Proposed Plan Change 94B – Papakāinga Provisions (PC94B) to the Whangarei District Plan

Recommendations of the Hearing Panel

14 February 2017

Contents

List of Abbreviations

Discretionary Activity	DA
General land owned by Māori	GLOBM
Heritage New Zealand Pouhere Taonga	HNZPT
Independent Hearings Panel	The Panel or Panel
Heritage New Zealand Pouhere Taonga Act 2014	HNZPTA
Māori Land Court	MLC
Non Complying Activity	NCA
Northland Regional Council	NRC
Operative Whangarei District Plan	WDP
Operative Regional Policy Statement	RPS
Papakāinga Development Plan	PDP
Permitted Activity	PA
Proposed Plan Change 94B Papakāinga Provisions	PC94B
Resource Management Amendment Act 2013	RMAA2013
Resource Management Act 1991	RMA
Restricted Discretionary Activity	RDA
Te Ture Whenua Māori Act 1993	TTWM Act
Whangarei District Council	WDC

1. Summary of the Recommendations

The Independent Hearings Panel (the Panel) recommends:

(a) Proposed Plan Change 94B Papakāinga Provisions (PC94B) to the Whangarei District Plan (WDP) is approved subject to the amendments described below in section 8 and contained in the Panel's recommendation version of the Plan Change Document [Attachments 1 and 2].

(b) That the submissions and further submissions be accepted, accepted in part or rejected according to the reasons set out in this recommendation report.

In summary our recommendation is that Council confirms the Plan Change subject to the amendments set out in Attachments 1 and 2 and addressed below. We note that we have adopted many of the changes recommended by the reporting planner Mr Badham, who comprehensively addressed all submissions in his section 42A and 32AA reports and in his Reply Statement (addressing the evidence heard at the hearing). Our recommendations are based on those in the Council's S32, 32AA, S42A reports, Mr Badham's detailed Reply Statement, the legal advice received by the Council, and the submissions and submitters' evidence presented or tabled at the hearing.

In summary the main changes from the notified plan change provisions are:

- That the underlying Environment Provisions of the WDP apply to papakāinga developments;
- That a Restricted Discretionary Activity (RDA) (notified as a Discretionary Activity (DA)) status be applied to papakāinga developments on general land owned by Māori (GLOBM) where the land is subject to proceedings before the Māori Land Court (MLC) to change the land from general title to Māori freehold land, or on GLOBM where an ancestral link has been identified;
- That RDA status (rather than full discretionary) be applied to papakāinga developments that cannot meet the permitted papakāinga development standards;
- That provision for places of assembly and commercial and industrial activity as part of papakāinga developments be retained but that such provision be clarified and limited to those activities directly associated with the communal living nature and function of the papakāinga;
- That the cumulative floor area of commercial and industrial activities be limited to 500 m^2;
- That a residential dwelling density limit of one residential unit per 2000 m^2 of net site area be applied;
- That rules about the transfer of powers and the use of independent hearings commissioners (which are already provided for in the Resource Management Act 1991 (RMA)) be changed to advice notes.

A tracked change version of PC94B Papakāinga Provisions (Attachment 1) forms part of our recommendations and enable the above changes to be more easily identified. A "clean" version incorporating our recommended amendments is attached as Attachment 2.

2. Delegation

The Panel, Greg Hill (Chair), Willow-Jean Prime and Russell De Luca, were delegated the responsibility by the Whangarei District Council (WDC) to hear and make recommendations on PC94B pursuant to section 34A of the RMA.

3. Process Matters Relevant to PC94B

Date of public notification of PC94B 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 date	21 November 2016
Council closing statement posted[1]	16 December 2016
Hearing closed	16 December 2016

A total of 126 submissions and 33 further submissions were received.

The submission from Federated Farmers (Northland Province) - PC94B-114 was received on 2 June 2016, two days after the submissions closing date. At the hearing the Panel resolved to accept this late submission pursuant to sections 37 and 37A of the RMA having considered:

(a) The interests of any person who, in its opinion, may be directly affected by the extension or waiver; and

(b) The interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan.

Also in terms of section 37A (c) – to avoid unreasonable delay - we note that there has been no delay due to the late submission.

Further submissions were received from Te Matapihi He Tirohanga Mo Te Iwi Trust (X-PC94B-031, 032 and 033). This submitter did not make an initial submission on PC94B, but we accepted these further submissions under Schedule 1 clause 8 of the RMA on the basis that the submitter represents a party with an interest greater than the general public.

4. Overview of Plan Change 94B

In 2009 WDC started a two-phase project to incorporate provisions for papakāinga into the District Plan. Phase One was the development of the objectives and policies for papakāinga together with provision for papakāinga housing as a Discretionary Activity (DA). That Plan Change became operative on 28 April 2011. We understand that those provisions were developed in response to the significant barriers encountered by Māori trying to establish papakāinga developments on their ancestral land.

At the time of the Phase One Plan Change, Council indicated that Phase Two (implementation methods, mainly rules, relating to papakāinga) would be introduced by a further plan change; being PC94B. Accordingly, PC94B only comprises implementation methods and does not include a review of the already operative objectives and policies relating to the provision of papakāinga.

The significance of this is that the existing Objectives and Policies are not part of PC94B and are therefore not able to be altered through this plan change process. Moreover, and importantly, the rules subject of this plan change must not be contrary to or inconsistent with the already operative objectives and policies.

We note that a comprehensive section 32 (and 32AA) evaluation has been undertaken by the Council to confirm the appropriateness of PC94B. section 32(1)(a) of the RMA requires an examination of the extent to which the objectives of a plan change achieve the purpose of the RMA. In this instance, the Phase One papakāinga objectives have already been settled and assessed as achieving the purpose of the RMA. The following purpose statement was developed for PC94B:

(a) Provide opportunities for Māori land owners to develop and live on their ancestral land;

(b) Develop guidelines and standards for the Papakāinga Development Plan (PDP) process as is foreshadowed in the existing papakāinga provisions.

The proposed plan change text that was notified is summarised as:

- Chapter Title – The chapter title was proposed to be changed from “Papakāinga Housing” to “Papakāinga.” This was supported by consequential changes to the Description and Expectations section, with this section expanded to discuss the issues and approach provided throughout the chapter.

[1] On WDC website

- Eligibility Rule for Papakāinga – The existing eligibility rule was proposed to be replaced by clauses that refer to the application of the papakāinga provisions with regard to other provisions in the WDP.
- Permitted Activities – Permitted Activities (PA) status was proposed for papakāinga developments on Māori freehold land administered under the Te Ture Whenua Māori Act 1993 (TTWM Act) provided that a PDP is submitted and certain controls were met. This included the requirement for a statement from a suitably qualified and experienced professional regarding site servicing requirements. Any papakāinga development that could not comply with the PA requirements would become a DA.
- Discretionary Activities – Discretionary Activities (DA) status was also proposed for papakāinga developments on GLOBM where the land is subject to proceedings before the MLC to change the land from general title to ancestral Māori land, or on GLOBM where an ancestral link has been identified.
- Non-Complying Activities – Non Complying Activities (NCA) papakāinga developments on all other land was proposed to be a Non-Complying Activity.
- Transfer of Powers – A provision was 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.
- Decision Making – The plan change proposed that applicants for resource consent may request that the application be heard by an Independent Commissioner(s) with expertise and qualifications in tikanga and Mātauranga Māori and resource management.

5. Statutory Considerations

5.1 Section 32 and section 32AA

PC94B was notified on 5 April 2016 and has been considered under the provisions of the RMA as amended by the Resource Management (Simplifying and Streamlining) Amendment Act 2009. PC94B has also been prepared and evaluated in accordance with section 32 of the RMA as amended by the RMA Amendment Act 2013. The key RMA provisions for consideration of a District Plan Change are Part 2 and sections 32, 72 to 76 and Part 1 of the First Schedule to the Act.

Before notifying a proposed plan change, the Council is required to prepare an evaluation report in accordance with section 32 of the RMA. Such an evaluation report must, generally, examine whether the proposed objectives of the plan change are the most appropriate way to achieve the purpose of the RMA, and whether (in this case) the rules and other methods of the plan change are the most appropriate way to achieve the objectives.

In summary, section 32 seeks to ensure that the costs and benefits of proposed plan provisions are considered and that the proposed controls are justified. Each objective proposed has to be examined with regard to the extent to which it is the most appropriate way to achieve the purpose of the RMA. This examination must take account of the benefits and costs of the proposed policies, rules or other methods and the risk of acting, or not acting, if there is uncertain or insufficient information about the subject matter of those policies, rules or other methods2. Any rules or other methods should be aimed at achieving the objectives and policies.

The Council completed an evaluation of PC94B in accordance with sections 32 and 32AA of the RMA as part of this plan change.

We note that an evaluation in terms of section 32 is ongoing, that the hearing itself forms part of the section 32 process, and that a further evaluation (section 32AA) must be undertaken prior to any decision to confirm the appropriateness of PC94B.

In his S42A report Mr Badham specifically referenced and addressed the section 32 evaluation report undertaken by the Council. Section 32 matters were also addressed in more general terms in response to submissions received to PC94B.

[2] Section 32(4)

In our view the section 32 and section 32AA reports, and our findings having heard all of the evidence (this report), have appropriately assessed the relevant provisions of section 32 and 32AA; in particular the rules and their effectiveness in:

(a) Providing for papakāinga development to meet the purpose of the RMA (section 5) - i.e. to enable Māori to provide for their social, economic, and cultural well-being and for their health and safety;

(b) Recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, a matter of national importance in the RMA (section 6(e)), while:

- Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

The Panel is required to include in its recommendations a further evaluation of the proposed plan change in accordance with section 32AA of the RMA. This evaluation is only for the changes that the Hearings Panel recommends be made and is undertaken at a level of detail that corresponds to the scale and significance of the changes. The entire hearings process and the Panel's deliberations have constituted its evaluation for the purposes of section 32AA of the RMA.

Section 32AA - Requirements for undertaking and publishing further evaluations, requires:

(1) A further evaluation required under this Act—

Importantly it also states at (2)

To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).

In terms of section 32AA of the RMA we largely rely on Mr Badham's section 32AA report and his Reply Statement as referenced above, as well as this report which addresses our reasons and recommendations in sufficient detail to demonstrate that a further evaluation has been undertaken, pursuant to subsection 2 of section 32AA – i.e. noting that this report also constitutes our section 32AA report. Subject to the amendments we have recommended to the plan change provisions, and for the reasons set out below, we consider that the plan change process satisfies the RMA section 32 and section 32AA requirements.

6. Who We Heard From

The following people appeared at the hearing:

Council Officers	David Badham	Consultant Planner
	Melissa McGrath	Team Leader District Plan, Policy and Monitoring
	Lisa McColl	Support Assistant – Policy (Minute preparation)

Submitters	Raewyn Messham and Tom Messham
	Jade Kake and Fred Saddler – Ngati Hau Trust Board and Te Matapihi, Kaumatua
	Frank Newman and Bob Syron for Landowners Coalition Inc
	John Blackwell - Federated Farmers: Northland
	Janet Dickson
	Gary Stables
	Robin Grieve
	Juliane Chetham, Bernadette Aperahama, Richard Morrell and Jared Pitman - Patuhahakeke Te Iwi Trust Board and Te Huinga
	Christina Hau
	Simon Reiher, Cato Bolam Consultants, representing the late John Harrison

A letter was tabled from Transpower (Rebecca Eng - dated 18 November 2016) advising that it would not be appearing at the hearing as it supported Mr Badham's recommended changes to Rule PKA 1.5 in relation to the concerns raised by Transpower in its submission.

7. Consideration of Submissions

7.1 Recommendations on Submissions

The RMA does not require a Council to make individual decisions on each and every submission or relief sought. This is set out in Schedule 1 – Preparation, Change, and Review of Policy Statements and plans. Clause 10 states (in part):

Decisions on provisions and matters raised in submissions

1. *A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.*
2. *The decision—*
   - *(a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to —*
     - *(i) the provisions of the proposed statement or plan to which they relate; or*
     - *(ii) the matters to which they relate; and*
   - *(b) may include —*
     - *(i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and*
     - *(ii) any other matter relevant to the proposed statement or plan arising from the submissions.*
3. ***To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.***

(Emphasis added)

The Hearings Panel has grouped all of the submissions as set out in the following sections of this report. While individual submissions and submission points may not have been expressly referred to, all submission points have nevertheless been taken into account when making our recommendations.

8. Findings and Reasons of the Submissions by Topic

8.1 Whole Plan Change – Support/Opposition

Relevant submissions

06a, 07a, 12a, 13a, 25a, 26a, 27a, 28a, 29c, 31a, 32b, 33d, 34a, 34e, 35a, 36a, 37a, 39a, 40a, 43g, 44a, 45a, 50d, 53a, 54a, 56a, 57a, 58a, 76a, 78a, 81a, 84a, 85a, 88a, 90a, 92a, 93a, 94a, 96a, 100a, 101a, 103a, 105a, 108a, 109a, 110a, 111a, 116b, 117b, 118b, 119b, 120b, 121b, 122b, 123b, 124b, 125b, 126b, 127b

Principal issues raised

- Support PC94B as it gives effect to the RMA by recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahitapu and other taonga (section 6e).
- Oppose PC94B:
    - That WDC should not be making provision for any individual group of individuals in order to carry out development.
    - That PC94B undermines the rule of law, which requires that all citizens are treated equally.
    - That papakāinga provisions should apply to all properties or not at all.
    - That there should be one law for all not based on racial preferences.
    - The proposed provisions would adversely affect property values of neighbouring land.

Planner's recommendation

Mr Badham recommended accepting those submissions in support while acknowledging that he had also recommended some changes to the notified provisions.

With respect to the submissions opposing the entire plan change, and its underlying rationale, on the basis that it was unfair to non-Māori, Mr Badham recommended that they be rejected or accepted in part to the extent that the provisions were appropriate but that some changes to address the concerns of some of these submitters were appropriate.

The overall recommendation of Mr Badham was that the submissions opposing the whole of PC94B be rejected and the plan change be approved subject to his various recommended amendments discussed elsewhere in this recommendation report and that the above submissions be accepted, accepted in part or rejected as appropriate.

Finding and reasons

In making and implementing this Plan Change, the Council must give effect to the purpose and principles of the RMA as contained within Part 2 of the Act. Its purpose, as set out in section 5, is to promote the sustainable management of natural and physical resources by enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the Reasonably foreseeable needs of future generations; and
(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Moreover, as a matter of national importance the Council must "*recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga*" (section 6e). The Council must also take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi (section 8).

A number of submitters considered that 'special' provisions' should not be provided to Māori. They believed that such provisions based on race were discriminatory and undemocratic and that the whole of the plan change should be withdrawn. Alternatively, if more enabling provisions were to be introduced, then they should be available to all property owners. The representatives of the Landowners Coalition Inc accepted that there were 'special' RMA provisions for Māori, but considered that these only extended to greater consultation with respect to plan developments.

We were not persuaded by these submissions. As we have set out above, the RMA explicitly requires that recognition be given to and that provision be made for "*the relationship of Maori and their culture and traditions with their ancestral lands"* (section 6e). Moreover people and communities are to be able to provide for their social, economic, and cultural well-being and for their health and safety (section 5). We find that the provisions of PC94B do this by enabling papakāinga developments on ancestral Māori land; in a manner consistent with Maori culture and traditions.

As set out in the reporting officer's reports (and the basis of the plan change that introduced the now operative objectives and policies for papakāinga developments) 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 favored by British laws. As a result, there are some fundamental differences regarding the ownership and management of Māori and non-Māori land. For instance, Māori land generally has multiple owners and is subject to the requirements of the MLC in respect of the administration and development of that land.

Due to the complexities associated with Māori land there are inherent barriers to its development. These were discussed at length in section 3.2 and more specifically section 3.2.3 of the section 32 Evaluation Report as well as in evidence presented by submitters at the hearing. In summary, this includes:

- The status of Māori land;
- Multiple ownership;
- Difficulties in obtaining finance given and the costs associated with resource consent applications.

Again, recognising and addressing these issues is part of the rationale behind PC94B and how it gives effect to the relevant provisions of the RMA.

A number of submitters were concerned that if PC94B was approved, there would potentially be a significant number of papakāinga developments, and these would have significant adverse effects on neighbouring properties and on the environment. Again we are not persuaded by these arguments as grounds for deleting the PC94B provisions in their entirety.

In terms of the numbers of papakāinga developments, Mr Badham set out in his section 42A report at section 2 - Background (paragraph 4)

> *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.*

There is little Māori land remaining within Whangarei District and this adds to the need to provide for Māori to support their aspirations through development on Māori freehold land or GLOBM. One of the ways that this can be achieved is through the integration of mātauranga and tikanga based around communal facilities and spaces, providing a range of housing and other enterprises while responding to the values of Māori associated with the site or the wider landscape. This is the purpose of PC94B.

Given the small percentage of land and the relative size (medium) of the blocks of Māori land holdings we believe it is unlikely that there would a significant number of particularly large papakāinga developments. However, the possible or likely number is not considered by us to be a relevant resource management issue. In this context what is relevant is whether the provisions will safeguard the life-

supporting capacity of air, water, soil, and ecosystems and avoid, remedy, or mitigate any adverse effects of activities on the environment (as required by section 5 of the RMA).

We accept that some changes are required to the papakāinga development provisions to address effects on neighbouring properties and on the environment. These are addressed later in this recommendation report and are contained in the actual PC94B provisions that we have recommended (refer Attachments 1 and 2).

We also note here, and set out more fully in section 4 Overview of Plan Change 94B, that the objectives and policies to provide for papakāinga developments were developed by an earlier plan change which was made operative on 28 April 2011. We understand that those provisions were developed in response to the significant barriers encountered by Māori in trying to establish papakāinga developments on their ancestral land.

For the reasons set out in this section and elsewhere in this recommendation report, the Panel finds that PC94B will give effect to Part 2 of the RMA. In recommending PC94B, the Panel has recommended some changes to the provisions from those notified. These, and the reasons, are addressed in more detail below. This section deals more broadly with those submissions seeking that the plan change be either supported, or deleted in its entirety or substantially altered so it would apply to all land (regardless of ownership) as well as those suggesting that 'special' provisions should not be applied to Māori.

The Regional Policy Statement and the WDP (including the objectives and policies relating to papakāinga) acknowledge the importance of Part 2 of the RMA, particularly the relevant section 6 Matters of National Importance and the principles of the Treaty (section 8). The District Plan must give effect to the Regional Policy Statement (section 75(3) of the RMA).

The existing objectives for papakāinga developments as set out in section PKH.3 of the WDP are:

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

The rules of PC94B are required to give effect to these objectives. We find that the rules we have recommended, will meet this requirement.

8.2 Scope of Term "Papakāinga" and Chapter Title (PKA.1)

Relevant submissions

02d, 04a, 13e, 17d, 23d, 30d, 56e, 97a, 108b, 109c, 112a, 113a

The term "papakāinga' as referred to in PC94B (see PKA.1.1 – Description and Expectations) includes residential activities, places of assembly, community facilities, education, recreation and enterprise activities.

Principal issues raised

- Whether papakāinga developments should be limited to housing;
- Whether in respect of non-residential activities, there should be a requirement for a direct link to "communal housing" or other requirement that there be an "association" of some sort. See also under 8.7.5 below;

- Whether in respect of non-residential activities, notification to the owners of adjacent neighbouring land should be required.

Planner's recommendation

Mr Badham noted in paragraph 92 (p23) of his section 42A report that the Operative District Plan already recognises that papakāinga developments are not solely limited to housing. Existing policy PKA.1.4 specifically refers to non-residential activities. This wider scope of the nature of papakāinga was confirmed through consultation prior to notification of PC94B.

However, Mr Badham recommended the following amendments to PC94B:

- That the words "*associated with communal housing*" be added to the second sentence of the second paragraph of PKA.1.1 (Description and Expectations), and
- That there be a PA control (PKA.1.5.b.i) requiring that: "*Any places of assembly and commercial or industrial activities are associated with papakainga*."

Other minor wording amendments are also recommended.

Findings and reasons

We generally agree with Mr Badham's recommendations and associated reasons. However, we find that further refinements to the wording of the relevant provisions are appropriate. These are set out in the following sections of this report and in our recommended changes to the PC94B provisions as set out in Attachments 1 and 2.

PKA.1.1 is an explanatory statement and the various matters referred to in that section are not rules. The Panel accepts that papakāinga developments are not just residential in nature, and PKA 1.1 states this by saying "*papakāinga developments may not solely focus on providing for housing*". However any provision requiring "*an association*" should be in the rules themselves e.g. under PKA.1.5.

For this reason we have not accepted Mr Badham's recommendation to include the words "*associated with communal housing*" but we accept that some '*limit*' needs to be placed on the nature and scale of commercial and industrial activities and places of assembly. We have recommended amendments to the rules to achieve this. The reasons for this are set out in section 8.7.5 below - Non-residential activities to be *"associated with"* papakāinga.

In relation to submissions 97a, 112a, 113a, these support the change in wording of the Chapter title from "Papakāinga Housing" to simply "Papakāinga". We find that the amended title wording is appropriate given the recognised scope of the term "Papakāinga", in particular that it includes more than just residential activities. The submissions are accordingly accepted.

8.3 Description and Expectations (PKA.1.1)

Relevant submissions

38a, 90b, 97b, 112b

Principal issues raised

- Whether reference should be made to avoiding effects on adjoining properties and adjacent residential communities;
- Whether reference should be made to MLC processes and to the provisions of regional statutory planning documents.

Planner's recommendation

That the submissions be declined on the basis that sufficient detail is provided through the existing PC94B text. Mr Badham does however recommend minor wording changes to the effect that non-residential activities are to be "*associated with communal housing".*

Findings and reasons

We concur with Mr Badham's recommendation and again note that the matters raised are more specifically covered elsewhere in this recommendation report, including recommendations for further

text amendments (refer to the amended PC94B provisions set out in Attachments 1 and 2) as well as through the addition of the following new text in section PKA.1.1 so as to more explicitly explain how in our view PC94B gives effect to the purpose and principles of the RMA as set out in Part 2:

> *"Providing for papakāinga meets the purpose of the RMA (section 5) in that it will enable Māori to provide for their social, economic, and cultural well-being and for their health and safety.*
>
> *"It also recognises and provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; a matter of national importance in the RMA (section 6(e))."*

We therefore find that the submissions should be rejected or accepted in part through the inclusion of the foregoing additional text.

8.4 General Concerns Relating to Effects on Neighbouring Properties

Relevant submissions

05a, 09a, 10b, 11a, 13d, 14a, 17a, 17b, 18a, 18b, 21b, 22a, 24a, 29b, 32a, 33c, 34d, 43f, 46b, 47b, 48b, 48f, 49b, 49f, 50b, 51b, 52b, 55b, 56d, 61b, 62b, 63b, 64b, 65b, 66b, 67b, 68b, 69b, 70b, 71b, 72b, 73b, 74b, 81b, 83b, 87a, 95a, 98a, 99a, 102b, 106b, 107b, 116a, 117a, 118a, 119a, 120a, 121a, 122a, 123a, 124a, 125a, 126a, 127a, 128a

Principal issues raised

There was widespread concern expressed by many individual submitters and the Landowners' Coalition (represented by Messrs Newman and Syron) as to what they saw as the uncertainty of the effects of the proposed provisions on neighbouring properties and the wider environment. This included the standard of development likely to occur and the potential for unacceptable environmental effects (including reverse sensitivity) to occur.

A particular concern regarding the potential for reverse sensitivity effects to be created in respect of the operation of legitimate farming activities was raised by Northland Federated Farmers (represented by Mr Blackwell). In summary, the principal issues raised were:

- PC94B inadequately addresses actual or potential adverse effects (including reverse sensitivity) on neighbouring properties, existing rural character and amenity values, and existing adjacent communities;
- Impacts on social and economic well-being may be significant;
- There is insufficient certainty as to the types of development which may occur and the associated effects created;
- Adjoining property owners should be notified of any development proposals; and
- That PC94B should be rejected in its entirety.

Planner's recommendation

Mr Badham recommended that the requests for additional safeguards be accepted in part by amending the provisions relating to eligibility (PKA.1.2) and permitted activities (PKA.1.5) in accordance with his other recommendations which we refer to elsewhere in this recommendation report. However, he considered that the requests to reject PC94B in its entirety and to require notification of all papakāinga development proposals to adjoining property owners should be rejected (noting that this issue has also been addressed in the section above on the Whole Plan Change – Support/Opposition).

Findings and reasons

We acknowledge the wide ranging concerns raised in respect of potential impacts on neighbouring land and adjacent communities, and consider those concerns to be genuinely held. We find that as notified, PC94B contains insufficient safeguards to adequately address actual or potential environmental effects. However, in our view the more specific recommended amendments to PC94B as set out elsewhere in this recommendation report (refer also to the attached amended PC94B provisions) appropriately address the concerns raised and that it is not necessary to withdraw the plan change in its entirety.

8.5 Application of Underlying District Plan Provisions (PKA.1.2 – Eligibility)

Relevant Submissions

13b, 17c, 31b, 33b, 34c, 36b, 38a, 39b, 43a, 46a, 47a, 48a, 49a, 50a, 51a, 52a, 55a, 56b, 61a, 62a, 63a, 64a, 65a, 66a, 67a, 68a, 69a, 70a, 71a, 72a, 73a, 74a, 83a, 90c, 97c, 97f, 97l, 101b, 102a, 106a, 107a, 112c, 112l

The WDP contains provisions of the following nature:

- District Wide (not mapped);
- Resource Areas (overlay maps);
- Environments (mapped zones).

Under PC94B, the District Wide and Resource Area provisions apply to PKA proposals but the underlying Environment provisions do not.

Principal Issues raised

- The need to provide maximum flexibility for papakāinga developments (therefore none of the underlying District Plan provisions should apply);
- That papakāinga developments have the potential to create adverse environmental effects (therefore all of the underlying District Plan provisions should apply).

Planner's recommendation

- In addition to application of the District Wide and Resource Area provisions, the underlying Environment Provisions (including those relating to subdivision) should apply;
- Where a PKA provision is more restrictive than the corresponding underlying Environment Provision, the latter should apply;
- PKA provisions should not apply in the Business 4 Environment (because of potential reverse sensitivity effects).

Findings and reasons

We reiterate our earlier finding that the notified provisions of PC94B afford insufficient protection to neighbouring properties and to the wider environment. We again acknowledge the many submissions which raised legitimate concerns about the actual and potential adverse effects which may be created by papakāinga developments under the PC94B provisions as notified.

We therefore agree with the planner's foregoing recommendations. As noted by Mr Badham in paragraph 106 (p26) of his section 42A report and more fully in section M (pages 39-42 of that report), application of the underlying Environment Provisions will address (at least to some extent) many of the submissions requesting greater control over papakāinga developments so as to provide better protection to neighbouring land and the environment generally.

We also find that because of the potential for reverse sensitivity effects to be created, the PKA provisions should not apply within the Business 4 Environment.

8.6 Objectives and Policies (PKA.1.3 and PKA.1.4)

Relevant submissions

13c, 33b, 38c, 41a, 43b, 56c, 80a, 97d, 110b, 112d, 113b

The objectives and policies contained in PKA.1.3 and PKA.1.4 form part of the WDP. PC94B does not propose any changes to those operative provisions.

Principal issues raised

The relief sought in submissions ranges from retaining the existing objectives and policies through to requesting various additional wording relating to the status of land on which papakāinga developments may occur as well as to effects on neighbouring properties and communities.

Planner's recommendation

That the submissions be declined because they fall outside the scope of PC94B.

Findings and reasons

We agree with Mr Badham's recommendation for the reason that there is no scope to amend the existing objectives and policies contained in PKA.1.3 and PKA.1.4. In that respect, we refer to our comments on this matter in the introductory "overview" section of our decision report.

8.7 Permitted Activities (PKA.1.5)

Relevant submissions

08a, 12b, 16a, 25b, 29a, 31c, 34b, 36c, 38d, 41b, 43c, 46c, 47c, 48d, 49c, 49d, 50c, 51c, 52c, 59a, 60a, 61c, 62c, 63c, 64c, 65c, 66c, 67c, 68c, 69c, 70c, 71c, 72c, 73c, 74c, 75a, 75b, 77b, 77c, 79a, 79b, 80b, 80c, 82a, 83c, 85b, 89b, 90d, 90e, 90f, 90g, 90h, 90i, 91a, 97e, 97f, 102c, 106c, 107c, 110c, 112e, 112f, 113c, 114a

PA status applies only to proposals on Māori freehold land.

Principal issues raised

- Whether PA status is appropriate or whether controlled or restricted discretionary status would be more suitable, particularly if there is a subjective judgement involved in determining compliance with the relevant standards or criteria;
- Controlled or restricted discretionary status would provide greater protection to neighbouring land;
- Whether PA status should also apply to GLOBM and/or other Māori-owned land (e.g. Māori reserves, Treaty settlement land) where an ancestral link can be demonstrated;
- Whether non-residential activities (in particular commercial or industrial) should require a resource consent;
- Whether the various controls applying to permitted activities are appropriate or require amendment.

Planner's recommendations

That PA status for papakāinga be limited to Māori freehold land only.

Add the following new or amended PA provisions to PKA.1.5:

- That the PDP be accompanied by certification from a "*Chartered* Professional Engineer or Independently Qualified Person" confirming that the land is able to be adequately serviced in accordance with Council requirements;
- That the PDP identify any recorded historic heritage sites or items located on the subject land;
- That places of assembly and commercial or industrial activities be required to be "associated with" papakāinga;
- Cumulatively, land occupied by commercial and industrial activities shall not exceed 500 m2;
- A maximum density requirement of one residential unit per 2000 m2 of net site area shall apply;
- Where a PA control is more restrictive than the corresponding control in the underlying Environment, the latter control shall apply.

At the conclusion of the hearing, we sought further advice from Mr Badham (supported as appropriate by legal opinion) on whether it would be appropriate to extend PA status to GLOBM and other Māori-owned land such as Māori Reserves and Treaty Settlement Land, where an "ancestral link" is identified. Mr Badham's subsequent advice (as contained in section 18 of his supplementary evidence in response to matters raised during the hearing and supported by legal submissions from Council's lawyer) was

that extending PA status to such other land is either not appropriate or is unnecessary for the following principal reasons:

- Much of such land, in particular GLOBM, is not readily identifiable and therefore the potential adverse environmental effects of such a provision are unable to be assessed in advance;
- A subjective judgement would be required in determining whether an ancestral link existed.

Mr Badham further advised that in his opinion RDA status for papakāinga developments on other such land would be appropriate.

Findings and reasons

8.7.1 General

As noted in Mr Badham's section 42A report, there were a number of submissions of a general or wide-ranging nature opposing PC94B in its entirety and/or requesting additional controls aimed at what the submitters see as providing better protection to adjacent land and the environment generally. As already noted, some of the amendments suggested above, in particular the application of the underlying Environment provisions and the proposed additional PA controls referred to below, will go at least some way to addressing such general concerns.

8.7.2 PA status

One of the aims of PC94B is to remove, to the extent practicable, the financial and other barriers which Māori face when endeavouring to live on and develop their ancestral lands. In the context of a District Plan, the activity status providing the least barrier is "permitted" as no resource consents are required for such activities. However, "PA" status should only be applied to situations where the following apply:

- The District Plan provisions providing PA status are clear and require no subjective judgement on the part of those administering the plan;
- Any actual or potential adverse environmental effects of the activity provided for can be adequately controlled through quantifiable standards and controls.

We find that PA status can be applied to papakāinga developments in a manner which meets both of the foregoing requirements, but only on Māori freehold land because unlike GLOBM and other land owned by Māori, Māori freehold land is readily identifiable and by its nature demonstrates the existence of an ancestral link. This finding is subject to the underlying Environment provisions of the District Plan applying to such land and the PA standards applying to papakāinga developments being amended or added to in accordance with Mr Badham's above recommendation as well as through further refinements to the rules which we consider to be appropriate.

8.7.3 Application of least restrictive District Plan PA provisions

Mr. Badham recommended in his section 42A report that we add the following rule to PKA 1.5:

> 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.*

We do not find this rule to be appropriate in RMA section 32 terms for the following reasons:

Mr. Badham states at paragraph 221 (page 46) of his section 42A report that:

> *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."*

While we agree that the removal of barriers to enable papakāinga developments is appropriate, the recommended rule essentially undermines the otherwise careful regulatory approach to such activities which has been developed under PC94B. This is particularly so in terms of on-site servicing requirements, generous setbacks (including for places of assembly and commercial or industrial activities) and low residential density. Given the enabling nature of the provisions of PC94B, it is our view that the particular papakāinga development rules should apply to all papakāinga developments.

While the papakāinga development rules may not 'fit' as well in the underlying urban environments (e.g. Living and Business), it is clear to us from the section 32 and 42A reports that the proposed provisions have been developed largely for non-urban sites. Notwithstanding this we accept that unless otherwise stated they will also apply to urban environment sites.

As noted by Mr. Badham in his section 42A report (paragraph 4, page 4), virtually all of the Māori land eligible to be developed for papakāinga as a PA is situated outside of urban areas, with concentrations in the Western fringes of the District, and along the Eastern coastline of the District.

Also, at paragraph 10 (page 7) Mr Badham states:

> *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.*

It therefore follows that eligible sites not "*currently zoned Countryside or Coastal Countryside Environment"* make up a very small proportion of the total sites on which papakāinga development could occur as a PA. Should a papakāinga development seek to establish on one of these blocks (likely to be in the living or business environments), it should, in our view, be required to comply with the papakāinga development rules. This is due to the very different nature of these environments to those of the countryside environments. Moreover, we believe it is not good planning to have an exception based rule which would in essence apply to just 16 properties.

If a papakāinga development cannot meet the specified PA standards then in accordance with our findings in section 9.4 of this report, a RDA consent would be required, with the matters of discretion limited to the particular matter(s) of non-compliance. This is different from the notified PC94B provisions, under which a full DA consent would be required (refer Rule PKA 1.6 2.).

In our view the provisions which we recommend will provide a more suitable planning framework to enable papakāinga developments while also ensuring that any adverse effects are appropriately avoided, remedied or mitigated.

8.7.4 Certification as to servicing

We agree that it is appropriate for the serviceability of a papakāinga development to be certified by a suitably qualified and experienced professional person. We find that because the PDP servicing requirements are all of a civil engineering nature, a Chartered Professional Engineer would be an appropriate person.

In making this finding, we note that the Institution of Professional Engineers of New Zealand (IPENZ) maintains an up to date register of chartered professional engineers which is able to be viewed on the IPENZ website. Therefore there is no subjective judgement involved in confirming the credentials of such a person.

However, that situation does not apply to the term "*Independently Qualified Person*". While this term is used elsewhere in a number of different contexts (including the Building Act) its use relies on there being an approved list of such persons held by the appropriate organisation or authority such as an industry group or a district council.

We are not aware of any such approved list held by the WDC which would be suitable for use in the context of administering a rule in the District Plan. We therefore find that in the context of a PDP, persons able to provide certification as to serviceability should be limited to Chartered Professional Engineers only.

We note further at this point that in evidence presented on behalf of his client, the late John Harrison, Mr Reiher (himself a registered surveyor) considered that a "registered professional surveyor experienced in land development" would be a suitable person to provide the necessary certification. However, we find that the wording suggested by Mr Reiher contains its own element of subjectivity and

as we have already found, all of the PDP servicing requirements are of a civil engineering (rather than surveying) nature.

8.7.5 Non-residential activities to be *"associated with"* papakāinga

A number of submitters raised concerns about the provisions for the establishment of non-residential activities under the proposed papakāinga provisions, in particular those providing for commercial or industrial activities. Other possible non-residential activities include places of assembly and education, recreational and community facilities. The main concern was that these could enable a wide range and scale of activity that may not be appropriate in all situations and may have significant adverse effects (e.g. noise, traffic, dust, visual and amenity effects).

Mr Badham accepted that these activities should be limited to those associated with the communal residential nature of papakāinga development (accepting, as we do, that papakāinga developments may not be of a solely residential nature) as well as limiting their scale.

He recommended the following changes to the provisions (underlined):

PKA 1.1 – Description and Expectations

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.

PKA 1.5 Permitted Activities

b. The following controls are met:

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

iii Commercial or industrial activities shall not cumulatively exceed 500 m^2 in gross floor area on any one site.

We agree with the direction of these suggested amendments for the reasons set out by Mr Badham, and as expressed by the submitters. However we do not think that as recommended rule b i is certain enough in terms of the words "associated with papakāinga". We therefore recommend the following rule to make it clear that while it is appropriate to have a range of activities, those other activities are essentially to support the communal living aspect of the papakāinga, rather than being stand-alone activities in their own right.

b The following controls are met:

i. Any places of assembly and commercial or industrial activities are established in conjunction with and are directly associated with residential activities within the papakāinga.

In support of the amendment to the rule we note the following District Plan definitions for non-residential activities:

Commercial Activity

means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, markets, showrooms, restaurants, take-away food bars, professional, commercial, and administration offices, service stations, motor vehicle sales, visitor accommodation, the sale of liquor and parking areas associated with any of the above

Industrial Activity

means the processing, manufacturing, fabricating, packing or storage of goods or other ancillary activities, and includes servicing and repair activities.

Place of Assembly

means any land or buildings used principally for public or private assembly of people, worship, educational, recreational, social, ceremonial and spiritual activities; for meditation and functions of a community character; and includes churches, church halls, church yards and marae complex.

We accept and support papakāinga developments being able to have a range of activities to support their communal nature and functions. However, we find that it would be inappropriate to permit stand-alone non-residential activities (even with the setback and size limitations specified) such as: intensive livestock farming, mineral extraction, animal boarding, panel beating, metal working, spray painting, motor vehicle repairs, outdoor storage of motor vehicles, motor vehicle manufacturing or dismantling, fibre glassing or laminating, meat processing; and food irradiation (noting that these are expressly not permitted activities in the Living 1, 2 and 3 Environments - Table 36.3.1) as well as restaurants, take-away food bars, service stations, motor vehicle sales and the sale of liquor.

While we did not hear specific evidence on this, it is our view from those who presented in support of papakāinga developments that these types of activities are not envisaged by groups wanting to develop papakāinga. Notwithstanding this, the wider public and those who own properties adjoining land which may be developed under the papakāinga provisions, need to be aware of the nature, scale and extent of potential papakāinga development. Accordingly we have recommended the amended rules that we have set out in the PC94B document (refer Attachments 1 and 2).

8.7.6 Historic heritage

Mr Badham recommends that the submission from Heritage NZ be accepted in part by the inclusion of a new provision requiring the PDP to identify any recorded historic heritage sites or items within the subject land. Other requests, including a requirement that an application include an archaeological assessment, are not supported. We agree with Mr Badham and find accordingly.

8.7.7 Number/density of residential units

Mr Badham recommends that the submissions requesting a control of this nature be accepted in part through his recommended new rules requiring compliance with the underlying Environment provisions (refer section 8.5 - PKA.1.2 above) and the inclusion of a new residential density requirement (refer section 8.7 – PKA.1.5). He considers that other requested additional controls are unnecessary. Again, we agree with Mr Badham for the same reasons and find accordingly.

8.7.8 Notification to owners of adjacent properties

Subject to the foregoing, we find that there is no necessity for neighbouring landowners to be notified of a papakāinga development which complies with the above PA standards (as amended above) and that "PA" status for such proposals is therefore appropriate.

8.8 Discretionary Activities (PKA.1.6)

Relevant submissions

2a, 13f, 15a, 17e, 20a, 23a, 30a, 56f, 90k, 90l, 97g, 112g, 113d

PC94B contains no RDA's and papakāinga developments on GLOBM are a "full" DA, provided that:

- The land is the subject of an application to the MLC to convert the land to Māori freehold; or
- An "ancestral link" to the land has been identified.

In addition, papakāinga developments on Māori freehold land which do not comply with all PA controls have "full" DA status.

Principal issues raised

- Papakāinga developments should be a PA on all Māori-owned land, subject to there being an identified ancestral link;
- The provision is discriminatory;
- Land which is not Māori freehold land cannot be identified in advance;

- Assessment criteria should be provided;
- Council is not qualified to make a judgement on “ancestral link”.

Planner’s recommendation

That the current DA status applying to GLOBM be changed to RDA and it is demonstrated that:

- “*The papakāinga development would otherwise comply with the PA controls in PKA.1.5* [as amended above].”, and
- there are “*appropriate legal mechanism(s) to ensure the land is maintained in whanau ownership*.”

That papakāinga developments on GLOBM which are unable to comply with the above proposed new RDA criteria have “full” DA status.

Findings and reasons

We agree with the above recommendations. We find that RDA status is appropriate for papakāinga development proposals on GLOBM where all PA standards are met. This is because the matters to which discretion needs to be exercised are limited to those relating to the history of the land and other information relevant to the existence of an “ancestral link”.

We find further that RDA (rather than “full” discretionary) status is appropriate for papakāinga developments on Māori freehold land where one or more of the PA standards are not complied with. Again, the matters to which discretion needs to be restricted in such cases are limited to the effects of the particular non-compliance rather than wider RMA section 104 considerations.

We also find that “full” DA status is appropriate for proposals on GLOBM which do not comply with the recommended new RDA criteria because in our view such proposals should be subject to full assessment under RMA section 104.

As already noted, we sought further advice from Mr Badham and Council’s legal counsel on these matters and their advice is summarised in 8.7 - Permitted Activities (PKA.1.5) above. We note further that the legal advice is that it is not necessary to make separate provision in respect of Māori Reserves or Treaty Settlement land because the underlying status of such land will be either Māori freehold land or GLOBM, thereby triggering the relevant PC94B provisions (as amended in accordance with our above findings).

8.9 Non-Complying Activities (PKA.1.7)

Relevant submissions

15b, 43e, 97h, 112h, 113e

NCA status applies to papakāinga developments on all land not referred to in PKA.1.5 and PKA.1.6.

Principal issues raised

- The need or otherwise to provide specific standards, controls and guidelines so as to ensure unacceptable environmental effects are not created;
- Whether NCA status should be applied to all non-residential activities.

Planner’s recommendation

That no change be made to the notified provisions applying to non-complying activities.

Findings and reasons

We agree with Mr Badham’s recommendation for the following reasons stated in para’s 249-250 (page 51) of his section 42A report:

> *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.*

In addition to the foregoing, we note that RMA sections 104 and 104D provide maximum scope for a full assessment of applications for non-complying activities and hence there is no need to specify standards, criteria or other particular matters of consideration in the District Plan.

We therefore find that as recommended by Mr Badham, there should be no changes made to the notified provisions of PC94B relating to non-complying activities.

8.10 Transfer of Powers (PKA.1.8) and Decision Making (PKA.1.9)

Relevant submissions

04b, 13g, 38e, 41c, 41d, 42a, 42b, 44b, 56g, 80d, 80e, 84c, 97i, 97j, 109b, 112i, 112j, 113f, 113g

As set out in the notified version of the plan change, the above provisions ostensibly have the status of rules and have been submitted on accordingly.

Principal issues raised

The appropriateness of the manner in which the provisions are dealt with in PC94B.

Findings and reasons

The legislative authority in respect of the transfer of powers and the delegation of decision-making are specifically covered under the RMA, through sections 33 and 34A respectively. Particular procedures relating to the exercise of these powers are set out in those sections. Such legislative powers cannot be pre-empted or overridden by provisions in a District Plan.

We therefore find that PKA.1.8 and PKA.1.9 should become advice notes in the same way as the current PKA.1.10.

8.11 Advice Note (PKA.1.10)

Relevant submissions

97k, 112k

Findings and reasons

We accept the foregoing submissions which are in support of the advice note relating to making an application to the MLC for an Occupation Order or Licence to Occupy.

Also, we note and agree with Mr Badham's recommendation in paragraph 20.3 of his Reply Statement evidence that it would be appropriate to include a further advice note advising of a Council guidance document relating to the assessment of evidence for the identification of an ancestral link in respect of a restricted discretionary resource consent application to establish a papakāinga development on GLOBM. Such guidance document should be available once PC94B becomes operative.

8.12 Other Barriers – Development Contributions, Rates and Resource Consent Costs

Relevant submissions

02b, 02c, 15c, 84b, 23b, 23c, 30b, 30c, 97m, 112m, 113h, 115a

Findings and reasons

As noted in paragaphs 130-138 (pp 32-33) of Mr Badham's section 42A report, a number of submissions relate to barriers to papakāinga developments other than those which may be in the District Plan. The submissions refer to other methods the Council could adopt to overcome such barriers, including:

- Being an "active facilitator" of papakāinga developments;
- Providing relief from property rates, resource consent application fees and financial contributions;

- Providing or funding specialist advice.

While they may be worthy of consideration by the Council, we find that all of the foregoing matters fall outside the scope of PC94B and the RMA itself. We are therefore obliged to decline the relief sought in the submissions concerned but note that the various measures suggested are able to be investigated and pursued by Council through its powers and responsibilities provided under other legislation, most notably the Local Government Act 2002.

8.13 Procedural Issues

Relevant submissions

01a, 03a, 21a, 29d, 48e, 49e, 83d, 86b, 87b, 109d

The foregoing submissions are referred to in paragraph's 139-147 (pp 33-34) of Mr Badham's section 42A report where he notes that the matters raised include:

- Insufficient explanatory information provided through PC94B notification process;
- Notification process was confusing and provided unrealistic timeframes;
- Lack of awareness about PC94B on the part of Councillors and landowners.

Findings and reasons

On the basis of the information available to us, we consider that the Council has fulfilled its statutory obligations in respect of the notification of PC94B. In any event, we do not consider it part of our role to investigate these matters.

9. Conclusion

Based on our findings and reasons, and subject to the amendments to the PC94B provisions that we have proposed we recommend that the Council adopt this plan change on the basis that:

1. Subject to the changes we have recommended we are satisfied the statutory requirements of the RMA are met in that:

    a) The amended provisions will be the most appropriate way of achieving the purpose of the RMA, namely:

        - Providing for papakāinga development to meet the purpose of the RMA (section 5) - i.e. to enable Māori to provide for their social, economic, and cultural well-being and for their health and safety,
        - Recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahitapu, and other taonga; a matter of national importance in the RMA (section 6(e)), while
        - Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
        - Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
        - Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

    b) The proposed provisions of Plan Change 94B will be effective in meeting the Operative Plan Objectives (and Policies) with respect to the Papakāinga Provisions while also satisfying the relevant wider objectives and policies of the District Plan.

2. We record that the "relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" is a matter of national importance, which WDC is required to recognise and provide for. PC94B recognises and provides for this relationship.

3. PC94B introduces rules which will provide for the appropriate development of papakāinga without unnecessary regulation.

Accordingly, we recommend that the Council adopt PC94B with the amendments discussed above for all of the reasons given in section 8 of our recommendations.

10 Recommendation

Our overall recommendation is that:

1. PC94B to the WDP be approved subject to the amendments described above and as contained in the amended plan change documents [refer Attachments 1 and 2]. Our reasons are set out above.
2. That the submissions/further submissions be accepted, accepted in part or rejected according to the reasons set out in our recommendation report.

Signed on behalf of the Panel.

Greg Hill - Chairperson - 14 February 2017

Attachment 1: Panel's Recommendation Version of Plan Change 94B (Track Change)

PKA.1

Papakāinga

Attachment 1 - Tracked Change Version

The Panel's recommended changes to the notified Plan Change are

- shown as underlined and/or ~~struck out~~

Index

PKA.1.1 Description and Expectations

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

Providing for papakāinga meets the purpose of the RMA (section 5) in that it will enable Māori to provide for their social, economic, and cultural well-being and for their health and safety. It also recognises and provides for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; a matter of national importance in the RMA (section 6(e)).

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~~. In addition to housing papakāinga may also include activities such as: community ~~facilities~~, education and recreational facilities, places of assembly and ~~enterprise~~ industrial and commercial activities, all of which are directly associated with the communal nature and function of the papakāinga.

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

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

~~Papakāinga developments can be considered on land that is not classified as Māori freehold land.~~ A restricted discretionary activity status is provided for “General land owned by Māori” that is either the subject of proceedings before the Māori Land Court to convert it to Maori freehold land, or where an

ancestral link has been identified. On all other land, papakāinga developments are non-complying activities.

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

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

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

PKA.1

Papakāinga

PKA.1.2 Eligibility

1. The following provisions of the District Plan shall apply to papakāinga developments:
   a. The District Wide and Resource Area objectives, policies and rules.
   b. The underlying Environment provisions, unless otherwise specified in PKA.1.5.
   c. The underlying Environment subdivision provisions.
2. The PKA provisions shall not apply to land located in the Business 4 Environments.
3. ~~The District Wide and Resource Area objectives, policies and rules in the District Plan shall apply to papakāinga developments under the papakāinga provisions below.~~
4. ~~The underlying Environment provisions shall not apply to papakāinga developments under the papakāinga provisions below.~~

PKA.1.3 Objectives

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

PKA.1.4 Policies

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

PKA.1.5 Permitted Activities

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

PKA.1

Papakāinga

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

   i. The location of any residential units.

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

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

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

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

   vi. ~~The PDP is accompanied by a statement from a suitably qualified and experienced professional stating that t~~ 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. The PDP shall be accompanied by a written report and certification to this effect from a Chartered Professional Engineer confirming that this requirement is met.

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

b. The following controls are met:

   i. Any places of assembly and commercial or industrial activities are established in conjunction with and are directly associated with ~~communal function and nature of~~ the residential activities of the 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 500m^2 in gross floor area on any one site.

   iv. The number of residential units per site does not exceed one residential unit per 2,000m^2 of net site area.

   ~~v. 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.~~

   ~~vi. Any signage on site shall relate to activities onsite and shall not exceed 2m^2 per site.~~

   ~~vii. Any artificial lighting shall not exceed 10 lux when measured from the boundaries of the site.~~

   ~~viii. Any activity shall meet the conditions for permitted activities in Appendix 8 Hazardous Substances.~~

   ~~ix. No indigenous wetland shall be destroyed.~~

   ~~x. The destruction or clearance of an area of predominantly indigenous vegetation shall not exceed 500m^2 where it forms a contiguous area of 1.0ha or more.~~

   ~~xi. Habitable buildings are set back at least 500m of a Mineral Extraction Area or the Business 4 Environment.~~

   ~~xii. The creation of impermeable surfaces does not exceed 1,000m^2 cumulative impermeable area (including buildings).~~

~~2. Any papakāinga development on Maori freehold land that cannot comply with the permitted activity criteria in PKA.5.1 shall be a discretionary activity.~~

PKA.1.6 Restricted Discretionary Activities

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

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

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

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

2. Any papakāinga development on Maori freehold land that cannot comply with one or more of the permitted activity standards in PKA.1.5.

3. Matters of discretion

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

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

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

      iii In the case of PKA.1.6.1 c 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.

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

      Note: Refer to guidance document for assistance in demonstrating the adequacy of evidence for the identification of an ancestral link.

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

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

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

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

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

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

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

      ~~vii. The PDP is accompanied by a statement from a suitably qualified and experienced professional stating that the land can be sufficiently serviced in terms of access, water, wastewater and stormwater in accordance with the relevant provisions of the Environmental Engineering Standards 2010 for the type and number of buildings shown on the PDP.~~

b. When assessing restricted discretionary applications pursuant to PKA.1.6.2 Council shall restrict its discretion to any actual or potential environmental effects associated with the matter of non-compliance.

PKA.1.7 Discretionary ~~Non-Complying~~ Activities

1. Any papakāinga development on General land owned by Māori that cannot comply with the restricted discretionary activity in PKA.1.6.1.

PKA.1.8 ~~7~~ Non-Complying Activities

1. ~~On all other land not specified above~~ Papakāinga developments on all other land not specified above. ~~shall be a non-complying activity~~

PKA.1.9 ~~8 Transfer of Powers~~ Advice Notes

1. Transfer of Power

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

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

~~PKA.1.9 Decision Making~~

2. Decision Making

~~Except for areas subject to a transfer of powers,~~ Any applicant for resource consent ~~for a discretionary or non-complying activity~~ pursuant to PKA 1.6 ~~5~~ – PKA 1.8 ~~7~~ can request that the application is considered and determined by an Independent Commissioner(s) with knowledge and experience in tikanga Māori and Planning.

~~PKA.1.10 Advice Note~~

3. Application to the Māori Land Court for an Occupation Order or a Licence to Occupy

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

Attachment 2: Panel's Recommendation Version of Plan Change 94B (Clean)

PKA.1

Papakāinga

Attachment 2 - "Clean" Version

Index

PKA.1.1 Description and Expectations

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

Providing for papakāinga meets the purpose of the RMA (section 5) in that it will enable Māori to provide for their social, economic, and cultural well-being and for their health and safety. It also recognises and provides for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; a matter of national importance in the RMA (section 6(e)).

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. In addition to housing papakāinga may also include activities such as: community, education and recreational facilities, places of assembly and industrial and commercial activities, all of which are directly associated with the communal nature and function of the papakāinga.

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

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

A restricted discretionary activity status is provided for “General land owned by Māori” that is either the subject of proceedings before the Māori Land Court to convert it to Maori freehold land, or where an ancestral link has been identified. On all other land, papakāinga developments are non-complying activities.

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

PKA.1

Papakāinga

PKA.1.2 Eligibility

1. The following provisions of the District Plan shall apply to papakāinga developments:
    a. The District Wide and Resource Area objectives, policies and rules.
    b. The underlying Environment provisions, unless otherwise specified in PKA.1.5.
    c. The underlying Environment subdivision provisions.
2. The PKA provisions shall not apply to land located in the Business 4 Environment.

PKA.1.3 Objectives

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

PKA.1.4 Policies

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

PKA.1.5 Permitted Activities

1. On Māori freehold land as defined in the Te Ture Whenua Māori Act 1993, papakāinga developments are a permitted activity provided that:
    a. A Papakāinga Development Plan(“PDP”) is submitted to Council prior to any application for building consent that identifies and demonstrates the following:
        i. The location of any residential units.
        ii. The location of any structures other than residential units.

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

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

v. The land can be 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. The PDP shall be accompanied by a written report and certification to this effect from a Chartered Professional Engineer confirming that this requirement is met.

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

b. The following controls are met:

i. Any places of assembly and commercial or industrial activities are established in conjunction with and are directly associated with the residential activities of the 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 500m^2 in gross floor area on any one site.

iv. The number of residential units per site does not exceed one residential unit per 2,000m^2 of net site area.

PKA.1.6 Restricted Discretionary Activities

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

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

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

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

2. Any papakāinga development on Maori freehold land that cannot comply with one or more of the permitted activity standards in PKA.1.5.

3. Matters of discretion

   a. When assessing restricted discretionary applications pursuant to PKA 1.6.1 Council shall restrict its discretion to the following matters:

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

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

      iii In the case of PKA.1.6.1 c 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.

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

Note: Refer to guidance document for assistance in demonstrating the adequacy of evidence for the identification of an ancestral link.

b. When assessing restricted discretionary applications pursuant to PKA.1.6.2 Council shall restrict its discretion to any actual or potential environmental effects associated with the matter of non-compliance.

PKA.1.7 Discretionary Activities

1. Any papakāinga development on General land owned by Māori that cannot comply with the restricted discretionary activity in PKA.1.6.1.

PKA.1.8 Non-Complying Activities

1. Papakāinga developments on all other land not specified above.

PKA.1.9 Advice Notes

1. Transfer of Power

Subject to the requirements of section 33 of the Resource Management Act 1991, the WDC is able to transfer its powers to the relevant iwi authority for the rohe in which the land is located.

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

2. Decision Making

Any applicant for resource consent pursuant to PKA 1.6 – PKA 1.8 can request that the application is considered and determined by an Independent Commissioner(s) with knowledge and experience in tikanga Māori and Planning.

3. Application to the Māori Land Court for an Occupation Order or a Licence to Occupy

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