

Proposed Plan Change 94B – Papakāinga Provisions

Section 32AA Evaluation

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1.0 Introduction

1. This document provides an assessment pursuant to section 32AA of the Resource Management Act 1991 (“**RMA**”) of the proposed changes outlined in **Attachment 5** of the Section 42A Report for PC94B Papakāinga.
2. The relevant provisions from the revised chapter are set out below showing changes to the notified text in underlined or ~~striketrough~~. Depending on the complexity of the change proposed, the section 32AA assessment then follows in a separate table underneath or an overall discussion. In accordance with section 32AA(1)(c), the assessment of each change has been undertaken at a level of detail that corresponds to the scale and significance of the proposed changes.

2.0 PKA.1.1 Description & Expectations

3. The following change is proposed to the second paragraph of PKA.1.1:

“In the context of the District Plan, papakāinga developments are developments of a communal nature on ancestral Māori land. Papakāinga developments may not solely focus on providing for housing and may also include activities such as community facilities, education, recreation and enterprise associated with communal housing.”
4. Two reasonably practicable options have been identified for the proposed change:
 - **Option 1:** Notified Provisions – **Attachment 3**
 - **Option 2:** Revised Provisions – **Attachment 5**
5. Option 1 is no longer considered the most efficient and effective option. No definition is proposed for papakāinga in the proposed PC94B provisions because papakāinga means many things to Māori and in the development of the existing phase one provisions there was a clear opposition to defining the term. However, context is provided in the second paragraph of PKA.1.1. A new permitted activity control in PKA.1.5.1.b.i has been proposed (see paragraph 41) which requires that “any places of assembly and commercial or industrial activities are associated with papakāinga.” In light of this proposed change, it is important that the second paragraph of PKA.1.1 is amended to clarify what kind of “community facilities, education recreation and enterprise” activities are considered appropriate in a papakāinga development.
6. Option 2 is the most efficient and effective option. The proposed amendment to the second paragraph of PKA.1.1 provides more clarification of what kind of “community facilities, education recreation and enterprise” activities are considered appropriate in a papakāinga development. This proposed change along with the new permitted activity control in PKA.1.5.1.b.i (see paragraph 41) will also address general concerns expressed in submissions about the scope of non-residential activities that could occur in a papakāinga development while still allowing flexibility for papakāinga developments in accordance with the PKA objectives and policies.
7. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC94B.
8. There is no risk due to insufficient information.

3.0 PKA.1.2 Eligibility

PKA.1.2.2 – Application of the underlying Environment Provisions

9. The following change is proposed to PKA.1.2:

- “1. The following provisions of the District Plan shall apply to papakāinga developments:
- a. The District Wide and Resource Area objectives, policies and rules.
 - b. The underlying Environment provisions, unless otherwise specified in PKA.1.5.
 - c. The underlying Environment subdivision provisions.”
2. The PKA provisions shall not apply to land located in the Business Environments.
- ~~1. The District Wide and Resource Area objectives, policies and rules in the District Plan shall apply to papakāinga developments under the papakāinga provisions below.~~
- ~~2. The underlying Environment provisions shall not apply to papakāinga developments under the papakāinga provisions below.”~~

10. PKA.1.2.1.a is the essentially the same as notified with a slightly different structure. The main change is PKA.1.2.1.b which states “The underlying Environment provisions, unless otherwise specified in PKA.1.5.” This change is assessed below, with PKA.1.2.1.c and PKA.1.2.2 assessed in the proceeding section.

11. There are four reasonably practicable options for the proposed change in PKA.1.2.1.b:
- **Option 1:** Status Quo – Retain the existing eligibility rule which refers to activity statuses [see **Attachment 2**].
 - **Option 2:** Submission requests – “the underlying Environment provisions shall ~~not~~ apply to papakainga developments under the papakainga provisions below.”
 - **Option 3:** Notified Provisions – “the underlying Environment provisions shall not apply to papakainga developments under the papakainga provisions below” [**Attachment 3**].
 - **Option 4:** Revised Provisions – “The underlying Environment provisions shall ~~not~~ apply to papakāinga developments, unless otherwise specified below. ~~under the papakāinga provisions below.”~~

TABLE 1: EVALUATION OF ELIGIBILITY RULE OPTIONS		
Option	Costs	Benefits
Option 1: ¹	<u>Environmental</u> Not clarifying the application of other provisions in the Whangarei District Plan (“WDP”) could jeopardise the protection of ecological, landscape, heritage and other features which are of value to Māori and the wider community. <u>Economic</u> None known. <u>Social</u>	<u>Environmental</u> None known. <u>Economic</u> None known. <u>Social</u> Consistency in application with existing papakāinga provisions / structure. <u>Cultural</u>

¹ This row is duplicated from Table 4 of the Section 32 Evaluation Report [see **Appendix A**].

	<p>The structure of the eligibility rule is inconsistent with the structure of other chapters progressed under the WDP Rolling Review.</p> <p><u>Cultural</u></p> <p>None known.</p>	<p>None known.</p>
Option 2:	<p><u>Environmental</u></p> <p>None known.</p> <p><u>Economic</u></p> <p>Total adherence with all underlying Environment provisions will increase compliance costs for papakāinga developments which often will infringe rules such as density of residential units and the allowance of commercial activities associated with papakāinga.</p> <p><u>Social</u></p> <p>The papakāinga provisions would essentially become redundant if all of the underlying Environment provisions apply. Existing consenting barriers will remain.</p> <p><u>Cultural</u></p> <p>Such an approach will not allow flexibility for Māori to develop their ancestral lands and will not enable Māori to establish and maintain traditional settlement patterns, activities and development opportunities.</p>	<p><u>Environmental</u></p> <p>All papakāinga developments will be required to comply with the existing underlying Environment provisions, some of which are designed to manage effects on the environment.</p> <p><u>Economic</u></p> <p>None known.</p> <p><u>Social</u></p> <p>Greater certainty would be provided to neighbouring properties about the types of development that could occur on Māori land.</p> <p>The application of other provisions in the WDP for the papakāinga chapter are clear for Plan users.</p> <p><u>Cultural</u></p> <p>None known.</p>
Option 3:	<p><u>Environmental</u></p> <p>Potential that the removal of compliance with all underlying Environment provisions could mean that appropriate amenity standards are not met and unacceptable adverse effects on the surrounding environment.</p> <p><u>Economic</u></p> <p>None known.</p> <p><u>Social</u></p> <p>While controls were proposed in PKA.1.5.1.b as notified, neighbouring landowners have identified concerns regarding the uncertainty about the location and level of development that could occur.</p> <p>Difficult to create specific controls for papakāinga developments in PKA.1.5.1.b which appropriately account for the differences in characteristics of the underlying Environment (while Māori land is predominantly rural and coastal, it also exists in other zones), which in many cases are subject to change under the wider WDP rolling review (e.g. rural plan changes).</p> <p><u>Cultural</u></p> <p>None known.</p>	<p><u>Environmental</u></p> <p>None known.</p> <p><u>Economic</u></p> <p>Compliance costs for papakāinga developments would be reduced.</p> <p><u>Social</u></p> <p>The application of other provisions in the WDP for the papakāinga chapter are clear for Plan users.</p> <p><u>Cultural</u></p> <p>Such an approach would allow flexibility for Māori to develop their ancestral lands and would allow Māori to establish and maintain traditional settlement patterns, activities and development opportunities.</p>
Option 4:	<p><u>Environmental</u></p> <p>Potential for environmental effects associated with the more permissive allowances in the revised PKA.1.5 .b (see attachment 5 and table</p>	<p><u>Environmental</u></p> <p>None known.</p> <p><u>Economic</u></p> <p>Compliance costs for papakāinga</p>

	<p>2 below)</p> <p><u>Economic</u></p> <p>Compliance costs for papakāinga developments would be reduced, although not as much as Option 3.</p> <p><u>Social</u></p> <p>While more controls are provided, there may still be concerns from neighbouring property owners regarding the more permissive allowances in the revised PKA.1.5.b.</p> <p><u>Cultural</u></p> <p>The approach is less flexible than option 3 in terms of providing flexibility for Māori to develop their ancestral lands.</p>	<p>developments would be reduced, although not as much as Option 3.</p> <p><u>Social</u></p> <p>More certainty provided to neighbouring land owners that appropriate amenity standards will be met with regard to the Underlying Environment provisions that do apply.</p> <p>The application of other provisions in the WDP for the papakāinga chapter are clear for Plan users.</p> <p>The assumption is that the underlying Environment provisions would apply unless otherwise specified. More permissive allowances are made for papakāinga developments in PKA.1.5.1.b.(see Attachment 5 and Table 2 below) with regard to places of assembly, commercial activities associated with papakāinga and the density of residential units that are generally more permissive than the underlying Environment.</p> <p><u>Cultural</u></p> <p>Such an approach would allow flexibility for Māori to develop their ancestral lands and would allow Māori to establish and maintain traditional settlement patterns, activities and development opportunities.</p>
Option	Efficiency & Effectiveness	
Option 1:	Option 1 is neither efficient nor effective as the use of the eligibility rule will remain inconsistent with the structure of other WDP chapters progressed under the Rolling Review. There will be no clarity as to the application of other provisions in the WDP, which could affect the protection afforded to ecological, landscape, heritage and other features which are of value to Māori and the wider community. This will also make it more difficult for Plan users utilising and interpreting the papakāinga provisions.	
Option 2:	Option 2 is neither efficient nor effective as specifying that all underlying Environment provisions apply would make the Papakāinga chapter redundant and will not allow flexibility for Māori to develop their ancestral lands and to establish and maintain traditional settlement patterns, activities and development opportunities.	
Option 3:	Option 3 is efficient in that it will provide clarity that the underlying Environment provisions in the WDP do not apply. It is effective in that it will provide more flexibility for Māori to develop their ancestral lands and to establish and maintain traditional settlement patterns, activities and development opportunities. However, in light of submissions and in the context of the ongoing rolling review of the WDP which has and will continue to introduce new Environments and associated activity rules and development controls, it is considered that the notified controls in PKA.1.5.2.b do not necessarily provide for the most efficient and effective protection of amenity values in the context of each Environment.	
Option 4:	Option 4 is efficient and effective as, taking into account all relevant considerations, it will provide a more appropriate balance between allowing the flexibility for Māori for papakāinga developments with regard to rules that are typically an issue (e.g. density controls and restrictions on commercial activities) while ensuring appropriate amenity standards for the underlying Environments are met.	
Option	Economic Growth and Employment Opportunities	
Option 1:	Papakāinga developments provide economic growth and employment opportunities through the utilisation of previously underutilised land for the social, cultural and economic benefit of Māori land owners and their whanau. Option 1 has five years of application and no economic growth or	
Option 2:		

Option 3:	employment opportunities have been recognised. Option 2 will inhibit papakāinga developments and will have no economic growth or employment opportunities. Options 3 and 4 have a higher potential for economic growth as they will provide more flexibility for papakāinga developments to occur without needing resource consents.
Option 4:	
Risk of acting and not acting if there is uncertain or insufficient information	
There is no risk due to insufficient information.	

12. Option 4 is considered to be the most efficient and effective method to achieve the existing papakāinga objectives and purpose of PC94B.

PKA.1.2.3 & PKA.1.2.4 – Application of Subdivision provisions & papakāinga developments in the Business Environment

13. The following two additions are proposed to the eligibility rule in PKA.1.2:

“1. The following provisions of the District Plan shall apply to papakāinga developments:

a. _____

b. _____

c. The underlying Environment subdivision provisions.”

2. The PKA provisions shall not apply to land located in the Business Environments.”

14. The following reasonably practicable options have been identified:

- **Option 1:** Status Quo / Notified Provisions – no clarification for the application of these provisions.
- **Option 2:** Revised provisions – see **Attachment 5**.

15. Option 1 does not provide clarity as to the application of the subdivision provisions. It was never intended that the papakāinga provisions would supersede the subdivision provisions in the underlying Environment, so it is important that this is clarified in the revised provisions.

16. Further, it is considered that papakāinga developments would not be suitable in the Business Environments due to potential reverse sensitivity conflicts. The papakāinga provisions are intended to provide for communal housing and associated activities on ancestral Māori land, but it is considered that communal housing is not necessarily appropriate in the Business Environments. Only five Māori land blocks are in the Business Environments (all Business 2) therefore this change is not considered to have a significant cost in terms of the development of Māori land on a district wide scale.

17. Option 2 is considered the most efficient and effective option. It will clarify the application of the subdivision provisions, and will avoid papakāinga developments being undertaken in Business Environments where reverse sensitivity conflicts may be an issue.

18. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC94B.

19. There is no risk due to insufficient information.

4.0 PKA.1.5 Permitted Activities & PKA.1.6 Discretionary Activities

PKA.1.5.1.a.iii & PKA.1.6.2.d.iii. “or Industrial”

20. The revised provisions include the inclusion of “or industrial” in these provisions.
21. The following reasonably practicable options have been identified:
 - **Option 1:** Notified Provisions – see **Attachment 3**.
 - **Option 2:** Revised provisions – see **Attachment 5**.
22. Overall, Option 2 is the most efficient and effective option as the inclusion of “or industrial” in PKA.1.5.1.a.iii. and PKA.1.6.2.d.iii. will ensure that any industrial activities are shown on the Papakāinga Development Plan so that an appropriate determination can be made as to whether resource consent will be needed or not.
23. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC94B.
24. There is no risk due to insufficient information.

PKA.1.5.1.a.vi & PKA.1.6.2.d.vii. (E.g. Chartered Professional Engineer or Independently Qualified Person)

25. The revised provisions include the following change in PKA.1.5.1.a.vi & PKA.1.6.2.d.vii:

“The PDP is accompanied by a statement from a suitably qualified and experienced professional (e.g. Chartered Professional Engineer or Independently Qualified Person) stating that the land can be sufficiently serviced in terms of access, water, wastewater and stormwater in accordance with the relevant provisions of the Environmental Engineering Standards 2010 for the type and number of buildings shown on the PDP.”
26. The following reasonably practicable options have been identified:
 - **Option 1:** Notified Provisions – no example of what constitutes a suitably qualified and experienced professional (see **Attachment 3**)
 - **Option 2:** Submission request (PC94B-90e) – “e.g. Chartered Professional Engineer”
 - **Option 3:** Revised provisions – include “e.g. Chartered Professional Engineer or Independently Qualified Person” – see **Attachment 5**.
27. Submissions have highlighted that Option 1 does not provide enough clarity as to what constitutes a suitably qualified and experienced professional.
28. Option 2 provides more clarity but only provides the example of a Chartered Professional Engineer that could constitute a suitably qualified and experienced professional. In some cases, engaging a Chartered Professional Engineer can be time consuming and cost prohibitive. The Environmental Engineering Standards 2010 allow the use of Independently Qualified Persons (“IQP”) in acknowledgement of this.

29. Option 3 is the most efficient and effective option as it clarifies what can be considered a suitably qualified and experienced professional and includes an IQP rather than just a Chartered Professional Engineer as outlined in Option 2.

30. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC94B.

31. There is no risk due to insufficient information.

PKA.1.5.1.a.vii & PKA.1.6.2.d.viii. "The location of any recorded historic heritage including archaeology that is protected by the Heritage New Zealand Pouhere Taonga Act 2014."

32. The revised provisions include the following change in PKA.1.5.1.a.vii & PKA.1.6.2.d.viii:

"The location of any recorded historic heritage including archaeology that is protected by the Heritage New Zealand Pouhere Taonga Act 2014."

33. The following reasonably practicable options have been identified:

- **Option 1:** Notified Provisions – no requirement for demonstrating the location of historic heritage in the PDP (see **Attachment 3**).
- **Option 2:** Submission request (PC94B-25b) – identification of any recorded or unrecorded historic heritage in a Papakāinga Development Plan ("**PDP**") and the inclusion of an archaeological assessment (specific wording is provided in the submission).
- **Option 3:** Revised provisions – include in PKA.1.5.1.a.vii & PKA.1.6.2.d.viii (see **Attachment 5**):

"The location of any recorded historic heritage including archaeology that is protected by the Heritage New Zealand Pouhere Taonga Act 2014."

34. PC94B-25b highlighted that Option 1 does not provide information regarding the location of historic heritage. This is important in terms of section 6(f) of the RMA and in terms of meeting statutory obligations under other legislation such as the Heritage New Zealand Pouhere Taonga Act 2014 ("**HNZPTA**").

35. Option 2 is not an efficient and effective option. The provision should be limited to identifying recorded archaeology, rather than unrecorded archaeology as well. It is unreasonable to require the PDP to show unrecorded sites as it is impossible to identify all unrecorded sites without a full archaeological assessment investigating the entirety of the site. In this regard, the additional request to require an archaeological assessment to accompany a PDP for every papakāinga development is inappropriate and unfeasible from a cost perspective for papakāinga developments.

36. Option 3 is the most efficient and effective option. The identification of recorded archaeological sites is typically used by the Council as a 'red flag' to trigger notification to Heritage New Zealand ("**HNZ**"). If a recorded site is identified on the PDP, HNZ can be notified and then the applicant can be made aware of their statutory obligations under HNZPTA and the potential

likelihood of other unrecorded sites in the vicinity, without the unnecessary burden of providing an archaeological assessment in every instance.

37. There is no economic growth and employment opportunities / implications / issues arising from the options for this component of PC94B.
38. There is no risk due to insufficient information.

PKA.1.5.1.b Permitted Activities

39. The notified papakainga provisions included requirements regarding the servicing requirements (PKA.5.1.a.vi.) of the land that are primarily included to ensure that appropriate health and safety standards are maintained (objective 5.3.2). A number of controls (PKA.5.1.b) were also included to specifically provide for the maintenance of amenity values. These controls are discussed in greater detail in paragraph 106 of the Section 32 Evaluation Report [see **Appendix A**]. In response to submissions regarding amenity concerns, the following changes are recommended in the Section 42A Report to PKA.1.5.1.b in conjunction with the amendment to PKA.1.2 (see paragraph 9):

b. The following controls are met:

- i. Any places of assembly and commercial or industrial activities are associated with papakāinga.
- ii. Any places of assembly and commercial or industrial activities are setback at least 100m from any existing residential unit on a separate site.
- iii. Commercial or industrial activities shall not cumulatively exceed 500m² in gross floor area on any one site.
- iv. The number of residential units per site does not exceed one residential unit per 2,000m² of net site area.
- ~~iii.—The construction or alteration of any building does not exceed a height equal to 3m plus the shortest horizontal distance between that part of the building and the site boundary.~~
- ~~iv.—Any signage on site shall relate to activities onsite and shall not exceed 2m² per site.~~
- ~~v.—Any artificial lighting shall not exceed 10 lux when measured from the boundaries of the site.~~
- ~~vi.—Any activity shall meet the conditions for permitted activities in Appendix 8 Hazardous Substances.~~
- ~~vii.—No indigenous wetland shall be destroyed.~~
- ~~viii.—The destruction or clearance of an area of predominantly indigenous vegetation shall not exceed 500m² where it forms a contiguous area of 1.0ha or more.~~
- ~~ix.—Habitable buildings are set back at least 500m of a Mineral Extraction Area or the Business 4 Environment.~~
- ~~x.—The creation of impermeable surfaces does not exceed 1,000m² cumulative impermeable area (including buildings)~~

2. Where any control in PKA.1.5.1 is more prescriptive than the corresponding control in the underlying Environment, the underlying Environment provision shall apply.

40. As highlighted above, existing notified controls in PKA.1.5.1.b.iii. – x. are proposed to be deleted. After reviewing submissions, and in the context of the ongoing rolling review of the WDP which has and will continue to introduce new Environments and associated activity rules and development controls, it is considered that the notified controls in PKA.1.5.2.b do not necessarily provide for the protection of amenity values in the context of each Environment. Therefore, the deletion of these existing provisions is proposed and in turn a reliance on the underlying Environment provisions for these matters. PC.1.5.1.b is now proposed to contain only four controls. The justification for these revised provisions is provided below:

PKA.1.5.1.b.i This control has been included to specify that any places of assembly and commercial or industrial activities must be “associated with papakāinga”. This is consistent with the terminology used in the PAUP Māori land provisions [see **Attachment 8**] and will address general concerns expressed in submissions about the scope of places of assembly and commercial or industrial activities that could occur in a papakāinga development while still allowing flexibility for papakāinga developments.

PKA.1.5.1.b.ii This control is similar to the existing control in the WDP for the Countryside and Coastal Countryside Environment. It has been included to ensure that the potential amenity effects of places of assembly and commercial or industrial activities in a papakāinga development can be considered. If these are located within 100 metres of an existing residential unit on a separate site, a discretionary resource consent will be required and this will allow appropriate consideration and mitigation of effects on neighbouring properties.

PKA.1.5.1.b.iii This control is similar to the existing control in the WDP for the Countryside and Coastal Countryside Environment. It is designed to constrain the size of commercial or industrial activities to 500m² on any one site. Should they be larger than 500m² GFA on site a consent will be required and appropriate amenity concerns can be considered.

PKA.1.5.1.b.iv This provision provides a density limit for papakāinga developments which provides a restriction of one residential unit per 2,000m² of net site area. This area limit is generally used in the WDP as the minimum net site area that is required to sustain on-site servicing on sites that are not connected to a reticulated sewerage system. In addition, any residential units will be required to demonstrate sufficient servicing in terms of the EES 2010 and will still need to comply with regional plan requirements for on-site servicing if it is to be proposed. This will provide a maximum yield as a permitted activity for each site classified as Māori land which will provide more certainty to neighbouring owners in terms of the development potential of adjacent Māori land, while

generally providing a greater density allowance for papakāinga developments on Māori land in accordance with the PKA objectives and policies.

PKA.1.5.1.2 This provision is designed to address instances where the underlying Environment may have more permissive controls than the PKA provisions. For example in some cases, the underlying Environment provisions may allow a more permissive density allowance than the 1 residential unit per 2,000m² net site area recommended in PKA.1.5.1.b.iv above. For instance, the Living 1 Environment allows density of one residential unit per 500m² net site area when connected to reticulated services. The proposed control is particularly appropriate in the context of the WDP rolling review which will create new underlying Environments which may have more permissive controls than in the PKA chapter. The intention of the PKA provisions is to remove barriers to papakāinga developments and not accidentally create new ones, therefore the new PKA.1.5.2 has been recommended.

41. There are two reasonably practicable options for this proposed change:
 - **Option 1:** Notified Provisions – **Attachment 3**
 - **Option 2:** Revised Provisions – **Attachment 5**
42. Option 1 is not as efficient or effective as Option 2. It is effective in that it will provide more flexibility for Māori to develop their ancestral lands and to establish and maintain traditional settlement patterns, activities and development opportunities. However, in light of submissions and in the context of the ongoing rolling review of the WDP which has and will continue to introduce new Environments and associated activity rules and development controls, it is considered that the notified controls in PKA.1.5.2.b do not necessarily provide for the protection of amenity values in the context of each Environment as envisaged by the PKA objectives and policies.
43. Option 2 is the most efficient and effective option as, taking into account all relevant considerations, it will provide a more appropriate balance between allowing the flexibility for Māori for papakāinga developments with regard to rules that are typically an issue (e.g. density controls and restrictions on non-residential activities) while ensuring appropriate amenity standards are met in accordance with the PKA objectives and policies.
44. Options 2 and 3 have a potential for economic growth and employment opportunities as they will provide more flexibility for papakāinga developments to occur without needing resource consents.
45. There is no risk due to insufficient information.
46. Option 2 is considered to be the most efficient and effective method to achieve the existing papakāinga objectives and purpose of PC94B.

5.0 Conclusion

47. The revised provisions [**Attachment 5**] have been detailed and compared above against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of section 32AA of the Act. Overall, it is considered that the revised provisions represent the most efficient and effective means of achieving the existing papakāinga objectives, the purpose of PC94B and for addressing the underlying resource management issues relating to papakāinga developments in the Whangarei District.