

Part 12
Proposed Plan Change 86B
Rural (Urban Expansion) Living
Environment Zoning

Right of Reply – Council Reporting
Planner

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Attachment

1 Recommended Rule 47.2.12

ROR Attachment

1 Recommended Rule 47.2.12

1.0 Introduction

1. This is **Part 12** of the Right of Reply (**ROR**) report. This part should be read in conjunction with the other **Parts 1 – 12**. This ROR has been prepared by David Eric Badham on behalf of the Whangarei District Council (**WDC**) in response to particular matters raised at the hearings for Proposed Plan Change 86B – Rural (Urban Expansion) Living Environment Zoning (**PC86B**) to the Operative Whangarei District Plan (**WDP**).
2. My Statement of Qualifications and Experience is provided in **Part 12** of the section 42A (**s42A**) evaluation report¹. The opinions expressed in this ROR 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.

2.0 Purpose and Structure of Report

3. This ROR addresses issues that were raised through evidence and in the hearing of submissions. The content and structure of the s42A report has been used with new sections written in blue text. Paragraph numbering within section 3 follows the original s42A number for the s42A content. **Part 12** of the s42A report grouped submissions by topics 'A' to 'C'. This ROR addresses evidence and information presented by a number of submitters in relation to the following topics.
 - A. General Support
 - B. Reverse Sensitivity
 - [Additional discussion on the Dickson's Quarry submission.](#)
 - C. Roothing & Infrastructure
 - [Recommended changes to recommended Rule 47.2.11.](#)
4. Any changes that I recommend as a result of the ROR are highlighted in green in the revised track change version of the plan change provisions which are included as **Attachment 1**. Proposed changes previously recommended in the s42A report are still indicated with ~~strikethroughs~~ representing recommended deletions and underlined writing representing recommended additions.

3.0 Consideration of Submissions and Further Consideration of Evidence

A. General Support

Submission Information

18. The majority of submissions² on PC86B support the proposed rezoning. Reasons for support in these submissions include:

¹ Page 3

² 3/1, 7/1, 22/1, 23/1, 29/1, 90/1, 146/1, 321/1, 331/1, 431/16

- The areas of land to be rezoned are no longer viable for rural production activities.
 - The proposed zoning is the most efficient and effective use of the land.
 - The change will be consistent with existing residential development in the identified areas.
 - There is demand for allotments on the fringe of Whangarei City and there are not enough allotments currently available.
 - Opening up the areas to further residential development will provide employment and a stronger rating base.
 - A number of submitters have raised site specific reasons as support for the rezoning of their land.
19. Other submissions express support but also seek amendment to extend the rezoning to apply to other properties. These submissions have been addressed in the **Part 6** of the s42A report.

Discussion

20. I acknowledge and generally support these submissions supporting the proposed rezoning in PC86B.

Recommendation

21. I recommend that the Commissioners **accept** submission points 3/1, 7/1, 22/1, 23/1, 29/1, 90/1, 146/1, 321/1, 331/1, 431/16, 497/1, 498/1, 501/1, 512/1, and 513/1.

B. Reverse Sensitivity

Submission Information

22. One submission from Dickson's Quarries and Transport Ltd (**Dickson's**)³ raises concerns regarding reverse sensitivity associated with the proposed rezoning of additional L1 and L3 in proximity to Dickson's Quarry. Some of the land proposed to be rezoned falls within the 500m MEA indicative setback. Dickson's seek the following relief:
- Specifically identify that the MEA 500m Indicative Setback line is the trigger which moves land use and subdivision in the L1 and L3 into discretionary or non-complying activity status; and
 - Minimum performance standards to be applied within the MEA 500m setback area to ensure that any construction or alteration of buildings associated with a sensitive activity is required to be designed to ensure identified internal design noise levels. Those levels to be determined by an acoustical expert. It would be appropriate to have this achieved through consequential changes to the Noise and Vibration Chapter.
23. Dickson's submission highlights that these changes are justified to avoid and mitigate reverse sensitivity effects on the operation of their quarry.

³ 178/3 and 4

Discussion

24. The Tikipunga, Glenbervie and Vinegar Hill Structure Plan (**The Tikipunga SP**) outlined a recommended extension of the L1 to the east of the existing village centre, along Ngunguru Road and Sands Road (see pages 46 and 47 of the Tikupunga SP for a summary of this proposed change). The Tikipunga SP also proposed an extension of the L3 to the east of the current L3 to the western boundary of Dickson's Quarry.
25. The proposed rezoning to L1 along Ngunguru Road and Sands Road is assessed in paragraphs 39 – 46 of the s32 Evaluation. The proposed rezoning to L3 on the western side of Clapham Road, eastern side of Sands Road and to the north of Whareora Road is assessed in paragraphs 47 – 55 of the s32 Evaluation. The following is a summary of the s32 analysis:
- There is no provision in the Living Environments requiring resource consent for the construction or alteration of sensitive activities or residential units within 500m of a Mineral Extraction Area (MEAs – it is acknowledged that the term MEA has been recommended to change to QRA in **Part 3** of the s42A report).
 - Some properties proposed to be rezoned L1 and L3 will fall within the 500m setback although only to the outer edge of the 500m setback. The s32 Evaluation considers that this is appropriate as the subject properties are situated toward the outer edge of the 500m buffer and some mitigation measures are available.
 - The Tikipunga SP recommended that properties to the east of Sands and Clapham Road be rezoned to L3. However, Paragraph 54 of the s32 Evaluation did not recommend rezoning the areas closest to Dickson's Quarry to L3 because of the possibility of reverse sensitivity effects on Quarry given that the properties directly adjoin the edge of the Quarry.
26. Dickson's submission has opposed the proposed rezoning in these specific areas within the 500m setback and has requested a trigger within the MEA 500m Setback line as a trigger which moves land use and subdivision in the L1 and L3 into Discretionary or non-complying activity status. I do not support this request for the reasons outlined below.
- This relief would mean that all land use and subdivision in areas currently zoned L1 or L3 would be subject to a consent requirement. I consider that there is a scope issue with this request as it relates to PC86B, as the purpose of PC86B is to review and implement the Urban Structure Plan rezoning proposals and not review the provisions of the underlying Living Environments themselves.
 - I acknowledge that Dickson's⁴ have made a submission on PC102 (Minerals) which seeks to redraft the MEA provisions so that the MEA 500m Indicative Setback is the trigger for Discretionary Activity Status rules in MEA.2.6 and MEA.3.1 (it is acknowledged that new rules and terminology have been recommended to change to QRA in **Part 3** of the s42A report), however that submission does not specify that this should apply to the Living Environments.

⁴ 179/2 – see discussion on this in setback area discussion in Topic D of **Part 3** of the s42A report

- Irrespective of the potential scope issue, consideration was given in the PC102 Minerals s32 Evaluation to the 500m setback applying to the Living Environments (referred to as Option 2, see paragraph 84 and 85 of that document and Table 8). Option 2 was not deemed an efficient nor effective option for achieving the proposed objectives as it would impose unfair restrictions on adjoining landowners. More specifically, the PC102 s32 identified specific costs relating to the potential for such a change to result in a large number of consents being required for alterations to existing lawful activities and the potential to restrict further development on land that already contains residential development or that has already been set aside for more residential development. I agree with this conclusion and would add that as the provisions cannot apply retrospectively to existing residential units or sensitive activities, there would be ad hoc consent requirements which would in my opinion not necessarily result in any real benefit in terms of avoiding reverse sensitivity effects.
- In my view, the 500m setback is an arbitrary figure and does not guarantee that a reverse sensitivity effect will occur in every instance if a sensitive activity or sensitive activities are located within it. Based on the information currently provided by Dickson's, I am not convinced that a reverse sensitivity effect will eventuate should the proposed rezoning go ahead. The proposed rezoning occurs on the outer edge of the 500m setback from Dickson's Quarry on a small number of properties. There are a number of sensitive activities (mainly residential units) already located in proximity to Dickson's quarry and Dickson's have not provided any evidence to demonstrate that these existing residential units are resulting in complaints being received. Dickson's have not provided any evidence that reverse sensitivity effects will eventuate if the proposed rezoning within the 500m goes ahead and if it does, the likely extent of that effect.
- PC86B concluded that the area on the eastern side of Sands and Clapham Road should be rezoned as Rural Production Environment (**RPE**) rather than as L1 or L3 as was initially outlined in the Tkipunga SP. This was done to specifically avoid reverse sensitivity effects. I agree that rezoning these properties directly adjacent to Dickson's Quarry could have an adverse reverse sensitivity effect and support the analysis in the s32 to not rezone them to L3 in PC86B.
- Another option available in response to Dickson's submission, is therefore to similarly not rezone the area of land that falls within the 500m setback from Dickson's Quarry as RPE. I consider that the boundary of these properties with Clapham and Sands Road forms the natural edge for the proposed L1 and L3 rezoning. In my view, it is not an efficient or effective option to rezone parts of these properties as RPE as this will result in split zoning on the properties where the 500m setback overlaps.

27. The second relief sought from Dickson's is a minimum performance standards for internal design noise levels determined by way of an acoustic expert. I do not support this request for the following reasons:

- The submission does not clarify if these minimum performance standards apply to sensitive activities just within the 500m setback from Dickson's quarry, or all sensitive activities within 500m from all MEAs. Based on the way the relief is worded in the submission, I would assume it relates to all MEAs, but the relief is requested under the heading of a submission on PC86B so it is

confusing as to where Dickson's are seeking this relief to apply. This has scope implications as to whether potential further submitters were aware of what Dickson's were seeking.

- The submission does not provide details as to what identified internal design noise level would be appropriate. It is difficult for me to recommend that this be approved without any technical evidence from the submitter as to what internal noise levels they seek.
- There is scant detail of the benefits of this change provided in the submission other than a general reference to reverse sensitivity. If the relief sought was to apply to all sensitive activities within 500m of existing MEAs, then it would capture a number of existing developed urban areas that are already heavily developed with sensitive activities (mainly residential units). As the provisions cannot apply retrospectively, I consider that there will be ad hoc uptake of acoustic insulation and the potential reverse sensitivity benefits are reduced.
- I am concerned about the financial cost of acoustic insulation and the associated effects on building costs and housing affordability. My research⁵ showed that the costs of achieving adequate acoustic insulation would be an estimated at 1-8% of the total cost for a new building, depending on the method and amount of noise insulation required to comply with internal noise levels.⁶ It is estimated that acoustic insulation (double glazing, floor ceiling and wall cladding /fill/lining doors etc) costs approximately \$15,000 per unit and ventilation units costing approximately \$10,000 per unit.⁷ In addition to this there is also the cost of technical design report from acoustics specialists likely required to demonstrate compliance with any internal design limits. In a climate of increasing criticism regarding the effect of planning regulations on the cost of building, it is my opinion that this cost is significant and needs to be given due consideration, especially considering the reduced benefit of requiring acoustic insulation in already developed areas.

Recommendation

28. I recommend that the Commissioners **decline** submission points 178/3 and 178/4.

Evidence and Hearing Information

- B.1 Russell Mortimer has provided expert planning evidence on behalf of Dickson's with regard to this submission point. In short Mr Mortimer has reiterated that the relief sought by Dickson's is appropriate and that the proposed rezoning should not increase the density of development without protecting Dickson's operations from reverse sensitivity.

Right of Reply Discussion

- B.2 The Dickson's submission also relates to the MIN chapter and as such was also addressed in the **Part 3 s42A** report prepared by Lara Clarke. Accordingly, Ms Clarke has addressed this matter in her section D of her **Part 3 ROR**.

⁵ Relating to the now operative Noise and Vibration Chapter and a similar request from the New Zealand Transport Agency to impose acoustic insulation / internal noise requirements along State Highway corridors.

⁶ based on research of other Council's information including " Auckland Council's 2.43 land transport noise – section 32 evaluation for the Proposed Auckland Unitary Plan

⁷ Table D4 of NZS 6806 2010 (Acoustics – road traffic noise – new and altered roads)

- B.3 In the interests of avoiding unnecessary duplication, I have reviewed Ms Clarke's ROR discussion and recommendation on this matter. In summary, Ms Clarke has identified and assessed 5 options in response to the submission of Dickson's and the evidence of Mr Mortimer. She has concluded that option 3, a bespoke provision in QRA.2.1.5, is the most efficient and effective option.
- B.4 Having carefully considered this, I agree with the assessment of Ms Clarke on this matter and confirm that it is also my professional opinion that option 3 represents the most efficient and effective option.

Right of Reply Recommendation

- B.5 I concur with the recommendation made by Ms Clarke in paragraph D.47 the **Part 3** ROR.

C. Roding & Infrastructure

Blampied Submission Information

29. Graeme Blampied⁸ and Jonathan Blampied⁹ have made identical submissions making a number of requests regarding transport matters:
- Clapham Road and Sands Road need to be linked by an appropriately formed metalled or sealed carriageway using the legal road reserve available.
 - The single lane bridge on Clapham Road needs to be replaced by a concrete box-culvert, or similar, on an improved horizontal and vertical road alignment upstream of the existing (i.e. eastwards).
 - The existing Clapham Road sealed carriageway needs to be widened to comply with the Councils own Environmental Engineering Standards for 'local roads'.
 - Revisit the subdivision rules in the Living Environments to give preference to property access by public / Council-maintained roading as opposed to privately maintained common access-ways which are fraught with ongoing complications. One way to address this would be to allow some variety in the width of legal road corridor, carriageway widths and forms of construction under the heading of 'Public Roding'. Mr Blampied highlights that he can expand on this in the hearing.

Blampied Discussion

30. In my view, the requests from the submitters for a formed connection between Clapham Road and Sands Road, a new bridge and widened sealed carriageway are outside of the scope of PC86B. These matters specifically relate to the upgrading and formation of existing roads, which are matters to be addressed by Council's Infrastructure and Services Department (**WDC I&S**) in accordance with Annual Plan processes under the Local Government Act 2002. Therefore, I do not recommend any changes in response to these submissions.

⁸ 90/2 and 3

⁹ 101/1

31. I do not support the submitters' request for a change in the subdivision rules in the Living Environments to give preference to public / Council-maintained roading as opposed to privately maintained common accessways. The submissions have given little evidence to support this request and have not provided any proposed wording or identified what specific rules he would like to see changed. From Graeme Blampied's submission, I understand that the submitters may expand on this in the hearing. However, in the absence of such information, it is difficult for me to recommend any changes in response to the submissions. Notwithstanding the lack of information to support this, I also highlight that the formation widths and construction forms are generally contained in the Environmental Engineering Standards 2010 (**EES**). I understand from **Part 1** of the s42A report that as part of the wider Rolling Review WDC are drafting PC109 Transport. PC109 will review transport provisions, chapter 22 Road Transport policy and update the road hierarchy, parking standards and the EES. This plan change is still being drafted with notification not anticipated until 2018. The submitters concerns will be better addressed through that process.

Blampied Recommendation

32. I recommend that the Commissioners **decline** submission points 90/2 and 101/1.

New Zealand Transport Agency (NZTA) and WDC I&S Submission Information

33. NZTA¹⁰ is generally supportive of rezoning in line with adopted structure plans. It is concerned however that without an indicative roading layout and much of the rezoning being located on or near to the State Highway (Springs Flat/Tikipunga, Maunu) additional pressure will be placed on the State Highway network, affecting its safe and efficient operation as a primary through route. NZTA state that it is important that land use and transport is integrated to ensure that further ribbon development does not occur on to the State Highway network.
34. WDC I&S¹¹ have made the following submissions regarding PC86B:
- PC86B is likely to have impacts on the roading network. WDC I&S have made similar requests as to those made on PC86A regarding the need for a transportation strategy (including indicative road network) to identify the strategic roading needs of the growth areas proposed for rezoning in PC86B. WDC I&S note that this could be done in support of this plan change or the upcoming Transportation Plan Change, in order to provide adequate consideration of the strategic roading layout in these areas and to protect them from inappropriate subdivision and development.
 - WDC I&S are concerned that the 4.5m setback from road boundaries in Living Environments inadequate to protect the potential future widening requirements of arterial road corridors such as Ngunguru Road and Vinegar Hill Road. WDC I&S state that multiple right of way systems onto public roading network can impact on the operation of the roading network and the efficient extension of the reticulated service network.

¹⁰ 453/18

¹¹ 479/10 and 11

- WDC I&S provide specific comments on growth areas in attachment 1 of their submission. I&S state that the cost of roading improvements on a per kilometre basis may be in the order of \$1m-\$2m per kilometre.

NZTA & I&S Discussion

35. In response to submissions relating to Transport on PC86A and PC86B, Council have engaged Don McKenzie from Traffic Design Group to prepare a Transportation Assessment Report (**TAR**) [see **Attachment 1 of Part 11** of the s42A report]. The TAR identifies and assesses the key transportation planning aspects of the plan changes. More specifically, in section 5 the TAR provides a response to the WDC I&S submission discussed above. Mr McKenzie's comments and conclusions in the TAR are referred to throughout this discussion. The discussion within this section is also similar to that in **Part 11** of the s42A report **Topic E**. To avoid unnecessary repetition, reference is made to that Report throughout the discussion below.
36. In my opinion the NZTA and WDC I&S submissions regarding the management and strategic needs of transport infrastructure raises valid concerns and requires a suitable response.
37. In my opinion, the difficulty stems from the fact that the proposed RUEE Living rezoning is not accompanied by any proposed provisions. Rather the areas proposed for rezoning under the PC86B will simply be given L1 or L3 zoning, which already exist under the operative WDP.
38. Land use provisions for the Living Environments are located in in Chapter 38 with subdivision provisions located in chapter 71 of the WDP. As discussed in paragraphs 79-84 of **Part 11** of the s42A report Topic E, I have specific concerns about the transport related rules in Chapter 71. In particular, I consider that there is uncertainty as to how the provisions are applied in conjunction with Appendix 9 and the EES.
39. In my opinion, the issues I have identified with regard to Chapter 71, Appendix 9 and the EES would be best addressed by reviewing these documents collectively and addressing any inconsistencies or issues in a holistic manner. It is my opinion that there is no scope to consider changes to these documents as they would fall outside of the scope of the rural plan changes which focus on the RA. Furthermore, changes to the provisions relating to the L1 and L3 would also affect existing areas in the District zoned L1 and L3, which would be unfair on landowners in these areas given that changes to these provisions were not outlined in the public notice for the rural plan changes.
40. I understand from section 4 of **Part 1** of the s42A report, that as part of the wider Rolling Review Council are drafting PC109 Transport and PC88 Urban Area. PC109 will review transport provisions, chapter 22 Road Transport policy, updating the road hierarchy, parking standards and the EES 2010. PC88 will review all of the urban zoning, residential (including the Living Environments) and Business Environments for Whangarei City and Ruakaka. These plan changes are still being drafted with notification anticipated in 2018.
41. This is 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. This is particularly apparent with the RUEE Living rezoning which proposes to rezone land currently zoned as Countryside Environment on the periphery of Whangarei City to an urban zoning of either L1 or L3. As such, given the current Countryside Environment zoning, this change has been considered under the rural plan

changes, rather than the urban area plan changes which are still under consideration. While this presents challenges in terms of achieving integrated resource management, Council has an obligation under section 79 of the RMA to review its District Plan every 10 years, and Council has already adopted a rolling review method.

42. Notwithstanding Council's intention to review provisions and provide greater direction on transportation, the ESS 2010 and the Urban Area in 2018, the question remains as to what happens in the interim. In my opinion, there are gaps in terms of the consideration and assessment of rules in Chapter 71, Appendix 9 and the EES 2010 as they relate to transportation infrastructure and more specifically, future subdivision and development in the proposed RUEE Living rezoned areas. In the absence of review of these provisions, I consider that a temporary measure is required until such time as Council can properly address these issues in PC109 and PC88.
43. Accordingly, I propose the inclusion of a new rule 47.2.12 in Chapter 47 Road Transport Rules [see **Attachment 1**] by a new "Living Overlay" on the Planning Maps which indicates the RUEE Living areas and where rule 47.2.12.a would apply. This rule specifies a restricted discretionary activity consent requirement for the construction of two or more residential units or the subdivision of two or more allotments in the "Living Overlay". This threshold has been chosen as it is acknowledged that even one additional allotment or residential unit in the wrong location can jeopardise the future operation or extension of the roading network.
44. Mr McKenzie has outlined support in section 6.2.1 of the TAR for the recommended rule 47.2.12 as it relates to the RUEE Living rezoning:

"In this regard it is considered that the proposed restricted discretionary activity status and the matters for assessment are appropriate from a transportation point of view and will contribute to achieve of safety and effectiveness of the wider transport network not just the ability for roads to accommodate generated traffic movements."

45. In proposing the above, I also requested that Mr McKenzie consider whether the recommended Rule 47.2.12 should be supported by a mandatory Integrated Transportation Assessment (ITA) information requirement. Mr McKenzie's response and my opinion on the matter is already provided in paragraphs 90 and 91 of the Transport subtopic in **Topic E of Part 11** of the s42A report. In summary, a mandatory ITA requirement is considered too onerous.
46. In proposing Rule 47.2.12 [**Attachment 1**] I have considered the following options pursuant to s32AA.
Status Quo – Retain Countryside Environment Zoning / Revert RPE
47. In my opinion, retaining the status quo is not an efficient and effective option. The purpose of PC86B is to provide for projected population growth in the Whangarei District by reviewing and implementing the urban structure plan rezoning proposals for Living Environments in areas that are serviced or are planned to be serviced; and that avoid significant hazards and significant natural, cultural and historic features.
48. In my opinion, retaining these areas as Countryside Environment or reverting them to RPE under the rural plan changes will not provide for the projected population growth of the District as is outlined in the Council's capacity modelling, and will not achieve the purpose of PC86B, the objectives and policies of the RA and the relevant objectives and policies of higher order documents (such as the RPS, Rural Development Strategy and Urban Growth Strategy) and Part 2 of the RMA.

49. Mr McKenzie has also assessed this option and drawn the following conclusion in section 6.2.2 of the TAR:

“From a transportation perspective the existing provisions do not achieve further enhancement of the efficiency of the transport network to cater for additional land use activities in an appropriate manner. There are considered to be large extents of the current District transport system that could safely and effectively cater for additional transport activity. Therefore the opportunity to enhance the effectiveness of the transport network would be lost by retaining the status quo..”

Operative Provisions

50. In my opinion, the Operative provisions are not the most efficient and effective option.
51. As discussed earlier in this report, there are existing provisions in Chapter 71 (e.g. Rule 71.3.8, 71.3.9 and 71.3.11), Appendix 9 and the EES 2010 which address transportation considerations, however in my view these existing provisions are unclear in terms of their application and inadequate to address the concerns raised in the I&S submission. Mr McKenzie has reiterated these concerns about the operative provisions:

“As with the discussion and assessment provided above with respect to the RUEE Environment, the notified provisions for the Living Environments contain no consideration of the transport elements/criteria described above. The Council’s Environmental Engineering Standards 2010 (EES) which refer to future development and the relevant transport considerations, while relevant for the consideration within discretionary activity status activities are relatively vague and non-specific.

It is preferred, especially with respect to the interests of the District transport network (including NZTA interests in relation to the State Highways), that effects of activities be considered on the wider transport network rather than simply on roads.

It is therefore concluded with respect to the proposed PC86B rezoning that the current Operative Provisions and existing EES standards would not appropriately achieve the objectives in respect of transportation outcomes.”

52. I agree with Mr McKenzie’s conclusion and consider that the operative provisions will not achieve the purpose of PC86B, the objectives and policies of the RA and the relevant objectives and policies of higher order documents (such as the RPS, Rural Development Strategy and Urban Growth Strategy) and Part 2 of the RMA.

All subdivision and development is a discretionary activity in the RUEE Living Overlay

53. I do not consider that this is an efficient and effective option. While requiring discretionary activity consent for all subdivision and development will allow comprehensive case by case assessment of transportation considerations, the cost and time delays associated with this would in my opinion be excessive and generally unnecessary. Mr McKenzie has identified similar concerns about this option in section 6.1.5 of the TAR:

“Smaller developments should not be expected to be subject to the same level of detailed assessment as those larger and higher effect developments. Therefore from a transportation standpoint it would be inefficient and unnecessary to require all developments within Living Overlay to be subject to full discretionary activity assessment.”

Recommend Amendments – Rule 49.2.12

54. In my opinion, this is the most efficient and effective option.
55. Given the concerns that I have identified with Chapter 71 (e.g. Rule 71.3.8, 71.3.9 and 71.3.11), Appendix 9 and the EES, I consider that Rule 49.2.12 is necessary as a temporary measure to allow

the assessment of transportation considerations until such time as Council progresses PC109 and PC88.

56. While I acknowledge there will be compliance costs associated with obtaining restricted discretionary resource consents pursuant to this rule, I consider that this is offset by the requirement for all subdivision to obtain a controlled activity resource consent regardless. Furthermore, I consider that this consent requirement is necessary in order to adequately consider the effects of subdivision on the transportation network and the ability for future subdivision and development to occur on other sites.
57. In my opinion, a restricted discretionary status is more appropriate than a discretionary activity status as it narrows assessment to relevant transportation considerations. Furthermore, I consider that a restricted discretionary activity status is more appropriate than a controlled activity status, as it gives Council the ability to decline consents in situations for instance, where the layout of a subdivision or development may significantly impact on the ability of a neighbouring site to provide for efficient future roading layout.
58. Mr McKenzie has similarly endorsed Rule 47.2.12:

“The proposed restricted discretionary activity status included within the Recommended Amendments with respect to the RUEE (Living) Environment is considered to be appropriate to achieve the transport and wider objectives of the Plan Change and the District overall.

The inclusion of the matters for assessment under Rule 47.2.12 will reflect the wider consideration of the transport network and system within the District, as well as reflecting the specific comments and concerns expressed by submitters especially NZTA as the owner and manager of the State Highway network within the District. The way in which the assessment matters are framed is also considered to be appropriate so that the assessment (and accompanying reporting for a restricted discretionary activity consent) can be scaled with respect to the application such that a full multi-modal and transportation policy assessment can be adopted for those larger scale of activity and application, and that a more streamlined assessment would be appropriate for smaller developments.”

NZTA and I&S Recommendation

59. I recommend that the Commissioners **accept in part** submission points 453/18, 479/10 and 479/11 that the a new rule be added to Chapter 47 as follows:

CHAPTER 47 – ROAD TRANSPORT RULES

47.2.12 Living Overlay

- a) The construction of two or more residential units or the subdivision of two or more allotments on a site within the Living Overlay is considered a restricted discretionary activity.

Discretion is restricted to:

- i. The extent to which the additional allotments or residential are appropriately serviced by the existing transportation network, including through:
- The current or future provision of a well-connected street and transport network.
 - Facilitation of walking, cycling and public transport.
 - Methods to manage significant localised traffic effects.

Evidence and Hearing Information

- C.1 Mr Johnston has provided a statement on my recommended rule 47.2.11. Brett Hood has provided expert planning evidence on behalf of Mr Daniel Johnston.
- C.2 Mr Johnston's submission was initially made in support of RUEE Living zoning that was to be applied to his property. As such his submission was initially addressed by Robert Burgoyne in the **Part 6** Zoning 42A. However, Mr Johnston has expressed concern at the imposition of the proposed traffic movement rule in 47.2.11 that I recommended above. Mr Hood's evidence raises concerns with the interpretation of rule 47.2.11 and in particular he and Mr Johnston request clarification of how the words "subdivision of two or more allotments" should be interpreted. Both Mr Johnston and Mr Hood also raise general opposition to the rule based on its potential implications on the uptake of subdivision and development in the RUEE Living areas. Mr Hood also raises concerns with regard to the open-ended wording of the matters of discretion that I have proposed in rule 47.2.11.
- C.3 At paragraph 48 and 49 of her evidence, Ms Heppelthwaite has recommended a change to the matter of discretion in my recommended rule 47.2.12. This is consistent with the change recommended by Ms Heppelthwaite in the **Part 11** ROR (see paragraphs E.3 and E.8).

Right of Reply Discussion

- C.4 I acknowledge that some clarification is required for the term "subdivision of two or more allotments." On reflection, and following discussion in the hearing, I accept that the wording is confusing. As such, I support a change to the wording to be "any subdivision." Given that this change is intended to provide clarification to plan users and does not materially change the provisions or the outcomes sought, I do not consider that additional s32AA assessment, beyond which has already been undertaken above, is necessary in this instance to justify this change.
- C.5 With regard to Mr Hood's planning evidence, I highlight that he has not contested the issues I have identified with the exiting provisions in the WDP. At paragraph 14 of his evidence, Mr Hood has "completely agreed" with my statement in paragraph 31 of the **Part 12** s42A highlighting the issues with Chapter 71, Appendix 9 and the EES 2010. While Mr Hood has not clearly stated any recommended changes in his evidence, I consider that it is apparent that Mr Hood's opinion is that my recommended Rule 47.2.11 should not be included based on the possible implications that he has identified in his evidence.
- C.6 I consider that Mr Hood's alternative of "no rule" is effectively relying on the "operative provisions" that I have already considered above in paragraphs 50 – 52 of the s42A. In my opinion, Mr Hood has not presented any evidence or information, or any viable alternative, that addresses the issues I have identified. As such, my original discussion still stands and I have nothing further to add.
- C.7 During the hearing, Mr Hood's other concern regarding the broadness of the restricted discretionary criteria for rule 47.2.11 was discussed. In his evidence and during the hearing, Mr Hood did not provide any recommended wording for this, nor has he in my opinion, provided sufficient evidence to justify changing my recommended wording. As such, in the absence of any

other suggested wording, my original discussion and recommended wording still stands and I have nothing further to add.

- C.8 I support Ms Heppelthwaite's recommended changes to the matters of discretion in recommended rule 47.2.11. Having considered Ms Heppelthwaite's wording I support it as I consider that it clarifies these provisions further. Subsequently, I recommend that the wording of these provisions is changed as outlined in Ms Heppelthwaite's evidence. Given that this change does not materially change the provisions or the outcomes sought, I do not consider that additional s32AA assessment, beyond which has already been undertaken above, is necessary in this instance to justify this change.

Right of Reply Recommendation

- C.9 I recommend that the Commissioners amend the provisions as follows:

CHAPTER 47 – ROAD TRANSPORT RULES

47.2.12 Living Overlay

- a) The construction of two or more residential units or ~~the any~~ subdivision ~~of two or more allotments~~ on a site within the Living Overlay is considered a restricted discretionary activity.

Discretion is restricted to:

- i. The extent to which the additional allotments or residential ~~units are~~ appropriately ~~address effects~~ on serviced by the ~~existing~~ transportation network, including through:
- The current or future provision of a well-connected street and transport network.
 - Facilitation of walking, cycling and public transport.
 - Methods to manage significant localised traffic effects.

4.0 Conclusions and Recommendations

5. After carefully considering the evidence received in relation to each topic, I recommend that PC86B be amended to the extent detailed in the preceding sections of **Part 12** of the ROR and as illustrated in **Attachment 1**.
6. The revised provisions [**Attachment 1**] have been detailed and compared above against viable alternatives in terms of their costs, benefits, efficiency and effectiveness and risk in accordance with the relevant clauses of s32AA. Overall, it is considered that the revised provisions represent the most efficient and effective means of achieving the RMA and PC86B.

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