Enabling Housing Supply.

PC6 means plan change 6 to the Bay of Plenty Regional Policy Statement.

QMs means Qualifying Matters.

RCEP means the Bay of Plenty Regional Coastal Environment Plan 2019.

RDIS means restricted discretionary (activity status).

RER means reasonably expected to be realised development.

RLTP means the Bay of Plenty Regional Land Transport Plan 2021-31.

RMA means Resource Management Act 1991.

RNRP means the Bay of Plenty Regional Natural Resources Plan 2008.

s.32 Evaluation Report means the evaluation report prepared by the Council under s.32 of the RMA.

Sch. means Schedule.

SGS means the Smart Growth Strategy 2024 – 2074.

TCL means Tauranga Crossing Ltd.

TPG means Tauriko Property Group Ltd and Classic Group Ltd.

SGS means the Smart Growth Strategy 2024 – 2074.

TSP means the Transport System Plan.

UFTI means the Urban Form and Transport Initiative 2020.

UGA means Urban Growth Area.

Urban Task Force means the Urban Taskforce for Tauranga.

Var 1 means Variation 1 to Plan Change 33 of the Tauranga City Plan.

VMB means Visual Mitigation Buffer.

WBP means Western Bay of Plenty.

Appendix 2- List of Submitters and Persons Appearing

Day 1: 4 December 2024

Person/Party	Presenter	Attendance
Kaikarakia	Tāmati Tata	In person
Tauranga City Council – Opening Statement	Andrew Mead – Manager: City Planning and Growth, Council	In person
	Richard Harkness – Principal Planner Structure Planning, Council	In person
	Alistair Talbot – Principal Planner: Structure Planning, Council	In person
	Tim Fischer – Legal Counsel, Simpson Grierson	In person
	Craig Richards – Director Transportation Engineer at Beca	In person
	Avron Greenway – Team Leader, Growth Research and Analytics, Council	In person
	Sarah Dove – Team Leader: Strategic Transport and Infrastructure	In person
	Michael Kemeys – Director of Veros Property Services	In person
	Ross Hudson – Manager Strategic Planning and Partnerships, Council	Present but did not formally appear
Cambridge Road Spokesperson	Mark Le Comte	
Kāinga Ora	Bal Matheson (Legal)	In person
	Cam Larking/Lezel Beneke (Corporate)	In person
	Matt Lindenberg (Planning)	In person
Classic Group and Tauriko Property Group	Kate Barry-Piceno (Legal)	In person
	Peter Cooney and Matthew Lagerberg (Corporate)	In person
	Adam Thomson (Economic)	In person
	James Paxton (Urban Design)	In person
	Kevin Hill (Engineering)	In person
	Aaron Collier (Planning)	In person

Day 2: 5 December 2024

Person/Party	Presenter	Attendance
Tauranga Crossing Ltd	Daniel Minhinnick and Kirsty Dibley (Legal) Greg Akehurst (Economics) Daryl Hughes (Transport) Mark Arbuthnot (Planning)	In person In person In person In person In person
Urban Taskforce	Scott Adams (Chair)	In person
Element IMF	Craig Batchelar (planning) Grant Downing	In person In person
NZTA	Mike Wood (Planning)	Audio-visual link (AVL)
BOPRC	Lucy Holden (Planning) Mark Ivamy (Natural Hazards) Andres Roa (Engineering) Sue Ira (Stormwater) Nancy Willems (Ecology)	In person In person In person In person In person
MOE	Emma Howie (Planning)	AVL
Redwood Lane Spokesperson (for himself, M and D Faulkner and A Pratt)	George Marriott	In person
Redwood Lane Resident	Keith Catran	In person
Redwood Lane Resident	Jason Wright	In person
Tauranga City Council - Closing	Alistair Talbot Andrew Mead Richard Hawkins T Fischer	In person In person In person In person
Closing Karakia		

Appendix 3 – PC33 Variation 1 Recommended Provisions