

IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY

I TE KŌTI TAIAO O AOTEAROA KI
TĀMAKI MAKĀURAU

ENV-2024-AKL-

IN THE MATTER of the Resource Management Act 1991 (the **Act**)

A N D

IN THE MATTER of an appeal pursuant to Schedule 1, cl 14 of the Act

BETWEEN **BLUEHAVEN INVESTMENTS LIMITED**

Appellant

A N D **BAY OF PLENTY REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL AGAINST PLAN CHANGE 6 TO THE BAY OF PLENTY REGIONAL POLICY
STATEMENT**

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TO: The Registrar
Environment Court
AUCKLAND

1. Bluehaven Investments Limited (“**BIL**”) appeals against a decision of Bay of Plenty Regional Council on Proposed Plan Change 6 to the Bay of Plenty Regional Policy Statement (“**RPS**”), (the “**Plan Change**”).
2. BIL made a submission on the Plan Change. A copy of the submission is attached as **Annexure A**.
3. BIL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (The Act).
4. BIL received notice of the decision on 9 February 2024.
5. The decision was made by a hearings Panel comprising of both independent commissioners Council and Councillors as hearings commissioners (the Hearings Panel).
6. BIL is appealing the following parts of the Plan Change decision:
 - (a) Introduction Part 2.8 -Urban and rural growth management.
 - (b) Policy UG 7A: Providing for unanticipated or out-of-sequence urban growth – urban environments.
 - (c) Appendix E – Management and Growth areas for the Western Bay of Plenty and key related policies.

Reasons for appeal

7. The general reasons for this appeal are that, in absence of the relief sought, the Plan Change decision:
 - (a) Will not promote the sustainable management of resources and will therefore not achieve the purpose of the Act, including by not meeting the reasonably foreseeable needs of future generations.

- (b) Will not promote the efficient use of natural and physical resources.
- (c) Will not achieve the integrated management of the effects of the use, development or protection of land and associated natural and physical resources.
- (d) Does not represent the most appropriate way of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the Act.
- (e) Does not adequately provide for the efficient function of urban zoned land as a significant physical resource, in particular land zoned for housing and business, the shortage of which is a matter of national significance under 2020 National Policy Statement of Urban Development ("NPS-UD").
- (f) BIL's submission set out sound planning reasons for each of the changes sought, which were all rejected without proper analysis or explanation by the Hearings panel.

Specific reasons for appeal

8. The reasons for the appeal against the Plan Change decisions relate to the changes sought as set out specifically in the BIL submission, which were rejected, and include:
 - (a) The spatial planning/policy environment is dynamic and the RPS will invariably become out of date through making specific references to planning documents such as the SmartGrowth Strategy and Implementation Plan 2013. Further the other documents referred to may not always be aligned, or subject to the same rigour of analysis, community engagement, or decision making.
 - (b) Strategies subject to RMA or LGA public consultation and submission processes such as the Future Development Strategy ("FDS"), Tauranga Urban Strategy ("TUS") and proposed Commercial Centres Strategy ("CCS") should be referred to and included in the Urban Growth Policy rather than UFTI, in anticipation of their formal approval in the next 12-24 months.
 - (c) Policy UG 7A Providing for unanticipated or out-of-sequence urban growth – urban environments should not refer to the Housing Business Assessment ("HBA"). The criterion should refer to the FDS, not the HBA. The HBA is not a plan. It is a tool used to inform the FDS alongside other inputs and does not deliver capacity on its own. It is a technical analysis that is not subject to formal consultation nor decision making under the Act or Local Government Act 2002. Further, the other planning documents referred to in the

Explanation to the policy may not always be aligned, or subject to the same rigour of analysis, community engagement, or decision making.

- (d) Unanticipated or out of sequence development may affect planned development and infrastructure, however that may well be acceptable where the benefits outweigh the costs. The proposed policy criterion has an unnecessarily high threshold (i.e. (f) ‘...without materially reducing the benefits of other existing or planned development...’). The limiting criterion will unnecessarily constrain opportunities for alternative, and potentially more advantageous, urban development proposals and is therefore inconsistent with the intent of the NPS-UD.
9. The Council decision rejected Bluehaven’s submission. The decision did not consider that the policy provision changes sought are more effective and efficient and give full effect to the wider statutory framework and intention of the Government housing intensification directives and policies.

Relief Sought

10. BIL seeks the following relief:

- (a) Delete the final paragraph of 2.8 **Urban and rural growth management**.

~~The western Bay of Plenty sub-region has determined through its 50-year growth management strategy (Smart Growth Strategy and Implementation Plan, 2007-2013) how the pressures of growth will be best managed in a time, resource and cost-effective manner. The districts of Rotorua, Whakatāne, Ōpōtiki and Kawerau have different pressures. Rotorua and Whakatāne District Councils have undertaken their own urban growth strategies.~~

- (b) Refer to the proposed Commercial Centres Strategy (CCS) and Tauranga Urban Strategy (TUS) within relevant UG policies on the basis that these documents are in the process of being reviewed and formally approved.
- (c) Amend **Proposed Policy UG 7A Providing for unanticipated or out-of-sequence urban growth – urban environments** to refer to the FDS and RMA Plans as the primary documents that anticipate and sequence urban development and remove reference to other planning documents.
- (d) Amend **criterion (f) under Proposed Policy UG 7A** as follows:
 “~~Required~~ Development infrastructure can be provided efficiently, including the delivery, funding and financing of infrastructure. ~~without materially reducing the benefits of other~~

~~existing or planned development infrastructure or undermining committed development infrastructure investment.”~~

- (e) Any other amendments to the specified and any related provisions to address the reasons for the appeal as set out in its submission.
- (f) Costs.

11. The following documents are attached to this Notice of Appeal:

- (a) **Annexure A:** A copy of the submission of BL on the Proposed Plan.
- (b) **Annexure B:** A list of names and addresses of persons to be served with this Notice of Appeal; and
- (c) **Annexure C:** A copy of the relevant parts of the decision.

12. BIL agrees to participate in mediation or other alternative dispute resolution mechanism.

Signature:



Kate Barry-Piceno, Legal Counsel for Appellant

Date: 20 March 2024

Address for Service of Appellant:

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Advice to recipients of copy of Notice of Appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- within 15 working days after the period for lodging a Notice of Appeal ends, lodge a notice of your wish to be a party to the proceedings (inform 33) with the Environment Court and serve copies of your notice on the relevant local authority and the Appellant; and
- within 20 working days after the period for lodging a Notice of Appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this Notice served on you does not attach a copy of the Appellant's submission and the decision appealed. These documents may be obtained, on request, from the Appellant.

Advice

If you have any questions about this Notice, contact the Environment Court in Christchurch.