

Proposed Change 6 (NPS-UD) Submissions Hearing

Open Minutes

Commencing:	Thursday 21 June 2023, 10.00 am
Venue:	Atrium Café and Conference Centre, 252 Ōtumoetai Road, Ōtumoetai, Tauranga
Hearing Panel:	Robert Scott - Independent Commissioner, Chair Rawiri Faulkner - Independent Commissioner Cr Jane Nees - Bay of Plenty Regional Council Toi Moana (BOPRC) Cr Paula Thompson - BOPRC
In Attendance:	<u>BOPRC</u> : Cr Kat Macmillan; Nassah Rolleston-Steed - Principal Advisor; Samantha Pottage - Urban Planner; Cheryl Robb - Spatial Planning Coordinator; Claudia Cameron - Committee Advisor. <u>External</u> : All submitters as listed in the Minutes.

1. Karakia

A karakia was provided by Mr Rawiri Faulkner.

2. Chair's Opening Statement

Chair Robert Scott welcomed submitters and introduced the Hearings Panel (the Panel) and Planning Staff (staff). He noted that Cr Kat Macmillan (BOPRC) was in attendance as an observer. Those in attendance were informed that the Panel would be conducting a field trip prior to deliberations.

3. Declaration of Conflicts of Interest

Cr Jane Nees **declared** her position as a member of the Smart-Growth Leadership Group and Hearing Panel member for the Future Development Strategy for Rotorua.

Cr Paula Thompson **declared** her position as a member of the Smart-Growth Leadership Group, Chair of the BOPRC Strategy and Policy Committee and member of the Mount Maunganui Air Quality Working Party.

4. Bay of Plenty Regional Council Planner Introduction

Presented by: Samantha Pottage - Urban Planner (BOPRC)

Key Points

- Introduced Proposed Change 6 (National Policy Statement - Urban Development) to the Bay of Plenty Regional Policy Statement (PC6 (NPS-UD))
- The scope, as defined by the BOPRC Strategy and Policy Committee, was limited to changes considered necessary to give effect to the National Policy Statement on Urban Development
- Changes relating to the National Policy Statement for Highly Productive Land (NPS-HPL) were considered out of scope and would be implemented during Proposed Change 8.

In Response to Questions

- A change to policy 10 was considered out of scope and had not been notified.

5. Hearing of submissions to the Proposed Change 6 (NPS-UD) to the Bay of Plenty Regional Policy Statement

Time	Name	Sub/FS #
10:15 am	<p><u>Tauranga Crossing Limited</u> - via Zoom Presented by: Mark Arbuthnot - Bentley and Co Ltd</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary of the Tauranga Crossing - Supplementary Evidence was provided • Tauranga Crossing was one of the largest retail spaces in New Zealand • The NSP-UD provided a clear policy directive requiring Territorial Authorities (TLAs) to provide <i>sufficient development capacity</i> which included <i>infrastructure-ready</i> business land • The Bay of Plenty Regional Policy Statement (RPS) should reflect the directive language of the NPS-UD to ensure its completion by TLAs, including specific language to identify long/medium/short term infrastructure-ready development capacity. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • Clear language provided for consistent decision making by TLAs, and the assurance the more subtle aspects of the NPS be retained • Suggested structure plans be used to demonstrate readiness/sufficiency of infrastructure - sufficient infrastructure was required to support growth • A definition of sufficient in the context of <i>sufficient development capacity</i> should be considered on a site-by-site/issue-by-issue basis, but needed to be adequate to service the development • As infrastructure projects were coordinated through TLAs in conjunction with Waka Kotahi, the wording of Policy UG 6A was not inappropriately directing Waka Kotahi. 	26/FS06

<p>10:53 am</p>	<p><u>Royal Forest and Bird Protection Society</u></p> <p>Presented by: Dr Chantel Pagel (Regional Conservation Manager - Forest and Bird) and Richard James (Tauranga Branch Chair, Forest and Bird)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • Forest & Bird speaking notes were tabled • The plan provided for protection, maintenance and enhancement • Supported intensification of urban development with the goal of reduced emissions but did not support the removal of urban limits in western Bay of Plenty sub-region. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • Preference for the more directive language of <i>should</i> over <i>may</i> • Planning for soft infrastructure should be included within urban development • Significant Natural Areas should be noted and accommodated for within urban development • Acknowledged that the National Policy Statement on Indigenous Biodiversity was out of scope for this change. <p><u>Planning Staff - Response to Questions</u></p> <ul style="list-style-type: none"> • A definition of <i>urban activities</i> could be found in the operative RPS. 	<p>17/FS02</p>
<p>11:08 am</p>	<p><u>Kiwi Rail Holdings Ltd</u> - via Zoom</p> <p>Presented by: Jacob Burton, Julia Fraser (Russell McVeagh), Cath Heppelthwaite and Mike Brown (Group Manager Planning and Land Use KiwiRail holdings Limited)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary was provided of the KiwiRail - Legal Submission, KiwiRail - Supplementary Evidence (corporate) and KiwiRail - Supplementary Evidence (planning) • There were approximately: 190 train movements to the west of Tauranga, 56 between Tauranga and Mount Maunganui and 90 east of Tauranga • The role of rail was set to grow, the RPS should future-proof that growth in the same way as for residential growth • Providing for high density housing should not compromise the safe and efficient rail network • Reverse sensitivity effects did not take into consideration rail and required sufficient consideration to protect the rail corridor, and 	<p>20</p>

	<p>noted the definition of <i>reverse sensitivities</i> included the activity’s future ability to grow</p> <ul style="list-style-type: none"> • Noted the forward looking, proactive protection of regionally significant activities that are vulnerable to reverse sensitivity complaints • Highlighted the importance of rail for linking regions and the need for a nationally consistent management framework • Rail corridors tended to be noisy on a 24-hour basis, as when they were not being used for freight, maintenance was underway. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • High freight volume line required futureproofing. Future use by passengers was not precluded, although there were no current plans for passenger rail in the Bay of Plenty • Acknowledged rapid transit passenger rail required rail within an urban area, but noted the five-metre building set back of new buildings to allow sufficient space for maintenance • Electrification of the network reduced vibration, however there was currently no programme to extend this • Policy UG7A(g) - having an <i>avoid</i> policy may reduce enabling abilities, and acknowledged <i>mitigate/manage</i> may be more enabling and consistent • UG 13B(i) - were rail to be included as a qualifying matter, this may need to be addressed via the RPS. 	
<p>12:11 pm</p>	<p><u>Ngāti He hapū</u></p> <p>Presented by: Des Heke</p> <p>Tabled Document 1: Interim Report of Excavations at 47 Adler Drive Ohauiti, Tauranga Bay of plenty/; HNZPT Authority 2016/421 - Tabled Document 1 - Ngāti He Hāpu</p> <p>Tabled Document 2: 47 Adler Drive, Ohauiti: archaeological assessment - Tabled Document 2 - Ngāti He Hāpu</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary of the Supplementary Evidence - Des Heke was provided • The loss of cultural heritage sites was a long-standing issue for tangata whenua and was partly due to a lack of quality information about the location of sites and their values prior to development occurring • There was a lack of appropriate tangata whenua representation at strategic meetings, with cultural concerns often overshadowed • Highlighted the adverse effects of urban intensification, high growth, pollution, poor 	<p>14</p>

	<p>transport and suggested <i>avoidance</i> was more effective than <i>mitigation</i></p> <ul style="list-style-type: none"> • Cultural monitors added value to development projects, currently organisations identified and planned around areas of cultural heritage significance, but communication breakdowns resulted in some development projects inadvertently encountering and destroying sites • Many of the Significant Māori Areas (SMAs) that were including in the original notified Tauranga City Plan were removed through the schedule 1 process because of inadequate information to substantiate their values and location. Many of those SMAs removed from TCC’s City Plan have since been developed and their location and cultural significance substantiated by the development works. Kaitiaki remain frustrated as the only option was to record and destroy the sites through an authority obtained from Pouhere Taonga. Offsetting might offer another option at that stage in the process • Noted multiple hapū were facing similar issues particularly in the western Bay of Plenty sub-region which is facing the highest population growth pressure • Suggested a fund to compensate cultural heritage site destruction be investigated and established • Considered this an extension to Western Bay of Plenty District Council’s transferable development rights mechanism. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • There was a need for cultural offsetting • The development of capability and capacity of Tangata Whenua to participate in these processes was required • Acknowledged some aspects of the submission were out of scope but this did not undermine the importance of cultural heritage loss • There was a need to clearly articulate the concepts of <i>offset</i> and <i>compensate</i> • Directive policy statement language at RPS level was required • Requested the Panel consider replacing offset with cultural redress. 	
<p>12:58 pm</p>	<p><u>Tauranga City Council</u> (via Zoom)</p> <p>Presented by: Simon Banks (Working Group Manager - Planning and Environment - WSP)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary was provided of the TCC - Supplementary Evidence • Recommended the promotion of multi-modal 	<p>9</p>

	<p>transport not just public transport in Policy UG 7Ax</p> <ul style="list-style-type: none"> • Consistency of language was required throughout the policy, and wording alignment with Tauranga City Council (TCC) plans and national policy • Clarification was sought around non-anticipated urban development directly adjacent to an urban area, and the potential for unintentional creation of an urban limit. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • In reference to the large-scale five-hectare threshold - a definition of <i>equitable</i> and an understanding of potential restrictions that the threshold may place on papakāinga was required • Needed to reconsider the linkages between Policies UG 7A and UG 14B • TCC – Proposed Policy Wording was tabled • The Panel requested a personal opinion which was provided as: <i>TLAs were required to give effect to the NPS, therefore directive wording had some benefits.</i> 	
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01:16 pm - The hearing **adjourned**

01:46 pm - The hearing **reconvened**

Time	Name	Sub #
1:47 pm	<p>Fonterra Ltd (via Zoom)</p> <p>Presented by: Daniel Minhinnick (Russel McVeagh, Suzanne O'Rourke (National Environmental Policy Manager - Fonterra), Abbie Fowler (Environmental Planner)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary was provided of Fonterra - Statement of Evidence (corporate), Fonterra - Statement of Evidence (planning), and Fonterra - Legal Submissions • Highlighted the Waikato RPS as an example of clear direction - noted differences in the management of reverse sensitivities compared to other regions • Changes were being sought to better provide for land use and avoid future reverse sensitivities, noting that increased residential density around industrial areas increased the incidence of reverse sensitivity • Port overflow and required logistics demonstrated significant effects on existing operations, particularly in regard to reverse sensitivities • RPS was required to give effect to all provisions of 	15/FS03

	<p>the NPS, rather than only the intensification provisions.</p> <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • <i>Avoid or mitigate</i> within the written evidence were deliberately used based on context, and avoidance of reverse sensitivities in the first instance was preferred • Fonterra factories employed a combination of mitigation and management techniques to deal with sensitivities, e.g., acoustic barriers. A pre-existing reverse sensitivity was near impossible to be avoided • Preferred the term <i>avoid</i> over <i>avoid and if cannot be avoided then mitigate/minimise</i>, particularly as there was significant potential for green field development near factories • Fonterra’s evidence was based on four key assets in locations which required sensitivities, including the manufacturing site, processing and distribution assets, not dairy farming locations • It was not uncommon for a directive RPS to be implemented on a site-by-site basis by relevant TLAs • The Panel <u>requested</u> the Waikato RPS be presented as evidence to allow contextual consideration - Fonterra - Supplementary Statement of Evidence (planning) <p><u>BOPRC Staff Response</u></p> <ul style="list-style-type: none"> • The RPS definition of rural production activities currently encompassed Fonterra’s processing facilities. 	
<p>2:19 pm</p>	<p><u>Tumu Kaituna 14 Trust</u> and <u>Ford Land Holdings Pty Ltd</u> Presented by: Jeff Fletcher (Bconn Ltd.)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • Although accepted planning language, there was potential confusion in the term “private” plan change and a definition in the Regulatory Documents had not been found • As there was currently no adopted Future Development Strategy (FDS) for the region there was a potential for a policy vacuum which may result in inconsistencies and Plan Change inflexibilities • Better land use and infrastructure planning was required to progress growth areas. <p><u>In Response to Questions</u></p>	<p>28/FS11 & 16/FS12</p>

	<ul style="list-style-type: none"> • Suggested the Appendix E western Bay Of Plenty sub-region urban limit maps remain, supported by wording to the effect of: <i>the maps remain operative until a relative FDS is adopted covering those geographic areas</i> • The urban limits provided certainty for investment in infrastructure and development • Sought clarification of the section regarding natural hazards • Consistency of language was important, particularly if referring to appendices • Tumu Kaituna 14 Trust was conducting consultation with beneficiaries and working with TCC to enable infrastructure corridors to the land blocks and surrounding areas • Ford Lands Holdings Pty Ltd was a private interest with the potential to urbanise • The Panel were directed to the Tumu Kaituna Trust 14 website for more information: Tumu Kaituna 14 Trust - Your Whenua. Your Future. 	
<p>2:45pm</p>	<p><u>Newman Group Ltd</u> and <u>Vercoe Holdings Ltd</u> and <u>Classic Developments Ltd</u> and <u>Urban Task Force for Tauranga</u></p> <p>Presented by: Aaron Collier (Collier Consultants) and Scott Adams (Urban Task Force)</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary was provided of the Statement of Evidence - Aaron Collier, Urban Task Force - Statement of Evidence and Statement of Evidence - Aaron Collier for the Urban Task Force and Others • Highlighted growth as an opportunity for the region, connected planning and strong leadership were required • Noted urban development was too slow in the region • Multiple further urban growth areas were needed • The FDS was supported in principle, although a draft had not been sighted • Anticipated the FDS would focus on larger development areas. Noted that smaller development areas could occur quicker as an interim approach and would enable an immediate assistance with combatting the housing deficit • Noted a mistype within the evidence, a reference to objective 2 of NPS should be objective 3 - referring to a provision outlining <i>well planned transport</i> • Urged the panel to take an enabling approach until the content of the FDS was known as there was a significant development capacity deficit • As the RPS is not a one size fits all document, the 	<p>22 30 13 29/FS13</p>

	<p>provisions in relation to density should come from lower planning documents</p> <ul style="list-style-type: none"> • Regarding reticulated services and future growth - where reticulation was not already in existence for a settlement, a developer should be able to provide this • Highlighted the term <i>spatial</i> plan is preferable as opposed to a <i>structure</i> plan and would include more than just hard engineering. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • Areas under 5 hectares should not be excluded for consideration under Policy UG 7A • Reverse sensitivity and future developments - preferred mitigation over total avoidance, e.g., a buffer area • Site specific analysis of effects should be undertaken when setting strongly worded policies which may prohibit growth • Instead of land parcel size being the deciding factor, suggested the panel consider yield, the current policy was too blunt considering the housing deficit • Preferred reference to only RMA and FDS as opposed to Long-Term Plans. 	
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3:33 pm - The hearing **adjourned**

3:43 pm - The hearing **reconvened**

Time	Name	Sub #
3:43 pm	<p><u>Ballance Agri-Nutrients Ltd</u></p> <p>Presented by: Dominic Adams (Environmental Manager - Ballance Agri-Nutrients Ltd) and Barbara Mead (Sharp Tudhope Lawyers)</p> <p>Tabled Document 3: Brief of Evidence of Dominic Adams on behalf of Ballance Agri-Nutrients Ltd - Ballance - Statement of Evidence</p> <p>Tabled Document 4: Legal Submission on behalf of Ballance Agri-Nutrients Ltd - Ballance - Legal Submission</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • Cr Paula Thompson noted her position as a member of the Mount Maunganui Air Quality Working Party • A verbal summary of the tabled documents was provided • Balance manufacturing site was established in 	10/FS05

	<p>1958, the Whareroa marae directly adjoining to the south was already in existence prior, no other uses were established in the area at that time, the challenges of living next to an industrial site were acknowledged by Ballance with regular communications with the Whareroa marae</p> <ul style="list-style-type: none"> • Ballance was part of the Mount Maunganui Air Quality Working Party • Investments were made to improve environmental performance, particularly air discharges • Required the ability to modify within the confines of regulations to continue to be economically viable, noted their current port location was of high importance • Pipe/funnel analogy was provided to explain the relationship between the RMA and lower policy documents. Noted that the wording of the lower policy document should give effect to the RMA and not impose more onerous obligations/responsibilities • Wanted to avoid adding difficulty to future consent applications - wanted the ability to continue operations and improving environmental performance. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • Highlighted the efforts and investment made by Ballance to reduce odour and dust within the confines of product requirements - noted odour was subjective • Increasingly engaged in the consent’s application process, which included relationships with neighbouring properties • Operated within conditions of consent. Operative sensors were on site, along with a sulphur dioxide scrubbing system and dust extraction. 	
<p>4:47 pm</p>	<p><u>Element IMF</u> and <u>Bluehaven Investments</u> and <u>Bell Road Limited Partnership</u></p> <p>Presented by: Craig Batchelor (Cognito Consulting Ltd)</p> <p>Tabled Document 5: Statement of Evidence of Craig Batchelor - Craig Batchelor - Statement of Evidence</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • Noted he was recently employed as an advisor to SmartGrowth but prior to accepting the role had assisted preparing submissions and didn’t consider there to be a conflict of interest • Provided a summary of the tabled document • Key concerns related to unanticipated and out of 	<p>01/FS07 12/FS08 11</p>

	<p>sequence developments</p> <ul style="list-style-type: none"> • Suggested FDS be included in the wording of the out of sequence provisions, particularly when determining if a development was unanticipated or out of sequence • Housing and business development capacity assessments (HBAs) should be included in the criteria in the interim until the FDS is operative • Suggested recognition of existing and prospective commercial centres. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • HBA and FDS should have consistencies, the FDS takes into consideration the HBA as well as other factors • The definition of <i>spatial planning</i> is broad and could include the Urban Form and Transport Initiative (UFTI) • Wording was important to provide guidance if a proposal required consideration under the specified criteria. <p><u>BOPRC Staff Response</u></p> <ul style="list-style-type: none"> • FDS was due to be released for submissions during October 2023. 	
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05:10 pm - The hearing **adjourned**

09:52 am, Thursday, 22 June 2023 - The hearing **reconvened**

Time	Name	Sub #
09:52 am	<p><u>Waste Management NZ Ltd</u></p> <p>Presented by: Simon Pilkinton (Russel McVeagh), James Jefferis (Head of Environment and Consents - Waste Management NZ Ltd.) and Te Teira Rawiri (Cultural Advisor - Waste Management NZ Ltd.)</p> <p>Tabled Document 6: Legal Submissions on behalf of Waste Management NZ Limited - Waste Management Legal Submission</p> <p>Tabled Document 7: Statement of Evidence of James Hilton Jefferis on behalf of Waste Management NZ Limited - James Jefferis - Statement of Evidence</p> <p><u>Key Points</u></p> <ul style="list-style-type: none"> • A verbal summary of the tabled documents was provided • Noted there was no legal obligation for regional or district councils to provide waste management, 	32

	<p>meaning a reliance on private companies</p> <ul style="list-style-type: none"> • If a discharge from a current facility became prohibited, it would remove the ability to apply for a consent as an existing use right was not applicable to air discharge applications • The wording <i>protect from</i> may reduce the ability to secure new future facility locations • Policy should reflect statutory language, lower order planning documents must give effect to legislation • Considered the RMA s32 assessment by BOPRC to be insufficient • Use of strongly directive words such as <i>protect</i> and <i>incompatible</i> should be carefully evaluated and their definitions considered before inclusion • Noted Waste Management had been approached by BOPRC as an example of good practice • It was currently a requirement under the RMA that the principles of Te Tiriti o Waitangi be taken into account. <p><u>In Response to Questions</u></p> <ul style="list-style-type: none"> • Seeking Policy UG 22B(e) be deleted until a more robust s32 analysis was conducted • Considered the likely outcome of a requirement to <i>protect</i> would result in <i>prohibit</i> • Consents could not be considered for a prohibited activity, with no opportunity to demonstrate an ability to avoid/remedy/mitigate adverse effects • Softened language to enable a consenting pathway was preferred, as <i>incompatible activities</i> would be prohibited - noted the King Salmon Case • The RPS must achieve Part 2 of the RMA, PC6 was more onerous than s8 of the RMA, it must be consistent • Noted Waste Management undertook consultation with local iwi/hapū, and employed a cultural advisor, with the goal of genuine relationships/partnerships. <p><u>Staff Response</u></p> <ul style="list-style-type: none"> • Noted <i>active protection</i> was a principle of the Treaty of Waitangi/Te Tiriti o Waitangi and questioned whether Waste Management NZ agreed, Mr Pilkington agreed it was a recognised Tiriti o Waitangi principle. 	
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11:20 am - The hearing **adjourned**

11:42 am -The hearing **reconvened**

Time	Name	Sub #
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	<p><u>Response from Council Officers:</u></p> <ul style="list-style-type: none"> • Noted evidence from developers concerned mainly the western Bay of Plenty sub-region • Recognised the on-going Eastern Bay of Plenty (EBOP) Spatial Planning process, and that the FDS did not apply to the EBOP, therefore a blanket reference to the FDS was inappropriate • Supported the retention of the 5-hectare large-scale development provision as notified • Noted that the development of Māori owned land was not inhibited, as Policy UG 22B allowed for its urban development even if unanticipated. Additionally, Policy UG7A enabled significant development capacity and had relevance regardless of land ownership. <p><u>Actions:</u></p> <ul style="list-style-type: none"> • Actions for staff and questions from the Panel were noted, and responses would be provided to the Panel in due course. 	<p>N/A</p>
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6. Next Steps

- A written response from Samantha Pottage (BOPRC Urban Planner) would be provided to the Panel on Friday 7 July
- A field trip would take place on Tuesday 18 July, itinerary to be confirmed
- Deliberations were due to commence Wednesday 19 July.

12:47 pm - the hearing adjourned.