IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 94B Papakāinga to the Whangarei District Plan.

RIGHT OF REPLY – COUNCIL REPORTING PLANNER, DAVID BADHAM

MAY IT PLEASE THE COMMITTEE:

Introduction

1. This right of reply has been prepared by David Badham (on behalf of Whangarei District Council ("WDC")) in response to particular matters raised at the hearing for Proposed Plan Change 94B – Papakāinga Provisions ("PC94B) to the WDC District Plan.

2. My Statement of Qualifications and Experience is provided in Attachment 1 of the section 42A Hearing Report ("s42A Report"). In preparing this right of reply, I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. The opinions expressed in this evidence, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that.

3. At the conclusion of the hearing of submissions for PC94B, the Hearings Commissioners requested a review of certain issues arising out of the evidence heard.

4. A summary of the points on which it is understood further legal submissions and planning analysis were required is as follows:

(i) Business Environments – Should the papakāinga provisions apply to Business Environments?

(ii) Activity Status for General Land owned by Māori ("GLOBM") – What should the activity status be for papakāinga developments on GLOBM as defined in Te Ture Whenua Māori Act 1993 ("TTWMA")?

(iii) Māori Reserves – Do the proposed PC94B provisions apply to Māori Reserves?

(iv) Treaty Settlement Land – Should the papakāinga provisions apply to Treaty Settlement Land?

(v) Suitably qualified and experienced professional – Should the term suitably qualified and experienced professional be retained in PKA.1.5.1.a.vi and PKA.1.6.2.d.vii?

(vi) Legal Access – Should a clause regarding demonstration of legal access be added to the PKA.1.5.1.a PDP permitted activity criteria and PKA.1.6.2.d discretionary activity criteria?

(vii) Additional Setbacks for Papakāinga development within rural production areas – should additional setbacks apply for papakāinga developments within rural production areas?

5. Any changes that I recommend as a result of the right of reply are highlighted in green in the revised track change version of the plan change provisions which are included as **Attachment 1**. Proposed changes previously recommended in the s42A report are still indicated by red writing with ~~strikethroughs~~ representing recommended deletions and underlined writing representing recommended additions.

6. This right of reply is also supported by further legal submissions from WDC's Legal Counsel Sarah Shaw. Reference is made to Ms Shaw's further legal submissions throughout the right of reply.

Point i. Business Environments

7. Evidence from Jade Kake on behalf of Ngati Hau Trust Board and Te Matapihi he tirohanga mō te Iwi Trust and from Juliane Chetham and Bernadette Aperahama on behalf of Patuharakeke Te Iwi Trust Board and Te Huinga opposed the inclusion of clause PKA.1.2.2 "The PKA provisions shall not apply to the land located in the Business Environments" in the Track Change Version of the Provisions ("the revised provisions") in Attachment 5 of the s42A Report.

8. The proposed addition of PKA.1.2.2 is discussed at paragraph 196 of the s42A report as follows:

> "I also recommend an additional clause PKA.1.2 clarifying that the PKA provisions shall not apply to land located in the Business Environments. It was always intended that that the papakāinga provisions would not apply to land located in the Business Environments. It is considered that papakāinga developments would not be suitable in the Business Environments due to potential reverse sensitivity conflicts. Council's GIS team has identified that only five Māori land blocks are in the Business Environments (all Business 2) therefore this change is not seen to have a significant cost in terms of the development of Māori land on a district wide scale."

9. Ms Kake addresses the matter at section 6.2 of her Statement of Evidence stating that the provisions are "unnecessarily limiting" and refers to many examples of mixed use development which could apply to Māori land in the Business Environments. She considers that "Māori land owners should be free to define their own aspirations with regard to urban papakāinga."

10. Ms Chetham and Ms Aperahama address the matter at section 6.4 of their Statement of Evidence stating that "in our opinion, this is a narrow view and represents a

significant departure from the objectives and policies of PC94B." Their evidence highlights that the five Māori land blocks that are currently located in the Business Environments "are the various titles that make up the Whangarei Terenga Paraoa marae complex on Porowini Avenue." With regard to this site, Ms Chetham and Ms Aperahama conclude that any reverse sensitivity effects could be dealt with by consent notices[1] as papakāinga development in this location would trigger a requirement for resource consent due to density requirements. Ultimately, Ms Chetham and Ms Aperahama seek the deletion of proposed PKA.1.2.2 in the revised provisions.

11. Having considered the matters raised at the hearing, I acknowledge the validity of some of the concerns expressed in the evidence of Ms Kake, Ms Chetham and Ms Aperahama.

12. I have undertaken an analysis of the existing provisions of the Business Environments and acknowledge that there is no restriction on the number of residential units that can be constructed in the Business 1 – 3 Environments, provided that the building rules and Resource Area and District Wide provisions are adhered to. However, the Business 4 Environment (essentially the Whangarei District Plan's 'heavy industry' zone) designates residential units as a non-complying activity in Rule 42.3.1 - Activities Generally (see **Attachment 2**). While the five Māori land blocks that make up the Whangarei Terenga Paraoa marae complex represent the only blocks of Māori land currently located in the Business Environments (Business 2 Environment), it cannot be ruled out that other pieces of land will not be potentially transferred to Māori land title in other areas of the Business Environments. If the papakāinga provisions applied to land located in the Business 4 Environment however, I consider that there could be adverse reverse sensitivity effects under this scenario as PKA.1.5.1.b.iv would provide for one residential unit per 2000m^2.

[1] Consent notices can only be imposed through a subdivision consent. Papakāinga developments due to their communal nature, will not typically require a subdivision consent. Accordingly, consent notices could not be imposed on a papakāinga development that did not require subdivision consent. Therefore, I assume that Ms Chetham and Ms Aperahama intended to refer to "consent conditions" rather than "consent notices". It is also noted that on a land use consent "Land Covenants" can be imposed pursuant to s108(2)(d).

13. Overall, I agree with the submitters that PKA.1.2.2 in the revised provisions is unnecessary as it relates to the Business 1, 2 and 3 Environments and that allowance should be made for papakāinga developments in these zones. However, I still consider that the papakāinga provisions should not apply to land located in the Business 4 Environment. Therefore, I recommend that the Commissioners provide the following change to the revised provisions:

PKA.1.2 Eligibility 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 4 Environments.

Point ii. Activity Status for GLOBM

14. Evidence from Ms Kake, Ms Chetham and Ms Aperahama also opposed the discretionary activity status outlined in PKA.1.6 for papakāinga developments on GLOBM as defined in the TTWMA, and instead seek that a permitted activity status be applied. The Commissioners also questioned whether consideration had been given to a restricted discretionary activity status for papakāinga developments on GLOBM.

15. Policy PKA.1.4.1 seeks "to limit papakāinga development to ancestral Māori land that is administered under the Te Ture Whenua Māori Act 1993." The Commissioners have asked Council to clarify whether GLOBM can be considered as ancestral Māori Land "administered" under TTWMA. Ms Shaw has addressed GLOBM at point 5 of her legal submissions. At paragraph 5.3 Ms Shaw states that section 4 of the TTWMA defines GLOBM as:

> "**General land owned by Maori** means General land that is owned for a beneficial estate in fee simple by a Maori or by a group of persons of whom a majority are Māori."

16. Ms Shaw concludes at paragraph 5.7 that in terms of Policy PKA.1.4.1, GLOBM is land that is "administered" under TTWMA. On the basis of Ms Shaw's submission, I consider that GLOBM can be considered as ancestral Māori land that is administered under TTWMA as required by policy 1.4.1.

17. Ms Chetham and Ms Aperahama refer to the definition of GLOBM at paragraph 6.3.1 of their Statement of Evidence. They refer to a definition of GLOBM in s93:[2]

> "Land (other than Maori freehold land) that has been alienated from the Crown for a subsisting estate in fee simple shall, while that estate is beneficially owned by [a Maori or by a group of] persons of whom a majority are Maori, have the status of General and owned by Maori".

18. The submission from the Ngati Hau Trust Board (PC94B-110) has sought that papakāinga developments should be a permitted activity on GLOBM where an ancestral link is established. As stated in paragraph 237 of the s42 Report, the option of a permitted activity status for GLOBM was assessed in the section 32 Report at paragraph 158. I accept Ms Kake's statement at paragraph 6.1.2 of her evidence that "owners of Māori ancestral land held under General title may have compelling reasons to retain General Land status and access to conventional mortgage products." However overall, I continue to not support a permitted activity status for papakāinga developments on GLOBM for the following reasons:

    18.1 My main concern is that the amount and location of GLOBM is not immediately identifiable. Council could not identify this land prior to notification of PC94B. Ms Chetham and Ms Aprehama state at section 6.3.6 of their evidence that "we were not able to obtain definitive data on the amount

[2] This appears to be a typo. My assumption is that Ms Chetham and Ms Aperahama are referring to the "93 Act" (TTWMA) and the actual section that they are referring to is s129(2)(c) in part 6 of the Act, which describes the various status of land including GLOBM.

of GLOBM." They do go on to state that they were able to identify only one site in the District via Māori Land Online, however they do not identify where that land is or provide any further detail. During the hearing, Jared Pitman from the Māori Land Court[3] also stated that the Māori Land Court could not easily identify this land. If the land is not identifiable, the potential for papakāinga development on such land cannot be foreseen and therefore nor can potential effects on neighbouring properties. Accordingly, I think a precautionary approach to GLOBM is justified in this instance.

18.2 Furthermore, I cannot perceive how a permitted activity status for GLOBM could be implemented given that a permitted activity requirement must be absolute – the proposed activity either complies or does not comply. This is reiterated at paragraph 5.13 of Ms Shaw's legal submissions. In my view, it is key that an application for a papakāinga development on GLOBM is supported by evidence of an ancestral link to the land in question. For instance, if Māori freehold land was transferred to General land 50 years ago, it could have been sold outside the whanau in the intervening years and the current owner may not necessarily have any ancestral link to the land. Determination of an ancestral link would require a judgement as to whether the evidence is sufficient to demonstrate an ancestral link. Accordingly, I cannot perceive a way to word a permitted activity rule for GLOBM that would enable the evidence of an ancestral link to be considered without a judgement made as to the veracity of that evidence.

18.3 Ms Shaw has identified a further complication with making papakāinga developments on GLOBM a permitted activity at paragraph 5.15 of her legal submissions. I agree that if papakāinga developments on GLOBM were a permitted activity, then there would be nothing preventing an application to subdivide any completed houses which could then be transferred out of whanau ownership. In my opinion, this is not an outcome that would be supported by the operative objectives and policies.

[3] While Mr Pitman has a role with the Māori Land Court, it is acknowledged that he attended the hearing in his capacity as a representative for Patuharakeke and Te Huinga.

19. The submissions for Patuharakeke Te Iwi Trust Board (PC94B-097g) and Te Huinga (PC94B-112g) request that a permitted activity status be provided for land which had been converted from Māori land to GLOBM by statute. I accept Ms Chetham and Ms Apreahama's statement at paragraph 6.3.4 that the Māori Affairs Amendment Act 1967 resulted in a significant transfer of land from Māori freehold title to General title. I do not support a permitted activity status for land which had been converted from Māori land to GLOBM by statute for the same reasons identified in paragraphs 18.1, 18.2 and 18.3 above and because of the submissions made by Ms Shaw at paragraph 5.14 of her legal submissions.

20. The Commissioners have also asked for consideration of a restricted discretionary activity status for papakāinga developments on GLOBM. I take the point made, that if a papakāinga development on GLOBM otherwise complied with the permitted criteria for papakāinga developments in PKA.1.5 the only apparent issue would be with the tenure of the land relating to confirming the ancestral link. On this basis, I recommend that the Commissioners provide a restricted discretionary activity status for papakāinga developments on GLOBM and recommend the provision be worded as in **Attachment 1.** On the basis of Ms Shaw's submissions at paragraph 5.16, I understand that there is scope for the Commissioners to make this amendment. The key features of my recommended wording are:

20.1 New PKA.1.6.1.a requiring that the papakāinga development on GLOBM would otherwise comply with the permitted activity controls in PKA.1.5.

20.2 Change PKA.1.6.2 to refer to matters of discretion. Delete the PDP requirement in PKA.1.6.2.d as this would be addressed by the new PKA.1.6.1.a. I have also proposed a new clause 1.6.2.d providing a matter of discretion of "Demonstration of appropriate legal mechanism(s) to ensure that the land is maintained in whanau ownership." I have proposed this clause in response to the matters raised in paragraph 5.15 of Ms Shaw's legal submissions and as further discussed in paragraph 18.3 above.

20.3 Inclusion of a note making reference to a guidance document on analysing the adequacy of evidence for the identification of an ancestral link. It is

anticipated that Council would prepare this guidance note should the papakāinga provisions become operative.

20.4 Consequential changes to PKA.1.1 Descriptions and Expectations to support the restricted discretionary activity status and further changes to cross references throughout the rest of the proposed provisions.

Point iii. Māori Reserves

21. Ms Kake's statement of evidence questioned at paragraph 5.1.1 whether the PC94B provisions would apply to Māori reserves.

22. Ms Shaw has addressed Māori reserves in section 3 of her legal submissions. On the basis of Ms Shaw's submissions, I understand that when a Māori reserve is created, the land retains its underlying status as either Māori land or General land. Accordingly, the answer to Ms Kake's question is that the papakāinga provisions would apply to Māori reserves depending on the underlying status of the land.

Point iv. Treaty Settlement Land

23. At paragraph 6.1.4 of her Statement of Evidence, Ms Kake has requested that specific consideration should be given to Treaty Settlement land, and how such lands should be dealt with under the PC94B rules.

24. Ms Shaw has addressed Treaty settlement land at section 4 of her legal submissions. Ms Shaw states at paragraph 4.3 that:

> "Treaty settlement land may therefore be Crown land or General land. Once returned it may become General land owned by Maori. There may or may not be an identifiable ancestral link between the land and the settlement group."

25. I do not support Ms Kake's request for a permitted activity status for papakāinga developments on Treaty settlement land for the following reasons:

25.1 An identifiable ancestral link is crucial to the application of the papakāinga provisions and more specifically the operative objectives and policies. On the basis of Ms Shaw's legal submissions, I understand there is no guarantee that Treaty settlement land will have an identifiable ancestral link. This would need to be assessed on a case by case basis which cannot be done for a permitted activity.

25.2 I understand that not all iwi and hapu within the Whangarei district have settled with the Crown, therefore the amount and location of Treaty settlement land is not immediately identifiable. If the land is not identifiable, the potential for papakāinga development on such land cannot be foreseen and therefore nor can potential effects on neighbouring properties.

25.3 There is no direction provided for papakāinga developments on Treaty settlement lands in the operative objectives and policies. In my opinion, the inclusion of a permitted activity status for papakāinga developments on Treaty settlement land would not be consistent with the operative objectives and policies. Therefore, a change to the objectives and policies would be required to facilitate a permitted activity status on Treaty settlement lands. For the reasons outlined in paragraphs 200 – 202 of the s42A report and as further clarified in Ms Shaw comments in section 3 of her legal submissions tabled at the hearing, I consider that there is no scope to change the objectives and policies.

25.4 I consider that there is also a submission scope issue with the request from Ms Kake. This is addressed at point 4 of Ms Shaw's legal submissions. Making papakāinga developments a permitted activity on Treaty settlement land was not a relief requested in Ngati Hau's original submission (PC94B-110) nor in the further submissions from Ngati Hau (X-08) or Te Matapihi he tirohanga mō te Iwi Trust (X31 to X33). The Ngati Hau further submission supported the Patuharakeke Te Iwi Trust Board original submission (PC94B-097g) which requested that a discretionary activity status should be retained for other lands e.g. Treaty settlement into tribal ownership or land purchased where there is record that it was alienated from Māori.

25.5 The District Plan has a 10-year life span. Accordingly, the proposed papakāinga provisions should they be made operative, will require review under the Act 10 years from the operative date. At that point, the majority of Treaty settlements may have been finalised and more information subsequently available about the extent and location of any Treaty settlement land. At that time Council will have the opportunity to appropriately consider whether any change is appropriate and what activity status or statuses should apply for papakāinga developments on Treaty settlement land.

26. For these reasons, it is my opinion that Treaty settlement land should be treated on the basis of the its underlying status, in a manner similar to how Māori reserves would be treated. I recommend that the Commissioners make no further changes to the revised text in response to this matter.

Point v. Suitably qualified and experienced professional

27. At the beginning of the hearing, the Commissioners questioned the application of the term "suitably qualified and experienced professional" with regard to the permitted activity criteria in PKA.1.5.1.vi. The key matter raised was whether the term "suitably qualified and experienced professional" required a judgement from Council regarding the suitability and experience of a particular professional that provided a statement to accompany the PDP pursuant to PKA.1.5.1.vi.

28. The matter of what constitutes a suitably qualified and experienced professional was raised in submission from Far North District Council (PC94B-90e) and the Northland District Health Board (PC94B-98a). These submissions were discussed in paragraph 120 and 161 of the s42A Report and resulted in my recommendation to the Commissioners that "(e.g. Chartered Professional Engineer or Independently Qualified person)" be included to clarify ambiguity about who could be considered a suitably and qualified professional.

29. Having considered the Commissioners questions and comments during the hearing, and having reviewed the wording more closely, I accept that as currently worded the

provision implies that Council would need to make a judgement as to whether a particular person could be deemed suitably qualified and experienced. This would introduce an element of discretion into the permitted activity rule. On this basis, I recommend that the Commissioners provide the following change to the revised provisions:

PKA.1.5.1.a Permitted Activities

vi. "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."

* No change has been recommended to PKA.1.6.2.d.vii as I have recommended that this provision is deleted (see paragraph 19). If the Commissioners reject my recommendation to delete this provision and retain a discretionary activity status for GLOBM as notified, then a similar change will be necessary to PKA.1.6.2.d.vii if the Commissioners accept the above recommendation to delete "suitably qualified and experienced professional."

Point vi. Legal Access

30. Dwayne Simon Reiher presented evidence at the hearing on behalf of submitter John Harrison (PC94B-16). Mr Harrison's submission raised specific concerns regarding the current access to Māori Land at Pautua 4A and 4B blocks.

31. Mr Reiher's evidence expands on this concern and requests the following changes to the notified wording of PKA.1.5.1.a.vi and PKA.1.6.2.d.vii:

> "The PDP is accompanied by a statement from a ~~suitably qualified and~~ **Registered Professional Surveyor** experienced **in Land Development** ~~professional~~ 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."

32. I do not support Mr Reiher's requested wording for the following reasons:

32.1 I do not consider that a Registered Professional Surveyor experienced in Land Development is the most appropriate professional in every case to provide a statement to accompany a PDP.

32.2 I do not support the deletion of "2010". It is my understanding that there is a legal requirement[4] to include a year / version of a referenced document in the District Plan. Otherwise, it is possible that any version of the Environmental Engineer Standards (including previous versions) could be used. This would lead to confusion and potential inconsistency in the application of the provision.

32.3 During his oral statement, Mr Reiher highlighted that his primary concern was that papakāinga developments should have sufficient legal access confirmed by a Registered Professional Surveyor. In my opinion, legal access is not an issue that is unique to papakāinga developments. There are undoubtedly examples of general land throughout the Whangarei district which are land locked or do not technically have legal access. Under the Operative District Plan provisions, consideration of legal access is only directly required by Council for subdivision consents. I have recommended in the s42A report that the underlying Environment subdivision rules shall apply to papakāinga developments. As I understand it, developments that do not require subdivision consent have no requirement under the Operative District Plan to demonstrate legal access. For instance, the construction of a residential unit on a vacant 20ha site in the Countryside Environment with no Resource Area overlays would be considered a permitted activity pursuant to Rule 38.4.1 (see **Attachment 3**). Under this scenario, no consideration could be given by Council to whether the site has legal access. Accordingly, I consider that it

[4] Council have a standing legal opinion on this matter. The Commissioners can review this legal opinion if required.

would be unfair to require a papakāinga development to provide demonstration of legal access, when the underlying Environment provisions in the Operative District Plan do not specify such a requirement for developments on general land. Conversely, it is my view that the consideration of legal access needs to be addressed at a district wide level to ensure consistency across the district. Unfortunately, PC94B does not have the scope to address this matter at a district wide level, and therefore I recommend that the Commissioners make no further changes in response to Mr Reiher's evidence.

Point vii. Additional Setbacks for Papakāinga development within rural production areas

33. A statement of Evidence prepared by Debra Anne Bidlake on behalf of the Northland Province of Federated Farmers of New Zealand was presented at the hearing. While not directed by the Commissioners to address the submission, I consider that a response from me to the matters raised in Ms Bidlake's evidence is appropriate in this instance.

34. Federated Farmers original submission (PC94B-114) requested that:

> "WDC amend the objectives, policies and rules in PC94B to provide appropriate setbacks for any Papakainga developments from boundaries adjoining agriculture, horticulture and forestry land."

35. This submission was directly addressed at paragraph 88 of the s42A report where I recommended that the Commissioners decline the relief sought.

36. Ms Bidlake's evidence states at paragraph 2.2 that:

> "Federated Farmers generally supports PC94B but is concerned that reverse sensitivity issues associated with papakāinga development in rural production areas is not appropriately managed."

37. Ms Bidlake draws the following conclusion:

> "In my view, the easiest way to address Federated Farmers concerns is to explicitly require setbacks from rural production activities and farm dwellings in PKA.1.5.1"

38. I do not support Ms Bidlake's request on behalf of Federated Farmers for the following reasons:

38.1 It is difficult to recommend that the Commissioners accept the relief sought when Ms Bidlake's evidence and Federated Farmers original submission have not provided any indication as to what would constitute an appropriate setback for papakāinga developments from rural production activities and farm dwellings.

38.2 In the section 42A report I have recommended that papakāinga developments comply with the underlying Environment provisions unless otherwise stated in PKA.1.5. As a result, the setbacks of the underlying Environment would apply the same as any other development that is not covered by the papakāinga development provisions. In my opinion, reverse sensitivity effects on rural production activities are not unique to papakāinga developments. The establishment of any sensitive activities (including a single residential unit) adjacent to particular rural production activities could result in a potential adverse reverse sensitivity effect. Proposed Rule RPE.2.3.1 (see **Attachment 4**) in the proposed Rural Production Environment ("RPE") chapter acknowledges this, and proposes that discretionary resource consent be required for any sensitive activity within 250m of an existing intensive livestock activity on a separate site and an existing activity ancillary to farming or plantation forestry on a separate site. At paragraph 3.6 Ms Bidlake refers to Rule RPE.2.3.1 and makes reference to the operative definition of "sensitive activities" in Chapter 4 of the District Plan. She states that "unfortunately the definition for sensitive activity in chapter 4 of the operative District Plan only applies to the National Grid Corridor." While this is correct for the operative definition, I note that the rural plan changes also propose a

substantial amount of consequential amendments to the operative District Plan text, including a revised definition for "sensitive activities"[5] as follows:

> "Sensitive Activities means, ~~within a National Grid Corridor,~~ childcare and education facilities, Residential Activity, hospitals, Health Care Facilities and Retirement Villages."

On the basis of this proposed revised definition, it is my opinion that any residential units proposed in a papakāinga development would constitute a residential activity, and therefore under the proposed RPE provisions would be considered a "sensitive activity." Therefore, I disagree with Ms Bidlake's position at paragraph 3.7. In my view, the proposed RPE provisions would provide considerable safeguard for potential reverse sensitivity effects on farming operations. At any rate, I acknowledge that the RPE and overall rural plan change provisions are currently only proposed with the further submission period still open. Therefore, I reiterate my statement in paragraph 194 of the s42A report that the operative provisions would apply, until such time as the rural plan change provisions may become operative. This is the same situation as for any land affected by the rural plan change.

AUTHOR

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Date: 9 December 2016

[5] See page 3 of this document: http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/Documents/NEW-Proposed-Plan-Changes-Aug-2016/PC-85-86-Rural-Area/1-General-Information/WDP-Consequential-Amendments.pdf

PKA.1

Papakāinga

Index

PKA.1.1 Description and Expectations

The papakāinga provisions provide for the development of ancestral Māori land. In the context of the District Plan, ancestral Māori land is land subject to the Te Ture Whenua Māori Act 1993, including; Māori customary land, and Māori freehold land and General land owned by Māori. These provisions seek to provide opportunities for Māori land owners to develop and live on their ancestral land.

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.

It is recognised that Māori land is subject to a number of development barriers and complications that require it to be treated differently to land held in European title. These barriers include (but are not limited to) the status of Māori land under Te Ture Whenua Māori Act 1993 and the costs associated with obtaining approval from councils and other organisations.

Council is committed to providing for papakāinga developments on ancestral Māori land. The PKA provisions reflect this commitment by providing a permitted activity status for papakāinga developments on Māori freehold land, provided that it can be demonstrated that the land has the capacity to cater for the development and that certain amenity standards are met.

~~Papakāinga developments can be considered on land that is not classified as Māori freehold land.~~ A restricted discretionary activity status is provided for “General land owned by Māori” that is either the subject of proceedings before the Māori Land Court to convert it to Maori freehold land, or where an ancestral link has been identified. On all other land, papakāinga developments are non-complying activities.

Pursuant to section 33 of the Resource Management Act 1991, Council has reiterated the availability of a transfer of powers for the consideration of papakāinga developments that require resource consent.

Except any transfer of powers, Council has made provision for applications to be considered by Independent Commissioner(s) with expertise in tikanga Māori and resource management, on request by the applicant. It is important that the Commissioner(s) have expertise across both areas in order to ensure decision making adequately provides for tikanga and the relevant requirements of the Resource Management Act 1991.

Māori Land Court processes for Occupation Orders and Licenses to Occupy require Māori land owners to obtain certain information from Council. It is highlighted in the provisions that Council will provide this information on request.

PKA.1

Papakāinga

PKA.1.2 Eligibility

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 4 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.~~

PKA.1.3 Objectives

1. For the District Plan to recognise the desire of Māori to maintain and enhance their traditional and cultural relationship with their ancestral land.
2. Provide for papakāinga development on ancestral land in a manner which is sensitive to tikanga Māori and the sustainable management of the land resource.
3. Allow maximum flexibility for Māori to develop their ancestral lands, while ensuring appropriate health, safety and amenity standards are met.
4. Enable Māori to establish and maintain traditional settlement patterns, activities and development opportunities.
5. Protection and enhancement of ecological, landscape, cultural, heritage and other features which are of value to Māori and the wider community.

PKA.1.4 Policies

1. To limit papakāinga development to ancestral Māori land that is administered under the Te Ture Whenua Māori Act 1993.
2. To require the maximum intensity and scale of papakāinga development to be determined by the sustainable servicing capacity of the land and the surrounding environment.
3. To require the location and extent of built development to be determined by the physical characteristics of the land and tikanga Māori.
4. To provide for non-residential activities of a scale, character, and intensity that are compatible with the values of Māoritanga, character of the environment and the sustainable servicing capacity of the locality.
5. To encourage Māori to prepare Papakāinga Development Plans as a guide to sustainable management of ancestral land.

PKA.1.5 Permitted Activities

1. On Māori freehold land as defined in the Te Ture Whenua Māori Act 1993, papakāinga developments are a permitted activity provided that:

PKA.1

Papakāinga

a. A Papakāinga Development Plan ("PDP") is submitted to Council prior to any application for building consent that demonstrates the following:

i. The location of any residential units.

ii. The location of any structures other than residential units.

iii. Areas of land or buildings to be dedicated to commercial or industrial activities.

iv. Areas of land or buildings to be dedicated to places of assembly.

v. The location of utility servicing requirements and internal roading network.

vi. 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.

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

b. The following controls are met:

i. Any places of assembly and commercial or industrial activities are associated with papakāinga.

~~i.~~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 500m^2 in gross floor area on any one site.

~~ii.~~iv. The number of residential units per site does not exceed one residential unit per 2,000m^2 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 2m^2 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 500m^2 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 1,000m^2 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.

~~2.~~3. Any papakāinga development on Maori freehold land that cannot comply with the permitted activity criteria in PKA.1.5.1 shall be a discretionary activity.

PKA.1.6 Restricted Discretionary Activities

1. Papakāinga developments are a restricted discretionary activity where the land is General land owned by Maori as defined in the Te Ture Whenua Māori Act 1993 and:

   a. It is demonstrated that the papakāinga development would otherwise comply with the permitted activity controls in PKA.1.5; and

   ~~a.~~b. The land is subject of proceedings before the Māori Land Court to convert the land to Māori freehold land on the date the application for resource consent is made; or

   ~~b.~~c. The land has not been the subject of proceedings before the Māori Land Court to convert the land to Māori freehold land but an ancestral link to the land has been identified.

2. When assessing restricted discretionary applications pursuant to PKA.1.6.1 Council shall restrict it's discretion to the following matters: ~~a and b above the assessment shall include (but is not limited to):~~

   a. Explanation as to the historical reasons why the land was transferred to general title.

   b. Evidence as to why the land should be considered as ancestral Māori land.

   c. In the case of PKA.1.6.~~1b~~ 1c above, an explanation as to why the land has not been converted to Māori freehold land pursuant to the Te Ture Whenua Māori Act 1993.

   ~~c.~~d. Demonstration of appropriate legal mechanism(s) to ensure that the land is maintained in whanau ownership.

   Note: Refer to guidance document for guidance on analysing the adequacy of evidence for the identification of an ancestral link.

   ~~d. A PDP is submitted to Council that adequately demonstrates the following:~~

      ~~i. The location of any residential units.~~

      ~~ii. The location of any structures other than residential units.~~

      ~~iii. Areas of land or buildings to be dedicated to commercial activities~~

      ~~iv. Areas of land or buildings to be dedicated to places of assembly.~~

      ~~v. How the principles of tikanga and kaitiakitanga have been incorporated into the papakāinga development.~~

      ~~vi. The location of utility servicing requirements and internal roading network.~~

      ~~vii. The PDP is accompanied by a statement from a suitably qualified and experienced professional 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.~~

3. Any papakāinga development on General land owned by Māori that cannot comply with the restricted discretionary activity criteria in PKA.1.6.1 shall be considered a discretionary activity.

PKA.1.7 Non-Complying Activities

1. On all other land not specified above, papakāinga developments shall be a non-complying activity.

PKA.1.8 Transfer of Powers

1. Subject to the requirements of section 33 of the Resource Management Act 1991, the transfer of powers to the relevant iwi authority for the rohe in which the land is located, is available for the consideration and determination of discretionary activities in this chapter.

   Note: Refer to guidance document on Transfer of Powers for guidance as to the process for applying for and obtaining a transfer of powers.

PKA.1.9 Decision Making

1. Except for areas subject to a transfer of powers, any applicant for resource consent for a restricted discretionary, discretionary or non-complying activity pursuant to PKA.1.5 – PKA.1.7 can request that the application is considered and determined by an Independent Commissioner(s) with knowledge and experience in tikanga Māori and Planning.

PKA.1.10 Advice Note

1. For the purposes of making an application to the Māori Land Court for an Occupation Order or a Licence to Occupy, Council can supply on request District Plan maps or any other relevant information it holds relating to the suitability of the land for a papakāinga development.

PKA.1

Papakāinga

Revision and Sign-off Sheet

Date Approved	Editor	Paragraph	Change Reference	Decision Date	Approved By

Editor	**Taya Baxter (TB)**
Author Position	Team Administrator Policy Division
Approved By	**Melissa McGrath (MM)**
Approver Position	District Plan Team Leader

42 Business 4 Environment Rules

42.1 Introduction

This chapter contains rules governing land uses in the Business 4 Environment. The boundaries of this Environment are shown on the Planning Maps. Generally, it includes the heavy industrial areas of the District. In accordance with the nature of the heavy industrial activities within this Environment, the threshold levels are higher than other Business Environments. Special recognition has been given to the Marsden Point Oil Refinery and the Kauri Dairy Factory, in that special overlay maps are applicable to these activities. Relevant provisions are contained in Chapter 49 Scheduled Activities.

Road Transport rules and Resource Area rules also apply in this Environment. The Resource Area rules apply only to the areas indicated on the Planning Maps.

42.2 Prohibited Activities

The following activity is a prohibited activity, for which no resource consent shall be granted:

- Use, storage or disposal of radioactive material with an activity exceeding 1000 terabequerels.

42.3 Business 4 Environment - Activity Rule Table

42.3.1 Activities Generally

Any activity is a **permitted** activity provided that: a) It does not involve the construction of a residential unit; and b) It does not involve the care of the elderly or sick people, or the education or care of children; and c) It is not a Place of Assembly; and d) The area for retail activity, including display, does not exceed 100m^2 gross floor area; and e) It does not involve food irradiation; and f) It is not an activity that is classified as an offensive trade in the Health Act 1956.	Any activity that does not comply with a condition for a permitted activity is a **discretionary** activity if: a) It does not involve the construction of a residential unit; and b) It does not involve the care of elderly or sick people, or the education or care of children. Any activity that does not comply with a standard for a discretionary activity is a **non-complying** activity.

42.3.2 Hazardous Substances

a) The use, storage or on-site movement of hazardous substances is a permitted activity if it complies with the conditions for **permitted** activities in Appendix 8; and	a) The use, storage or on-site movement of hazardous substances is a **discretionary** activity if it does not comply with a condition for permitted activities in Appendix 8; and

iv. The removal is necessary for the maintenance of any building, structure, road or track including any telecommunication work or utility service; or v. The removal is for a new fence where the purpose of the fence is to exclude stock and/or pests from the area; or vi. The removal is beneath a canopy of a production forest; or vii. The removal is for the formation and maintenance of walking tracks less than 1.2 metres wide using manual methods that do not require the removal of any indigenous tree over 300mm girth; or viii. The removal is for the construction of a fire break by a rural fire authority; or ix. The removal of a tree or trees, or the gathering of plant matter is in accordance with Maori custom or values; or x. The removal is harvesting of indigenous timber under a Sustainable management Plan or permit under the Forests Act 1949.	

38.4 Countryside and Coastal Countryside Environment - Building Rule Table

38.4.1 Residential Units

Construction of a residential unit in the Countryside Environment is a **permitted** activity if: a) The residential unit, after completion, will be the only residential unit on the site; or b) The residential unit will be an additional residential unit on the site; and there is at least 20.0ha of net site area associated with each residential unit; and c) It is not within a Mineral Extraction Area as shown on the Planning Maps. d) It is not within 500m of a Mineral Extraction Area. Construction of a residential unit within 500m of Mineral Extraction Area is a controlled activity. **Control is reserved over:** i. The impact of mineral extraction on residential safety and amenity including noise, traffic, dust, vibration and visual effects. Construction of residential units, not	Construction of a residential unit in the Coastal Countryside Environment is a **restricted discretionary** activity if: a) The residential unit, after completion, will be the only residential unit on the site; or b) The residential unit will be an additional residential unit on the site; and there is at least 20.0ha of net site area associated with each residential unit. c) It is not within a Mineral Extraction Area as shown on the Planning Maps. d) It is not within 500m of a Mineral Extraction Area. ***Discretion is restricted to:*** i. Extent of visual intrusion from the building; ii. Colour and design; iii. Landscaping; iv. Effects on landscape values; v. Size and shape of the site; vi. Alternative building locations;

otherwise provided for as a permitted or controlled activity is a **discretionary activity.**	vii. Effects on the character of the coastal environment; viii. Location; ix. Visibility from road and public places; x. The effect on the appearance of skylines and ridgelines; xi. The impact of mineral extraction on residential safety and amenity including noise, traffic, dust, vibration and visual effects. Construction of a residential unit, not otherwise provided for a **restricted discretionary** activity is a **discretionary** activity. Discretion includes, but is not limited to, the above assessment criteria for a restricted discretionary activity.

38.4.2 Minor Residential Units

Construction of a minor residential unit is a **permitted** activity if: a) In the Countryside Environment the minor residential unit, after completion, will be the only minor residential unit on the site and the minimum net site area of the allotment is 8000.0m2; or b) In the Coastal Countryside Environment, the minor residential unit, after completion, will be the only minor residential unit on the site and the minimum net site area of the allotment is 1.2 hectares; and c) It is not within a Mineral Extraction Area as shown on the Planning Maps. d) It is not within 500m of a Mineral Extraction Area.	Construction of a residential unit within 500m of Mineral Extraction Area is a **controlled** activity. **Control is reserved over:** i. The impact of mineral extraction on residential safety and amenity including noise, traffic, dust, vibration and visual effects. Construction of additional residential units, not otherwise provided for as a permitted or controlled activity, is a **discretionary** activity.

RPE.2

Landuse

RPE.2.1 Eligibility Rules

1. Commercial and industrial activities are non-complying activities.
2. Mineral extraction activities within the Mining Area of a Mineral Extraction Area are exempt from RPE.2.1.3, RPE.2.3.3 (a) and (b) and will be assessed by applying the Mineral Extraction Area Chapter.
3. Mineral extraction activities is a non-complying activity if the activity:
    a. Extracts over 5,000m^3 in any 12 month period on the site.
    b. Undertakes blasting.
    c. Establishes within 500m of an existing sensitive activity on an adjacent site.
4. Intensive livestock activities that are closer than 250m to the boundary of a separate site containing a sensitive activity are non-complying activities.
5. Any activity ancillary to farming or plantation forestry that operates within a building with a GFA and/or from an outdoor area larger than 500m^2 is a non-complying activity.
6. Any other activity not requiring consent as a discretionary or non-complying activity is a permitted activity.

RPE.2.2 Notification Rules

1. All land use activities are subject to the notification tests of the RMA.

RPE.2.3 Discretionary Activities

1. Any sensitive activity (excluding non-habitable buildings):
    a. Within 500m of:
        i. The Mining Area of a Mineral Extraction Area,
        ii. A Strategic Rural Industry Environment or a Business Environment.
    b. Within 100m of an unsealed metal road.
    c. Within 30m of an existing production forestry on a separate site.
    d. Within 250m of:
        i. An existing intensive livestock activity on a separate site.
        ii. An existing activity ancillary to farming or plantation forestry on a separate site.
2. Any residential unit resulting in more than 1 residential unit per 20ha of net site area.
3. Any building:
    a. That exceeds a maximum height of 10m.
    b. Within 8m of a site boundary.
    c. That results in site coverage exceeding 20% of the net site area.
    d. Within 27m of mean high water springs (excluding bridges, culverts and fences).
    e. Within 27m of the top of the bank of any river that has a width exceeding 3m (excluding bridges, culverts and fences).

4. The destruction of any indigenous wetland.
5. The destruction or clearance of an area exceeding 500m^2 of predominately indigenous vegetation that forms a contiguous area of 1ha or more.
6. Any activity ancillary to farming or plantation forestry that operates within 250m of an existing sensitive activity on a separate site.
7. Any place of assembly.
8. Any emergency service.

Note: Refer to RA.4.2 for Assessment of Discretionary Activities.