ATTACHMENTS

Ordinary Council meeting
Separate Attachments 1

Monday, 3 March 2025

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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

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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

[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*

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[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*

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[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:

[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.

[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

[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.

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[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.

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

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[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].