



**Proposed Change 6 (National Policy Statement on
Urban Development)
to the Bay of Plenty Regional Policy Statement**

Overview report on submissions

6 June 2023

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1. Introduction

- 1.1 This report provides an overview of the key points raised in submissions and further submissions received on Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement (“Proposed Change 6”). The conclusions and recommendations made within this report have been made without the knowledge or content of any evidence on submissions that will be made at the hearing as such, it cannot be assumed that the Hearing Panel will reach the same conclusions as those provided within this report. This report should be read in conjunction with Proposed Change 6 version 5.0 staff recommendations redline version and the section 32AA report.
- 1.2 Council staff recommendations on all submissions are provided within the Staff Recommendations on Provisions with Submissions and Further Submissions Report included as Appendix B which summarises the submissions and sets out whether staff recommend each submission should be accepted, accepted in part, or rejected, with reasons to justify the recommendation.
- 1.3 My name is Samantha Pottage. I am employed by the Bay of Plenty Regional Council (Regional Council) as an Urban Planner.
- 1.4 I hold a bachelor’s degree from the University of Waikato, majoring in geography and supporting subject in environmental planning. I have been employed by Regional Council since 2022. I have four years of professional planning experience. Prior to my role at Regional Council, I was a resource consent planner at Tauranga City Council. I am a qualified as a Resource Management Act decision maker through the Making Good Decisions certification programme run by the Ministry for the Environment.

2 Background

- 2.1 Proposed Change 6 to the Bay of Plenty Regional Policy Statement was publicly notified on 9 August 2022. The submission period closed on 6 September 2022. At the close of submissions, Council received 34 valid submissions. The ‘*Summary of Decisions Requested*’ was publicly notified on 24 January 2023. The further submission period closed on 10 February 2023. Proposed Change 6 seeks to fulfil Regional Council’s responsibilities to implement the National Policy Statement on Urban Development. In particular, Proposed Change 6 implements Policies 3, 5, 8 and 9 of the National Policy Statement on Urban Development relating to urban intensification, responsive planning and the principles of Te Tiriti o Waitangi.

3 Statutory Framework

- 3.1 The National Policy Statement on Urban Development came into effect on 20 August 2020. It requires all Tier 1, 2 and 3 local authorities to amend its regional policy statements and district plans to give effect to its provisions as soon as practicable. District plan changes were required to be notified no later than 2 years after the commencement date to give effect to Policies 3 and 4 (the intensification policies) relating to Tier 1 urban form and density to reflect housing and business use demand in city centre and metropolitan centre zones. To ensure that it complied with the direction to make changes as soon as practicable, and to align with the timeframes with the region’s Tier 1 urban environments (Tauranga City Council and Western Bay of Plenty District Council), Regional Council notified the Proposed Change 6 on 20 August 2022.
- 3.2 The National Policy Statement on Urban Development recognises the national significance of:

- Having well-functioning urban environments that enable all people and communities to provide for their social, economic and cultural wellbeing; and
- Providing sufficient development capacity to meet the different needs of people and communities.

The National Policy Statement on Urban Development requires:

- Urban development to occur in a way that takes into account the principles of Te Tiriti o Waitangi.
- That plans make room for growth both 'up' and 'out'.
- That there is an evidence base about demand, supply and prices for housing to inform planning decisions; and
- Aligning and coordinating planning across urban areas, regardless of boundaries.

4 Summary of submissions

4.1 The makeup of submitters to Proposed Change 6 comprise of developers, iwi/hapū or Māori land trust representatives, government agencies, territorial authorities, industrial and rural business representative groups and landowners.

4.2 Staff received two invalid submissions:

- A submitter sent through a blank submission form. Staff tried contacting the submitter for clarification but received no response.
- A submitter who confirmed their submission was on a Tauranga City Council plan change, and subsequently withdrew their submission.

4.3 Two submissions by Element IMF Ltd and Toi Te Ora Public Health were received two days late. No persons are considered to be adversely affected by the late receipt of these submissions and staff recommend these are accepted.

4.4 Staff seek confirmation from the Hearing Panel that both submissions are accepted under s37 and s37A of the Resource Management Act 1991 ("RMA").

4.5 On 24 May 2023, submitter # 27 (and further submission # 10) acknowledged that they formally withdraw their submissions. These submissions were focused on existing use rights, reverse sensitivity effects and recognition of the national grid. As detailed within Appendix B – Staff Recommendations on Submissions and Further Submissions Report, staff don't recommend adopting the relief sought by these submission points to Proposed Change 6. At the time of withdrawal, staff had already provided responses to submissions, as such those submission points remain within the recommendation reports.

4.6 A list of submitters is attached as Appendix A to this report.

5 Pre-hearing correspondence with submitters

5.1 Staff received two submissions (submitter # 4 and 34) that raised matters considered out of scope of Proposed Change 6. Staff sent follow up letters to both submitters to arrange a meeting to discuss their concerns. Staff did not receive a response from submitter 4, and submitter 34 did not want to engage in further discussions on their submission points.

6 Tāngata Whenua Engagement

- 6.1 Care has been taken to undertake tāngata whenua consultation consistent with Resource Management Act requirements, RPS consultation Policy IR 4B *'Using consultation in the identification and resolution of resource management issues'* and RPS Method 41 *'Promote consultation with potentially affected tāngata whenua'*. Staff take an open-door policy approach to consultation and have afforded genuine opportunities to tāngata whenua and representatives of hapū and iwi authorities to be consulted during the process of developing Proposed Change 6. The specific details on consultation undertaken with iwi and hapū representatives and tāngata whenua consulted are documented in the Section 32 report.
- 6.2 Staff acknowledge that some tāngata whenua groups face capability and capacity challenges to engaging in planning processes, including Change 6. This is a wider issue and partly the result of the scale of policy and plan changes underway to implement various national directives. Regional Council sought to ensure that the changes, which were necessary to enable urban development and provide responsive planning criteria, were notified as soon as practicable, including to align with its Tier 1 territorial authority plan changes. It used the time available to try and effectively engage potentially affected tāngata whenua, iwi and hapū, and a number of these groups did engage and influence the provisions of Proposed Change 6.

7 Submission issues and outcomes

- 7.1 The Strategy and Policy Committee directed that the scope of Proposed Change 6 be limited to that necessary to implement the NPS-UD. Some submissions have sought changes which are considered to be outside the narrow scope of Proposed Change 6.
- 7.2 There are also matters raised within submissions where the concerns raised are already addressed by other provisions in the operative RPS, and so further changes are not considered necessary. Most submissions support Proposed Change 6 in principle with various recommended changes sought. Staff have recommended further changes to Proposed Change 6 where submitter recommendations offer alternative wording that staff agree better aligns with the direction of the NPS-UD. A summary of the changes is outlined within sections 21 – 25 of this report. A full account of recommended changes in response to submissions is provided with Appendix C – Staff Recommendations Redline Amendment Version 5.0 of Change 6. Key issues raised in submissions have been categorised within this overview report. A fulsome account of staff recommendations on submissions is provided in Appendix B - Staff Recommendations on Submissions and Further Submissions Report.

8 RPS Part Two – Resource Management Issues

- 8.1 Most submissions support the proposed changes to Part Two, Resource Management Issues in principle. Minor amendments were sought. The main amendments sought which staff recommend be accepted are listed below.
- 8.2 **Section 2.8. – Urban and rural growth management**
- Submissions sought changes to remove references to population projections to the year 2021 as that reference is outdated.
- 8.3 **Section 2.8.1.1 – Un-coordinated growth and development**
- Submissions sought changes to include additional wording to better clarify the issue and align with Policy 1 of the NPS-UD.
- 8.4 **Section 2.8.1.9 – Intensive urban development**
- Submissions sought changes to include additional wording to better clarify the issue and align with Objective 6 of the NPS-UD.

9 Removal of urban limits (deletion of Policy UG 5A and Appendix E)

9.1 The urban limits mapped in Appendix E are proposed to be removed to be more flexible and responsive to urban development opportunities. This is aligned with guidance from the Ministry for the Environment that states; *'a hard rural urban boundary without the ability to consider change or movement of that boundary would not meet the requirements of the responsive planning policy.'* Hard urban limits in Appendix E have been proven to be inflexible, particularly in the face of delays due to unexpected constraints within some of the identified growth areas. To date there has been no flexible alternative pathway for urban growth outside the urban limits. The hard urban limits are inconsistent with the NPS-UD thrust of responsiveness and flexibility that encourages opportunities for alternative urban growth proposals to be considered on their merits, as and when they arise.

9.2 Some submitters have opposed the removal of urban limits. Staff consider that removing the urban limits within the western Bay of Plenty sub-region is the most practical approach to enable more land and infrastructure supply to give effect to the NPS-UD, that it would be inconsistent with the direction in the NPS-UD to retain them, and that doing so would also not appropriately respond to the review conclusions that the urban limit has not been effective at, and has actually restricted, providing for positive urban development outcomes.

10 Policy UG 6A – Efficient use of land and infrastructure for urban growth and development

10.1 Most submissions support proposed changes to Policy UG 6A. The main issues and outcomes sought were:

- Changes to clarify that servicing of urban development includes provision for access.
- Changes to include 'high-level' in reference to the matters to be addressed for urban growth and development.
- Outcomes sought to refer to development capacity being plan enabled and infrastructure ready.

10.2 Staff agree that the changes sought to include provision for access offers clarity on the servicing requirements for urban development.

10.3 Staff consider it inappropriate to describe the level of urban design input at the RPS level. The term 'high-level urban design' is ambiguous and does not offer a clear understanding of what is expected in terms of urban design. Further, this text is part of the explanation statement to explain the elements involved to meet Policy UG 6A, amongst other matters, and so does not provide any direction on the appropriate level of urban design.

10.4 The definition for plan-enabled and infrastructure ready is provided in section 3.4 of the NPS-UD. In terms of being plan-enabled, the NPS-UD defines this by urban development provided for in existing or proposed district plan changes or a Future Development Strategy ("FDS") or other relevant local authority strategies. Being infrastructure-ready is relevant to existing infrastructure and funding in long-term plan and local authority infrastructure strategies. Sequencing of development capacity for housing and business land or infrastructure is not the role of the RPS, but rather a process for territorial authority plans. For Tier 1 and 2 urban authorities (and Tier 3 on a voluntary basis), this work will overlap with FDS which addresses urban development capacity for the long-term range of 30 years.

11 Policy UG 7A – Unanticipated and out of sequence developments

11.1 Existing operative Policy UG 7A is proposed to be deleted by Proposed Change 6. It is the only policy in the operative RPS that makes provision for urban development outside the urban limits. However, it is strictly limited to the expansion of existing business activities or business land only. It does not provide for the expansion of other urban activities (e.g. residential) outside existing urban zoned areas or the urban limits (in the western Bay of Plenty sub-region).

11.2 The new proposed Policy UG 7A, that will replace the operative version, implements Policy 8 and Clause 3.8(3) of the NPS-UD. It sets out criteria for determining whether unanticipated or out of sequence urban development proposals will add significant development capacity, and how the merits of individual proposals will be consistently assessed. It applies to both residential and business development proposals.

11.3 Submitters raise concerns with the criteria set for unanticipated and out of sequence developments. The main concerns raised were:

- That references to growth strategy, Long Term Plan or 30-year infrastructure are inappropriate; and
- the policy should only reference Future Development Strategies (“FDS”) and RMA plans.
- Housing and Business Development Capacity Assessments (“HBA”) should not be referred to within Policy UG 7A.
- For the western Bay of Plenty sub-region submitters are concerned with the large scale 5 hectares land size area (including Māori owned land) to meet the large-scale threshold.
- Accessibility applies within a development area which can provide self-sustaining services.

11.4 Policy UG 7A applies to urban growth proposals not included or provided for in a territorial authority endorsed planning process (e.g. FDS, RMA plan change or within the planned release of land recognised in an LTP). These are unanticipated or out-of-sequence urban growth proposals which would normally be considered through a private plan change request but might also be sought through submissions on a formal district plan change or review. For the avoidance of doubt, Policy UG 7A does not apply to urban growth proposals that are provided for in an adopted local authority Future Development Strategy, growth strategy, RMA plan, Long Term Plan, or 30-year infrastructure strategy. NPS-UD Policy 8 recognises local authority decisions must be responsive to unanticipated or out-of-sequence plan changes that will add significant development capacity and contribute to a well-functioning urban environment. The size, location and demand for housing and business development capacity are relevant considerations for determining whether a proposal will add significant development capacity.

11.5 Large scale land to meet development capacity:

Ministry for the Environment guidance recognises that the requirement for regional councils to include criteria in their regional policy statements for determining what plan changes will be treated as adding significantly to development capacity should ensure that local authorities can focus resources and attention on opportunities that will support well-functioning urban environments. For example, focusing on large-scale opportunities instead of dedicating resources to requests for plan changes for small parcels of land that would not yield as large of an increase in dwellings or business land. Policy UG 7A requires that the development is of a large enough scale to add significantly to development capacity. The operative RPS defines large scale: “in the context of land-use change involving the proposed development of land for urban purposes including proposed changes in zoning, refers to an area greater than or equal to 5 ha.” Including a threshold in paragraph (b) provides certainty what constitutes large scale in the western Bay of Plenty sub-region and when the criteria apply.

11.6 Evidence of business and housing land demand:

The purpose of an HBA is to provide information on demand and supply of housing and business land, while quantifying the development capacity that is sufficient to meet demand for housing and business land. For a Plan Change to provide evidence that it will add significant development capacity it needs to be of a large scale and has quantifying evidence that there is demand for housing and business land in that location.

11.7 Accessibility to urban environments:

The location of land that is unanticipated or out of sequence is essential in consideration of its ability to contribute to a well-functioning urban environment. Policy 1 of the NPS-UD sets out what a well-functioning urban environment comprises. To give effect to NPS-UD Policy 1, specifically clauses (c) and (e) for accessibility and to support reductions in greenhouse gas emissions, the plan change must also show how the development is well-connected along transport corridors. This should encourage urban developments in locations with easy access to a range of services.

Staff consider that to achieve the requirements of NPS-UD Policy 1, out of sequence or unanticipated urban development could only be acceptable when it is within, or is an extension to, an existing urban environment.

Within the NPS-UD, urban environment means any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:

- is, or is intended to be, predominantly urban in character; and
- is, or is intended to be, part of a housing and labour market of at least 10,000 people.

11.8 In summary, staff consider that the threshold set out with Policy UG 7A allows for appropriate consideration of un-anticipated or out-of-sequence development in a manner that ensures territorial authorities are responsive to such proposals where there is evidence of demand and land availability to provide for significant development capacity.

12 Policy UG 13B – Promoting the integration of land use and transport

12.1 Submissions generally support this policy as notified. The main issues and outcomes submissions sought are:

- Amendments to provide greater clarity in relation to areas of high amenity within clause (c).
- Reference to existing and proposed proximity to commercial centres within clause (c).
- References to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (“MDRS”).
- Insert ‘travel’ at the beginning of clause (d) to clarify the policy intent describes travel demand management.

12.2 Staff agree with the changes sought to clause (c) in reference to areas of higher amenity.

12.3 Staff disagree that (c) should be amended so that regard is given to existing and proposed commercial centres, places of employment etc. Referring to ‘proposed centres’, which is undefined, is uncertain and poses a risk as there is no guarantee that such centres will be developed.

12.4 Proposed Change 6 enables increased density within urban environments, as addressed under Policy UG 7Ax, which is consistent with the MDRS. In terms of qualifying matters, the explanation statement for Policy UG 7Ax recognises that increased density development may not be appropriate in some areas and is relative to different urban environments.

12.5 Policy UG 3A actively promotes ‘travel demand’ management across the region to, among other things, create effective integrated land and travel networks. Consequently, for consistency staff recommend

inserting 'travel' at the beginning of clause (d) of UG 13B as sought by submissions. This is what was intended.

13 Policy UG 14B – Restricting urban activities outside of urban environments

13.1 Submissions raised concerns and sought varying outcomes in relation to this policy. The main issues are:

- That this policy is a re-establishment of urban limits, and conflicts with Policy UG 7A.
- That there may be circumstances where expansions to existing settlements may be appropriate where currently such settlements are not serviced by reticulated services.
- That the policy needs to clarify whether it applies to existing small settlements and villages.

13.2 Policy UG 7A is a gateway policy to consider unanticipated and out-of-sequence developments to give local authorities criteria to consider large scale private plan changes that would add significant development capacity to an urban environment. If the criteria in Policy UG 7A can be met, local authorities will still need to consider the existing rural environment that the proposed urban development will interface with. The explanation statement for Policy UG 14B details that outside urban environments new urban areas or zoning is not desirable and can create sporadic settlement patterns and result in an inefficient use of natural and physical resources. Policy UG 14B is also linked to and contributes to achieving rural growth management Objective 26. Restricting urban activities is particularly relevant to protecting the productive potential of the regions rural land resource and providing for the growth and efficient operation of rural productive activities. That remains a key consideration.

13.3 Expansion of existing settlements and villages

Settlements and villages are not defined as urban areas under section 1.4 of the NPS-UD unless they meet the following criteria:

- a) is, or is intended to be, predominantly urban in character; and
- b) is, or is intended to be, part of a housing and labour market of at least 10,000 people

There is an opportunity for growth of settlements to become urban if they:

- Are included within a Future Development Strategy, growth strategy, RMA plan, Long Term Plan or 30-year infrastructure strategy.
- Are considered to provide significant development capacity through an unanticipated out of sequence development plan change proposal.

In both cases the development capacity is required to be infrastructure ready which includes the provision of reticulated services.

13.4 In summary, staff consider that Policy UG 14B does not conflict with Policy UG 7A and the expansion of existing settlements can be achieved where they meet the criteria of Policy UG 7A or are included within a future development strategy or other local authority endorsed plan.

14 Policy UG 22B – Te Tiriti o Waitangi Principles

14.1 Submissions have raised concerns and sought outcomes in relation to this policy. The main issues are:

- Cultural off-setting.
- Western Bay of Plenty District Council as a Tier 1 local authority within a Tier 1 urban environment.
- Reference to the 'Wānanga Report'

- Recognition for Māori involvement in the decision making for resource consents, designations, heritage orders.
- Recognition of Māori development and aspirations for community and social housing.
- Policy linkage with Policy UG 7A: Unanticipated and out of sequence urban developments.

14.2 Cultural off-setting

Submitters have raised concerns with the use of cultural off-setting that is referenced within the explanation text of UG 22B and seek that reference to it be removed. Staff recognise that cultural offsetting is still a novel process and specific provision for it as a method or policy was opposed by a number of tāngata whenua representatives consulted. The intention was not to suggest that offsetting would be appropriate in all circumstances, and nor that it should be the default position (ie, instead of avoiding, remedying or mitigating effects on cultural sites or values).

One of the ways that the principles of te Tiriti o Waitangi principles might be, where appropriate, though methods developed in collaboration with tāngata whenua to offset the impacts of urban development on culturally significant values or sites. However, it may not always be appropriate. Staff understand the concerns raised. It is for tāngata whenua to identify what they consider to be an appropriate approach through their involvement in specific processes and in their cultural impact assessments, and this may or may not involve offsetting. Referring to offsetting in isolation may give the impression that it is an appropriate starting point.

For these reasons, staff agree with the relief sought by submissions seeking the removal of reference to cultural off-setting in the explanation.

14.3 Western Bay of Plenty district as a Tier 1 urban environment

Submissions consider that Western Bay of Plenty District Council should not be considered as a Tier 1 urban environment. The NPS-UD defines Tauranga as a Tier 1 urban environment, and Western Bay of Plenty (specifically Te Puke and Ōmokoroa) form part of that urban environment. Western Bay of Plenty District Council is a Tier 1 local authority. To not include the Western Bay of Plenty District as part of the Tier 1 urban environment would be contrary to the NPS-UD.

14.4 Wānanga Report

The 'Wānanga Report' referred to in submissions is the report from the Māori Built Environment Practitioners Wānanga that was prepared by Ngā Aho and Papa Pounamu in 2016. That report contains key recommendations to the Productivity Commission at section 5.1 which include that the Commission consider the following:

- Acknowledgment of Māori histories in urban areas, and Māori aspirations for urban planning and development.
- The diverse roles and interests of Māori communities in urban planning, and ensure these roles and interests are provided for in any recommendations to reform the urban planning system.
- Providing further support for the Māori planning and design community to continue this conversation about 'the future of planning.'

Policy UG 22B in combination with existing operative RPS Iwi Resource Management and Matters of National Importance policies (e.g. Policies IW 2B, IW 2B, IW 5B, MN 1B and MN 8B) also apply to future urban development proposals. Collectively these provisions can be relied on to give effect to Policy 9 of the NPS-UD and provide for tāngata whenua values to influence, and be addressed as part of, urban planning related decision-making processes. Further changes are not considered necessary.

14.5 Recognition for Māori involvement in the decision making for resource consents, designations, heritage orders

A submission sought changes to Policy UG 22B to broaden the reference in (b) to 'Council's decision-making processes' so that it would include resource consents, designations, heritage orders, and water conservation orders. This policy is listed in Method 3 of the RPS, which means that it is to be given effect to in city, district and regional plans and also had regard to when considering a resource consent or notice of requirement. The submission acknowledges that referring to what is required within the NPS-UD policy will remove any ambiguity and make it clear how planning decisions on resource consents, designations, and orders should provide for te Tiriti o Waitangi principles.

14.6 Staff agree that that it would be appropriate to include reference to wider decision-making processes that relate to urban development. This is of particular importance in the interim before district and regional plans have been updated. However, staff consider it to be inappropriate to broaden the policy to refer to water conservation orders. While these involve "planning decisions", local authorities do not have direct functions or a decision-making role in relation to water conservation orders, which goes through a Ministry for the Environment and Special Tribunal process. Staff have made recommended changes to clause (c) which has been updated to version 5.0 of Change 6.

14.7 Recognition of Māori development and aspirations for community and social housing

Submissions seek amendments to specifically reference community and social housing within clause (a) and 'Māori development' be included in clause (e). Staff agree with the reasoning for the additions of community and social housing in that these references would be consistent with the objectives of the NPS-UD and the principles of te Tiriti o Waitangi. It is clear upon reading the explanation that the intention is for the policy to extend the Te Tiriti o Waitangi principles to all Māori development. It is appropriate to enable this development.

However, staff do not agree that 'Māori development' should be included in clause (e), which would require it to be protected from incompatible development and reverse sensitivity.

The term 'Māori development' is undefined and could conceivably include a wide range of different development and uses. The implications of extending the protection in clause (e) in the way sought has not been adequately identified or assessed. This could create unintended restrictions on the surrounding environment and the ability to develop in proximity to land on which Māori development is undertaken.

The term 'Māori development' is included within the explanation statement in reference to ensuring that planning decisions relating to urban environments take into account the principles, as well as iwi and hapū aspirations for urban development. Māori development aspirations include (but are not limited to) the development of community and social housing as recognised by submitters. Staff consider that the term 'Māori development' is appropriately referenced within the explanation statement by way of providing for Māori development without creating unintended restrictions on the surrounding environment.

Staff have made recommended changes to clause (a) to encompass community and social housing which has been updated to version 5.0 of Change 6.

14.8 Policy linkage with Policy UG 7A: unanticipated and out of sequence urban developments

A submission contends the link to Policy UG 7A will create unintended restrictions on Māori owned land. Specifically, the requirement for unanticipated or out of sequence developments in the Tauranga and Western Bay of Plenty districts to be 5ha or more may not be feasible. Ministry for the Environment guidance recognises that Policy 8 of the NPS-UD requires local authorities to be responsive to plan changes that would add significantly to development capacity even if the development capacity is unanticipated by RMA planning documents or out-of-sequence with planned land release. The criteria listed within Policy UG 7A help consider whether development fulfils needs for identified demand. Policy UG 7A applies to all and any land that forms part of an urban environment. For the western Bay of Plenty, 5ha is the minimum land

size that would enable a proposal for growth to be considered as providing significant capacity. Staff consider this to be an appropriate threshold to apply to urban development plan changes on all land, including Māori land. This development can still be enabled provided it is of a reasonable scale and so can provide significant capacity as sought by the NPS-UD.

It is important to note that this will only apply to plan changes to enable urban development. The development of Māori land for marae and Papakainga does not require a plan change and so are directly enabled and protected under Policy UG 22B, with no threshold size applying.

Further, where there are aspirations for large scale urban development on Māori owned land, there will be opportunities to ensure that such aspirations are captured within an FDS or other Council endorsed plan, in which case Policy UG 7A will also not be relevant, as it only applies to development that is “unanticipated”.

15 Policy UG 22B – Te Tiriti o Waitangi Principles – Existing use rights and reverse sensitivity effects

15.1 Objective 5 and Policy 9 of the NPS-UD require decision makers to take into account the Treaty of Waitangi Principles. The Treaty principle of active protection involves an obligation to take positive steps toward ensuring Māori interests are protected.

15.2 Policy UG 22B aims to protect against incompatible uses or development and reverse sensitivity effects, and the explanation statement recognises that industrial development undertaken around marae that have existed for decades have compromised culturally significant viewshafts and the enjoyment of normal cultural activities. Policy UG 22B seeks to avoid these outcomes from occurring.

15.3 The operative RPS defines reverse sensitivity as being “the potential for the operation of an existing lawfully established activity to be compromised, constrained or curtailed by the more recent establishment of other activities which are sensitive to the adverse environmental effects being generated by the pre-existing activity”.

15.4 Submissions oppose Policy UG 22B and seek recognition of existing use rights in relation to existing lawful activities. Sections 10, 10A and 20A of the Resource Management Act already protect existing lawful activities and that will not be affected by the policy direction in.

15.5 New proposed incompatible activities or developments in proximity to existing marae which may generate reverse sensitivity effects will be captured by Policy UG 22B. The appropriateness of continuation of existing activities proposed to operate outside their existing use rights, will need to be assessed against this policy. Taking into account the principle of active protection, in staff’s view, means that Marae and Papakāinga need to be better protected against further encroachment and adverse effects. Staff do not consider it necessary to refer to existing use rights or existing lawful activities as such activities are afforded protection when operating within their lawful parameters.

16 Method 18 – Structure Plans

16.1 Submitters support in part Method 18, while seeking specific changes. The main issues raised are:

- That structure plan should be referred to as a spatial plan.
- Reference to demonstrate how structure plans will support reductions in greenhouse gas emissions and be resilient to climate change.

16.2 Staff do not agree that structure plan should be changed to spatial plan. Spatial planning is generally broader than what is involved within a structure plan, and nor does this change offer any further clarity in giving effect to the NPS-UD. It could cause confusion given the Spatial Planning Bill is expected to be promulgated later this year and has a specific spatial plan definition and process.

Local Government NZ (LGNZ) paper 'Spatial Planning Can Improve Housing and Affordability and Protect Our Environment', (March 2021) acknowledges that the term spatial planning is a broad concept that covers well-defined plans, and narrowly defined plans, as defined below:

- Well defined plans (spatial plans) – which set out where and how cities should grow and develop in great detail; and
- Narrowly defined plans (strategic plans) – which set out a strategy focused on securing cost-effective options for future infrastructure development.

17 Appendix A – Definitions

17.1 Submissions seek a definition of 'urban environments' to be included to the RPS through Proposed Change 6. As notified the terms not included in Appendix A has been expanded to include those defined in National Policy Statements. The term 'urban environment' is defined within section 1.4 of the NPS-UD which negates the need for a definition in the RPS.

18 Reverse sensitivity effects

18.1 Submissions have raised concerns regarding reverse sensitivity effects and sought recognition of reverse sensitivity effects throughout the issue statements and policies within the urban and rural growth management provisions.

18.2 The RPS defines reverse sensitivity as being *"the potential for the operation of an existing lawfully established activity to be compromised, constrained or curtailed by the more recent establishment of other activities which are sensitive to the adverse environmental effects being generated by the pre-existing activity"*.

18.3 The RPS recognises reverse sensitivity effects on existing lawfully established activities through various policies. Of relevance to the submissions the following operative RPS direction is still relevant to consider for further urban growth:

- Policy UG 20B: Managing reverse sensitivity effects on rural production activities and infrastructure in rural areas.
- Policy EI 7B: Managing the effects of infrastructure development and use.
- Policy AQ 1A: Discouraging reverse sensitivity effects associated with odours, chemicals and particulates.
- Policy EI 3B: Protecting nationally and regionally significant infrastructure.

18.4 The primary purpose of Proposed Change 6 is to give effect to the responsive planning and intensification requirements of the NPS-UD. Broader urban and rural growth management issues will need to be addressed as part of the pending RPS review, and particularly Proposed Change 8. In the interim, staff consider reverse sensitivity effects are appropriately recognised by the aforementioned RPS provisions which remain relevant to new urban growth proposals.

19 References to National Policy Statement on Highly Productive Land

19.1 Proposed Change 6 was notified prior to the NPS-HPL's gazettal on 17 October 2022. Proposed Change 6 was not developed with the intention of giving effect to the NPS-HPL and submissions on it are considered out of scope.

19.2 The RPS already addresses rural growth management issues pertaining to reverse sensitivity and the protection of versatile/highly productive land. The operative RPS uses the term 'versatile land' which is defined as 'land under the New Zealand Land Use Capability Classification System categorised as being in Classes 1, 2 and 3.' Consequently, operative RPS references to versatile land will need to be amended to refer instead to highly productive land.

19.3 Except for differences in key terminology (i.e. versatile v highly productive) the RPS rural growth management Objective 26 and its corresponding policies are considered generally in alignment with the NPS-HPL policy framework. Rural growth management Objective 26 states: *'The productive potential of the region's rural land resources is sustained and the growth and efficient operation of rural production activities are provided for.'* The corresponding policies are:

- Policy UG 17B addresses urban growth management outside the western Bay of Plenty sub-region by ensuring it is undertaken following sound resource management principles including the efficient development and use of the finite land resource (including versatile land).
- Policy UG 18B seeks to protect versatile land and the productive rural land resource for rural production activities, ensuring proposals have particular regard to any loss of productivity to rural areas, including versatile land, and cumulative impacts that would reduce the potential for food or other primary production.
- Policy UG 19B requires the productive potential of versatile land is not compromised when providing for rural lifestyle activities.
- Policy UG 20B requires that subdivision, use and development in rural areas does not compromise or result in reverse sensitivity effects on rural production activities and the operation of infrastructure.
- Policy UG 23B provides for the operation and growth of rural production activities including having regard to appropriate plan (and zone) provisions, access to and use of rural resources, and protection from reverse sensitivity effects.

19.4 At the same time as progressing Proposed Change 6 Regional Council is also in the process of undertaking a wider review of the RPS and Regional Natural Resources Plan to implement the National Policy Statement for Freshwater Management (NPS-FM). The Strategy and Policy Committee has also resolved to progress Proposed Change 8, the purpose of which is to implement the highly productive land mapping requirements under Policy 3 and Clause 3.4 of the NPS-HPL. Other amendments to the RPS rural growth management provisions will also be necessary to align with NPS-HPL terminology and policy nuances.

19.5 Some submitters have sought amendments to ensure that the RPS aligns with the NPS-HPL. Regional Council needs to go through a full Schedule 1 process, including consultation with tāngata whenua and the community, to make changes to implement the NPS-HPL and this will occur through Proposed Change 8. Some are changes in terminology, but given the meanings are slightly different I do not think that they would constitute a minor change to Proposed Change 6. The limited scope of Proposed Change 6 was identified in all relevant documents, and so people would not have appreciated that it could be amended to address NPS-HPL matters.

19.6 In the interim the NPS-HPL provides a safeguard that applies until the necessary changes are made to the relevant RPS in clause 3.5(7). That clause states that until the RPS is amended to include maps of the highly

productive land, each relevant territorial authority and consent authority must apply the NPS-HPL as if reference to highly productive land were references to land that, at the commencement date:

- Is zoned general rural or rural production; and
- Is LUC 1, 2 or 3 but;

Is not

- Identified for future urban development; or
- Subject to Council initiated or an adopted, notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

19.7 Staff consider the best option is to give effect to the NPS-HPL on a comprehensive basis as part of Proposed Change 8 (NPS-HPL) to the RPS, which in turn, may require further amendments or additions to the existing operative RPS rural growth management provisions, rather than doing this on an ad hoc basis through this narrowly scoped RPS change.

20 References to National Policy Statement on Indigenous Biodiversity

20.1 Submissions refer to the direction of the National Policy Statement on Indigenous Biodiversity (NPS-IB). The NPS-IB is still under development and is yet to be gazetted. Given we do not know what the NPS-IB will say when it ultimately becomes operative, we cannot attempt to give effect or ensure consistency with it. In the interim the RPS contains policy direction around protecting indigenous biodiversity that still need to be considered alongside the urban development policies.

21 Amendments – spelling and minor errors

21.1 Submissions have found spelling and minor errors within version 4.0 of Change 6. Spelling mistakes and minor errors are proposed to be amended via version 5.0 of Change 6 provided within Appendix C to this report. Changes have been made to the following sections:

- Grammatical correction within Objective 25.
- Spelling correction within clause (f) of Policy UG 7A.
- Addition of the word 'policy' before 'UG 7A' within Policy UG 18B.
- Change reference 'Policy UG 7B' within the explanation statement of Policy UG 22B to 'Policy UG 7A', as reference to the policy on unanticipated and out of sequence development, and that there is no Policy UG 7B proposed.
- Grammatical correction from 'then' to 'than' within explanation statement of Policy UG 22B.
- Grammatical correction from 'and' to 'or' within Appendix A – Definitions.

22 Amendments – urban and rural growth management provisions

22.1 Staff have recommended the outcomes sought from various submission points to offer greater clarity and/or to better align with the direction of the NPS-UD. These changes have been updated to version 5.0 of Change 6 provided within Appendix C to this report. Changes have been made to the following sections:

- 2.8: Urban and rural growth management.
- 2.8.1.1: Un-coordinated growth and development.
- 2.8.1.9: Intensive urban development.
- Policy UG 6A Explanation statement.
- Policy UG 7A clause (b).
- Policy UG 7A Explanation statement.

- Policy UG 7Ax clause (c).
- Policy UG 13B clause (c) and (d).
- Policy UG 22B clauses (a) and (b).

23 Changes of minor effect

23.1 Submissions 16-14 and 28-13 seek changes to Section 2.11: Natural Hazards of the operative RPS. Submissions 16-15 and 28-15 seek changes to Section 2.2.3: Use and Allocation of Coastal Resources of the operative RPS.

23.2 These submissions recognise references to Appendix E within the Coastal Environment Chapter of the RPS under Section 2.2.3: Use and Allocation of Coastal Resources, and references to Appendix D and E within the Natural Hazards Chapter of the RPS under Section 2.11: Natural Hazards.

Proposed Change 6 proposes the deletion of:

- Appendix D – Indicative growth area sequencing.
- Appendix E – Management and Growth areas for the western Bay of Plenty.

Proposed Change 6 has not proposed changes elsewhere in Part Two of the RPS including to Sections 2.2.3 and 2.11. Staff acknowledge the sections referred to within the submissions are the only two remaining sections that refer to Appendices D and E within the operative RPS and that these references are now redundant because of the deletion of the appendices referred to.

23.3 The retention of the reference to Appendices D and E within the Coastal Environment and Natural Hazards sections was an oversight and these should have been proposed to be removed in the notified version of Proposed Change 6. Staff also consider Proposed Change 6 is an appropriate process to amend these statements referencing Appendices D and E as their reference will become irrelevant and the statements would be incorrect on the adoption of Change 6 (as currently proposed).

The relief sought within these submission points is:

- Remove references to Appendix E within Section 2.11: Natural Hazards
- Remove reference to urban limits within Section 2.11: Natural Hazards
- Add text to Section 2.11: Natural Hazards in replacement of urban limits to the effect of 'urban development areas that have been identified as being provided for in an adopted local strategy, RMA plan, Long Term Plan, or 30-year infrastructure strategy'.
- Remove references to Appendices D and E from Section 2.2.3: Use and Allocation of Coastal Resources.
- Add text to Section 2.2.3: Use and Allocation of Coastal Resources in replacement of urban limits to the effect of 'urban development areas that have been identified as being provided for in an adopted local strategy, RMA plan, Long Term Plan, or 30-year infrastructure strategy'.

23.4 The intent of the relief sought by the submissions is to essentially ring fence planned urban growth in a similar manner that Appendices D and E have before their proposed deletion. However, what is being sought would, in staff's opinion, result in the relevant sections of the RPS applying more broadly than they were intended to when they referred to the appendices, the inclusion of which in the RPS resulted from a full Schedule 1 process.

23.5 Staff's view is that the references to the appendices should be removed in their entirety and not replaced with any additional wording. Deleting the references in their entirety would be an alteration of minor effect to correct a minor error and so can be done under cl 16 of Schedule 1. The amendment would not affect the rights of the public:

- The references to Appendices D and E will become redundant through Proposed Change 6.

- The references are referred to within the Issue Statements only, which are there to provide insight and direction on the following objectives and policies that follow. They do not have any directive or policy effect. They simply outline options for managing conflicts.
- The removal of references will not excuse urban developments and growth from addressing the appropriate matters of the RPS as it relates to natural hazards and the coastal environments.

23.6 Replacing the wording with that being sought by the submitter would expand the scope of the issues, in a way that people would not have appreciated, and would not be an alteration of minor effect. The plans and strategies that the submitter seeks to have included are future documents that are yet to be developed or go through a full process, and the contents of which cannot therefore be known at this time. It is not appropriate, as a result, to suggest that they may not need to address the relevant RPS matters as they relate to natural hazards and the coastal environment.

23.7 In addition, Staff recommend that the reference to the western Bay of Plenty sub-region is also removed from Section 2.11. In this context the sub-region is referring to Appendix E which outlines the western Bay of Plenty urban limits that are proposed to be deleted.

23.8 As these provisions were not included within Version 4.0 of Proposed Change 6 as notified in August 2022, staff have not included this within the red-line Appendix C. Text amendments recommended by staff are show in red. Text recommended to be added is underlined and text recommended to be deleted is ~~struck through~~ below:

23.9 Paragraph 1 in Section 2.2.3 ‘Use and Allocation of Coastal Resources’ (Page 27/28 of operative RPS)

Coastal use and development can also result in conflict and competition for space, where uses and activities are not compatible or are not managed proactively and effectively. Management of coastal space to avoid conflicts, protect the rights of existing and lawfully established uses, retain amenity values and meet safety and navigation requirements is crucial and requires direction on which activities take priority, as well as guidance on managing the cumulative effects of coastal development. This can be achieved by providing direction (including in resource management planning documents) on the appropriate location and form of use and development within the coastal environment, encouraging development in areas where the natural character has already been highly compromised (except where areas and opportunities for restoration and rehabilitation have been identified) and constraining development on undeveloped land. ~~(except where land has been identified as an appropriate location of future urban growth within Appendix D and E).~~

23.10 Paragraph 21 in Section 2.11: Natural Hazards (Page 110c of operative RPS)


Similarly, the management of urban growth in the region has been provided for in district plans and ~~in the western Bay of Plenty sub-region,~~ through the Urban and Rural Growth Management policies and methods and in section 2.9. As more detailed planning and consenting is undertaken for urban growth, these growth areas, the natural hazard risk will need to be identified and managed. ~~However, by specifically providing for western Bay of Plenty urban limits in Appendix E, the This Statement anticipates that any required risk reduction can be achieved within those urban limits while providing for urban development. This does not obviate~~ the need to manage natural hazard risk by, for example, influencing the design and location of urban development ~~within growth areas.~~ Method 18 of the this Policy Statement is a key means by which that can occur.

24 Conclusions and recommendations

24.1 This report was prepared pursuant to section 42A of the RMA to address the planning issues associated with Proposed Change 6. Proposed Change 6 seeks to fulfil Regional Council's obligation to implement the provisions of the NPS-UD.

24.2 The recommended amendments to Proposed Change 6 result from the acceptance of some submissions including minor amendments to improve the clarity of the provisions and align with the direction of the NPS-UD. I recommend that the Hearing Panel:

1. Receives the reports:
 - a) Proposed Change 6 (National Policy Statement on Urban Development) to the Bay of Plenty Regional Policy Statement Overview Report on Submissions.
 - b) Staff Recommendations on Submissions and Further Submissions Report (Appendix B)
 - c) Version 5.0 of Change 6 (Appendix C)
 - d) Section 32AA evaluation of changes (Appendix D)
2. Confirms the acceptance of late submissions as detailed under section 4.4 of this report.
3. Hears submitters and makes decisions in accordance with the RMA Schedule 1 process on submissions and further submissions received on Proposed Change 6.
4. Recommends its decisions in (3) above to the Regional Council for approval.



Samantha Pottage

Urban Planner

25 Appendices

Appendix A – List of Submitters

Appendix B – Staff Recommendations on Submissions and Further Submissions Report

Appendix C – Staff Recommendations Redline Amendment Version 5.0 of Change 6

Appendix D – Section 32AA report

Appendix A – List of Submitters

Submitter	Submission Number	Further Submission Number
Element IMF	01	07
Bayliss Ham Group Ltd	02	
Geoff Rice – Retimana Whānau Trust	03	
Ian and Elizabeth Gargan	04	
Kainga Ora – Homes and Communities	05	09
Federated Farmers NZ (BOP and Rotorua, Taupō)	06	
National Public Health Services – Toi Te Ora Public Health	07	
Julian and Joy White	08	
Tauranga City Council	09	
Balance Agri-Nutrients	10	05
Bell Road Limited Partnership	11	
Bluehaven Investments Limited	12	08
Classic Developments Limited	13	
Des Heke – Ngāti He hapū	14	
Fonterra Limited	15	03
Ford Land Holdings Pty	16	12
Royal Forest & Bird Protection Society of New Zealand Inc – Bay of Plenty branches	17	02
Horticulture New Zealand	18	
Keith Warwick	19	
KiwiRail Holdings Ltd	20	
Mitre 10 Holdings	21	
Newman Group Limited	22	
Ngā Potiki a Tamapahore Trust	23	01
Tony Wihapi – Ngati Moko	24	
Rotorua Lakes Council	25	
Tauranga Crossing Limited	26	06
Transpower New Zealand Limited	27	10
Tumu Kaituna 14 Trust	28	11
Urban Taskforce for Tauranga	29	13
Vercoe Holdings Limited	30	
Waka Kotahi	31	04
Waste Management NZ Limited	32	
Western Bay of Plenty District Council	33	
Yvonne James	34	