Proposed Plan Change 94B – Papakāinga Provisions

Section 42A Hearing Report

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Table of Contents

Attachments

1 Statement of Qualifications and Experience

2 Existing Papakāinga Provisions

3 Provisions as Notified

4 Summary of Submissions

5 Track Change Version of Provisions

6 Section 32AA Assessment

7 PC114 Landscapes – Proposed District Plan Text

8 PAUP Provisions – E.20 Māori Land

9 Independent Hearings Panel Christchurch Replacement Plan – Decision 37 Papakāinga/Kāinga Nohoanga Zone and Specific Purpose (Ngā Hau e Whā) Zone

10 Public Notification Advert

11 Summary of Submissions by Topic

12 PC87 Coastal Area – Proposed District Plan Text

13 Summary of Further Submissions by Topic

Appendices (Available Online)

A PC94B – Section 32 Evaluation and Appendices

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Documents/PC-94B-Papakainga/1-General-Information/Section-32-Evaluation-Report.pdf

B PC94B – Submissions and Further Submissions

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/District-Plan-Change-94B.aspx#Expand

C Plan Change 85, A-D and 86A and B: Rural Environment Plan Changes & PC87 Coastal Area

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/District-Plan-Change-85.aspx

D PC102 – Minerals.

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/Plan-Change-102-Minerals.aspx#Expand

E PC114 – Landscapes.

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/Plan-Change-114-Landscapes.aspx

F PC124 – Built Heritage

http://www.wdc.govt.nz/PlansPoliciesandBylaws/Plans/DistrictPlan/DistrictPlanChanges/Pages/District-Plan-Change-124.aspx

1.0 Introduction

1. This report has been prepared in accordance with section 42A of the Resource Management Act 1991 ("**RMA**") and forms the Hearing Report for the Whangarei District Council's ("**WDC**") Proposed Plan Change 94B ("**PC94B**") – Phase Two Papakāinga Provisions. This report provides consideration of the proposed provisions, recommendations in relation to submissions and, where appropriate, the report cross-references the Section 32 Evaluation, further expert evidence, analysis of any background material and legislative discussions.

2. This section 42A report has been prepared by David Badham. A Statement of Qualifications and Experience is provided in **Attachment 1**. I confirm that 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 report, are based on my qualifications and experience, and are within my area of expertise. Where I rely on the evidence or opinions of another, the report acknowledges that. I have no vested interest in the outcome of PC94B nor any conflict of interest to declare.

2.0 Background

3. A comprehensive description of the background to PC94B is included in Section 3.0 of the Section 32 Evaluation [**Appendix A**]. This provides an overview of Māori land and the Māori Land Court ("**MLC**"), the identification of resource management issues for papakāinga, details of pre-notification consultation, and discussion regarding review of the Te Ture Whenua Maori Act 1993 ("**TTWM Act**").

4. Rather than duplicate the background section from the section 32 Evaluation, the following key points are made in summary, with some additional comment based on further progress and updates since the notification of PC94B:

    - **Status of Māori land:** Māori land is different to general land. Māori land generally has multiple owners, with descendants inheriting ownership as owners die and the number of owners increasing with each generation. Māori land is administered by the MLC under TTWM Act and owners of Māori land must apply to the MLC if they want to administer their land. This is different to general land where, for example, a person does not need to apply to a Court to succeed to land interests they have inherited.

    - **Māori land in the Whangarei context:** Approximately 14,350ha (5%) of Whangarei District's total land falls within the jurisdiction of the MLC under TTWM Act. The land is held in 886 individual parcels, at an average size of 16.76 hectares (with a median of 1.56 hectares). Virtually all of this land is situated outside of urban areas, with concentrations in the western fringes of the district, and along the eastern coastline of the district.

    - **Existing papakāinga provisions:** The existing phase 1 papakāinga provisions became operative in April 2011 [see **Attachment 2**]. This introduced five objectives and five policies into the Whangarei District Plan ("**WDP**") with a default discretionary activity status for

papakāinga housing until specific standards were developed by way of a future "Phase 2" plan change.

- **Barriers to papakāinga development:** Since the phase 1 provisions were made operative, the Auditor General has released two reports on Government Planning and support for housing on Māori land and the release of the Māori Housing Strategy. These reports highlight several significant barriers to papakāinga developments such as the unique status of Māori land, complications associated with multiple ownerships and the financial costs of development.
- **Consultation:** Following presentations to Te Kārearea (Strategic Partnership Forum between WDC and hapu) and Te Huinga (hapu collective) in October – November 2014, WDC released draft pre-consultation provisions for comment from 15th December 2014 to 13th March 2015, with further consultation undertaken after this period. Consultation included the circulation of a letter, summary brochure and draft provisions to key stakeholders; release on WDC's website; public notices in the Whangarei Leader with an article in the Whangarei Report and presentations to various forums, iwi and hapu groups on request.
- **Te Ture Whenua Māori Bill Review:** On 27th May 2015 Te Puni Kokiri released a consultation document and exposure draft Te Ture Whenua Māori Bill ('**TTWM Bill**') which proposes sweeping changes to the existing TTWM Act. At the time the section 32 Evaluation was released, the TTWM Bill had not been formally introduced to Parliament. The TTWM Bill was introduced to Parliament and had its first reading on 11th April 2016. The TTWM Bill is currently at Select Committee with a final report due on 11th November 2016.[1]

LU1600076 – First Resource Consent Application under Operative Provisions

5. Since PC94B was notified, WDC received its first application for a papakāinga development under the operative provisions. This application (WDC reference LU1600076) was lodged on 13th May 2016 by Nga uri o te Aurere Pou Whanau Trust and proposed 10 earth houses with supporting infrastructure at Wilson Road, Parakao, Whangarei.

6. The application was subject to limited notification and resource consent was eventually granted on 21st July 2016. WDC costs for the consideration of this application came to $7,161.80. However, this does not account for the costs incurred by the applicant in the preparation of the application (e.g. the engagement of experts to deliver necessary assessments). This provides a real-life case study of the current resource consent process that a papakāinga development has to navigate.

Rolling Review: New Plan Changes

7. Section 79 of the RMA sets ccouncils' the requirement to review Operative District Plan provisions within a 10 year time period. Following a review of provisions, the local authority

[1] This is based on the details provided on the NZ Parliament website - https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/00DBHOH_BILL68904_1/te-ture-whenua-maori-bill

must notify a plan change whether the local authority considers that the provisions require alteration or considers that no alteration is required.

8. To meet this requirement a rolling review method has been adopted by WDC. The rolling review means that since PC94B was notified, ten further plan changes have also been notified. These plan changes are described and their relationship with PC94B are briefly explored below and are referenced further in the main body of this report. These plan changes have various relationships with the proposed PC94B provisions, symptomatic of a rolling review process where there are inevitably instances where plan changes are considered at different times that are interrelated and affect one another.

Rural Plan Changes

9. On 10th August 2016 WDC notified its proposed rural environment changes. The submission period closed on 4 October 2016. This suite of plan changes reviews the zoning of the Whangarei District's rural area and proposes the following [see **Appendix C** for further details on these plan changes]:

- **Plan Change 85 – Rural Area (PC85)**

  PC85 proposes to identify the environmental expectations and outcomes for rural areas through the proposed Rural Area (RA) objectives, policies and performance standards (which apply to all of the proposed Rural Environments).

- **Plan Change 85A – Rural Production Environment (PC85A)**

  PC85A proposes to replace the existing Coastal Countryside Environment and Countryside Environment with the Rural Production Environment (RPE). The RPE seeks to provide primarily for the productive use and development of rural land and resources.

- **Plan Change 85B – Strategic Rural Industries Environment (PC85B)**

  PC85B proposes to replace WDP Scheduled Activities 14, 15 and 16 with the Strategic Rural Industries Environment (SRIE). The SRIE seeks to recognise and provide for the retention and managed expansion of established industries of strategic significance located in rural areas.

- **Plan Change 85C – Rural Village Environment (PC85C)**

  PC85C proposes to replace existing Living 1 and 3, and Business 2, 3 and 4 Environments in existing rural and coastal villages with Rural Village Environment (RVE) and three Sub-Environments: Rural Village Residential (RVRE), Rural Village Centre (RVCE) and Rural Village Industry (RVIE). The RVE seeks to provide for a range of activities which support village communities, while also protecting the amenity values within each Sub-Environment.

- **Plan Change 85D – Rural Living Environment (PC85D)**

  PC85D proposes to rezone clusters of rural lifestyle development from Countryside Environment to Rural Living Environment (RLE). The RLE seeks to provide opportunities

for the on-going development of land for rural living activities in locations that have an existing density compatible with lifestyle development.

- **Plan Change 86A - Rural (Urban Expansion) Environment (PC86A)**

  PC86A proposes to rezone clusters of rural residential development in close proximity to Whangarei City from Countryside Environment to Rural (Urban Expansion) Environment (RUEE). Together with proposed Living 1 and Living 3 Environment rezoning (PC86B) the RUEE seeks to provide for the future urban growth of Whangarei City in areas that are contiguous with urban development.

- **Plan Change 86B – Rural (Urban Expansion) Living Environment Zoning (PC86B)**

  PC86B proposes to rezone specific locations in close proximity to Whangarei City from Countryside Environment to Living 1 and Living 3 Environments. These proposed new residential areas will provide for projected urban population growth in Whangarei City.

- **Plan Change 87 - Coastal Area (PC87)**

  PC87 proposes to protect the values of the coastal environment through a new Coastal Area ("**CA**") Resource Area overlay in the WDP. Parts of the CA are also proposed to be identified as High and Outstanding Natural Character Areas. PC87 seeks to implement the Northland Regional Policy Statement 2016 by mapping the "coastal environment" and High and Outstanding Natural Character Areas. The CA and High and Outstanding Natural Character Areas (together with the RPE) replace the Coastal Countryside Environment.

- **Plan Change 114 - Landscapes (PC87)**

  PC114 proposes a Landscapes Chapter. The Landscapes Chapter seeks to implement the Regional Policy Statement, Outstanding Natural Landscapes and Features mapping as a Resource Area overlay, and to protect Outstanding Natural Landscapes and Features [see **Appendix E** for further details on this plan change].

10. WDC's GIS team have calculated that there are currently 886 blocks in the Whangarei District that are classified as Māori land. 870 of these blocks are currently zoned Countryside or Coastal Countryside Environment. As the rural plan changes review these zones, it is clear that these plan changes will have some implications on Māori land and consequently the papakāinga provisions in PC94B.

11. WDC's GIS team have provided the following figures around the proposed zoning[2] that would apply to identified Māori land under the rural plan changes:

[2] Council's GIS team have identified that 9 of the Māori land parcels are proposed to have a split zoning between proposed Rural Village Residential / Rural Production Environment.

Table 1 – Proposed Environments for Māori land under the Rural Plan Changes			
Proposed Environment	**Number of Māori Land parcels**	**Average size of land (Hectares)**	**Median**
Proposed Rural (Urban Expansion)	6	1.024	0.9536
Proposed Rural Living	1	1.2746	1.2746
Proposed Rural Production	717	15.5027	2.0273
Proposed Rural Village Residential	146	1.1712	0.1052

12. Table 1 demonstrates that the vast majority of Māori land in the Whangarei District is proposed to be rezoned as Rural Production Environment ("**RPE**").

13. The PC87 CA overlays and provisions [see proposed text in **Attachment 12**] are proposed Resource Areas of the WDP so would apply to all Environments and to papakāinga developments. A significant quantity of Māori land is located within the proposed CA overlays. WDC GIS staff have provided some overall numbers for this which are shown in Table 2, 3 and 4. Out of the total of 886 Māori land parcels in the Whangarei District, 436 parcels or 49% of the total are located in or partially located in the proposed Costal Area. Further, 25% of the Māori land parcels in the District are proposed in a High or Outstanding Natural Character Area.

Table 2 – Coastal Area and Māori Land	
Percentage of Whangarei District which is CA	6.20%
Percentage of CA which is Māori land	15.00%
Percentage of total ha of Māori land which is CA	49.00%

Table 3 – High Natural Character Areas and Māori Land	
Percentage of Whangarei District which is HNC	1.40%
Percentage of HNC which is Māori land	5.27%
Percentage of total ha of Māori land which is HNC.	19.00%

Table 4 – Outstanding Natural Character Areas and Māori Land	
Percentage of Whangarei District which is ONC	0.70%
Percentage of ONC which is Māori land	2.09%
Percentage of total ha of Māori land which is ONC.	6.00%

14. From the above figures, it is clear that the proposed PC87 CA provisions will disproportionately affect Māori land, and that there would be implications for Māori wishing to undertake papakāinga developments on ancestral Māori land within the proposed CA.

15. A significant quantity of Māori land is located within the proposed PC114 landscape overlays. WDC GIS staff have provided some overall numbers. Out of the total number of 886 Māori land blocks in the Whangarei District, 177 have an Outstanding Natural Landscape ("**ONL**") overlay proposed with a further 12 having an Outstanding Natural Feature ("**ONF**") proposed. Some overall percentages relating to this are provided below as follows:

Table 5 – Outstanding Natural Features and Māori Land	
Percentage of Whangarei District which is ONF	1.20%
Percentage of ONF which is Māori land	0.50%
Percentage of total ha of Māori land which is ONL	0.16%

Table 6 – Outstanding Natural Landscapes and Māori Land	
Percentage of Whangarei District which is ONL	14.13%
Percentage of ONL which is Māori land	8.70%
Percentage of total ha of Māori land which is ONL.	30.20%

16. Table 6 highlights that 30.20 percent of the total area of Māori land is proposed to have an ONL overlay applying to it. A significant portion of ancestral Māori land within identified ONL areas is undeveloped and therefore PC114 will disproportionately affect Māori land, and that there would be implications for Māori wishing to undertake papakāinga developments on ancestral Māori land within the proposed ONL and ONF areas.

17. Submissions on PC94B from Patuharakeke Te iwi Trust Board (PC94B-97-l) and Te Huinga (PC94B-112-l) specifically raised concerns regarding the potential implications of the proposed landscape provisions on the ability to undertake papakāinga developments on Māori land. While these submissions focused on the PC114 provisions, it is considered that the points they raise are relevant to the PC87 provisions. It is noted that these submissions were received prior to the notification of PC87 and PC114. In response, WDC included specific provisions in PC87 for papakāinga development on Māori land including a proposed policy (CA.1.3.22) and a rule (CA.4.1.3) making papakāinga developments on ancestral land within an Outstanding Natural Character Area a discretionary activity [see proposed text in **Attachment 12**]. Further, WDC included specific provisions PC114 for papakainga development on Maori land including a new objective (LAN.1.2.6), policy (LAN.1.3.19) and rules (LAN.3.3.1 & 3.4.3) [see **Attachment 7** for copy of the proposed PC114 provisions and **Appendix E** for further details on PC114]. This matter discussed further in Topic F this report as it relates to these submissions.

PC102: Minerals

18. At the time of notifying the rural plan changes, WDC also notified PC102 Minerals [see **Appendix D** for further details on this plan change].

19. PC102 proposes a Minerals Chapter. The Minerals Chapter seeks to manage mineral resources and Mineral Extraction Areas (nationally and regionally significant mineral extraction) to avoid, remedy and mitigate adverse effects on the environment from mineral extraction, and to protect significant mineral resources from constraints by conflicting land use.

20. Proposed measures under PC102 include mapping buffer areas and setbacks for sensitive activities around identified Mineral Extraction Areas ('**MEAs**'). However, it is noted that there is already a 500m setback from MEA applied to residential units in the Countryside and Coastal Countryside Environments. The main change is that this will now apply to "sensitive activities" rather than just residential units and minor residential units as is currently the case in the existing provisions. Nonetheless, WDC staff have provided an analysis of the buffer and setback areas with regard to Māori land and confirmed that only one Māori land title is located within the buffer area (at the Golden Bay Cement Winstone's Otaika Quarry) and several others within the setback area (Takahiwai quarry, Robson's Quarry at Otaika and GBC Winstone's quarry at Portland). The Minerals Chapter as proposed would be considered a Resource Area chapter, so therefore the application of the MEA would still apply to all Environments and to papakāinga developments. No submissions on PC94B specifically referenced MEAs therefore no further comment on these provisions is made in the rest of this report.

PC124: Built Heritage & PC100 Sites of Significance to Māori

21. Since the notification of PC94B, PC124 was made operative on 28th September 2016. PC124 provides provisions relating to the use and protection of the District's built heritage [see **Appendix F** for further details on this plan change]. There are no direct implications of this plan change on PC94B.

22. It is anticipated that at a later date additional provisions regarding archaeological sites and Sites of Significance to Māori (PC100) will be integrated into the framework created by the PC124 provisions. Once notified PC100 will be relevant to PC94B, but as the plan change has not been prepared yet, it has no direct bearing on the consideration of PC94B.

Other Districts / Region Papakāinga Provisions

23. Since PC94B was notified there have been two recent determinations relating to district plan papakāinga provisions by other local authorities in New Zealand that warrant mention.

Proposed Auckland Unitary Plan (PAUP) – E.20 Māori Land

24. Through the Proposed Auckland Unitary Plan ('**PAUP**') process, Auckland Council proposed a number of provisions relating to papakāinga developments. This has resulted in the proposed E.20 Māori land provisions [see **Attachment 8**]. These provisions are still not yet operative given that the appeal period on the PAUP provisions has only recently closed, and Auckland Council have not yet released their determinations on what provisions can be deemed operative. However, these provisions were accepted by Auckland Council as recommended by the Independent Hearings Panel and therefore can only be subject to appeal on points of law.

25. Key features of the PAUP provisions for Māori land include:

- A permitted activity status of one dwelling per hectare with no more than 10 dwellings per site in the rural zones. A restricted discretionary activity status is reserved for one dwelling per 4,000m^2 with no more than 20 dwellings per site in the rural zones.
- A permitted activity status for Māori cultural activities, marae up to 700m^2 gross floor area on sites more than 1ha, and activities associated with marae or papakāinga up to 250m^2 gross floor area. A restricted discretionary activity status is provided for marae over 700m^2 gross floor area and activities associated with marae or papakāinga greater than 250m^2.
- Integrated Māori developments are considered discretionary activities and have a rule requiring that they be considered without public or limited notification or the need to obtain written approval.
- The development controls of the underlying zone apply to all Māori land with notable exceptions with regard to building height and impervious surfaces.

Independent Hearings Panel Christchurch Replacement Plan – Decision 37 Papakāinga/Kāinga Nohoanga Zone and Specific Purpose (Ngā Hau e Whā) Zone

26. Through the hearing process for the Christchurch Replacement Plan the Independent Hearings Panel have considered specific provisions for the Papakāinga/Kāinga Nohoanga zone ('**PKN'**). The PKN zone would apply to five discrete areas on Banks Peninsula originally set aside, in 19th century land purchase Deeds of Settlement ('PKN areas'), as "Māori Reserves". The Independent Hearings Panel released their decision on these provisions on 26 August 2016 [see **Attachment 9**]. This includes attached amended provisions. These provisions are not yet operative and are subject to an appeal period.

27. The approach to zone specific sites is different to the wider approach employed in the PAUP provisions and the proposed PC94B provisions, where the provision for papakāinga developments applies generally to all Māori land. However, the amended PKN provisions do propose differential treatment of Māori land and other land within the PKN zone. More specifically, the Independent Hearings Panel have recommended an enabling approach to the development of Māori land in the PKN zone. This includes permitted activity statuses for residential activity, marae complexes and other associated activities.

3.0 Description of the Plan Change as Notified

28. PC94B proposes changes to the existing Papakāinga Housing (PKH) Chapter in the WDP. The operative PKH chapter is included in **Attachment 2**.

29. Section 32(1)(a) of the Act specifies examination of the extent to which the objectives of a plan change achieve the purpose of the Act. Where a plan change does not propose new objectives, as is the case with PC94B (as the objectives and policies have already been settled in PC94), "objectives" means the purpose of the Plan Change. This requires the formulation of a purpose statement.

30. The following purpose statement was developed for PC94B:

"The purpose of PC94B is to:

- *provide opportunities for Māori land owners to develop and live on their ancestral land.*
- *develop guidelines and standards for the papakāinga development plan process as is outlined in the existing papakāinga provisions."*

31. The proposed plan change text that was notified is included in **Attachment 3** and is summarised as follows:

- PKA Chapter Title – It is proposed that the chapter title is changed from "Papakāinga Housing" to "Papakāinga." This is supported by consequential changes to the PKH abbreviation to PKA.
- PKA.1.1 Description and Expectations – the two explanatory notes in the operative provisions are proposed to be deleted with the description and expectations section significantly expanded to discuss the issues and approach provided throughout the PKA chapter.
- PKA.1.2 Eligibility Rule – The existing eligibility rule is proposed to be replaced by clauses that refer to the application of the papakāinga provisions with regard to other provisions in the WDP.
- PKA.1.3 Objectives and PKA.1.4 Policies – The existing objectives and policies are not subject to any proposed alterations. This means that consideration of the merits of those objectives and policies does not form part of the scope of PC94B.
- PKA.1.5 Permitted Activities – A permitted activity status is proposed for papakāinga developments on Māori freehold land administered under TTWM Act provided that a papakāinga development plan is submitted and certain controls are met. This includes the requirement for a certificate from a suitably qualified and experienced professional regarding site servicing requirements. Any papakāinga development that cannot comply with this requirement would be a discretionary activity.
- PKA.1.6 Discretionary Activities – A discretionary activity status is proposed for papakāinga developments on General land owned by Māori where the land is subject to proceedings before the MLC to change the land from general title to ancestral Māori land, or on General land owned by Māori where an ancestral link has been identified.
- PKA.1.7 Non-Complying Activities – Papakāinga developments on all other land is proposed to be a non-complying activity.
- PKA.1.8 Transfer of Powers – A provision has been included highlighting that a transfer of powers is available for the consideration of discretionary activities in the papakāinga chapter. Any transfer of powers would be required to comply with the relevant requirements of section 33 of the RMA.
- PKA.1.9 Decision Making – PKH.1.9 proposes that applicants for resource consent may request that the application be heard by an Independant Commissioner(s) with expertise and qualifications in tikanga and Mātauranga Māori and resource management.

- PKA.1.10 Advice Note – Māori Land Court processes for Occupation Orders and Licenses to Occupy require Māori land owners to obtain certain information from Councils. It is highlighted in the provisions that WDC can provide this information on request.

4.0 Statutory Considerations

Section 32 Evaluation

32. WDC has completed an evaluation of PC94B in accordance with section 32 of the RMA **[Appendix A]**. Section 32(1) states that an evaluation must:

    a. examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and

    b. examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

        i. identifying other reasonably practicable options for achieving the objectives; and

        ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

        iii. summarising the reasons for deciding on the provisions; and

    c. contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

33. An assessment under subsection s32(1)(b)(ii) must—

    a. identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

        i. economic growth that are anticipated to be provided or reduced; and

        ii. employment that are anticipated to be provided or reduced; and

    b. if practicable, quantify the benefits and costs referred to in paragraph (a); and

    c. assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

34. Evaluation in terms of Section 32 is ongoing, and must be undertaken to confirm the appropriateness of PC94B. The Section 32 Evaluation for PC94B was completed prior to notification **[Appendix A]**. Where required, recommendations in this report which differ from the notified provisions are supported by further evaluation in terms of Section 32AA of the RMA [**Attachment 6**].

35. The Section 32 Evaluation Report included an evaluation of PC94B with regard to Part 2 of the RMA which includes:

- The purpose of the Act as contained in Section 5;
- Section 6 - Matters of National Importance that are required to be recognised and provided for;
- Section 7 - Other Matters that require particular regard in achieving the purpose of the Act; and
- Section 8 - Treaty of Waitangi.

36. The Section 32 Evaluation Report also considered Section 31 of the RMA which sets out the functions of territorial authorities in giving effect to the purpose of the RMA.

Northland Regional Policy Statement

37. The Northland Regional Policy Statement ("**RPS**") was assessed in section 4.4.2 of the Section 32 Evaluation Report [see **Appendix A**] in terms of the Operative RPS and the Proposed RPS. Since the notification of PC94B the proposed RPS has now become operative, except for provisions that relate to the use of genetic engineering and the release of genetically modified organisms to the environment, as these provisions are still subject to legal challenge. These provisions do not relate to PC94B. Therefore, the relevant provisions of the RPS as assessed in paragraphs 95 – 97 of the Section 32 Evaluation Report are now operative. No further assessment is necessary within this report.

Iwi and Hapu Management Plans

38. Section 74(2A) of the RMA requires territorial authorities to take into account any relevant planning document recognised by an iwi authority to the extent that its content has a bearing on the resource management issues of the district.

39. Iwi and Hapu Management Plans were referenced in the Section 32 Evaluation Report see section 4.4.4 [**Appendix A**]. However, since the completion of the Section 32 Report, two additional hapu management plans have been formally recognised by WDC. For completeness, a list of the formally recognised iwi / hapu management plans for the Whangarei District is provided below:

- Ngatiwai – "Te Iwi o Ngatiwai: Iwi Environmental Policy Document 2007"
- Ngati Hine – "Ngati Hine Iwi Environmental Management Plan 2008"
- Patuharakeke – "Patuharakeke Hapu Environmental Management Plan 2014"
- Ngati Hau – "Hapu Environmental Management Plan 2016"
- Te Uriroroi Hapu Environmental Management Plan Whatiriri Hapu Environment Plan 2016.

40. Having reviewed each document and taking into account all of the provisions I consider that the proposed provisions of PC94B are consistent with, and in some respects will help achieve the outcomes sought in these documents.

5.0 Purpose of Report

41. This report considers submissions received in relation to PC94B. It has been prepared in accordance with Section 42A of the RMA to assist the Commissioners with deliberations on submissions and further submissions in respect of PC94B.

42. The report includes recommendations to the Commissioners to accept, accept in part or decline individual submissions. Where appropriate, it also includes recommended changes to the plan change provisions. Where any change necessitates further evaluation in accordance with s32AA, the necessary analysis is provided [see **Attachment 6**].

43. When making its decision, WDC is required under Clause 10 of the First Schedule of the RMA to give reasons for allowing or not allowing any submissions (grouped by subject matter or individually). The decisions of the council may also include consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

6.0 Structure of the Report

44. The report has been structured to provide an assessment of the submissions and further submissions received by WDC, arriving at a recommendation to the Hearing Commissioners.

45. Submission points have been grouped thematically as per the topic identified in the summary of submissions [see Summary of submissions by topic **Attachment 11**]. Submissions were made on general issues regarding the Plan Change and also on specific provisions. Submissions on general issues are addressed alphabetically first followed by submissions on specific provisions. As some submissions relate to multiple topics, cross references are included to the discussion and recommendation sections of other topics. Topic headings are as follows:

    A. Additional Controls

    B. Commercial and Industrial Activities

    C. Effects on Neighbouring Properties

    D. Fairness

    E. Lack of Clarity

    F. Landscapes

    G. Other Barriers – Development Contributions, Rates & Resource Consent Costs

    H. Procedural Issues

    I. Standard of Development

    J. Whole Plan Change

    K. PKA – Chapter Title

    L. PKA.1.1 Description and Expectations

    M. PKA.1.2 Eligibility

N. PKA.1.3 Objectives and PKA.1.4 Policies

O. PKA.1.5 Permitted Activities

P. PKA.1.6 Discretionary Activities

Q. PKA.1.7 Non-complying Activities

R. PKA.1.8 Transfer of Powers

S. PKA.1.9 Decision Making

T. PKA.1.10 Advice Note

U. Definitions

V. General Submissions – Access, Control of Māori Land & Engineering Matters

W. Corrections

46. While all submitters have been acknowledged in the Summary of submissions by topic [**Attachment 11**], due to the similarity of relief sought and reasons given along with the volume of submissions, responses have not necessarily been written for each individual submission point. Responses have been written for individual submissions that raise matters that differ from other submissions within the same thematic group or that request specific amendments to the plan change provisions.

47. While all further submissions have been acknowledged in the summary of further submissions by topic [see **Attachment 13**], responses have not been written for all further submission for the following reasons. The further submissions generally:

- Sought to emphasise the content of the corresponding original submission;
- Did not present new or additional evidence.
- Stated either support or opposition to the original submissions of other submitters.

48. The notified text of the plan changes is provided as **Attachment 3** to this report.

49. Any recommended changes to the notified text as a result of submissions are attached to this report [see **Attachment 5**]. Any recommended additions to the notified text are shown as underlined and deletions as strike-through. Any out of scope changes are also highlighted in yellow.

50. The assessment of submissions generally follows the following format:

- *Submission information* – Matters raised in the submissions with a brief outline of relief sought and reasons for relevant submissions.
- *Discussion* – discusses responses to the relief sought.
- *Recommendation* – outlines a recommendation to the Commissioners in response to the relief sought.

7.0 Consideration of Submissions

51. Table 7 below outlines a chronology of events relevant to the proceedings of PC94B.

Table 7 – Chronology of Events – PC94B	
Event	**Date**
Date of public notification of plan change for submissions	5 April 2016
Closing date for submissions	31 May 2016
Date of public notification for further submissions	27 July 2016
Closing date for further submissions	23 August 2016
Hearing dates	21 – 23 November 2016

52. Pursuant to section 37 of the RMA, WDC resolved to double the submission period from 20 working days to 40 working days and the further submission period from 10 working days to 20 working days.

53. There were 126 submissions and 33 further submissions to the plan change. The original submissions were numbered from PC94B-1 to PC94B-128. Submission PC94B-19 was combined with PC94B-48 and PC94B-49. PC94B-104 was removed and combined with PC94B-50. Please refer to **Appendix B** for submissions and further submissions, **Attachment 4** for a summary of submissions, **Attachment 11** for summary of submissions by topic and **Attachment 13** for a summary of further submissions by topic.

54. PC94B-114 was received on 2 June 2016 after the closure of the submission period on 31 May 2016. **I recommend** that the Commissioners accept this late submission.

55. Further submissions X-PC94B-031, 032 & 033 were received from Te Matapihi He Tirohanga Mo Te Iwi Trust who did not make an initial submission on PC94B. **I recommend** that this further submission is accepted by the Commissioners under Schedule 1 Clause 8 of the RMA on the basis that the submitter represents a party with a greater interest than the general public.

A. Additional Controls

Submission Information

56. 42 submissions were made with regard to the topic of additional controls.

57. These submissions generally seek that additional controls be applied to papakāinga developments in the PKA chapter. Some request specific relief while others request that further overall consideration be given to additional controls to protect the environment and neighbouring properties.

58. The majority of these submissions are pro-forma submissions that request that all controls need to be researched more thoroughly so that they fit the needs of a papakāinga in a coastal, rural and residential environment. These submissions state that the proposed plan change provisions cannot guarantee preservation of existing environments, preservation of existing settlement or rural character and the amenity values for those who live within or adjacent to Māori ancestral land.

59. PC94B-25b – from Heritage New Zealand ('**HNZ'**) requests the addition of provisions to PKA.1.5 and PKA.1.6 regarding the 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). This submission outlines that these requested provisions would highlight that the proposal needs to comply with other legal requirements.

60. PC94B-34b – seeks the inclusion of specific controls for each Environment concerning papakāinga development that allows for permitted activity for a maximum of five residential buildings (including existing) providing it meets all the rest of the Environment rules, all servicing requirements and additionally specifies for density and placing of those units, whilst taking into consideration the adjoining environments (an example of specific wording is included in the submission). The submission states that there is too much development scope in the proposed provisions and that this will have adverse effects on the environment and adjoining properties.

61. PC94B-38d – seeks the inclusion of specific controls to PKA.1.5 and PKA.1.6 to ensure that any papakāinga development is notified to all adjacent residential property owners so that they are aware and have the opportunity to comment on development that may affect them. This submission also identifies typos that are addressed in Topic W Corrections.

62. PC94B-43c – seeks that further controls be imposed on papakāinga developments regarding setbacks for residential and commercial components of papakāinga developments and natural and historic heritage. The submission states that it is inappropriate to treat places of assembly and commercial activities the same especially where they are adjacent to existing communities or environmentally sensitive areas.

63. PC94B-48d and PC94B-83c – request that papakāinga developments have a 200m setback from existing coastal community or privately owned land and that houses should be limited because the existing community is affected.

64. PC94B-80c – requests specific amendments to the permitted criteria in PKA.1.5 regarding the setback of buildings being the same as that of adjoining land, and providing further restrictions on commercial activities including the consideration of a restricted discretionary or discretionary activity status or further performance standards. This submission states that additional standards should apply to ensure that proposals are more compatible with the surrounding sites and that the amenity of neighbours is not unduly affected.

65. PC94B-82a – seeks that consideration be given to the protection of migratory birds and native birds with regard to specific concerns regarding a property at Ngunguru.

66. PC94B-85b – seeks that more consideration be given to the impact on landscape amenity values and public infrastructure and that vegetation clearance be limited to 500m^2 per 1ha overall. The submission cites concern that the section 32 report does not adequately consider the impact of development on public infrastructure and the surrounding environment.

67. PC94B-91a – seeks that existing standards in PKA.1.5.1.b are deleted and replaced with a general control requiring the highest levels of protection. The submission states that papakāinga developments should not adversely affect other people and that natural environments should be given the highest level of protection.

68. PC94B-114a - seeks that WDC amend the objectives policies and rules to provide appropriate setbacks from boundaries adjoining agriculture, horticulture and forestry to avoid reverse sensitivity conflicts between incompatible activities.

69. Other submissions in this topic not referenced above generally seek that more standards are considered or that the plan change be declined.

General Submissions – Discussion

70. In response to pro-forma submissions and general submissions requesting consideration of additional controls, I have recommended the deletion of the majority of existing controls in PKA.1.5.1.b (see recommendation section of Topic O) and a reliance instead on many of the controls in the underlying Environment (see recommendation section of topic M). I acknowledge that as notified, PKA.1.5.1.b provided duplication of some of the controls from the underlying Environments and presented a risk of missing some important controls. In my view, the changes to PKA.1.5.1.b detailed in Topic O along with the changes to the PKA.1.2 eligibility rule detailed in Topic M, provide a simpler and more understandable WDP. While these changes may appease some of the concerns of submitters, I acknowledge that there may still be concern regarding the flexibility afforded to papakāinga developments on Māori land. However in my view, the proposed amendments to the provisions strike an appropriate balance between providing an enabling planning framework for papakāinga developments, while ensuring that suitable standards are met in accordance with the requirements of the objectives and policies, section 32 of the Act and Part 2 matters.

Recommendation

71. I recommend the Commissioners **decline** the specific relief sought, but make the recommended changes detailed in Topic M and O in response to these submissions.

PC94B-25b – Discussion

72. I support in part the request from HNZ to add an additional clause to the PDP process in PKA.1.5.1.a and PKA.1.5.1.d requiring that the location of any recorded archaeology that is protected under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) is shown on the PDP. However, I consider that it should be limited to identifying recorded archaeology. In my opinion, 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 land parcel. In this regard, I do not support the additional request to require an archaeological assessment to accompany a PDP for every papakāinga development. In my opinion, this is inappropriate and likely to be unfeasible from a cost perspective for papakāinga developments. The identification of recorded archaeological sites is typically used by WDC as a 'red flag' to trigger notification to 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. Further, the recently operative Built Heritage chapter provisions are Resource Area provisions and would therefore apply to papakāinga developments. PC100 (Sites of Significance to Māori) is also currently under preparation and will seek to integrate additional provisions regarding the protection and management of archaeological sites and Sites of Significance to Māori.

Recommendation

73. I recommend that the Commissioners **accept** in part PC94B-25b and recommend that the following wording be added to the proposed provisions:

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

PC94B-34b – Discussion

74. I respond as follows to the four requests in this submission:

    1) I do not support the requested limit of five residential units on each site, however I do support a permitted density of one residential unit per 2000m^2. This area limit is generally used as the minimum site area that is required to sustain on-site servicing on sites that are not connected to a reticulated sewerage system. I have recommended this change in Topic O.

    2) In response to the request to meet all other requirements (e.g. setbacks, daylight angles, max building heights) and other submissions on similar matters, I have recommended under heading M that the eligibility rule PKA.1.2 be changed so that the underlying Environment provisions shall apply unless otherwise specified. Therefore,

the requirements listed in this submission would be applicable to papakāinga developments.

3) In my opinion, PKA.1.5.a.vi will ensure that all access, roading, wastewater and stormwater requirements in the EES 2010 are met. Therefore, I do not consider that there is a need to provide the additional control requested.

4) In my opinion the request to provide landscaping on boundaries for a width of two metres is inappropriate and unnecessary.

Recommendation

75. I recommend that the Commissioners **accept in part** PC94B-34b and recommend that the changes outlined in Topics M and O are made.

PC94B-38d – Discussion

76. I do not support the inclusion of requirements to notify all adjacent residential property owners of all papakāinga developments. In my opinion, this change would not be consistent with the enabling planning framework for papakāinga developments that are provided for in the objectives and policies. In my opinion, it should be left to the RMA notification regime to determine if effects warrant notification for papakāinga developments that require resource consent.

Recommendation

77. I recommend that the Commissioners **decline** the relief sought.

PC94B-43c, PC94B-48d and PC94B-83c – Discussion

78. I do not support requests for additional setbacks. In my opinion, these additional controls are not consistent with the enabling planning framework for papakāinga developments that are provided for in the objectives and policies. Furthermore, the proposed changes outlined in Topic M and O mean that the underlying Environment building setbacks would apply.

Recommendation

79. I recommend that the Commissioners **decline** the relief sought.

PC94B-80c – Discussion

80. I respond to the requests in this submission as follows:

- PKA.1.5 Permitted Activities – I do not support making papakāinga developments restricted discretionary activities. This matter is addressed further in Topic O where I have recommended the retention of the permitted activity status.
- PKA.1.5.1.b.i - I have recommended under Topic M that the eligibility rule PKA.1.2.2 be changed to make the underlying Environment provisions apply unless otherwise specified. This means that setbacks specified in the underlying Environment would apply. I do not consider that any other changes are necessary in response to this submission.

- PKA.1.5.a.iii – I have addressed specific requests regarding commercial and industrial activities in Topic B below.

Recommendation

81. I recommend that the Commissioners **decline** the relief sought, but make the recommended changes in Topics B, O and M in response to this and other submissions.

PC94B-82a – Discussion

82. I do not support the imposition of additional controls that seek to give protection to migratory birds and native birds. In my view, such issues should be dealt with elsewhere in the WDP on a district wide basis (e.g. the Resource Area provisions) or are within the realms of other authorities such as the Northland Regional Council with regard to the Regional Plan.

Recommendation

83. I recommend that the Commissioners **decline** the relief sought.

PC94B-85b – Discussion

84. I consider that the proposed amended provisions [**Attachment 5**] together with PC87 Coastal Area and PC114 Landscapes provide appropriate controls to account for the potential impact of papakāinga development on landscape, amenity values and public infrastructure. Accordingly, I see no need to impose additional controls in response to this submission.

Recommendation

85. I recommend that the Commissioners **decline** the relief sought.

PC94B-91a – Discussion

86. I do support the deletion of PKA.1.5.1.b.iii and have recommended that it be deleted for the reasons stated in Topic O. I do not support the imposition of the specific wording requested in this submission. In my view, the wording requested is vague, subjective and ultimately unworkable.

Recommendation

87. I recommend that the Commissioners:

- **Accept** the request to delete PKA.1.5.1.b.iii and recommend that it be deleted as outlined in Topic O.
- **Decline** other relief sought.

PC94B-114a – Discussion

88. I have recommended under Topic M that the eligibility rule PKA.1.2 be changed to make it so that the underlying Environment provisions shall apply unless otherwise stated. This means that setbacks specified in the underlying Environment would apply. The proposed Rural Production Environment (which is proposed to form the zoning of the majority of identified Māori land in the Whangarei District) includes appropriate setbacks from boundaries for adjoining agriculture,

horticulture and forestry to avoid reverse sensitivity conflicts between incompatible activities. I do not consider that any other changes are necessary in response to this submission.

Recommendation

89. I recommend that the Commissioners **decline** the specific relief sought, but make the recommended changes detailed in Topic M.

B. Commercial and Industrial Activities

Submission Information

90. Five submissions were made with regard to the topic of commercial and industrial activities, while a number of other submissions addressed under other topics include requests regarding commercial and industrial activities.

91. These submissions all oppose the provision of a permitted activity status for commercial and industrial activities, however the relief requested varies and includes:

- That PC94B be withdrawn entirely (PC94B-109c).
- That commercial and industrial activities should be treated as non-complying activities subject to public notification (PC94B-13e & PC94B-56e).
- That commercial and industrial activities should not be permitted without resource consents or the notification of adjoining landowners (PC94B-17d).
- Keep papakāinga developments to housing only (PC94B-108b).

PC94B-13e, PC94B-17d PC94B-56e – Discussion

92. PKH.1 Descriptions and Expectations of the existing provisions [**Attachment 2**] includes the following statement:

> In the context of the District Plan, papakāinga housing does not just focus on providing for the provision of housing. Papakāinga developments may also include activities such as community facilities, education, recreation and enterprise.

93. This statement was amended slightly and included in the PKA.1.1 Descriptions and Expectations section of the notified provisions [**Attachment 3**] as follows:

> 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.[3]

94. Furthermore, PKA.1.4.4 states:

> 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.

[3] It is noted that this paragraph is proposed to be amended in paragraph 183.

95. As a term, papakāinga means more than just housing. This distinction was made clear by Māori during consultation and submissions for the existing phase one provisions and during pre-consultation for PC94B. In response, the chapter title was proposed to be changed with the deletion of the word "housing" to avoid a misconception that papakāinga developments are limited to housing. No submissions were received opposing the change to the chapter title (see Topic K). The approach of making provision for activities other than just housing in papakāinga developments has also been endorsed by other councils [see **Attachment 8** and **Attachment 9**].

96. I do not support requests that commercial and industrial activities should be considered as non-complying activities subject to public notification or the notification of adjoining neighbours. I consider that appropriate scope needs to be made in the provisions for the undertaking of non-residential activities in papakāinga developments in policy PKA.1.4.4.

97. I consider that there is merit in clarifying that any places of assembly and commercial or industrial activities must be "associated with papakāinga" and have recommended a new PKA.1.5.1.b.i below. 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 commercial or industrial activities that could occur in a papakāinga development. I consider that mandatory notification for such activities is unnecessary and is ultimately inconsistent with the enabling planning framework for papakāinga developments that are provided for in the PKA objectives and policies.

98. Concurrently, I consider amendments should be made to PKA.1.5.1.a.iii. and PKA.1.6.2.d.iii. to ensure that any industrial activities are shown on the PDP so that an appropriate determination can be made as to whether resource consent will be needed or not.

Recommendation

99. I recommend that the Commissioners **accept** in part these submissions and recommend that the following changes[4] are made:

PKA.1.5.1.a Permitted Activities

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

PKA.1.5.1.b Permitted Activities

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.

PKA.1.6.2.d Discretionary Activities

[4] The changes indicated to PKA.1.5.1.b.ii. to include the terms "cumulatively" and "on any one site" is recommended in paragraph 121. The change has been replicated here for consistency.

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

PC94B-108b & PC94B-109c – Discussion

100. I do not support requests that PC94B be withdrawn (PC94B-109c) or that papakāinga developments be restricted to just housing (PC94B-108b). As outlined above, papakāinga means more than housing and can include other non-residential activities. Therefore, I consider that appropriate scope needs to be made in the provisions for the undertaking of other non-residential activities in papakāinga developments in accordance with policy PKA.1.4.4

Recommendation

101. I recommend the Commissioners **decline** the relief sought.

C. Effects on Neighbouring Properties

Submission Information

102. 55 submissions were made with regard to the topic of Effects on Neighbouring Properties. Most of these submissions opposed PC94B. The relief sought varies and includes:

- That the plan change be rejected and the status quo maintained.
- Where an activity would not be permitted under the underlying Environment provisions, that activity should be treated as a discretionary activity requiring notification to adjoining and affected landowners. This matter is specifically addressed in Topic O.
- That the residents directly affected by this plan change will not be detrimentally affected by the change of use of land to papakāinga developments thus devaluing their properties.
- Amend the provisions to provide more certainty for adjoining and neighbouring landowners. In particular, provide more guidance on density expectations, bulk and location provisions (particularly for external boundaries), design / layout, notification guidelines / rules.
- WDC reconsider PC94B and include safeguards for property owners and communities alongside Māori ancestral land that take into account all the requirements of the RMA.
- Resource consents should be required with local resident involvement.
- Require applications to consider effects on the surrounding environment and on adjoining landowners.

103. Reasons for these requests include:

- PC94B does not address the impact of papakāinga on existing adjacent residential communities, such as ours or provide any safeguards.
- There could be a wide range of adverse effects on local residents which could be significant.

- The proposed rules do not require any consideration of the surrounding environment. This is at odds with the intent and purpose of the RMA.
- The adverse effects on adjoining landowners may be potentially significant, and impact on social and economic well-being.
- The rules and policies do not provide enough certainty about the types of development and its effect on adjoining landowners. Restricting development potential through the physical characteristics of the land is too open ended.

Discussion

104. I do not support requests to decline PC94B and resort to the status quo. Explanatory notes in the existing provisions [**Attachment 2**] indicate that the chapter would be considered in two phases. Reverting to the status quo would not meet these outlined expectations and in my opinion would not appropriately give effect to the settled objectives and policies or achieve the sustainable management purpose of the Act.

105. I do not support requests that papakāinga developments require notification of adjoining landowners. In my opinion, such an approach is unnecessarily onerous and is not consistent with the enabling planning framework for papakāinga developments that are provided for in the objectives and policies. In my opinion, it should be left to the RMA notification regime to determine if effects warrant notification for papakāinga developments that require resource consent.

106. I acknowledge concerns expressed by adjoining landowners to Māori land and their requests for additional safeguards. In response to these submissions and other submissions addressed in other topics, I have recommended a change to the PKA.1.2 eligibility rule in Topic M to rely on the underlying Environment provisions, unless otherwise stated (the exemptions to this are then proposed to be stated in PKA.1.5.1.b – these are specifically discussed in further detail under Topic O). In my view, this will provide the flexibility for Māori for papakāinga developments while ensuring appropriate amenity standards are met in accordance with the objectives and policies.

Recommendation

107. I recommend that the Commissioners:

- **Decline** submissions seeking that PC94B be declined on the basis of effects on neighbouring properties.
- **Decline** submissions seeking that papakāinga developments require notification of adjoining landowners.
- **Accept** in part submissions seeking that additional safeguards be put in place to protect neighbouring properties and recommend that the eligibility rule PKA.1.2.2 be changed as shown in the recommendation section of Topic M.

D. Fairness

Submission Information

108. 52 submissions were made with regard to the topic of fairness. The relief sought varies and includes:

- The majority of these submissions seek that PC94B be rejected.
- A number of pro-forma submissions request that WDC reconsider PC94B and include safeguards for property owners and communities alongside Māori Ancestral land that take into account all the requirements of the RMA.
- Some submissions seek that the change be applied to all land.
- Some submissions seek that the status quo be maintained.

109. Reasons for these requests include:

- Object to WDC making provision for any individual group of individuals to be able to bypass the provisions of the RMA in order to carry out development.
- PC94B undermines the rule of law, which requires that all citizens are treated equally.
- The papakāinga provisions should apply to all properties or they shouldn't apply at all. Connection to land and environmental effects are, after all, not defined by race.
- There should be one law for all not based on racial preferences.
- The proposed provisions would adversely affect property values for neighbours.

Discussion

110. These submissions all question the rationale behind the PC94B provisions and generally oppose the proposed provisions on the basis that they are racist and unfair to non-Māori. In my opinion, these claims are incorrect and fail to acknowledge the realities of Māori land tenure.

111. The proposed provisions acknowledge that Māori land is different to general land. This has largely resulted from historical efforts from past governments to reconcile the fundamental differences in customary Māori communal ownership of land, and the individual title system favoured by British laws. As a result, there are some fundamental differences regarding the management of Māori and non-Māori land. For instance, Māori land generally has multiple owners and must apply to the MLC if they wish to administer their land. This is different to General Land where, for example, a person does not need to apply to a Court to succeed land interests left to them or to form a trust.

112. Furthermore, there are some inherent barriers to the development of Māori land. These are discussed at length in section 3.2 and more specifically section 3.2.3 of the Section 32 Evaluation Report [**Appendix A**] and include: the status of Māori land; multiple ownership and financial costs.

113. The proposed provisions are not about favouring one race over another, rather they are about addressing these fundamental barriers to the development of Māori land as a result of its unique

tenure. In my opinion, an enabling planning framework for papakainga developments on Māori land is desirable given these inherent barriers and given the limited area of Māori land in the Whangarei District, which remains in mostly isolated rural and coastal locations. In this regard, it is important that the papakāinga provisions in the WDP appropriately enable papakāinga development of Māori land, while also giving due consideration to other potentially competing resource management considerations in Part 2 of the RMA and the provisions of other higher order documents.

114. I am satisfied that the proposed revised provisions in **Attachment 5** provide an appropriate balance between these considerations. More specifically, I consider that the proposed enabling approach to the development of Māori land recognises and provides for the matters in section 6(e), has particular regard to the exercise of kaitiakitanga (s7(e)) and has appropriately taken into account the principles of the Treaty of Waitangi (s8).

Recommendation

115. I recommend that the Commissioners **decline** submissions requesting that PC94B be rejected on the basis of fairness.

E. Lack of Clarity

Submission Information

116. Eight submissions were made with regard to the topic of lack of clarity of a number of the proposed provisions.

117. Three of these submissions (PC94B-75a, PC94B-77b and PC94B-79a), while from different submitters seek similar relief:

- Clarify the following rules and amend as appropriate:
  - PKA.1.5.1
  - PKA.1.5.1.b.ii
  - PKA.1.5.1.b.vii
  - PKA.1.5.1.b.x
- Ensure that the provisions do not result in wholesale removal of native bush as a permitted activity.

These submissions state that these rules are ambiguous or not justified.

118. Five of these submission points (PC94B-90e, f, g, h & i) from Far North District Council seek the following clarification and relief:

- PKA.1.5.1.a.vi: better define what a suitably qualified and experienced professional may be i.e. Chartered Professional Engineer. This may be achieved by providing examples.

- PKA.1.5.1.b.ii: clarify the intent of the threshold and make necessary amendments in line with intent. Provide advice note or similar for better understanding of other district wide rules which may apply.
- PKA.1.5.1.b.vii: consider the effects of alteration to indigenous wetlands and introduce as part of control.
- PKA.1.5.1.b.viii: revisit the term 'predominantly' or remove the term completely. Clarify the intent of the threshold and make necessary amendments in line with intent.
- PKA.1.5.1.b.x: either amend the control to enable the mentioned development or solely rely on the PDP and accompanying professional statement as evidence for site specific stormwater management.

Specific reasons for each request are given in the submission.

PC94B-75a, PC94B-77b and PC94B-79a – Discussion

119. I respond to each of the requested clarifications as follows:

- PKA.1.5.1 – it is proposed that a papakāinga development on Māori freehold land is a permitted activity if a PDP is submitted, provides all the information required in PKA.1.5.1.a.i.-vi, and it complies with the controls in PKA.1.5.1.b and elsewhere in the WDP. The PDP is not to be approved by WDC. The intention of the PDP is to advise WDC of what is proposed so that it can be reviewed by WDC to determine if a resource consent is required under the controls in PKA.1.5.1.b, the underlying Environment provisions that do apply and the District Wide and Resource Area provisions. Therefore in my opinion, the PDP process gives effect to the supporting objectives and policies in PKA.1.3 and PKA.1.4 and achieves the sustainable management purpose of the RMA.
- PKA.1.5.1.b.ii – I accept that clarification is required regarding whether this control should be cumulative. In drafting this provision, the intention was that it would be a maximum of 500m^2 cumulatively on any one site. I have recommended changes to PKA.1.5.1.b.ii to this effect (see below in recommendation section).
- PKA.1.5.1.b.vii, PKA.1.5.1.b.x – As notified, the provisions in PKA.1.5.1.b were intended to control environmental effects that would have otherwise been addressed by the provisions of the underlying Environment. However, in light of this submission and other submissions, I have recommended the deletion or amendment of the majority of the controls and a reversion back to the underlying Environment provisions for these matters identified in the submission (see the recommendation section of Topic O). In my opinion, this amendment addresses the concerns expressed.
- I have recommended the deletion of provisions relating to the removal of indigenous vegetation and wetland in PKA.1.5.1.b.vii & viii. Any indigenous vegetation removal or indigenous wetland destruction will therefore revert to the relevant underlying Environment provisions.

PC94B-90e, f, g, h & I – Discussion

120. I respond to each of the requested clarifications as follows:

- PKA.1.5.1.a.vi – I agree that a suitably qualified professional could be better defined with the inclusion of "(e.g. Chartered Professional Engineer or Independently Qualified Person)". I recommend a change to PKA.1.5.1.a.vi in this regard. For consistency, I further recommend that the same change be made to PKA.1.6.d.vii.
- PKA.1.5.1.b.ii – My response is the same as given in the second bullet point of paragraph 119.
- PKA.1.5.1.b.vii, viii. & x. – My response is the same as given in the third bullet point of paragraph 119.

Recommendation

121. I recommend that the Commissioners:

- **Accept** in part the request to clarify PKA.1.5.1.b.vii, viii. & x. In Topic O, I have recommended the deletion of these provisions and a reliance on the underlying Environment provisions in Topic M.
- **Accept** in part the requested change to PKA.1.5.1.a.vi & PKA.1.6.2.d.viii and recommend that the following changes are made.[5]
- **Accept** the requests to change to PKA.1.5.1.b.ii to clarify that this control is cumulative and recommend that the following changes are made:[6]

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.

PKA.1.5.1.b. Permitted Activities

iii. Commercial or industrial activities shall not cumulatively exceed 500m2 in gross floor area on any one site.

PKA.1.6.1.d. Discretionary Activities

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

[5] The inclusion of (e.g. Chartered Professional Engineer or Independently Qualified Person) in PKA.1.5.1.a.vi. and PKA.1.6.1.d.vii. is also made in response to submission PC94B-98a from Northland District Health Board which is addressed in Topic I Standard of Development.

[6] The changes indicated to PKA.1.5.1.b.ii. include the deletion of "or industrial" recommended in paragraph 99. The change has been replicated here for consistency.

with the relevant provisions of the Environmental Engineering Standards 2010 for the type and number of buildings shown on the PDP.

F. Landscapes

Submission Information

122. Three submissions were made with regard to the topic of landscapes.

123. Two submissions (PC94B-97l and PC94B-112l) support the plan change but seek amendment to PKA.1.2.1 so that the District Wide and Resource Area objectives, policies and rules shall not apply to papakāinga developments (this request is also addressed in Topic M). The submission states that Māori land will be disproportionately affected by the proposed ONL, ONF and Coastal overlays, because the land has remained undeveloped while surrounding land has been cleared and built on and much of the district's Māori land is in coastal areas and is subject to further conditions. The submission states that the provisions of these overlays will conflict with the desire to develop Māori land and will in the view of the submitters, substantially limit (if not render completely redundant) the efficacy of the PKA provisions.

124. One submission (PC94B-17c) requested that WDC be responsible for environmental issues as environmental effects of papakāinga developments on environmentally sensitive sites should be considered.

PC94B-97l and PC94B-112l – Discussion

125. I agree that Māori land will be disproportionately affected by the proposed ONF and in particular ONL overlays proposed in PC114. This is evident tables 5 and 6 previously in this report. More specifically, table 6 highlights that 30.20% of the total area of Māori land has a proposed ONL overlay applying to it. Similarly, tables 3, 4 and 5 have demonstrated that 49% of Māori land is situated in the proposed CA as per the PC87 Coastal Area provisions. If PC87 and PC114 are made operative, there will be implications for Māori wishing to undertake papakāinga developments on ancestral Māori land.

126. At the time these submissions were made, PC114 was out for pre-notification consultation. The pre-notification draft PC114 provisions did not include any express provisions for papakāinga development on Māori land. In response to consultation and written comments citing similar issues, the notified PC114 provisions have proposed direct provision for papakainga development on Maori land including a new objective (LAN.1.2.6), policy (LAN.1.3.19) and rules (LAN.3.3.1 & 3.4.3) [see **Attachment 7** for copy of the proposed PC114 provisions and **Appendix E** for further details on PC114**]**. As highlighted previously in paragraph 17, similar amendments were made to the PC87 provisions. At this stage, I consider that these proposed provisions in PC87 and PC114 strike an appropriate balance of providing maximum flexibility for Māori to develop their ancestral lands while ensuring appropriate protection of identified landscape features. I also understand the similar submissions have been made on PC87 and PC114 on these matters and therefore consider that these issues can be considered more closely during the determination of submissions and hearings on those plan changes. It is my view that it would be inappropriate to amend PKA.1.2 so that the District Wide and Resource

Area objectives, policies and rules shall not apply to papakāinga developments (this position is expanded further Topic M).

Recommendation

127. I recommend that the Commissioners **decline** these submissions.

PC94B-17c – Discussion

128. The relief sought in this submission point is vague. However in my view, I consider that the provisions of PC94B, PC87 and PC114 as drafted will sufficiently account for the environmental effects of papakāinga developments on sensitive landscapes and coastal areas.

Recommendation

129. I recommend that the Commissioners **decline** this submission.

G. Other Barriers – Development Contributions, Rates & Resource Consent Costs

Submission Information

130. Nine submissions were made with regard to the topic of other barriers. These submissions generally identify other barriers to papakāinga developments outside of the WDP process that submitters say should also be addressed by WDC.

131. PC94B-97m and PC94B-112m – request that WDC consider the following:

- Being an active facilitator of papakāinga developments.
- Providing relief from financial (development) contributions.
- Developing a strategy approach to providing and/or funding specialist advice to assist in papakāinga developments.

These submissions state that WDC should become an active facilitator of papakāinga developments (as opposed to passive receivers of applications) as it will meet Treaty of Waitangi obligations while resulting in holistic benefits for Māori, and providing financial relief from development contributions and funding for specialist advice for applicants will further assist and encourage papakāinga developments.

132. PC94B-113h – request that WDC remove development contributions requirements for papakāinga developments on Māori land. This submission states that development contributions represent one of the main obstacles for papakāinga developments on Māori land.

133. PC94B-02b&c, PC94B-23b&c, PC94B-30b&c and PC94B-115a – identify issues or clarifications in terms of rates.

134. PC94B-15c and PC94B-84b – request that resource consent fees for papakāinga developments on Māori land should be either waived or based on a small percentage of the owners income. These submissions state that it is difficult for Māori to develop their land.

Discussion

135. Development contributions, rates and resource consent fees fall outside of the scope of the WDP, and consequently outside of the scope of this plan change. Unfortunately, PC94B cannot change these matters. However, I acknowledge that there is merit in submissions identifying these matters as additional significant barriers to papakāinga developments.

136. I highlight that the Auckland Council Māori cultural initiatives investment fund in the Auckland Long Term Plan (**LTP**) has set aside $10 million over ten years for operating expenditure to help fund development contributions, feasibility studies / reports / expertise and consenting fees for papakāinga developments on Māori land. Furthermore, from year four of the Auckland Council LTP, there is an additional $4 million capital expenditure to help fund physical works.

137. I recommend that WDC undertake a review of these additional barriers outside of this process for PC94B, and consider providing funding in a similar manner to Auckland Council in order to facilitate the development of a truly holistic papakāinga policy.

Recommendation

138. I recommend that the Commissioners:

- **Decline** the relief sought in these submissions.
- Make an informal recommendation to WDC to review funding options for development contributions, rates and resource consent fees as they relate to papakāinga developments on Māori land.

H. Procedural Issues

Submission Information

139. Ten submissions were made with regard to the topic of procedural issues.

140. PC94B-01a, PC94B-03a, PC94B-21a, PC94B-48e and PC94B-49e – request that more information should have been provided in the notification process in order to understand the proposed provisions.

141. PC94B-29d, PC94B-83d, PC94B-86b and PC94B-87b – raise concerns about the notification process stating that the process was confusing with a unrealistic timeframes and that PC94B should have been given more public exposure.

142. PC94B-109d – requests that PC94B be withdrawn as it is questionable whether the policy has been seen and approved by all councillors and whether all landowners in the community were made fully aware of the implications of the policy.

Discussion

143. In my opinion, PC94B appropriately followed the statutory process for the notification of the proposed provisions.

144. As discussed in section 3.2.3 of the Section 32 Evaluation Report [**Appendix A**], the notification of PC94B was preceded by a lengthy non-statutory pre-notification consultation phase which

informed the development of the proposed provisions and gave the opportunity for Māori and the wider community to comment on the development of the proposed provisions.

145. Before PC94B was notified, a workshop was held with Councillors on the proposed provisions along with the presentation of the proposed provisions and full Section 32 Evaluation Report to the March 2016 WDC Planning Committee meeting. The proposed provisions along with a copy of the Section 32 Evaluation Report were made available to the Councillors. In my view, Councillors were fully informed of the proposed provisions in accordance with relevant legislation.

146. The statutory timeframes for submissions and further submissions for PC94B were doubled to allow more time for it to be understood by Māori and the wider community. Beyond WDC's standard mailing list for plan changes, letters were sent to landowners located within 50 metres of Māori land to ensure that adjoining landowners were directly informed about PC94B and given the opportunity to submit. WDC staff were made available via phone or for meetings to answer any queries. During the submission period approximately 130 phone calls and meetings took place with the public.

Recommendation

147. I recommend that the Commissioner's **decline** these submissions.

I. Standard of Development

Submission Information

148. Eleven submissions were made with regard to the topic of standard of development.

149. The majority of these submissions oppose PC94B. Relief sought for opposing submissions include:

- That the plan change be rejected.
- Ensure that the same building standards apply to Papakāinga as apply to non-Papakāinga.
- All buildings should meet WDC requirements.
- Do not want to have more concentrated or increased density housing than is normally allowed for non-Māori Land on any Māori Land, where it is zoned as Coastal Countryside.
- Any papakāinga development should require resource consent.
- Everyone should be treated equally.

150. Reasons for these requests include:

- Concerns regarding existing development on Māori land where dwellings have been erected that are eye-sores and devalue other properties in the locality.
- Concerns that sites would become junkyards for cars and caravans.

- The plan change will result in a decline in standards.
- Housing of all sorts of dilapidated forms will be built.
- Need to ensure care and upkeep of the surrounding land.

151. Other submissions seek amendment. Amendments sought include:

- That the application of the rules must ensure that the quality of the development undertaken does not result in sub-standard housing or services being developed that could result in negative health outcomes for the inhabitants.
- Ensure that Rule PKA.1.2 Eligibility and PKA.1.5 Permitted Activities are clear in its interpretation and application.
- There needs to be some covenants/quality requirements on dwellings allowed. Visual and noise considerations when placing dwellings and a reasonable standard of construction and quality required.

General Submissions – Discussion

152. I do not support the opposing submissions that request that the plan change be declined or that resource consents be required for all papakāinga developments on the basis of concerns regarding the standard of development.

153. All buildings will be required to comply with the Building Act 2004 and obtain necessary building consents. PC94B cannot remove the requirement to comply with the Building Act as this is covered by separate legislation outside of the scope of the WDP. Compliance with the Building Act will ensure that appropriate health and safety standards are meet in accordance with objective PKA.1.3.3. If submitters have concerns that existing development on Māori land does not comply with the requirements of the Building Act, then I recommend that they formally notify WDC so that a proper investigation can be undertaken to determine any potential non-compliance with the relevant legislation.

154. With regard to wider concerns about the standard of existing or future development on Māori land, I highlight that the underlying Environment provisions in the WDP contain no specific provisions regarding the appearance (e.g. materials used[7]) or ongoing maintenance of buildings. Some properties may include consent notices or land covenants on their certificate of title that specify certain controls on the appearance or ongoing maintenance of buildings. However, these are either imposed as conditions by WDC at subdivision stage on a case by case basis in response to environmental effects, or are voluntarily imposed by developers to maintain certain standards in a development, and are not mandatory requirements in the WDP. In some cases, the Resource Area provisions specify controls or requirements for resource consents relating to the visual appearance of a building. However, PKA.1.2 requires that District Wide and Resource Area provisions apply to papakāinga developments.

[7] An exception to this is that residential units in the Coastal Countryside Environment currently require restricted discretionary resource consent pursuant to Rule 38.4.1. This may result in conditions being imposed regarding using recessive colours and materials to protect wider coastal landscape values. Further, PC87 Coastal Area has proposed specific colour controls on buildings in the Coastal Area however this is proposed as a Resource Area and would apply under the papakāinga provisions.

155. Overall in my view, there is no reason to recommend any changes in response to these submissions.

Recommendation

156. I recommend the Commissioners **decline** opposing submissions regarding the standard of development.

PC94B-98a – Discussion

157. The submission from Northland District Health Board (NDHB) raises some compelling points that require more precise consideration.

158. I recognise the specific concern expressed by NDHB in their submission:

> "NDHB therefore is neutral in terms of their support overall for this proposal. The specific concern NDHB has is that promoting the location of an at risk group potentially further from health resources could exacerbate existing negative health trends within the group. However, if provision of housing on ancestral Maori land removes some of the financial barriers to Maori being able to access better quality living accommodation, then this could result in health benefits."

159. I also acknowledge the position of NDHB to see that the desire to enable housing development on Māori land does not result in poor quality houses being developed and / or poor quality services being provided.

160. I reiterate that all buildings will still be required to comply with the Building Act 2004 and obtain necessary building consents. Compliance with the Building Act will ensure that appropriate health and safety standards are meet in accordance with objective PKA.1.3.3.

161. In response to promoting the location of an at-risk group potentially further from health resources, PC94B removes some of the barriers to enable Māori to develop papakāinga on Māori land if they wish. Māori land owners will need to weigh up the benefits of living in potentially isolated locations and the effect that it may have on access to transportation, medical support and other services, just as any other rural landowner would.

162. In terms of services, I have recommended in Topic E that "suitably qualified and experienced professional" in PKA.1.5.1.a.vi. and PKA.1.6.1.d.vii. is clarified further by the inclusion of "(e.g. Chartered Professional Engineer or Independently Qualified Person)". In my view this addreses the concern of ambiguity expressed in the submission. With regard to the term "sufficiently serviced", I am satisfied that the application of the provision is clear, as it refers to compliance with the Environmental Engineering Standards 2010 (**EES 2010**). What is deemed "sufficiently serviced", will be determined by compliance with the relevant provisions of the EES 2010.

Recommendation

163. I recommend the Commissioners **accept in part** the request to clarify the "suitably qualified and experienced professional" in PKA.1.5.1.a.vi. and recommend the following wording in accordance with the recommendation in Topic E.

J. Whole Plan Change

Submission Information

164. Seven submissions were made with regard to the topic of the whole plan change.

165. PC94B-06a, PC94B-25a, PC94B-90a, PC94B-101a, PC94B-105a and PC94B-110a – support PC94B and seek that the plan change be accepted identifying general support for the principles underpinning PC94B.

166. PC94B-34a – opposes the whole plan change and sought that it be rejected as the plan change will affect relationships and communication within local areas.

PC94B-06a, PC94B-25a, PC94B-90a, PC94B-101a, PC94B-105a and PC94B-110a – Discussion

167. I acknowledge and generally support the submissions supporting the direction of the proposed plan change provisions. However, changes to the notified plan change wording have been recommended in response to submissions requesting amendments.

Recommendation

168. I recommend that the Commissioners **accept** these submissions notwithstanding any changes outlined elsewhere in this report.

PC94B-34a – Discussion

169. I do not support this submission which seeks the rejection of PC94B for the reasons outlined in other sections of this report.

Recommendation

170. I recommend that the Commissioners d**ecline** this submission.

K. PKA – Chapter Title

Submission Information

171. Three submissions (PC94B-97a, PC94B-112a and PC94B-113a) were made with regard to the topic of chapter title, all of which supported the change from "Papakāinga Housing" to "Papakāinga" and seek that the chapter title be retained as notified.

Discussion

172. No further comment is required.

Recommendation

173. I recommend that the Commissioners **accept** these submissions.

L. PKA.1.1 Description and Expectations

Submission Information

174. Four submissions were made with regard to PKA.1.1 Descriptions and Expectations.

175. PC94B-38a – opposes PKA.1.1 as drafted and seeks the following specific amendment to paragraph 4:

> "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 and that adjacent residential communities are not adversely affected."

The submission states that PC94B does not adequately safeguard the interests and address the concerns of communities who live alongside or near Māori Ancestral Land.

176. PC94B-90b – supports PKA.1.1 but seeks specific amendment to include a paragraph outlining the process and interconnection between the WDC and the MLC, and to also reference NRC's role in terms of Regional Water & Soil Plan provisions, regional form and urban design and references to cross boundary issues and how these might be better addressed. The submission states that more explanation should be given to these matters in PKA.1.1.

177. PC94B-97b and PC94B-112b – support PKA.1.1 but seek amendment to include the background section provided in section 2.5 of the Operative Regional Policy Statement for consistency and Paragraph 27 of the Section 32 Evaluation Report. The submission states that there is a lack of context around the challenges facing the development of Māori land.

PC94B-38a – Discussion

178. I do not support this request. In my view, paragraph 4 provides adequate detail as to the approach taken in the proposed PKA provisions and the relief sought is unnecessary.

Recommendation

179. I recommend that the Commissioners **decline** this submission.

PC94B-90b, PC94B-97b and PC94B-112b – Discussion

180. I do not support these requests. The nature of the new structure of the WDP under the rolling review is that the description and expectations section provides a succinct outline of the approach taken in proceeding sections of each chapter. I consider that PKA.1.1 provides a succinct description of the approach taken in the PKA chapter. In my view, providing additional paragraphs outlining the matters requested in these submissions is unnecessary and will provide no additional benefit as to the application of the PKA provisions.

181. However, in light of changes recommended elsewhere in this report (in particular in Topic O with regard to the new permitted activity control PKA.1.5.1.b.i – see **attachment 5**), I consider that an amendment is required to the second paragraph of PKA.1.1 as follows:

> "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."

182. 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 currently provided in the second paragraph of PKA.1.1 as notified. As noted, I have proposed a new permitted activity control in PKA.1.5.1.b.i in topic O which requires that "any places of assembly and commercial or industrial activities are associated with papakāinga." In my opinion, 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 Topic O and **Attachment 5**), 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.

Recommendation

183. I recommend that the Commissioners **decline** these submissions but make the following amendment to the second paragraph in PKA.1.1:

PKA.1.1 Description and Expectations – second paragraph
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.

M. PKA.1.2 Eligibility

Submission Information

184. 39 submissions were made with regard to PKA.1.2 Eligibility. These submissions generally fell into the following three categories:

- Oppose PKA.1.2.1 – PC94B-97c and PC94B-112c oppose PKA.1.2.1 which states that "The District Wide and Resource Area objectives, policies and rules in the District Plan shall apply to papakāinga developments under the papakāinga provisions below." These submissions seek more flexibility for papakāinga developments and seek that the District Wide and Resource Area provisions shall not apply. The submission states that the provision effectively contradicts the intent of the existing policy as it does not provide maximum flexibility for papakāinga developments.
- Support PKA.1.2.1 – PC94B-101b was made supporting PKA.1.2.1 and seeking that it be retained as notified because it would mean that the Network Utilities (NTW) rules would still apply.
- Oppose PKA.1.2.2 – The majority of these submissions (including a significant number of pro-forma submissions) oppose PKA.1.2.2 which states "that the underlying Environment provisions shall not apply to papakāinga developments under the

papakāinga provisions below." These submissions generally either seek the deletion of this provision or amendment to state that the underlying Environment provisions shall apply to papakāinga developments. General reasons given include:

- All community groups should have the same policies and rules to follow in putting in planning applications to WDC, especially affecting the environment.
- Environmental effects are effects regardless of race and it is unacceptable to exempt papakāinga developments from complying with the underlying Environment rules.
- No groups can be exempt as the environmental damage affects everyone now and into the future. The same rules should apply to everyone.
- Papakāinga developments need to be sympathetic to the existing communities where they are located.

PC94B-101b – Discussion

185. I support the request seeking that PKA.1.2.1 be retained so that the District Wide and Resource Area provisions of the District Plan shall apply. For simplicity, I have recommended changes to the structure of the PKA.1.2 eligibility rule, and while the wording of this provision has changed slightly the overall outcome is the same in that the District Wide and Resource Area provisions will apply.

Recommendation

186. I recommend that the Commissioners **accept** this submission.

PC94B-97c and PC94B-112c – Discussion

187. I do not support submissions requesting that the Resource Area and District Wide Rules do not apply to papakāinga developments. The District Wide and Resource Area provisions provide important overlays and controls, often regarding unique characteristics and restrictions applying to specific pieces of land. This includes requirements regarding noise and vibration, network utilities, flooding hazard areas and outstanding landscapes. In my opinion, it is not reasonable to exempt papakāinga developments from complying with these provisions. While I acknowledge that PKA.1.3.2 seeks to "allow maximum flexibility for Māori to develop their ancestral lands" this must be balanced with "ensuring appropriate health, safety and amenity standards are met" and with PKA.1.3.5 which seeks the "protection and enhancement of ecological, landscape, cultural, heritage and other features which are of value to Māori and the wider community." The District Wide and Resource Area provisions provide important controls regarding these matters and I consider it inappropriate to exempt papakāinga developments from complying with them.

Recommendation

188. I recommend that the Commissioners **decline** these submissions.

General Submissions – Discussion

189. I support in part the requests to change PKA.1.2.2 eligibility rule to make the underlying Environment Provisions apply to papakāinga developments, but not to the extent requested by the majority of the submissions on this matter.

190. The provisions in PKA.1.5.1.b.i. – x were specifically included to address amenity values and other environmental effects, which form the basis for the concerns expressed by the majority of submitters on this matter. In light of these submissions and other submissions addressed under other topics, 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, I acknowledge that the PC94B controls as notified do not necessarily provide for the protection of amenity values in the context of each Environment. In this regard, I consider it appropriate to amend PKA.1.2 to rely on the underlying Environment provisions, unless otherwise specified (the exemptions to this are then proposed to be stated in PKA.1.5.1.b – these are specifically discussed in further detail under Topic O). In my view, this will provide 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.

191. My recommended change to PKA.1.2 does present implications in terms of the crossover with the Rural plan changes. As noted previously, the majority of Māori land in the Whangarei District is currently zoned Countryside or Coastal Countryside Environment. The Rural plan changes propose sweeping changes to these existing Environments with the creation of a number of new Environments and associated activity provisions and development controls. The vast majority of Māori land is proposed to be rezoned RPE (see table 1) and the proposed RPE provisions present some different development controls than what currently exist.

192. For instance, the Countryside and Coastal Countryside Environments currently have setback requirements in Rule 38.4.5 for buildings including: 8.0m from road boundaries, or any building line restriction shown on the Planning Maps, 3.0m from other boundaries and 30m from the legal boundary of existing plantation forestry in the case of a new residential building on a separate site.

193. The RPE proposes a setback of 8m from all boundaries and further setbacks such as: 500m from a Mining Areas of a MEA or a strategic Rural Industry Environment or Business Environment; 100m from an unsealed metal road; 30m of an existing production forestry on a separate site; and 250m from an existing intensive livestock activity or existing activity ancillary to farming or plantation forestry on a separate site.

194. Submitters on PC94B may question which underlying Environment rules would then apply. The answer is that at the time of the hearing for PC94B the operative “status quo” provisions would apply, until such time as the rural plan change provisions become operative. This is the same situation as for any land affected by the Rural Plan Changes.

195. In addition to the above and in light of submissions on the matter regarding the application of the underlying Environment provisions, I have identified that the eligibility rule as notified does

not clarify the application of the subdivision provisions for each Environment. For the avoidance of any doubt, I recommend the addition of a further clause PKA.1.2 stating that the subdivision provisions of the underlying Environment shall apply.

196. 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.

Recommendation

197. I recommend that the Commissioners **accept** in part submissions seeking changes to PKA.1.2 and recommend the following changes:

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 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.~~

N. PKA.1.3 Objectives and PKA.1.4 Policies

Submission Information

198. Eleven submissions were made with regard to the notified objectives and policies. These ranged from specific submissions requesting that the objectives and policies be retained as notified to submissions seeking specific amendments to the objectives and policies.

199. PC94B-97d – sought clarification for what the term 'surrounding environment' means.

General Submissions – Discussion

200. The existing objectives and policies of the WDP in Chapter PKH [**Attachment 2**] are operative, having been settled through PC94. These settled objectives and policies are not the subject of PC94B, which seeks only to introduce further methods to more efficiently and effectively implement the objectives and policies. Therefore, no changes to the existing objectives and policies were proposed in PC94B. This is clearly highlighted in the section 32 Evaluation Report

(see the executive summary, paragraph 61 and paragraph 99 in **Appendix A**) and within the public notification advertisement [**Attachment 10**]. Accordingly, in my opinion, any submissions requesting changes to the objectives and policies are out of scope.

201. The test for whether a submission is "on" the Plan Change is:

- The extent to which the Plan Change changes the status quo and;
- If accepting the submission would allow the District Plan to be amended without participation.

202. The public notice and section 32 Evaluation Report have clearly stated that there are no changes to the operative objectives and policies. If the Commissioners accepted submissions seeking to change them, in my opinion other people may be disadvantaged as they may have also sought changes to (or retention of) the objectives and policies had the section 32 Evaluation Report or public notice highlighted that changes to them were within the scope of PC94B. Therefore, I recommend that the Commissioners decline any submissions seeking amendments to the operative objectives and policies.

Recommendation

203. I recommend that the Commissioners d**ecline** all submissions seeking to retain or amend the operative objectives and policies as they are out of scope.

PC94B-97d – Discussion

204. There is no definition provided for 'surrounding environment.' It would therefore have its ordinary meaning and as interpreted in case law.

Recommendation

205. No recommendation is required for this submission.

O. PKA.1.5 Permitted Activities

Submission Information

206. 13 submissions were made with regard to the PKA.1.5 Permitted Activity provisions. A number of other submissions requested changes to the PKA.1.5 provisions which have been listed under other topics (such as fairness, additional controls, effects on neighbours and standard of development). This section focuses on the submission points that were classified under the topic PKA.1.5 Permitted Activities in the summary of submissions, although the recommendations in this Topic are cross referenced throughout this report.

207. PC94B-90d and PC94B-113c – support the provision as notified and seek that the broad intent of the approach be retained noting support for the implementation of this change in approach.

208. PC94B-97e&f and PC94B-112e&f – support the requirement for the PDP and stipulated contents in PKA.1.5.1.a, but oppose the imposition of controls in PKA.1.5.1.b stating that the controls seem to contradict the intent of the policies (using examples of the indigenous

vegetation clearance control in PKA.1.5.1.b.viii. and the impervious surfaces control in PKA.1.5.1.b.x.).

209. PKA94B-89 – opposes PKA.1.5 and seeks that the plan change be declined as papakāinga developments shouldn't be permitted activities.

210. PC94B-110c – supports the policy but also seeks the following specific amendment to PKA.1.5.1:

> "On Māori freehold land as defined in Te Ture Whenua Māori Act 1993, and on land under General Title where an ancestral link has been identified, papakāinga developments are a permitted activity provided that:"

The submission states that papakāinga development on ancestral land under General Title should be a permitted, rather than discretionary activity, due to the compliance costs and notification process associated with obtaining resource consent.

211. PC94B-75b, PC94B-77c and PC94B-79b – oppose in part PKA.1.5 and seek identical relief as follows:

- Change the activity status in PKA.1.5 from permitted to either controlled or restricted discretionary (the preference being restricted discretionary) and addition of a specific requirement (matter for control or matter of discretion) to consider effects on the surrounding environment in the overall design and location of the development; OR
- As an alternative to the above, retain the permitted activity status, but add a more appropriate permitted development threshold that goes at least some way to protecting the landscape, ecological and amenity values of the subject land, and the wider environment, after which discretionary or restricted discretionary consent is required.

Reasons given for this request include:

- As drafted, the provisions are ambiguous and do not achieve sustainable management in accordance with Part 2 of the RMA.
- The proposed permitted activity rules in PKA.1.5 do not require any consideration of the surrounding environment.
- The section 32 is inadequate and does not address the surrounding environment, and this is borne out in the highly permissive nature of the proposed rules.
- As drafted the requirement for a PDP is toothless and has no sustainable management purpose.

212. PC94B-41b and PC94B-80b – oppose the permitted activity status in PKA.1.5 and seek a restricted discretionary activity status with specific criteria largely relating to effects on neighbouring properties. PC94B-41b further requests that commercial activities should not be able to be included in papakāinga developments. Similarly, PC94B-80b seeks that commercial activities should not be included in papakāinga developments but goes further and requests that they should be considered a discretionary activity, with consent applications for restricted

discretionary activities being free to address the costs issue. Reasons for these requests include:

- Controls proposed should ensure compatibility with the natural qualities and character of the surrounding environment.
- Concerned that PC94B goes too far in easing up on development boundaries. This could unnecessarily affect the character of a community.
- Additional standards should apply to ensure that proposals are more compatible with the surrounding sites and that the amenity of neighbours are not unduly affected.
- Making restricted discretionary resource consent applications free for papakāinga developments would address the costs issue but still allow WDC to appropriately assess developments and apply suitable conditions.

PC94B-90d and PC94B-113c – Discussion

213. I support the relief sought in these submissions to retain the broad intent of the provisions.

Recommendation

214. I recommend that the Commissioners **accept** these submissions.

PC94B-97e&f and PC94B-112e&f – Discussion

215. I support the retention of PKA.1.5.1.a and the requirement for a PDP and the stipulated contents. I recognise specific concerns in this submission regarding the ambiguity or conflict in the indigenous vegetation clearance control in PKA.1.5.1.b.viii. and the impervious surfaces control in PKA.1.5.1.b.x. In response to these concerns and other submissions, I recommend that the controls in the notified provisions PKA.1.5.1.b.iii.-x. be deleted and that instead there be a reliance on the provisions of underlying Environments in accordance with the recommendation in topic M.

216. I do not support the request of the deletion of all controls in PKA.1.5.1.b. While I acknowledge that these controls will limit the flexibility of papakāinga developments on Māori land, in my opinion they are necessary to ensure that appropriate amenity standards are met in terms of objective PKA.1.3.3 and with regard to existing objectives in Chapter 5 – Amenity Values of the WDP.

Recommendation

217. I recommend that the Commissioners:

- **Accept** the request that PKA.1.5.1.a and the requirement for a PDP and the stipulated contents be retained.
- **Decline** the request that all controls in PKA.1.5.1.b be deleted.

PC94B-110c – Discussion

218. I do not support the requested amendment to PKA.1.5.1 to extend the permitted activity status to land under General Title where an ancestral link has been identified. The option of a

permitted activity status for General land owned by Māori was assessed in the section 32 Evaluation Report [see paragraph 158 in **Appendix A**]. I consider that a discretionary activity status should remain for General Land owned by Māori for the reasons outlined in the section 32 Evaluation Report.

Recommendation

219. I recommend that the Commissioners **decline** this submission.

PC94B-41b, PC94B-75b, PC94B-77c PC94B-79b and 80b – Discussion

220. I do not support the change in activity status in PKA.1.5 from permitted to either controlled or restricted discretionary. Controlled and restricted discretionary activity statuses were considered and assessed in the section 32 Evaluation Report [see section 4.5.4 and paragraph 149 onwards in **Appendix A**]. I consider that the permitted activity status should remain for the reasons outlined in the section 32 Evaluation Report.

221. However, I do see merit in providing a more prescriptive permitted development threshold as requested in the submissions. In response to these submissions and other submissions:

- I recommend the deletion of PKA.1.5.1.b.iii – x. and in Topic M that the underlying Environment provisions shall apply in PKA.1.2 Eligibility Rule. As a result, the provisions (such as bulk and location requirements) of the underlying Environment would apply with the special allowances specified in PKA.1.5.1.
- I recommend a density limit for papakāinga developments and more specifically a new PKA.1.5.1.b.iii. which provides a restriction of one residential unit per 2,000m^2 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 for each site classified as Māori land which will provide more certainty to neighbouring owners and to Māori land owners in terms of the development potential of adjacent Māori land. In some cases, the underlying Environment provisions may allow a more permissive density allowance than the 1 residential unit per 2,000m^2 net site area allowance that I have recommended. For instance, the Living 1 Environment allows density of one residential unit per 500m^2 net site area when connected to services. The intention of the PKA provisions is to remove barriers to papakāinga developments and not accidentally create new ones, therefore I recommend a new clause PKA.1.5.2 which states that "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"

222. In my view, the amended provisions strike an appropriate balance between providing an enabling planning framework for papakāinga developments, while ensuring that suitable

standards are met in accordance with the requirements of the objectives and policies, section 32 of the Act and Part 2 matters.

Recommendation

223. I recommend that the Commissioners:

- **Decline** the request to make papakāinga developments controlled or restricted discretionary activities.
- **Accept** in part requests to provide a more prescriptive permitted development threshold and recommend that the following changes are made:

PKA.1.5.1 Permitted Activities

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.

P. PKA.1.6 Discretionary Activities

Submission Information

224. 13 submissions were made with regard to the PKA.1.6 Discretionary Activities provisions.

225. PC94B-113a – supports PKA.1.6 and seeks that it be retained as is.

226. Four submission points support the provisions but seek specific amendment:

- PC94B-90k – request reference to those activities considered discretionary under PKA.1.5.2 and PKA.1.6 and also include reference to other of the parts of the WDP where assessment criteria can be found. The submission states that it is assumed that activities that are considered discretionary activity pursuant to PKA.1.5.2 have no relevant assessment criteria that must be addressed.
- PC94B-90l – request an additional sub clause in PKA.1.6.2.d which requires demonstration of consultation with owners of adjoining multiply owned Māori land without management structures. The reason given is that Far North District Council have experienced issues with an application for 15 dwelling papakāinga housing where the process of consulting with adjoining multiply owned Māori land blocks has proved difficult for the applicant.
- PC94B-97g and PC94B-112g – while from different submitters, both of these submissions are identical. They generally support this provision although request further definition of General land owned by Māori and ideally request that this should be considered as a permitted activity while a discretionary activity status is retained for other land.

227. PC94B-02a, PC94B-23a and PC94B-30a – did not state whether they support or oppose PKA.1.6 but rather seek clarity as to who in WDC would confirm the ancestral link for General land owned by Māori. These submissions challenged the expert knowledge that the WDC may perceive to hold in making such a determination.

228. PC94B-13f, PC94B-15a, PC94B-17e, PC94B-20a and PC94B-56f – generally oppose PKA.1.6 and seek that it be deleted. Reasons for these submissions include:

- Such land is unidentifiable to existing and potential landowners that are likely to be affected by a papakāinga development.
- Guidelines and standards need to be specified, to prevent lowering to an unacceptable level.
- The provision is discriminatory towards other general landowners.

PC94B-113a – Discussion

229. I support this submission to retain PKA.1.6 and recommend that PKA.1.6 is retained notwithstanding consequential changes outlined in other topics (Topic A – Additional Controls and Topic B – Commercial and Industrial Activities).

Recommendation

230. I recommend that the Commissioners **accept** this submission.

PC94B-90k – Discussion

231. I consider that assessment criteria are not necessary for discretionary activities considered pursuant to PKA.1.5.3. I consider that a discretionary activity status is appropriate because it allows WDC to consider a range of matters on a case by case basis and is consistent with the direction of the new WDP format advanced under the rolling review. In my view, the objectives and policies in PKA.1.3 and PKA.1.4 provide sufficient guidance to direct appropriate consideration of applications for discretionary activities pursuant to PKA.1.5.3.

232. With regard to the assessment criteria in PKA.1.6.2, I consider that it is necessary to ensure that papakāinga developments on General land owned by Māori as defined in the Te Ture Whenua Māori Act 1993, appropriately consider the historical reasons why the land was transferred to General title and why it should be considered as ancestral Māori land. The identification of this ancestral connection is integral to the PKA provisions with policy PKA.1.4.1 stating:

> "To limit papakāinga development to ancestral Māori land that is administered under the Te Ture Whenua Māori Act 1993."

233. PKA.1.6.2 acknowledges that some land may have lost its status as Māori land, and that there is a process via the MLC to return it to Maori freehold land title. I do not support the request in PC94B-90k to include reference to the discretionary activities under PKA.1.5.3 in PKA.1.6 because as outlined these provisions deal with separate matters.

Recommendation

234. I recommend that the Commissioners **decline** this request.

PC94B-90l – Discussion

235. I do not support the request for an additional sub clause in PKA.1.6.2.d which requires demonstration of consultation with owners of adjoining multiply owned Māori land without management structures. While I can understand the concerns expressed in this submission point, it does not provide sufficient detail on how such a process would work. In my opinion, the notification process under the RMA provides a suitable procedure for notifying these parties should a resource consent be required.

Recommendation

236. I recommend that the Commissioners **decline** this request.

PC94B-97g and PC94B-112g – Discussion

237. I do not support requests in these submissions to make papakāinga developments on General land owned by Māori permitted activities. The option of a permitted activity status for General land owned by Māori was assessed in the section 32 Evaluation Report [see paragraph 158 in

Appendix A]. I consider that a discretionary activity status should remain for General Land owned by Māori for the reasons outlined in the section 32 Evaluation Report.

238. With regard to the request of further definition of "General land owned by Māori" it is highlighted that PKA.1.6.1 specifically states "as defined in the Te Ture Whenua Māori Act 1993." Section 4 of the TTWMA defines general land owned by Māori as:

> "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"

Recommendation

239. I recommend that the Commissioners **decline** these submissions.

Discussion

240. PC94B-02a, PC94B-23a and PC94B-30a – my response to these submission points is that the determination of an ancestral link will be reliant on the evidence submitted by the applicant and consultation with the MLC. There is a defined process via the MLC to return such land to Maori freehold land title. The proposed papakāinga provisions acknowledge this and it is anticipated that approval of discretionary resource consents pursuant to PKA.1.6.1 will be heavily dependent on the MLC process. If an applicant for discretionary resource consent on General land owned by Māori identifies concerns about the capacity of WDC staff to evaluate the ancestral link, the applicant then has the option pursuant to PKA.1.9 of requesting that the application is considered and determined by an Independent Commissioner(s) with expertise in tikanga Māori and planning.

Recommendation

241. I recommend that the Commissioners **decline** these submissions.

PC94B-13f, PC94B-15a, PC94B-17e, PC94B-20a and PC94B-56f – Discussion

242. I do not support the remaining submission points requesting the deletion of PKA.1.6. A discretionary activity status for General land owned by Māori is the status quo under the existing provisions [see PKH.2 in **Attachment 2**]. PKA.1.6 provides more context and guidance on the assessment of applications for papakāinga development on General land owned by Māori. In my opinion, a discretionary activity status is appropriate given that such land is not immediately identifiable from Land Information New Zealand titles and as it will allow case by case consideration of all matters including effects on the surrounding environment and adjoining properties. Any application for discretionary resource consent would be subject to the standard notification tests under the RMA, and a decision would be made on a case by case basis as to whether neighbours should be notified or not, the same process that would be applied to any other land-use consent.

Recommendation

243. I recommend that the Commissioners **decline** these submissions.

Q. PKA.1.7 Non-complying Activities

Submission Information

244. Five submissions were made with regard to PKA.1.7 non-complying activities.

245. PC94B-43e seeks an addition to PKA.1.7 as follows:

> "Any Papakainga developments which directly and significantly effects land which is designated as environmentally sensitive or has significant biodiversity and ecosystems shall be a non-complying activity."

246. PC94B-15b seeks the total deletion of PKA.1.7 stating that guidelines and standards need to be specified, to prevent lowering to an unacceptable level.

247. PC94B-97h, PC94B-112h and PC94B-113e – support the provision and seek that it be retained as drafted.

PC94B-43e & PC94B-15b –Discussion

248. As notified, PKA.1.7.1 outlines that "on all other land not specified above, papakāinga developments shall be a non-complying activity." This is the same as the status quo in the existing papakāinga provisions [see **Attachment 2**].

249. I do not support the inclusion of an additional component to PKA.1.7.2. In my opinion, the criteria proposed in the submission PC94B-43e is ambiguous (as the "designation" of land is not specified) and ultimately unnecessary. In my opinion existing underlying Environment provisions and District Wide and Resource Area provisions that would apply to papakāinga developments already provide suitable controls for environmentally sensitive sites.

250. I do not support the deletion of PKA.1.7.1 as requested in PC94B-15b. In my view, it is important that a non-complying activity status be specified for papakāinga developments on all other land, as the objectives and policies only envisage papakāinga developments taking place on ancestral Māori land.

Recommendation

251. I recommend that the Commissioners **decline** these submissions.

PC94B-97h, PC94B-112h and PC94B-113e – Discussion

252. I support the retention of PKA.1.7 as notified.

Recommendation

253. I recommend that the Commissioners **accept** these submissions.

R. PKA.1.8 Transfer of Powers

Submission Information

254. Eleven submissions were made with regard to the Transfer of Powers provisions in PKA.1.8.

255. PC94B-97i, PC94B-112i and PC94B113f – support the provision and seek that it be retained as drafted. PC94B-97i and PC94B-112i request that the intention should be to allow the transfer of

powers to hapu associated with the lands, as opposed to Iwi Boards (it is presumed that this refers to "iwi authorities" as defined under the RMA").

256. The remaining eight submission points opposed PKA.1.8 and generally sought that it be deleted from the proposed provisions or that PC94B be withdrawn in its entirety. Reasons for their opposition included:

- WDC should not exclude the public from participating in the management of the powers to determine papakāinga developments.
- WDC has no right to transfer powers that impact the wider community.
- Any transfer of powers would represent an unlawful conflict of interest and could result in corruption.
- Decisions should be made by an independent panel with suitable expertise on Māori matters.

Discussion

257. Section 33 of the RMA allows a council to transfer powers, duties and responsibilities to iwi authorities. This provision has been in the RMA since its inception and has yet to be utilised with respect to transferring powers to iwi authorities. Section 33(4) details a specific process that must be followed in order to determine if a transfer of powers can take place:

> "*(4) A local authority shall not transfer any of its functions, powers, or duties under this section unless—*
>
> *(a) it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and*
>
> *(b) before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and*
>
> *(c) both authorities agree that the transfer is desirable on all of the following grounds:*
>
> *(i) the authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty:*
>
> *(ii) efficiency:*
>
> *(iii) technical or special capability or expertise.*"

258. PKA.1.8 as notified simply reiterates that a transfer of powers is available subject to the requirements of section 33 of the Act. It does not provide the opportunity for the transfer of powers to take place without the mandatory requirements of section 33 being adhered to. In my view, the concerns expressed by opposing submitters are all addressed in the mandatory process outlined in section 33. I maintain that there is merit in retaining PKA.1.8 as drafted because informs iwi and hapu that WDC actively encourage applications to utilise the RMA transfer of power provisions for the determination of papakāinga developments in accordance

with the regulatory methods outlined in section 7.5.1 of Chapter 7 Tangata Whenua Values of the WDP.

Recommendation

259. I recommend that the Commissioners:

- **Decline** all submissions seeking the deletion of PKA.1.8.
- **Accept** all submissions seeking the retention of PKA.1.8 as drafted.

S. PKA.1.9 Decision Making

Submission Information

260. Ten submissions were made with regard to PKA.1.9 Decision Making.

261. PC94B-80e and PC94B-113g – support PKA.1.9 and seek that it be retained as notified.

262. PC94B-97j and PC94B-112j – support PKA.1.9 but requested the reconsideration of the words "and Planning" in PKA.1.9.1. These submissions are identical and reason that the change is justified as all Commissioners require accredication under section 39 of the RMA which necessitates a robust knowledge of Planning, so there is no justification in the reference to "and Planning".

263. The remaining six submissions oppose PKA.1.9 and generally seek that it be deleted from the proposed provisions. Reasons for these requests include:

- Duly elected Councils cannot co-opt random unelected persons to vote or take decisions on their behalf.
- WDC should be the one dealing with every Resource Consent application that is applied for, not passing some on to iwi for iwi.
- WDC would be in breach of the common law requirement for public decision-making to be procedurally fair and without bias.
- The provision represents a conflict in interest. Decisions made by iwi can directly affect other ratepayers without the ratepayers being able to put in any objects for or against.

Discussion

264. All Independent Commissioners require accreditation under section 39B of the RMA which necessitates the completion of the Ministry for the Environment's "Making Good Decisions" course. The training is provided for councillors, community board members and independent commissioners and includes the completion of ten modules over two days and an assessment to be completed within one month post attendance. These modules cover a number of matters, including ethics, principles of RMA decision making, considerations relating to Māori and hearing procedures. While I acknowledge that an understanding of Planning supports these modules, it does not necessarily mean that an Independent Commissioner who completes the training has the necessary expertise in Planning. Therefore in my opinion, the term "and

Planning" should remain in PKA.1.9.1 as it is important that any Independent Commissioner(s) who consider an application for resource consent for a papakāinga development pursuant to PKA.1.9.1 have knowledge and experience in both tikanga Māori and Planning.

265. Submissions opposing PKA.1.9.1 generally do so on similar grounds to opposing the entire plan change and other provisions such as PKA.1.8 Transfer of Powers. The general theme inherent in the majority of these opposing submissions is the issue of fairness. This issue has already been canvassed extensively previously in this report (see section D. Fairness), so to avoid unnecessary repetition I provide the following key points below summarising my position on the matter.

266. The RMA provides the ability for elected councils to select and delegate Independent Hearings Commissioners to make decisions on resource consent applications. WDC does this by identifying Independent Commissioners in lists for both resource consents and plan changes in its Delegations Manual. These lists are updated periodically. WDC can appoint an Independent Commissioner outside of the approved list where the Planning Committee makes a specific resolution.

267. As noted previously, all Independent Commissioners require accreditation which necessitates the completion of the MfE Making Good Decision course. Therefore in my view, any accusation of bias are unfounded as Independent Commissioners are required to follow fair decision making procedures in order to maintain their accreditation. All Commissioner decisions are subject to appeal rights to the Environment Court.

268. WDC has acknowledged that it may not have appropriate in-house expertise and knowledge to adequately consider tikanga Māori in the consideration of resource consent applications for papakāinga developments. This was an issue that was identified by Māori during pre-notification consultation. PKA.1.9.1 gives the option to applicants for resource consent for papakāinga developments to request that the application be considered by an Independent Commissioner(s) with expertise in tikanga Māori and planning. In my view, this provision means that (when requested by applicants) it is more likely that decisions will be seen to appropriately take into account tikanga and the relevant requirements of the RMA.

269. Overall on the basis of the above, I recommend that PKA.1.9.1 remain as drafted.

Recommendation

270. I recommend that the Commissioners:

- **Decline** submissions seeking the deletion of PKA.1.9.
- **Decline** submissions seeking the deletion of "and Planning" in PKA.1.9.1.
- **Accept** all submissions seeking the retention of PKA.1.9 as notified.

T. PKA.1.10 Advice Note

Submission Information

271. Two submissions (PC94B-97k and PC94B-112k) were made with regard to PKA.1.10 Advice Note, both of which supported the provision and sought that it be retained.

Discussion

272. No further comment is required.

Recommendation

273. I recommend that the commissioners **accept** these submissions.

U. Definitions

Submission Information

274. Four submissions were made with regard to definitions.

275. PC94B-02d, PC94B-23d and PC94B-30d – seek clarity as to what is considered to be papakāinga with specific regard to a small cabin used occasionally on the submitters' land.

276. PC94B-04a – seeks clarity around the ancestral link and requests that uninterrupted ownership be proven for General land owned by Māori.

PC94B-02d, PC94B-23d and PC94B-30d – Discussion

277. There is no definition of papakāinga development in the proposed PC94B provisions. The reason for this is that 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 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."[8]

278. In response to the clarification requested regarding the construction of a cabin on Māori land, I consider that it would not constitute papakāinga development as it would not constitute development of a communal nature in accordance with the above, but this would need to be assessed on a case by case basis.

Recommendation

279. I recommend that the Commissioners **decline** these submissions.

PC94B-04a – Discussion

280. PKA.1.6.1 specifically states that General land owned by Māori is "as defined in the Te Ture Whenua Māori Act 1993." For clarity, section 4 of the TTWMA defines General land owned by Māori as:

[8] This underlined amendment is recommended in paragraph 183.

"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"

281. I see no merit in providing further clarification or definition for this term as requested in the submission as a statutory definition already exists.

Recommendation

282. I recommend that the Commissioners **decline** this submission.

V. General Submissions – Access, Control of Māori Land & Engineering Matters

Submission Information

283. This topic relates to general submissions that do not fall within the previous topics.

284. PC94B-08a and PC94B-16a – made requests regarding access. PC94B-08a requests that appropriate access is available to identified sites to ensure that reticulation is a viable option for papakāinga housing proposals. The submitter (Northpower) states that it would like to support papakāinga development in an efficient and effective manner. PC94B-16a seeks the addition of a new clause "before any papakāinga developments proceed the legal [access] must be formed and in use". This submission describes an existing situation at Pataua South where there is a legal paper road but whanau use an illegal track over DOC land.

285. PC94B-60a – requests that there should be no control of Māori land as it was given to Māori by Tupuna and WDC have no right to have a say in how it is used.

286. PC94B-12b and PC94B-24b – relate to requests relating to engineering matters. PC94B-12b requests that the provisions ensure that land and access has the carrying capacity to cope with the proposed papakāinga development likewise sewerage, water, electricity telephone. PC94B-24b requests that all roading, retaining and drainage requirements be met as it is a major concern from multiple housing in Church Bay.

PC94B-08a and PC94B-16a – Discussion

287. In my opinion, any concerns regarding access will be addressed in the statement from a suitably qualified and experienced professional provided to support the PDP pursuant to PKA.1.5.1.a.vi.

Recommendation

288. I recommend that the Commissioners **decline** these submissions.

PC94B-60a – Discussion

289. While I understand the concerns expressed in this submission, the RMA does give the WDC powers to impose controls on the development of Māori land. In my view, the proposed provisions strike an appropriate balance in terms of providing flexibility for papakāinga developments while ensuring that appropriate standards are met in accordance with the objectives policies and other considerations under the RMA.

Recommendation

290. I recommend that the Commissioners **decline** this submission.

PC94B-12b and PC94B-24b – Discussion

291. In my opinion any concerns regarding the matters raised in this submission will be addressed in the statement from a suitably qualified and experienced professional provided to support the PDP pursuant to PKA.1.5.1.a.vi.

Recommendation

292. I recommend that the Commissioners **decline** these submissions.

W. Corrections

Submission Information

293. One submission (PC94B-90j) was included in the topic corrections in the summary of submissions, although a number of submissions categorised in other topic headings also referenced corrections. The submission requested amended cross references to other provisions in PKA.1.5.2 and PKA.1.6.2.

Discussion

294. I support the requested corrections and also recommend that a number of other cross-references are amended as well. These errors are the result of the proposed provisions being changed to match the standard format of the new WDP. These errors require amendment to ensure that the provisions can be suitably understood and applied correctly.

Recommendation

295. I recommend that the Commissioners **accept** the submission and recommend the following amendments to the proposed provisions.

PKA.1.5 Permitted Activities

2. 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 Discretionary Activities

2. When assessing discretionary applications pursuant to PKA.1.6.1a and b above the assessment shall include (but is not limited to):

…

c. In the case of PKA.1.6.1b 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.

PKA.1.9 Decision Making

1. Except for areas subject to a transfer of powers, any applicant for resource consent for a 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.

8.0 Conclusions and Recommendations

296. After carefully considering the submissions and further submissions received in relation to each topic, I recommend that Plan Change 94B be amended to the extent detailed in the preceding sections of this report and as illustrated in **Attachments 5.** I further recommend that those submissions and further submissions that request the recommended changes be accepted in whole or in part, and that all other submissions be declined.

AUTHOR

David Badham
Senior Planner
Barker & Associates

ATTACHMENT 1 - Statement of Experience and Qualifications

David Badham

My name is David Badham. I am a Senior Planner at Barker and Associates. I hold a Bachelor of Planning with Honours (1st Class) from the University of Auckland. I have been a Full Member of the New Zealand Planning Institute since April 2015.

I have been employed in various resource management positions in local government and private companies since graduating in 2010. My predominant experience has been in statutory policy and resource consent planning in the Whangarei and Auckland regions, with additional experience working as an Environmental Adviser in Queensland, Australia and as an Iwi Liaison / Resource Management officer for Ngāti Whātua Ōrākei in Auckland. My experience includes processing and reporting on resource consent applications, district plan formulation and policy advice for the Whangarei District Council, preparation of Assessment of Environmental Effects, monitoring and compliance of consent conditions in operational mining environments and providing planning advice for iwi organisations.

I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. 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 position.