Planning and Development Committee

Notice of Meeting
A meeting of the Planning and Development Committee will be held in the Council Chamber, Forum North, Whangarei on:

Thursday
16 March 2017
9.00am

Committee
Councillor Greg Innes (Chairperson)
Her Worship the Mayor Sheryl Mai
Cr Stu Bell
Cr Crichton Christie
Cr Vince Cocurullo
Cr Tricia Cutforth
Cr Shelley Deeming
Cr Sue Glen
Cr Jayne Golightly
Cr Phil Halse
Cr Cherry Hermon
Cr Greg Martin
Cr Sharon Morgan
Cr Anna Murphy
Planning and Development Committee – Terms of Reference

Membership

Chairperson: Councillor G C Innes

Members: Her Worship the Mayor Sheryl Mai
Councillors Stu Bell, Crichton Christie, Vince Cocurullo, Tricia Cutfforth, Shelley Deeming, Sue Glen, Jayne Golightly, Phil Halse, Cherry Hermon, Greg Martin, Sharon Morgan, Anna Murphy

Meetings: Monthly

Quorum: 7

Purpose

To oversee planning, monitoring and enforcement activities, and guide the economic and physical development and growth of Whangarei District.

Key responsibilities include:

- Regulatory / Compliance
  - Environmental health
  - General bylaw administration
  - Animal (dog and stock control)
  - Hazardous Substances and New Organisms Control
  - Parking Enforcement (vehicles registrations and warrant of fitness)
  - Noise Control
  - Food Act
  - Landuse Consents
  - Building Act

- Building Control
  - Property Information and Land Information Memoranda
  - Consents and inspections

- Resource Consents
  - Subdivision, Land Use and Development Control
  - Development Contributions

- District Plan
  - Plan Changes
  - District Plan administration
- **Strategic Planning**
  - Futures planning
  - Urban design

- **Economic Development**
  - District Marketing/Promotions
  - Developer engagement

- **Commercial Property**

- **Shared Services** – investigate opportunities for Shared Services for recommendation to council.

### Delegations

(i) All powers necessary to perform the committee’s responsibilities, including, but not limited to:

- (a) approval of expenditure of less than $5 million plus GST.
- (b) approval of a submission to an external body
- (c) establishment of working parties or steering groups.
- (d) power to establish subcommittees and to delegate their powers to that subcommittee.
- (e) the power to adopt the Special Consultative Procedure provided for in Section 83 to 88 of the LGA in respect of matters under its jurisdiction (this allows for setting of fees and bylaw making processes up to but not including adoption).
- (f) the power to delegate any of its powers to any joint committee established for any relevant purpose under clause 32, Schedule 7 of the Local Government Act 2002
OPEN MEETING

APOLOGIES

CONFLICTS OF INTEREST
Members are reminded to indicate any items in which they might have a conflict of interest.

INDEX

<table>
<thead>
<tr>
<th>Item No</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>3</td>
</tr>
<tr>
<td>3.</td>
<td>16</td>
</tr>
<tr>
<td>4.</td>
<td>61</td>
</tr>
<tr>
<td>5.</td>
<td>99</td>
</tr>
</tbody>
</table>

Minutes of Meeting of the Planning and Development Committee held 16 February 2017

Operational Report – Planning and Development Committee

Implementation of the National Environmental Standards for Telecommunication Facilities 2016

PC94B Papakainga Decision

Proposed Inclusive Engagement Model

Local Government Act 2002 Amendment Act 2012 – Decision making

Full consideration has been given to the provisions of the Local Government Act 2002 Amendment Act 2012 in relation to decision making and in particular the current and future needs of communities for good quality local infrastructure, local public services and performance of regulatory functions in a way that is most cost effective for households and businesses. Consideration has also been given to social, economic and cultural interests and the need to maintain and enhance the quality of the environment in taking a sustainable development approach.

Recommendations contained in this agenda may not be final decisions. Please refer to the minutes for resolutions.
1. Minutes: Planning and Development Committee
Thursday 16 February 2017

Minutes of a meeting of the Planning and Development Committee of the Whangarei District Council held in the Council Chamber, Forum North on Thursday 16 February 2017 at 9.00am

Present:
Cr Greg Innes (Chairperson)

Her Worship the Mayor Sheryl Mai, Crs Stu Bell, Crichton Christie, Vince Cocurullo, Tricia Cutforth, Shelley Deeming, Sue Glen, Jayne Golightly, Cherry Hermon Phil Halse, Greg Martin, Sharon Morgan and Anna Murphy

In Attendance:
Chief Executive (Rob Forlong), Group Manager District Living (Alison Geddes), Governance Manager (Jason Marris), Building Compliance Manager (Paul Cook), District Promotions and Tourism Manager (Acting) (Sarah Archer), Policy and Bylaws Analyst (Shireen Munday), Policy and Monitoring Manager (Paul Waanders), Principle Planner (Murray McDonald), Property Manager (Mike Hibbert), Regulatory Manager (Grant Couchman), Media Relations Advisor (A Midson) and Senior Meeting Co ordinator (C Brindle)

1. Election of Deputy Chairperson – Planning and Development Committee

Moved: Cr Innes
Seconded: Cr Bell

“That the Planning and Development Committee choose not to elect a Deputy Chairperson and confirm the committee’s approach will be to include the full committee in the inclusive decision making on priorities.”

CARRIED

2. Operational Report – Planning and Development

Moved: Cr Deeming
Seconded: Cr Glen

“That the Planning and Development Committee notes the Planning and Development operational report.”

CARRIED

Cr Cocurullo declared a conflict of interest in regard to the Appeals section of the report; and did not take part in discussions on that section.
3. **Service Delivery Review Update**

   Moved: Cr Deeming  
   Seconded: Cr Morgan  

   “That the Planning and Development Committee note the completed Service Delivery Reviews.”

   CARRIED

4. **Contracts Approved Under Delegated Authority**

   Moved: Her Worship the Mayor  
   Seconded: Cr Morgan  

   “That the Planning and Development Committee note the contracts awarded under delegated authority.”

   CARRIED

5. **New Road Name – Pipiwi Investments Ltd**

   Moved: Cr Bell  
   Seconded: Cr Cocurullo  

   “That the Planning and Development Committee approves the following new road names.

   1. The new Public road (Arterial) at High Street, Whangarei be named Kōtātā Rise.
   2. The new Public road (Residential) at High Street, Whangarei be named Pahi Drive.
   3. The new Private road (ROW 1) at High Street, Whangarei be named Edwards Place.
   4. The new Private road (ROW 2) at High Street, Whangarei be named Millview Place.
   5. The new Private road (ROW 3) at High Street, Whangarei be named Evergreen Place.”

   CARRIED

The meeting closed at 9.55am

Confirmed this 16th day of March 2017

G C Innes (Chairperson)
2 Operational Report - Planning and Development

Reporting officer: Alison Geddes (Group Manager District Living)
Date of meeting: 16 March 2017

1 Purpose

To provide a brief overview of work occurring, in the current financial year, across functions that the Planning and Development Committee has responsibility for.

2 Recommendation/s

1. That the Planning and Development Committee notes the Planning and Development operational report.
2. That a Councillor be appointed on the hearings panel for Rural Plan Changes.

3 Background

I took up the reins of the District Living Department in the interim before the new structure comes into place on 13 March 2017. This has given me a good opportunity to familiarise myself with people, projects and current issues before the full transition into the new structure.

The Department has had a busy month with exciting developments in the Economic Development and Tourism and marketing functions and on-going Sense of Place projects underway. Commercial property continues to be a busy portfolio which reflects the general buoyancy of the current economic climate.

Policy and monitoring have made steady progress on the rolling review of the District Plan and Structure Planning for the Inner City is underway. As noted in the Policy and Monitoring District Plan section and the recommendations, we requested a Councillor be appointed to serve on the Hearings Panel for the Rural Plan Changes which will be heard between 3 and 14 July 2017.

Currently Cr Innes and Cr Glen are accredited as RMA Commissioners. It would be preferable to have an accredited Councillor on such an important panel, however as the RMA requires that 2/3 of a hearing panel has to be accredited, a non-accredited Councillor could be appointed. It is also noted that Shelly Deeming is still registered but as an Independent Commissioner with her certification lapsing on 31 December 2017.

There is opportunity for Councillors to gain accreditation before that date (in May and June). It is acknowledged that Councillors have busy schedules but it would strengthen the Council’s RMA capacity and capability if more Councillors gain this accreditation in the future.
Consent numbers for both resource consents and building continue to climb but service levels remain high. This is also reflected in the increased level of Development Contributions collected.

Environmental Health has marked the successful transition to the new Food Act and as the Recreational Swimming Water Quality Programme comes to an end the team is pleased to report there have been no “Action” results returned for any of the monitored sites.

Regulatory compliance tends to be stretched to the limit over the busy summer period with the influx of visitors and the increased outdoor activity in the District. The Armourguard contract continues to “bed down” with operational adjustments being made where necessary.

4 Significance and Engagement

The decisions or matters of this report do not trigger the significance criteria outlined in Council’s Significance and Engagement Policy, and the public will be informed via report publication.

5 Attachments

Planning and Development Operational Report - February
Operational Report – Planning and Development

Economic Development

DHL New Zealand Lions Series 2017

A full report has been provided through the Community Development agenda.

NZTE Regional Business Partners Workshop

Along with staff from the Northland Inc Business Innovation and Growth team, we attended the Regional Business Partners workshop held in Auckland by New Zealand Trade and Enterprise in conjunction with Callaghan Innovation.

The intent was to give the region’s Economic Development Agencies easier access into the central government departments’ programmes to enable economic growth within the regions.

Tourism Marketing

Tourism Content & Collateral

Whangarei Tourism Marketing Products

In 2014, Council went through a public quotation process for management and production of the Whangarei Visitor Guide and assorted other marketing products.

The offer was publicly advertised and local agency, Big Fish Creative won the contract. The products are now part of an integrated offer and ratecard selling the tourism products offered by Whangarei District Council, Far North District Council and Northland Inc.

2016/17 was the third year of the Contract and a Request For Quote has been publicly advertised, inviting responses by 14 March.

Digital & Social Channels

Destination Marketing Website – WhangareiNZ.com

The last significant upgrades to WhangareiNZ.com were made three years ago. The current version of WhangareiNZ.com is built on a Content Management System (CMS) that is approaching end of life.

Our web partner, Jam Digital has migrated the website to a new CMS to align ongoing development with the regional tourism website NorthlandNZ.com, and to continue to benefit from population of content (accommodation, activity and transport listings API feed) being provided via Tourism New Zealand’s destination marketing website NewZealand.com.

Migration of the current content to the new platform is underway.
Campaign & Advertising

Facebook Marketing

Paid Facebook advertising, with the aim of increasing brand awareness and motivating Aucklanders to visit Whangarei continues. Advertising focuses on great activities and events in beautiful, subtropical Whangarei.

Sense of Place

Refreshed signage will be installed prior to the Lions Series at the Town Basin, Maunu Road, SH1 north and south of the city, and at the Town Basin. This is a continuation of the new ‘Sense of Place’ branding that started being rolled out last year, to create consistent look and feel across city and District signage.
Brand Management – Whangarei Love It Here!

Whangarei Love It Here! promotional material produced and distributed including branded tee-shirts, bags, NZMCA Rally 2018 joint branded bags and USBs.

Commercial Property

Town Basin

The summer season is drawing to a close and preparation of continued maintenance is progressing. With Easter late this year, painting of roofs and cleaning of buildings will be delayed slightly to avoid construction over Easter and school holiday period. Bollards that control vehicle access to the wharf and service areas are scheduled to be replaced.

Staff are engaged with two new potential tenants to occupy vacant spaces at the ex ‘History on Wheels’ premise and vacant ‘Scenario Events’ space. Agreements are expected to be completed with 2 weeks. The ex-Kauri Creations space remains vacant however staff continue to explore potential options.

Vacant Bridge Site

Staff are progressing with a new interest re a pop-up café at the vacant bridge site. The previous term of Council via the 20/20 Committee supported the development of a pop-up site as a result of a public process. The concept is the same but the potential operator is different. Council will be asked to support the proposal in full at the next Council meeting.

Rent Reviews/Renewals

Rental reviews and renewals continue in accordance with both Ground and Commercial freehold leases. There has been no further progress regarding the arbitration hearing that occurred prior to Christmas.
The award was expected by the end of February however no further notification has been received. Further enquires are being made to try and establish an exact timeframe.

Commercial rent arrears are tracking well with a steady decline over the 2016/17 financial year. Further payments are expected in the next two months as payment recovery mechanisms take effect. Recovery of a handful of historical arrears are being reviewed further and will be presented to Council for consideration before the end of the financial year.

Herekino Street- External refurbishment

Progress continues regarding the external refurbishment of the 20 Herekino Street. The Completion date has been extended unfortunately until 17 March as a result of delays in aluminium joinery.

New Parapet Construction
Land Sales/Enquiries

Enquiries regarding the purchase of Council’s Lessors interest continue.

Interest especially in the upper Port Road precinct is increasing in anticipation of the H&H Slipway Conneeter project and walkway extension. Future sale/acquisition opportunities will be explored once the design of the walkway extension is completed as part of the Blue/Green Emerald Neckless strategy.

Policy and Monitoring

District Plan

Progress with the rolling review and programme

Staff continue to review submissions and draft s42A hearing reports for the Rural, Mineral, Coast and Landscape plan changes.

Draft provisions and section 32 reports have been completed for proposed plan changes PC82: Signs and Lighting, PC129: Heritage Trees and PC88: Urban Residential Environment.

Pre-consultation feedback on draft PC91: Hazardous Substances has closed with the provisions and section 32 report being finalised for approval to notify.

Proposed PC137: Implementation of the National Environmental Standards for Telecommunication Facilities 2016 is a separate agenda item.

Recommendation report for PC94B: Papakainga has been received and reported as a separate agenda item.

The hearings for the Rural Plan Changes are scheduled for early July 2017 and the appointment of Commissioners is being considered. Normally the Hearings Panel consists of two Independent Commissioners and one Councillor. Council is requested to appoint a Councillor to serve on the Hearings Panel.

Plan Formulation (Futures)

The first part of the Structure planning for the Inner City Development Plan has been circulated internally for inputs. Review of all the Structure Plans adopted in 2009 will be required in future years.

Strategic Planning

UNISA

Council was instrumental to the ‘Upper North Island Story’ project which will be publically released at UNISA Mayors and Chairs Meeting on 31 March.
National Policy Statement on Urban Development Capacity

Staff are working with the Ministry for the Environment and the Ministry of Business, Innovation and Employment to understand the implications of this new policy statement.

Urban Design

Urban design guidelines for the District Plan are progressing which will be integrated with the Urban Plan changes.

Various implementation plans requiring urban design inputs such as Parking to Park, the H&H pocket park, Bank Street revitalisation and the like have been provided and orders for providing the delivery of street furniture have been let.

Resource Consents (Feb)

Processing

February has seen a continuation of the trend of increasing resource consent numbers with 53 applications received. This is an increase of 179% over February 2016 and a 120% increase on the 5-year average for February.

Subdivision

Subdivision applications were 58% of the total number of applications. The Totara Parklands subdivision at Tikipunga is being developed at a faster rate than originally planned which has resulted in later stages of the approval being developed ahead of schedule to meet demand.

Two subdivisions of approximately 30 lots each have been received for land at Te Hape Road recently rezoned to Living 3 by Plan Change 112.

Landuse

Landuse applications made up 42% of the total number of resource consents for the period. The extension to the Countdown Supermarket at the Regent was heard and approved by an Independent Commissioner during February.

An application for 16 attached townhouses at Reyburn Street is currently being processed.
Development Contributions

DCs invoiced to end of February total $3.1M. The budgeted income for the year is $3.5M. This reflects an increase in development activity generally. In line with the increase in activity there have been 75 assessments made since 1 January 2017, where DCs will be required for new subdivisions, building consents and service connections. As DCs recover part of the cost of past and future projects, which have or will be undertaken in anticipation of growth, this money is already allocated to those projects.

Appeals

The appeal against the NZTA designation (Tarewa Road) by Mr V. Cocurullo has been scheduled for hearing on 8 May by the Environment Court.

No date has yet been set for the appeal against the consent granted to Saleyards Investments Ltd for a retail development at Waipu.

Building

Building Consent Processing

Building consent applications have continued to show an increase in numbers compared to the last financial year.

<table>
<thead>
<tr>
<th>Performance Indicators</th>
<th>Feb-17</th>
<th>Year’s Average To Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Consents</td>
<td>Issued In 20 Days</td>
<td>92%</td>
</tr>
<tr>
<td>LIMs</td>
<td>% Within 7 Days</td>
<td>80%</td>
</tr>
<tr>
<td>LIMs (Statutory Requirement)</td>
<td>% Within 10 Days</td>
<td>100%</td>
</tr>
<tr>
<td>PIMs</td>
<td>% Within 5 Days</td>
<td>59%</td>
</tr>
<tr>
<td>Inspections (Completed within 48 Hrs)</td>
<td>% Complete Within 2 Working Days</td>
<td>99%</td>
</tr>
</tbody>
</table>
The “technical vetting” has improved the quality of applications submitted and had a positive effect on application suspensions. The technical vetting is now moving forward with the process being effective and completed and accurate applications are the “norm”.

**Inspections**

Inspection numbers are high compared to the last year’s figures with an increase in this activity. This is expected to continue and align with the increase in building consent applications received. Another vehicle and inspector has been put on the road to meet the increase in demand for inspections.

**Residential and Commercial trends**

The residential sector continues to show strength with new dwellings being 46% of all of the overall building work. This continues to be a national and North Island trend in areas like Northland, Tauranga (the Bay of Plenty) and Hamilton.
New Dwelling Trends and Wards

New dwellings have continued to increase in volume and in dollar value. The district is showing a consistency in the wards for growth, with Bream Bay being the largest area then Denby/Okara with the remainder being coastal and rural areas. The graph below refers to volume not dollar value.

![Pie chart showing dwelling trends in different wards]

Regulatory Services

Environmental Health

The new Food Act 2014, which came into effect on 1 March 2016 requires that existing food businesses transition from the old scheme to the new Act over a three (3) year transitioning phase. The first year’s transition period ends on 31 March 2017.

Environmental Health staff have been working hard to assist food businesses to meet this target and as a result, all first year food businesses have nowtransitioned.

In addition, the Act requires that certain early childhood centres, which provide food to children at their centre, register under a National Program before 31 March 2017. This is a new requirement, as these centres were previously exempt from registration. Environmental Health staff made contact with all early childhood centres in the district to assess which must register. Following on from that, staff conducted two workshops with those centres needing to register to assist them through this process and as a result, 15 Early Childhood Centres have now registered and are compliant with legislation.

In order for the Whangarei District Council (WDC) to be able to offer National Program verification (auditing) to its customers, Environmental Health staff had to develop a Ministry for Primary Industries (MPI) approved Quality Management System (QMS) and apply for recognition.
MPI has now approved WDC’s application and accredited two of its staff members as National Program Verifiers. This now makes WDC (and the two staff members) the only council/staff in the North Island to be able to verify National Programs, eliminating businesses registering under National Programs having to make use of scarce external auditors, often at very high costs to the operator. A good outcome for WDC and its customers.

The annual Recreational Swimming Water Quality Programme will shortly come to an end again. The programme over the summer season sees Northland Regional Council weekly test 29 bathing water sites (26 saline & 3 fresh water) within our area of jurisdiction. The results are measured against the water quality guideline and grading system. The system group results together under the “Acceptable” (green) level; the “Alert” (orange) level; and the “Action” (red) level. “Action” level results require further sampling and signage being erected at the site warning the public of the potential risks. This year no red “Action” results were returned for any of the sites, except for the Whangarei Falls site, where a permanent warning sign has been existing for a number of years and where previous sample results showed that the contamination was from natural sources such as herbivores and wild fowl (ducks). Again, an excellent result for the district and our bathing sites.

**Parking**

Parking enforcement officers continue to maintain required enforcement programmes in the CBD and suburban shopping areas. The officers issued 2037 infringement notices for various parking offences in January. During the same month last year 1514 notices were issued.

23393 infringements were issued over the 12 month period March 2016 – February 2017. 27017 infringements were issued over the 12-month period March 2015 – February 2016. The decrease for the more recent period is due in part to modifying the practice of issuing repeat infringements for unregistered/unwarranted vehicles.

**Dog control**

In January 241 complaints were received about dogs with the greatest number received about barking dogs. Over the same period last year 297 complaints were received with barking dogs also featuring.

**Enforcement of bylaws at Ruakaka Beach**

Council’s contracted enforcement staff (Armourguard) undertook targeted patrols in the Ruakaka Beach area during the busy Christmas holiday period (20 December to the end of January) and again over Waitangi weekend. They spoke to 95 people who were seen not complying with bylaw requirements, mostly freedom campers and issued three infringement notices to dog owners on the beach. Regulatory services staff are yet to meet representatives from Police, Department of Conservation, Northland Regional Council and the Ministry for Primary Industries to progress a shared enforcement approach for next summer so as to better manage a range of enforcement issues on Ruakaka Beach.
Resource Consent Monitoring

Staff have investigated a complaint about a Brothel operating out of a motel on Riverside Drive. The Motel is located in the Living 1 Environment. It has been determined that a Land Use Resource Consent is necessary for this activity, particularly due to non-compliance with District Plan rules in regards to hours of operation. An application for the consent is expected from the Owner of “The Bach” within two weeks.

Window Washers

During February Council received 18 complaints about window washers, ten relating to state highways and eight to Council controlled roads. Of interest; a members Bill has been introduced in Parliament which proposes to make window washing an offence under transport law so that Police can issue infringement fines. The Bill is called the Land Transport (Vehicle Users Safety) Amendment Bill and will amend the Land Transport Act 1998 and other associated rules and regulations. It will need to survive passage through various stages of law making to become operative. Currently the only enforcement avenue under bylaws made by councils, is prosecution.
3 Implementation of the National Environmental Standards for Telecommunication Facilities 2016

Reporting officer: Melissa McGrath (Team Leader District Plan)
Date of meeting: 16 March 2017

1 Purpose

To approve the District Plan implementation of the National Environmental Standards for Telecommunication Facilities 2016.

2 Recommendation/s

That the Planning and Development Committee

a) Approves the amendments to the Operative District Plan, as detailed in Attachment 1, in accordance with section 44A(4), (5) and (6) of the RMA, without going through the Schedule 1 process of the RMA.

3 Discussion

A National Environmental Standard (NES) prescribes technical standards, methods or requirements for District Plans. A NES takes immediate effect and may be absolute, effectively overriding affected rules of a Plan. Council must enforce the observance of NESs to the extent to which their powers enable them to do so.

On January 1 2017, the National Environmental Standards for Telecommunication Facilities 2016 (NESTF 2016) replaced the National Environmental Standards for Telecommunication Facilities 2008. NESTF 2016 provides greater national consistency in the rules surrounding the deployment of telecommunications infrastructure across New Zealand, while ensuring environmental effects are minimised and managed appropriately.

Section 44A of the RMA sets out the process for changing District Plans to give effect to NESs. Council cannot have Plan rules that are more lenient than the NES (s44A(2)(b)), and may only include more stringent controls through rules if the NES provides for this (s44A(2)(a)). Any rules that duplicate or conflict with the provisions of a NES must be removed from the Plan. This must be done as soon as practicable after the NES comes into effect without using the Schedule 1 process under the RMA.

What this effectively means is that the rules regarding telecommunication facilities outlined in the NES should be referenced in the District Plan and any conflicts or duplications be removed as soon as possible through Councils delegated process with no public consultation undertaken.
Any provisions in the Plan relating to telecommunication facilities that are in addition to the requirements of the NES, for example effects on amenity or objectives and policies, will be subject to the normal plan change process, and therefore public consultation.

Options to implement the NES have been evaluated within the attached s42A Report. It is recommended that the Operative District Plan be amended to remove duplication (as detailed in Attachment 1) in accordance with section 44A(4), (5) and (6) of the RMA, without going through the Schedule 1 process of the RMA.

4 Significance and engagement

Council’s Significance and Engagement Policy has been considered in relation to this Agenda item.

The decisions or matters of this Agenda item do not trigger the significance criteria outlined in Council’s Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

5 Attachments

Plan Change 137 - National Environmental Standards for Telecommunication Facilities

Section 42A Report

Prepared by Melissa McGrath, Team Leader District Plan
24 February 2017
Purpose
To align the Operative Whangarei District Plan (WDP) telecommunication facility provisions with the Resource Management (National Environmental Standard for Telecommunication Facilities) Regulations 2016 (the ‘NESTF’).

Policy Framework
On January 1 2017, the National Environmental Standards for Telecommunication Facilities 2016 (NESTF 2016) (Attachment 1) replaced the National Environmental Standards for Telecommunication Facilities 2008 (NESTF 2008).

NESTF 2016 provides greater national consistency in the rules surrounding the deployment of telecommunications infrastructure across New Zealand, while ensuring environmental effects are minimised and managed appropriately. The scope of the NESTF 2008 framework has been extended by classifying more activities related to the installation of telecommunications infrastructure as permitted. This means that subject to meeting prescribed conditions, network operators will not need to seek resource consent for the installation of a wider range of telecommunications equipment.

The NESTF 2016 regulates the following activities:
- Cabinets
- Antennas on poles
- Antennas on buildings
- Small cell units
- Telecommunication lines
- Underground telecommunication lines

The regulation has different levels of compliance depending upon whether or not the activity is located within a road reserve, residential zone or non-residential zone.

The regulation defaults back to the relevant WDP activity status, where a facility fails to comply with the permitted activity regulations.

The regulation defaults to the relevant WDP provisions for the following:
- Heritage values
- Visual amenity landscapes
- Significant habitats for indigenous vegetation
- Significant habitats for indigenous fauna
- Outstanding natural features or landscapes
- Coastal protection rules

Council cannot make a natural hazard rule that applies to a regulated activity. And any natural hazard rule made before the NESTF 2016 came into force does not apply.

How are National Environmental Standards (NES) incorporated into District Plans?
A NES prescribes technical standards, methods or requirements for District Plans. A NES takes immediate effect and may be absolute, effectively overriding affected rules of a Plan. Council must enforce the observance of NESs to the extent to which their powers enable them to do so.

Section 44A of the RMA sets out the process for changing District Plans to give effect to NESs. Council cannot have Plan rules that are more lenient than the NES (s44A(2)(b)), and may only include more stringent controls through rules if the NES provides for this (s44A(2)(a)). Any rules that duplicate or conflict with the provisions of a NES must be removed from the Plan. This must be done as soon as practicable after the NES comes into effect without using the Schedule 1 process under the RMA.
What this effectively means is that the rules regarding telecommunication facilities outlined in the NES should be referenced in the District Plan and any conflicts or duplications be removed as soon as possible through Councils delegated process with no public consultation undertaken. Any provisions in the Plan relating to telecommunication facilities that are in addition to the requirements of the NES, for example effects on amenity or objectives and policies, will be subject to the normal plan change process, and therefore public consultation.

A section 32 analysis considering alternatives, benefits and costs under the RMA is not required unless a rule is proposed that imposes a greater prohibition or restriction on an activity than the NES (RMA s32(3A)).

Changes to the WDP

Issues

The NESTF 2016 does not provide for all possible telecommunication network activities, therefore there are circumstances where the WDP needs rules to manage potential effects. The main challenge to implement the NESTF 2016, is that the WDP definitions and rules for telecommunication facilities are not consistent with the NESTF.

As defined by the NESTF 2016, telecommunication facilities would be assessed under various WDP rules because each type of telecommunication facility is defined differently in the WDP.

Building

means any temporary or permanent, movable or immovable structure, including any place, vehicle or construction used as a place of residence or business or for assembly or storage purposes; but does not include:

a) A network system owned or operated by a network utility operator whose purpose is to provide reticulation from a network system to and from individual properties and structures, including all structures and equipments owned or used by a network utility operator, provided that a system including any structure or equipment does not exceed 1.5m in height and has 3m² or less ground coverage; or

b) Any aerial or aerial support structure, clothesline or similar device; or

c) Scaffolding or support work used in the course of the construction process; or

Aerial means a device being a rod, wire, dish or similar, anemometer or other meteorological equipment (but excluding a weather balloon) used for the purpose of measuring collecting and distributing meteorological information or the reception of transmission of radio, telephone or electromagnetic signals.

Aerial Support Structure

means a single supporting structure such as a tower, pole or mast, including guy wires, being permanent or temporary, and possibly extendable, used for the support of an aerial or aerals.
Telecommunication facilities that are antenna or aerials would be assessed against the relevant aerials and aerial support structure rules for each Environment.

**Minor Upgrading**
means an increase in the carrying capacity, efficiency or security of any network utility operation utilising the existing support structures or structures with the effects of a similar scale, character, bulk and form. It includes, in regard to electricity, telecommunication and radio-communication services:
- The addition of circuits and conductors;
- The reconductoring of the line with higher capacity conductors;
- The resagging of conductors;
- The addition of longer and more efficient insulators;
- The addition of earth wires (which may contain telecommunications lines), earth peaks and lightning rods;
- Additional telecommunication lines;
- The replacement of existing cross arms with cross arms of an alternative design;
- The replacement or alteration of existing antennae;
- The replacement or alteration of existing masts, poles and associated structures in the same or similar location and in accordance with the relevant New Zealand Standard.

**Minor upgrading shall not include:**
additional structures or the replacement of structures with the effects that are not of a similar scale, character, bulk and form.

The WDP does not define Network Utility Operations, but does have rules in every Environment. The WDP defines Network Utility Operators and Minor Upgrading for network utility operations. Telecommunication facilities would need to comply with the Network Utility Operations rules but maybe permitted under minor upgrading.

Natural hazards provisions in Chapter 56 also result in duplication with regulation 57 of the NESTF 2016.

**Options**
**Options to change the WDP to remove duplication:**

- **Option 1:**
  Delete all rules relating to Network Utility Operations, and Aerials and Aerial Support Structures.

- **Option 2:**

- **Option 3:**
  Insert a new district wide rule stating that “No rule in any chapter of the plan that duplicates or conflicts with the NESTF 2016 shall apply. The NESFT 2016 applies in addition to all other rules in any chapter of this plan”.

- **Option 4:**
  Amend all provisions relating to Network Utility Operations, Aerials and Aerial Support Structures, to remove any specific clause that is a duplication.
**Discussion:**

**Option 1 and Option 4:**

Network Utility Operation rules in the WDP apply to all types of network utilities. The NESTF 2016 also only addresses public telecommunication activities the WDP Aerials and Aerial Support Structure rules apply to private people undertaking activities.

It is not possible to delete or amend these rules in their entirety to avoid duplication with the NESTF, without undertaking a complete plan change to introduce alternative provisions for other network utilities and private aerials. Therefore, options 1 and 4 are considered not to be the most efficient and effective method of implementation.

**Option 2:**

WDP definitions for Buildings and Aerials and Aerial Support Structures result in rule duplication with the NESTF 2016. Option 2 considers the possibility of altering these definitions to remove duplication. Due to the nature of the definition of building, the overlap with the Network Utility Operations rules and the definition of Minor Upgrading, it is considered too complicated to amend the definition of Buildings. The definitions for Aerials and Aerial Support Structures apply to private people undertaking activities as well as network utility operators, to remove the duplication it would be possible to insert specific exclusion to the definitions. Option 2 is considered to be complicated, resulting in inefficient use of the plan.

**Option 3:**

Option 3 is consistent with the method used to implement the National Environmental Standards for Contaminated Soils. Option 3 avoids the necessity to amend existing rules and definitions while ensuring that duplication is removed. This provides a simple way of ensuring duplication is removed until such time as a plan change is undertaken to comprehensively review the Network Utility, Aerials, Aerial Support Structure and Building rules. Option 3 is considered to be an efficient and effective method to implement the NESFT 2016.

**Conclusion**

The NESTF 2016 came into force on 1 January 2017 and rendered the current telecommunication provisions in the Operative District Plan out of date.

It is recommended that the WDP be amended to remove duplication (as detailed in Attachment 4) in accordance with section 44A(4), (5) and (6) of the RMA, without going through the Schedule 1 process of the RMA. This is a relatively simple process. Changes need to be approved by the Planning and Development Committee who are delegated the authority to amend the District Plan to include references and delete any duplications or conflicts with National Environmental Standards (NES).

It is anticipated that inconsistencies between the definitions and land use rules and further clarification of the NESTF 2016 will be addressed via a more comprehensive Network Utilities plan change.

**Attachments**

Attachment 1: NESTF 2016
Attachment 2: Section 44A of the RMA
Attachment 3: Implementation flow chart
Attachment 4: Track Changes to Operative District Plan
Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016

Patsy Reddy, Governor-General

Order in Council

At Wellington this 21st day of November 2016

Present:
Her Excellency the Governor-General in Council

These regulations are made under sections 43 and 43A of the Resource Management Act 1991—
(a) on the recommendation of the Minister for the Environment made in accordance with section 44 of that Act; and
(b) on the advice and with the consent of the Executive Council.

Contents

<table>
<thead>
<tr>
<th></th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Title</td>
</tr>
<tr>
<td>2</td>
<td>Commencement</td>
</tr>
</tbody>
</table>

Part 1

Preliminary matters

3 | Purpose | 4 |
4 | Interpretation | 4 |
5 | Installing and operating a facility | 7 |
6 | Meaning of baseline pole and baseline date | 7 |
7 | Measurements | 8 |
8 | Application of regulations to coastal marine area and rivers and lakes | 9 |
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Transitional, savings, and related provisions</td>
</tr>
<tr>
<td>10</td>
<td>Restrictions on land use for regulated activities</td>
</tr>
<tr>
<td>11</td>
<td>Activity complying with standard is permitted activity</td>
</tr>
<tr>
<td>12</td>
<td>Status if not permitted activity</td>
</tr>
<tr>
<td>13</td>
<td>RFG facilities: status in respect of generation of radiofrequency fields</td>
</tr>
<tr>
<td>14</td>
<td>Controlled activities</td>
</tr>
<tr>
<td>15</td>
<td>Restricted discretionary activities</td>
</tr>
<tr>
<td>16</td>
<td>Discretionary activities</td>
</tr>
<tr>
<td>17</td>
<td>Non-complying activities</td>
</tr>
<tr>
<td>18</td>
<td>Prohibited activities</td>
</tr>
<tr>
<td>19</td>
<td>Regulated activity and standard</td>
</tr>
<tr>
<td>20</td>
<td>Cabinet not servicing antenna on building</td>
</tr>
<tr>
<td>21</td>
<td>Cabinet servicing antenna on building</td>
</tr>
<tr>
<td>22</td>
<td>Group rules for cabinets in road reserves</td>
</tr>
<tr>
<td>23</td>
<td>Temporary contravention of group rules</td>
</tr>
<tr>
<td>24</td>
<td>Noise limits for cabinet in road reserve</td>
</tr>
<tr>
<td>25</td>
<td>Noise limits for cabinet not in road reserve</td>
</tr>
<tr>
<td>26</td>
<td>Regulated activity and standard</td>
</tr>
<tr>
<td>27</td>
<td>Antenna on existing pole in road reserve</td>
</tr>
<tr>
<td>28</td>
<td>Regulated activity and standard</td>
</tr>
<tr>
<td>29</td>
<td>Antenna on new pole in road reserve</td>
</tr>
<tr>
<td>30</td>
<td>Regulated activity and standard</td>
</tr>
<tr>
<td>31</td>
<td>Antenna on existing pole with antenna not in road reserve and in residential zone</td>
</tr>
<tr>
<td>32</td>
<td>Regulated activity and standard</td>
</tr>
<tr>
<td>33</td>
<td>Antenna on existing pole with antenna not in road reserve and not in residential zone</td>
</tr>
</tbody>
</table>
### Antennas on new poles not in road reserve and in rural zone

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>Regulated activity and standard</td>
<td>23</td>
</tr>
<tr>
<td>35</td>
<td>Antenna on new pole not in road reserve and in rural zone</td>
<td>24</td>
</tr>
</tbody>
</table>

### Antennas on buildings

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>Regulated activity and standard</td>
<td>24</td>
</tr>
<tr>
<td>37</td>
<td>Antenna on building</td>
<td>25</td>
</tr>
</tbody>
</table>

#### Subpart 3—Small cell units

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>Regulated activity and standard</td>
<td>25</td>
</tr>
</tbody>
</table>

#### Subpart 4—Telecommunication lines

#### Customer connection lines

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>Regulated activity and standard</td>
<td>26</td>
</tr>
<tr>
<td>40</td>
<td>Customer connection line</td>
<td>26</td>
</tr>
</tbody>
</table>

#### Aerial telecommunication lines along same routes as existing telecommunication or power lines

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Regulated activity and standard</td>
<td>26</td>
</tr>
<tr>
<td>42</td>
<td>Aerial telecommunication line along same route as existing telecommunication or power line</td>
<td>27</td>
</tr>
</tbody>
</table>

#### Underground telecommunication lines

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>43</td>
<td>Regulated activity and standard</td>
<td>28</td>
</tr>
</tbody>
</table>

#### Subpart 5—Application of district and regional rules

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>Trees and vegetation in road reserve</td>
<td>28</td>
</tr>
<tr>
<td>45</td>
<td>Significant trees</td>
<td>28</td>
</tr>
<tr>
<td>46</td>
<td>Historic heritage values</td>
<td>29</td>
</tr>
<tr>
<td>47</td>
<td>Visual amenity landscapes</td>
<td>29</td>
</tr>
<tr>
<td>48</td>
<td>Significant habitats for indigenous vegetation</td>
<td>29</td>
</tr>
<tr>
<td>49</td>
<td>Significant habitats for indigenous fauna</td>
<td>30</td>
</tr>
<tr>
<td>50</td>
<td>Outstanding natural features or landscapes</td>
<td>30</td>
</tr>
<tr>
<td>51</td>
<td>Places adjoining coastal marine area</td>
<td>30</td>
</tr>
<tr>
<td>52</td>
<td>Rivers and lakes</td>
<td>30</td>
</tr>
</tbody>
</table>

#### Subpart 6—Earthworks

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>Earthworks associated with certain antennas</td>
<td>30</td>
</tr>
<tr>
<td>54</td>
<td>Earthworks: regional rules apply</td>
<td>32</td>
</tr>
</tbody>
</table>

#### Subpart 7—Radiofrequency fields

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>Radiofrequency fields</td>
<td>32</td>
</tr>
</tbody>
</table>

### Part 4

#### Miscellaneous

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>56</td>
<td>District and regional rules may be more stringent</td>
<td>33</td>
</tr>
<tr>
<td>57</td>
<td>District rules about natural hazard areas disapplied</td>
<td>33</td>
</tr>
<tr>
<td>58</td>
<td>Regulations revoked</td>
<td>33</td>
</tr>
</tbody>
</table>
These regulations are the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016.

These regulations come into force on 1 January 2017.

These regulations—
(a) prescribe the standards that must be complied with in relation to the use of land for regulated activities for the purposes of sections 9 and 15 of the Act; and
(b) classify regulated activities for the purposes of section 87A of the Act.

In these regulations, unless the context otherwise requires,—
Act means the Resource Management Act 1991
ancillary equipment means telecommunications, radiocommunications, electrical or similar equipment it is necessary to install with a facility to enable the facility to operate as intended, but not a self-contained power unit or a lightning rod
antenna means a device that receives or transmits radiocommunication or telecommunication signals, but not a small cell unit
antenna A has the meaning given in regulation 26
antenna B has the meaning given in regulation 28
antenna C has the meaning given in regulation 30
antenna D has the meaning given in regulation 32
baseline date has the meaning given in regulation 6
baseline pole has the meaning given in regulation 6
cabinet means a casing around equipment that is necessary to operate a telecommunication network, but not any of the following:
(a) a casing around an antenna, a small cell unit, ancillary equipment, or any part of a telecommunication line:

(b) a casing that is wholly underground:

(c) a casing that is inside a building:

(d) a building

**customer connection line** means a telecommunication line that connects a telecommunications distribution network to a premises for the purpose of enabling a facility operator to provide telecommunication services to a customer

**date A** has the meaning given in regulation 26

**date B** has the meaning given in regulation 28

**date C** has the meaning given in regulation 30

**date D** has the meaning given in regulation 32

**earthworks** means a disturbance of soil, earth, or substrate land surfaces (including by blading, boring, contouring, cutting, drilling, excavating, filling, moving, piling, placing, removing, replacing, ripping, thrusting, or trenching)

**facility** means an antenna, cabinet, telecommunication line, or small cell unit

**facility operator** means—

(a) a network operator (as defined in section 5 of the Telecommunications Act 2001); or

(b) the Crown (as defined in section 2(1) of the Public Finance Act 1989); or

(c) a Crown agent (as defined in section 10(1) of the Crown Entities Act 2004)

**headframe** means a structure attached to a pole that—

(a) enables more than 1 antenna to be attached to the pole; and

(b) results in the notional envelope of the pole being larger than 0.7 m in diameter

**installing and operating**, in relation to a facility, has the meaning given in regulation 5

**location**, in relation to a facility that has not yet been installed, means the location where the facility will be once it has been installed

**mount** means equipment used to attach—

(a) an antenna to a building; or

(b) an antenna to a pole without a headframe; or

(c) an antenna to a headframe; or

(d) a headframe to a pole

**non-dish antenna** means an antenna that is not a dish antenna
notional envelope, for a pole, means the smallest notional cylindrical shape into which all non-dish antennas attached to the pole (including any shroud but not including any mount or ancillary equipment) would fit.

pole means a pole, mast, lattice tower, or similar structure, of a kind that is able to be used (with or without modification) to support antennas.

pole A has the meaning given in regulation 26.

pole B has the meaning given in regulation 28.

pole C has the meaning given in regulation 30.

pole D has the meaning given in regulation 32.

protrusion distance means the amount by which the outer edge of a dish antenna protrudes from the edge of the pole to which it is attached.

regulated activity means an activity that is declared by regulation 19, 26, 28, 30, 32, 34, 36, 38, 39, 41, or 43 to be a regulated activity.

residential zone means an area identified in a district plan or proposed district plan as being zoned primarily for residential activities, but not an area zoned for rural/residential or countryside living activities (however described).

RFG facility means—
(a) an antenna or a small cell unit, if it generates radiofrequency fields or will do so when it is in operation; or
(b) a cabinet, if the equipment in the cabinet generates radiofrequency fields or will do so when the equipment is in operation.

road reserve means a formed legal road and any land next to it up to the legal boundary of the adjoining land.

rural zone means an area identified in a district plan or proposed district plan as being zoned primarily for rural activities, including an area zoned for rural/residential or countryside living activities (however described).

self-contained power unit means equipment installed with a facility for the purpose of generating power for that facility (such as solar panels), including cables connecting the equipment to the facility.

small cell unit means a device—
(a) that receives or transmits radiocommunication or telecommunication signals; and
(b) the volume of which (including any ancillary equipment, but not including any cabling) is not more than 0.11 m$^3$.

standard, in relation to a regulated activity, means the standard set out for that activity in the regulation that declares it to be a regulated activity.

surface-mounted line means a telecommunication line that is mounted on the surface of a structure (such as a wall, fence, or paving).
telecommunication line means a wire, or conductor of any other kind (including a fibre optic cable), referred to in paragraph (a) of the definition of line in section 5 of the Telecommunications Act 2001.

5 Installing and operating a facility

(1) Installing and operating a facility means—

(a) installing and operating the facility; and

(b) installing and operating any of the following:

(i) ancillary equipment for the facility:

(ii) in relation to an antenna attached to a pole, the pole and any head-frame, mount, or shroud:

(iii) in relation to an antenna on a building, any mount or shroud:

(iv) in relation to a cabinet, the equipment in the cabinet:

(v) in relation to a telecommunication line, any structure supporting the line:

(vi) a lightning rod for the facility:

(vii) a plinth or other foundation supporting the facility or anything referred to in this paragraph; and

(c) carrying out repairs and maintenance of the facility or anything referred to in paragraph (b); and

(d) carrying out earthworks associated with anything referred to in paragraphs (a), (b), or (c).

(2) However, installing and operating a facility does not include—

(a) installing and operating either of the following:

(i) a self-contained power unit:

(ii) a track that provides access to the facility; or

(b) carrying out repairs and maintenance of anything referred to in paragraph (a); or

(c) carrying out earthworks associated with anything referred to in paragraph (a) or (b).

6 Meaning of baseline pole and baseline date

(1) This regulation defines the terms baseline pole and baseline date in relation to pole A in regulation 27, pole C in regulation 31, and pole D in regulation 33 (the relevant pole).

(2) If the relevant pole was erected before 1 January 2017,—

(a) the baseline pole is the relevant pole; and

(b) the baseline date is 1 January 2017.
(3) If the relevant pole was erected after 1 January 2017 for a purpose other than the installation of an antenna,—
   (a) the baseline pole is the relevant pole; and
   (b) the baseline date is date A for regulation 27, date C for regulation 31, and date D for regulation 33.

(4) If the relevant pole was erected after 1 January 2017, for the purpose of installing 1 or more antennas on it, and is not a replacement for another pole,—
   (a) the baseline pole is the relevant pole; and
   (b) the baseline date is date A for regulation 27, date C for regulation 31, and date D for regulation 33.

(5) If the relevant pole was erected after 1 January 2017, for the purpose of installing 1 or more antennas on it, and is a replacement for another pole (pole X),—
   (a) the baseline pole is—
      (i) if pole X was not a replacement for a previous pole, pole X; or
      (ii) if the relevant pole is the latest in a series of 2 or more pole replacements, the first pole in that series to have an antenna installed on it after 1 January 2017; and
   (b) the baseline date is immediately before work begins to install the first antenna that was installed on the baseline pole.

7 Measurements

(1) The height of a cabinet is to be measured—
   (a) from the bottom of the cabinet at its lowest point (not including any plinth or other foundation):
   (b) to the highest point of the cabinet.

(2) The width of a pole is to be measured at the widest point of the pole (not including any antenna, headframe, mount, shroud, or ancillary equipment).

(3) The width of a headframe is to be measured at the widest point of the headframe and all antennas attached to it (not including any shroud or ancillary equipment).

(4) The width of a support structure for a telecommunication line is to be measured at the widest point of the structure (not including the line or any ancillary equipment).

(5) The width of a pole, headframe, or support structure means—
   (a) if it is circular, its diameter; or
   (b) otherwise, its widest cross-sectional measurement.

(6) The height of a pole is to be measured—
   (a) from the following (measured at the centre of the pole):
(i) if the pole is erected on the ground and with no plinth or other foundation, ground level; or
(ii) if the pole is erected on the ground with a plinth or other foundation, the top of the plinth or foundation; or
(iii) if the pole is erected on a structure (such as a bridge), the upper surface of the structure:
(b) to the highest point of the pole (not including any headframe, antennas, mount, shroud, or ancillary equipment).

(7) The height of a pole and all antennas is to be measured—
(a) from the point described in subclause (6)(a):
(b) to the highest point of the pole, any headframe, and all antennas (not including any mount, shroud, or ancillary equipment).

(8) All measurements are to be made not including any lightning rod.

(9) The distance between 2 things is to be measured at their closest point.

8 Application of regulations to coastal marine area and rivers and lakes
(1) These regulations do not apply to anything done in the coastal marine area or in, on, under, or over the bed of a river or lake.
(2) However, these regulations do apply to anything done over a river or lake (such as on a bridge).

9 Transitional, savings, and related provisions
The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Part 2
Carrying out of regulated activities

10 Restrictions on land use for regulated activities
For the purposes of sections 9 and 15 of the Act, a person must not use land for a regulated activity unless the activity—
(a) is carried out in accordance with the standard (and is therefore a permitted activity); or
(b) is allowed by a resource consent.

11 Activity complying with standard is permitted activity
A regulated activity is a permitted activity if it is carried out in accordance with the standard.

12 Status if not permitted activity
If a regulated activity is not a permitted activity under regulation 11,—
(a) if the facility is an RFG facility, the status of the activity is to be determined under regulation 13; or
(b) otherwise, the status of the activity is to be determined under regulations 14 to 18.

13 RFG facilities: status in respect of generation of radiofrequency fields

(1) This regulation applies to a regulated activity if—
   (a) the facility is an RFG facility; and
   (b) the activity is not a permitted activity under regulation 11.

(2) If regulation 55 is complied with,—
   (a) in respect of the generation of radiofrequency fields, the activity is a permitted activity; and
   (b) in all other respects, the status of the activity is to be determined in accordance with regulations 14 to 18.

(3) If regulation 55 is not complied with—
   (a) in respect of the generation of radiofrequency fields, the activity is a non-complying activity; and
   (b) in all other respects,—
       (i) if all other regulations compliance with which are part of the standard are complied with, the activity is a permitted activity; or
       (ii) otherwise, the status of the activity is to be determined in accordance with regulations 14 to 18.

14 Controlled activities

(1) A regulated activity is a controlled activity if—
   (a) it is carried out not in accordance with the standard; and
   (b) under the relevant district plan or proposed district plan, it is a permitted activity or controlled activity.

(2) For the purposes of section 87A(2)(b) of the Act, control is reserved over the subject matter of each regulation (or component of a regulation)—
   (a) compliance with which is part of the standard; and
   (b) that is not complied with.

15 Restricted discretionary activities

(1) A regulated activity is a restricted discretionary activity if—
   (a) it is carried out not in accordance with the standard; and
   (b) under the relevant district plan or proposed district plan, it is a restricted discretionary activity.
(2) For the purposes of section 87A(3)(a) of the Act, discretion is restricted over the subject matter of each regulation (or component of a regulation)—
   (a) compliance with which is part of the standard; and
   (b) that is not complied with.

16 **Discretionary activities**
   A regulated activity is a discretionary activity if—
   (a) it is carried out not in accordance with the standard; and
   (b) under the relevant district plan or proposed district plan, the activity—
      (i) is a discretionary activity; or
      (ii) is not classified as a controlled, restricted discretionary, discretionary, non-complying, or prohibited activity.

17 **Non-complying activities**
   A regulated activity is a non-complying activity if—
   (a) it is carried out not in accordance with the standard; and
   (b) under the relevant district plan or proposed district plan, it is a non-complying activity.

18 **Prohibited activities**
   A regulated activity is a prohibited activity if—
   (a) it is carried out not in accordance with the standard; and
   (b) under the relevant district plan or proposed district plan, it is a prohibited activity.

**Part 3**
**Regulated activities and standards**

**Subpart 1—Cabinets**

19 **Regulated activity and standard**
   (1) The installation and operation of a cabinet by a facility operator is a regulated activity.
   (2) The standard for the activity is that—
      (a) regulation 20 or 21, as applicable, must be complied with; and
      (b) if the cabinet is in a road reserve,—
         (i) regulation 22 must be complied with (subject to regulation 23); and
         (ii) regulation 24 must be complied with; and
(c) if the cabinet is not in a road reserve, regulation 25 must be complied with; and
(d) each regulation in subpart 5, if it applies, must be complied with; and
(e) if the activity includes earthworks, regulation 54 must be complied with; and
(f) if the cabinet is an RFG facility, regulation 55 must be complied with.

20 Cabinet not servicing antenna on building

(1) This regulation applies to any cabinet other than one to which regulation 21 applies.

(2) This regulation is complied with if—

(a) the height, footprint, and grouping rules in subclause (3) are complied with; and

(b) one of the following applies:

(i) the cabinet’s equipment does not require power:

(ii) power for the cabinet’s equipment is provided by a self-contained power unit:

(iii) the power supply for the cabinet’s equipment is connected under the ground or inside the cabinet.

(3) The **height, footprint, and grouping rules** are as follows:

(a) if the cabinet is in a road reserve that is in, or adjoins, a residential zone,—

(i) the height of the cabinet must not be more than 1.8 m; and

(ii) the footprint of the cabinet must not be more than 1.4 m²; and

(iii) the group rules in regulation 22 must be complied with (subject to regulation 23):

(b) if the cabinet is in any other road reserve,—

(i) the height of the cabinet must not be more than 2 m; and

(ii) the footprint of the cabinet must not be more than 2 m²; and

(iii) the group rules in regulation 22 must be complied with (subject to regulation 23):

(c) if the cabinet is not in a road reserve and is in a residential zone,—

(i) the height of the cabinet must not be more than 2 m; and

(ii) the footprint of the cabinet must not be more than 2 m²:

(d) if the cabinet is not in a road reserve and is not in a residential zone,—

(i) the height of the cabinet must not be more than 2.5 m; and

(ii) the footprint of the cabinet must not be more than 5 m².
In this regulation, part of a road reserve adjoins a residential zone if that part of the road reserve adjoins, and is on the same side of the road as, land that is in a residential zone.

21 Cabinet servicing antenna on building

(1) This regulation applies to a cabinet that houses equipment the primary purpose of which is to service an antenna that is located on a building.

(2) This regulation is complied with if—
   (a) the height, footprint, and grouping rules in subclause (3) are complied with; and
   (b) for a cabinet that is on the ground, one of the following applies:
      (i) the cabinet’s equipment does not require power:
      (ii) power for the cabinet’s equipment is provided by a self-contained power unit:
      (iii) the power supply for the cabinet’s equipment is connected under the ground or inside the cabinet.

(3) The height, footprint, and grouping rules are as follows:
   (a) if the cabinet is on the building,—
      (i) the height of the cabinet must not be more than 2 m; and
      (ii) the footprint of the cabinet must not be more than 2 m²;
   (b) if the cabinet is not on the building, the requirements set out in regulation 20(3) must be complied with.

22 Group rules for cabinets in road reserves

(1) The group rules for a cabinet in a road reserve are that, at the time a cabinet is installed,—
   (a) the cabinet must be—
      (i) at least 30 m away from any other cabinet that is on the same side of the road; or
      (ii) in a group of cabinets; and
   (b) if the cabinet is in a group,—
      (i) each cabinet in the group must be at least 30 m away from any cabinet that is on the same side of the road and is not in the group; and
      (ii) the total footprint of all cabinets in the group must not be more than 2 m².

(2) Two or more cabinets are in a group if the distance between each cabinet and the one nearest to it is not more than 0.5 m.
23 Temporary contravention of group rules

(1) This regulation applies if—
   (a) a cabinet (the new cabinet) is installed for the purpose of housing equipment that will replace the equipment in an existing cabinet (the old cabinet); and
   (b) the equipment in the new cabinet—
       (i) is for the purposes of the same telecommunications network as the equipment in the old cabinet; or
       (ii) relates to a telecommunications network that will replace the network to which the equipment in the old cabinet relates; and
   (c) in the absence of this regulation, the group rules in regulation 22 would not be complied with in relation to the new cabinet.

(2) For the purposes of determining whether the group rules are complied with in relation to the new cabinet, compliance with the group rules—
   (a) is not to be assessed when the new cabinet is installed; and
   (b) is instead to be assessed at the expiry of 3 months from when,
       (i) if subclause (1)(b)(i) applies, the new cabinet is installed; or
       (ii) if subclause (1)(b)(ii) applies, the old telecommunications network is discontinued.

(3) Until the expiry of the 3 months referred to in subclause (2)(b), the group rules are taken to be complied with.

24 Noise limits for cabinet in road reserve

(1) This regulation applies to a cabinet located in a road reserve.

(2) This regulation is complied with if the noise from the cabinet does not exceed the noise limits set out in subclauses (3) and (4).

(3) If the cabinet is located in a residential zone or an adjoining road reserve, the noise limits for the cabinet are,—
   (a) between 7 am and 10 pm, 50 dB $L_{Aeq(5min)}$; and
   (b) between 10 pm and 7 am,—
       (i) 40 dB $L_{Aeq(5min)}$; and
       (ii) 65 dB $L_{A_{Fmax}}$.

(4) For any other cabinet, the noise limits for the cabinet are,—
   (a) at any time, 60 dB $L_{Aeq(5min)}$; and
   (b) between 10 pm and 7 am, 65 dB $L_{A_{Fmax}}$.

How noise to be measured

(5) The measurement of the noise from a cabinet must be—
   (a) made in accordance with NZS 6801; and
(b) adjusted in accordance with NZS 6801 to a free field incident sound level; and
(c) assessed in accordance with NZS 6802.

Where noise to be measured

(6) If a building containing a habitable room is within 4 m of the road reserve where the cabinet is located, the noise must be measured at a point that is—
(a) 1 m from the side of the building; or
(b) on the vertical plane of the side of the building.

(7) In any other case, the noise must be measured at a point that is—
(a) at least 3 m from the cabinet; and
(b) within the boundaries of land adjoining the road reserve where the cabinet is located.

(8) In this regulation,—

adjoining road reserve, in relation to a zone in a district plan or proposed district plan, means that part of a road reserve that adjoins, and is on the same side of the road as, land that is in that zone
L\text{Aeq(5min)} has the same meaning as in NZS 6801
L_{AF\text{max}} has the same meaning as in NZS 6801
NZS 6801 means NZS 6801:2008 Acoustics – Measurement of environmental sound

25 Noise limits for cabinet not in road reserve

(1) This regulation applies to a cabinet not located in a road reserve.

(2) This regulation is complied with if the cabinet is installed and operated in accordance with the district rules about noise from a facility at the place where the cabinet is located.

Subpart 2—Antennas

Antennas on existing poles in road reserve

26 Regulated activity and standard

(1) The installation and operation of an antenna (antenna A) by a facility operator is a regulated activity if—

(a) before work to install antenna A begins (date A),—

(i) there is a pole (pole A) in a road reserve; and

(ii) if there are any antennas attached to pole A (whether operated by the same or a different facility operator), their installation and operation complies with the Act; and
(b) antenna A (alone or with 1 or more other antennas) is to be installed—
   (i) on pole A in pole A’s original location; or
   (ii) on pole A after pole A is moved to a new location; or
   (iii) on a new pole erected to replace pole A.

(2) The standard for the activity is that—
   (a) regulation 27 must be complied with; and
   (b) each regulation in subpart 5, if it applies, must be complied with; and
   (c) if the activity includes earthworks, regulation 54 must be complied with; and
   (d) if the antenna is an RFG facility, regulation 55 must be complied with.

27 Antenna on existing pole in road reserve

(1) This regulation applies to the regulated activity described in regulation 26.

(2) This regulation is complied with if, at the time antenna A is installed,—
   (a) if pole A is moved or replaced, the location of the pole on which antenna A is installed (the final pole)—
      (i) is in the road reserve; and
      (ii) is not more than 5 m from pole A’s location on date A; and
   (b) the antenna size rules in subclause (3) or (4) are complied with; and
   (c) the number of dish antennas attached to the final pole is not more than,—
      (i) if more than 2 dish antennas were attached to pole A on date A, that number; or
      (ii) otherwise, 2; and
   (d) the pole height rules in subclause (5) are complied with; and
   (e) the pole width rules in subclause (6) are complied with; and
   (f) if the final pole has a headframe, the headframe rules in subclause (7) are complied with.

(3) If antenna A is a non-dish antenna, the antenna size rules are that,—
   (a) if the final pole has a headframe, the width of antenna A must not be more than,—
      (i) if antenna A is a replacement for an existing non-dish antenna the width of which was more than 0.7 m, the width of the replaced antenna; or
      (ii) otherwise, 0.7 m; or
   (b) if the final pole does not have a headframe, the notional envelope for the final pole must not be larger than,—
(i) if pole A’s notional envelope on date A was larger than 3.5 m in length and 0.7 m in diameter, the size of pole A’s notional envelope on date A; or
(ii) otherwise, 3.5 m in length and 0.7 m in diameter.

(4) If antenna A is a dish antenna, the antenna size rules are that—
(a) the diameter of the dish must not be more than,—
   (i) if antenna A is a replacement for an existing dish antenna the diameter of which was more than 0.38 m, the diameter of the replaced antenna; or
   (ii) otherwise, 0.38 m; and
(b) antenna A’s protrusion distance must not be more than,—
   (i) if antenna A is a replacement for an existing dish antenna that had a protrusion distance of more than 0.6 m, the protrusion distance of the replaced antenna; or
   (ii) otherwise, 0.6 m.

(5) The pole height rules are that the height of the final pole and all antennas must not be more than the greater of—
(a) the height of the baseline pole on the baseline date plus 3.5 m; and
(b) the height of the baseline pole and all antennas on the baseline date.

(6) The pole width rules are that the width of the final pole must not be more than the width of the baseline pole on the baseline date multiplied by,—
(a) if 1 or more antennas were attached to the baseline pole on the baseline date, 1.3; or
(b) otherwise, 2.

(7) The headframe rules are that—
(a) the headframe was on pole A on date A; or
(b) the headframe—
   (i) is a replacement for a headframe that was on pole A on date A; and
   (ii) has a width that is not more than the width of the replaced headframe.

Antennas on new poles in road reserve

28 Regulated activity and standard

(1) The installation and operation of an antenna (antenna B) by a facility operator is a regulated activity if,—
(a) before work to install antenna B begins, a pole (pole B) is to be erected—
(i) at a location that—
   (A) is in a road reserve; and
   (B) is within 100 m of an existing pole in the road reserve; and
(ii) for the purpose of installing antenna B (alone or with 1 or more other antennas) on pole B; and
(b) pole B is not a replacement for an existing pole.

(2) The standard for the activity is that—
(a) regulation 29 must be complied with; and
(b) each regulation in subpart 5, if it applies, must be complied with; and
(c) if the activity includes earthworks, regulation 54 must be complied with; and
(d) if the antenna is an RFG facility, regulation 55 must be complied with.

29 Antenna on new pole in road reserve

(1) This regulation applies to the regulated activity described in regulation 28.
(2) This regulation is complied with if, at the time antenna B is installed,—
   (a) pole B does not have a headframe; and
   (b) the antenna size rules in subclause (3) are complied with; and
   (c) no more than 2 dish antenna are attached to pole B; and
   (d) the pole height rules in subclause (4) are complied with; and
   (e) the pole width rules in subclause (5) are complied with.

(3) The antenna size rules are that,—
   (a) if antenna B is a non-dish antenna, pole B’s notional envelope must not be larger than 3.5 m in length and 0.7 m in diameter; or
   (b) if antenna B is a dish antenna,—
      (i) the diameter of the dish must not be more than 0.38 m; and
      (ii) antenna B’s protrusion distance must not be more than 0.6 m.

(4) The pole height rules are that the height of pole B and all antennas must not be more than,—
   (a) if pole B has a neighbouring pole in only 1 direction along the road reserve, the height of the neighbouring pole plus 3.5 m; or
   (b) if pole B has a neighbouring pole in 2 or more directions along the road reserve, the average of the heights of all the neighbouring poles plus 3.5 m.

(5) The pole width rules are that the width of pole B must not be more than,—
   (a) if pole B has a neighbouring pole in only 1 direction along the road reserve, the width of the neighbouring pole multiplied by,—
(i) if the neighbouring pole has 1 or more antennas attached to it, 1.3; or
(ii) otherwise, 2; or

(b) if pole B has a neighbouring pole in 2 or more directions along the road reserve, the average of the widths of the neighbouring poles multiplied by,—
(i) if any of the neighbouring poles has 1 or more antennas attached to it, 1.3; or
(ii) otherwise, 2.

(6) In this regulation, a pole is a neighbour of pole B in a particular direction along the road reserve if the pole—
(a) is in the road reserve; and
(b) was erected before pole B; and
(c) is not more than 100 m from pole B; and
(d) is the pole nearest to pole B in that direction along the road reserve.

**Antennas on existing poles with antennas not in road reserve and in residential zone**

**30 Regulated activity and standard**

(1) The installation and operation of an antenna (antenna C) by a facility operator is a regulated activity if,—

(a) before work to install antenna C begins (date C), there is a pole (pole C) that—
(i) is not in a road reserve; and
(ii) is in a residential zone; and
(iii) has 1 or more antennas (the existing antennas) attached to it (whether operated by the same or a different facility operator); and

(b) the installation and operation of the existing antennas on pole C complies with the Act; and

(c) antenna C (alone or with 1 or more other antennas) is to be installed—
(i) on pole C in pole C’s original location; or
(ii) on pole C after pole C is moved to a new location; or
(iii) on a new pole erected to replace pole C; and

(d) the pole on which antenna C is to be installed (the final pole) is—
(i) not in a road reserve; and
(ii) in a residential zone.
The standard for the activity is that—
(a) regulation 31 must be complied with; and
(b) each regulation in subpart 5, if it applies, must be complied with; and
(c) if the activity includes earthworks, regulations 53 and 54 must be com-
plied with; and
(d) if the antenna is an RFG facility, regulation 55 must be complied with.

31 Antenna on existing pole with antenna not in road reserve and in
residential zone

(1) This regulation applies to the regulated activity described in regulation 30.

(2) This regulation is complied with if, at the time antenna C is installed,—
(a) if pole C is moved or replaced, the location of the final pole—
   (i) is not in a road reserve; and
   (ii) is in a residential zone; and
   (iii) is not more than 5 m from pole C’s location on date C; and
(b) the antenna size rules in subclause (3) or (4) are complied with; and
(c) the number of dish antenna attached to the final pole is not more than,—
   (i) if more than 2 dish antenna were attached to pole C on date C, that number; or
   (ii) otherwise, 2; and
(d) the width of the final pole must not be more than 1.3 times the width of
   the baseline pole on the baseline date; and
(e) the final pole does not have a headframe unless pole C had a headframe
   on date C; and
(f) if the final pole has a headframe, the headframe width rules in subclause
   (5) are complied with; and
(g) the pole height rules in subclause (6) are complied with.

(3) If antenna C is a non-dish antenna, the antenna size rules are that the width of
    antenna C must not be more than,—
    (a) if antenna C is a replacement for an existing non-dish antenna the width
        of which was more than 0.7 m, the width of the replaced antenna; or
    (b) otherwise, 0.7 m.

(4) If antenna C is a dish antenna, the antenna size rules are that—
    (a) the diameter of the dish must not be more than,—
        (i) if antenna C is a replacement for an existing dish antenna the di-
            ameter of which was more than 0.38 m, the diameter of the re-
            placed antenna; or
        (ii) otherwise, 0.38 m; and
(b) antenna C’s protrusion distance must not be more than,—
(i) if antenna C is a replacement for an existing dish antenna the pro-
trusion distance of which was more than 0.6 m, the protrusion dis-
tance of the replaced antenna; or
(ii) otherwise, 0.6 m.

(5) The **headframe width rules** are that the width of the headframe on the final pole must not be more than,—
(a) if the width of the headframe on pole C on date C was more than 6 m, the width of that headframe; or
(b) otherwise, the lesser of—
(i) 6 m; and
(ii) double the width of the headframe on pole C on date C.

(6) The **pole height rules** are that the height of the final pole and all antennas must not be more than the greater of—
(a) the height of the baseline pole on the baseline date plus 3.5 m; and
(b) the height of the baseline pole and all antennas on the baseline date.

*Antennas on existing poles with antennas not in road reserve and not in residential zone*

32 **Regulated activity and standard**

(1) The installation and operation of an antenna (**antenna D**) by a facility operator is a regulated activity if,—
(a) before work to install antenna D begins (**date D**), there is a pole (**pole D**) that—
   (i) is not in a road reserve; and
   (ii) is not in a residential zone; and
   (iii) has 1 or more antennas (**the existing antennas**) attached to it (whether operated by the same or a different facility operator); and

(b) the installation and operation of the existing antennas on pole D com-
plies with the Act; and

(c) antenna D (alone or with 1 or more other antennas) is to be installed—
   (i) on pole D in pole D’s original location; or
   (ii) on pole D after pole D is moved to a new location; or
   (iii) on a new pole erected to replace pole D; and

(d) the pole on which antenna D is to be installed (the **final pole**) is—
   (i) not in a road reserve; and
(ii) not in a residential zone.

(2) The standard for the activity is that—
(a) regulation 33 must be complied with; and
(b) each regulation in subpart 5, if it applies, must be complied with; and
(c) if the activity includes earthworks, regulations 53 and 54 must be com-
plied with; and
(d) if the antenna is an RFG facility, regulation 55 must be complied with.

33 Antenna on existing pole with antenna not in road reserve and not in
residential zone

(1) This regulation applies to the regulated activity described in regulation 32.

(2) This regulation is complied with if, at the time antenna D is installed,—
(a) if pole D is moved or replaced, the location of the final pole—
   (i) is not in a road reserve; and
   (ii) is not in a residential zone; and
   (iii) is not more than 5 m from pole D’s location on date D; and
(b) if the antenna is a dish or panel antenna, the antenna size rules in sub-
clause (3) are complied with; and
(c) the pole width rules in subclause (4) or (5) are complied with; and
(d) if the final pole has a headframe, the headframe width rules in subclause
   (6) are complied with; and
(e) the pole height rules in subclause (7) are complied with.

(3) The **antenna size rules** are that,—
(a) if antenna D is a panel antenna, the width of the panel must not be more
   than,—
   (i) if antenna D is a replacement for an existing panel antenna the
      width of which was more than 0.7 m, the width of the replaced ant-
     enna; or
   (ii) otherwise, 0.7 m; or
(b) if antenna D is a dish antenna, the diameter of the dish must not be more
   than,—
   (i) if antenna D is a replacement for an existing dish antenna the di-
      ameter of which was more than 1.2 m, the diameter of the re-
      placed antenna; or
   (ii) otherwise, 1.2 m.

(4) If the final pole is in a rural zone, the **pole width rules** are that the width of the
final pole must not be more than,—
(a) if the width of pole D on date D was more than 6 m, that width; or
(b) otherwise, the lesser of—
   (i) 6 m; and
   (ii) the width of pole D on date D multiplied by,—
       (A) if the number of antennas attached to the final pole is more
           than the number that were attached to pole D on date D, 2;
           or
       (B) otherwise, 1.3.

(5) If the final pole is not in a rural zone, the pole width rules are that the width of
    the final pole must not be more than the width of the baseline pole on the base-
    line date multiplied by,—
    (a) if the number of antenna attached to the final pole is more than the num-
        ber that were attached to the baseline pole on the baseline date, 2; or
    (b) otherwise, 1.3.

(6) The headframe width rules are that the width of the headframe on the final
    pole must not be more than,—
    (a) if pole D had a headframe on date D the width of which was more than
        6 m, the width of that headframe; or
    (b) otherwise, 6 m.

(7) The pole height rules are that the height of the final pole and all antennas must
    not be more than,—
    (a) if the pole was installed without a resource consent in reliance on regula-
        tion 34, the lesser of—
        (i) the height of pole D and all antennas on date D plus the permitted
            height increase; and
        (ii) 25 m; or
    (b) otherwise, the height of the baseline pole and all antennas on the base-
        line date plus the permitted height increase.

(8) In this regulation, the permitted height increase is,—
    (a) if the facility operator for antenna D is the facility operator for all anten-
        nas attached to the final pole, 3.5 m; or
    (b) otherwise, 5 m.

Antennas on new poles not in road reserve and in rural zone

34 Regulated activity and standard

(1) The installation and operation of an antenna (antenna E) by a facility operator
    is a regulated activity if,—
    (a) before work to install antenna E begins, a pole (pole E) is to be erec-
        ted—
(i) at a location that—
   (A) is not in a road reserve; and
   (B) is in a rural zone; and
(ii) for the purpose of installing antenna E (whether alone or with 1 or more other antennas) on pole E; and
   (b) the new pole is not a replacement for an existing pole.

(2) The standard for the activity is that—
   (a) regulation 35 must be complied with; and
   (b) each regulation in subpart 5, if it applies, must be complied with; and
   (c) if the activity includes earthworks, regulations 53 and 54 must be com-
       piled with; and
   (d) if the antenna is an RFG facility, regulation 55 must be complied with.

35 Antenna on new pole not in road reserve and in rural zone

(1) This regulation applies to the regulated activity described in regulation 34.

(2) This regulation is complied with if, at the time antenna E is installed,—
   (a) the height of pole E and all antennas is not more than 25 m; and
   (b) the width of pole E is not more than 6 m; and
   (c) if pole E has a headframe, the width of the headframe is not more than 6 m; and
   (d) pole E is at least 50 m away from any building used for residential or educational purposes; and
   (e) if antenna E is a panel antenna, the width of the panel is not more than 0.7 m; and
   (f) if antenna E is a dish antenna, the diameter of the dish is not more than 1.2 m.

Antennas on buildings

36 Regulated activity and standard

(1) The installation and operation by a facility operator of an antenna on a building is a regulated activity.

(2) The standard for the activity is that—
   (a) regulation 37 must be complied with; and
   (b) each regulation in subpart 5, if it applies, must be complied with; and
   (c) if the activity includes earthworks, regulation 54 must be complied with; and
   (d) if the antenna is an RFG facility, regulation 55 must be complied with.
37 Antenna on building

(1) This regulation applies to the regulated activity described in regulation 36.

(2) This regulation is complied with if,—

(a) for a dish or panel antenna, the size rules in subclause (3) are complied with; and

(b) the antenna is attached to the building in a way that complies with the attachment rules in subclause (4).

(3) The size rules are that,—

(a) if the antenna is a panel antenna, the area of the panel must not be more than 1.5 m²; or

(b) if the antenna is a dish antenna, the diameter of the dish must not be more than 1.2 m.

(4) The attachment rules are that—

(a) the top of the antenna must not be more than 5 m above,—

(i) if the antenna is attached to a vertical surface, the top of that surface, directly above the point at which the antenna is attached to the building; or

(ii) otherwise, the point at which the antenna is attached to the building; and

(b) if the building is in a residential zone, the lowest point at which the antenna is attached to the building must be at least 15 m above the ground.

Subpart 3—Small cell units

38 Regulated activity and standard

(1) The installation and operation of a small cell unit by a facility operator is a regulated activity if it is installed on an existing structure.

(2) The standard for the activity is that—

(a) each regulation in subpart 5, if it applies, must be complied with; and

(b) if the activity includes earthworks, regulation 54 must be complied with; and

(c) if the small cell unit is an RFG facility, regulation 55 must be complied with.
Subpart 4—Telecommunication lines

Customer connection lines

39 Regulated activity and standard

(1) The installation and operation of a customer connection line by a facility operator is a regulated activity.

(2) The standard for the activity is that—

(a) regulation 40 must be complied with; and

(b) regulations 44 and 45, if they apply, must be complied with; and

(c) in relation to any part of the customer connection line that is a surface-mounted line, each regulation in subpart 5, if it applies, must be complied with; and

(d) if the activity includes earthworks,—

(i) in relation to any earthworks that are undertaken at a place that is not in a road reserve, each regulation in subpart 5, if it applies, must be complied with; and

(ii) regulation 54 must be complied with.

40 Customer connection line

(1) This regulation applies to a customer connection line.

(2) This regulation is complied with if,—

(a) for any part of the customer connection line that is a surface-mounted line,—

(i) the diameter of the line is not more than 30 mm; and

(ii) if the line is enclosed in a conduit, the diameter of the conduit is not more than 32 mm; and

(iii) the line (and any conduit) is supported solely by existing structures; and

(b) for any part of the customer connection line that is an aerial line,—

(i) the diameter of the line is not more than 30 mm; and

(ii) the line is supported solely by existing structures.

41 Regulated activity and standard

(1) The installation and operation of a telecommunication line (line A) by a facility operator is a regulated activity if—

(a) line A is not a customer connection line; and
(b) before line A is installed, there is an existing aerial power line or tele-
communication line (the current line); and
(c) line A is supported only by 1 or more of the following:
   (i) existing support structures in their original locations;
   (ii) existing support structures after they have been moved to new lo-
cations;
   (iii) new structures erected to replace existing support structures; and
(d) line A is supported by those structures in the same order as the current line.
(2) The standard for the activity is that—
   (a) regulation 42 must be complied with; and
   (b) regulations 44 and 45, if they apply, must be complied with; and
   (c) if the activity includes earthworks, in relation to those earthworks,—
      (i) each regulation in subpart 5, if it applies, must be complied with;
      and
      (ii) regulation 54 must be complied with.
(3) In this regulation, existing support structure means a structure that supported
the current line before the installation of line A.

42 Aerial telecommunication line along same route as existing
telecommunication or power line
(1) This regulation applies to the regulated activity described in regulation 41.
(2) This regulation is complied with if—
   (a) the diameter of line A is not more than 30 mm; and
   (b) the total volume of ancillary equipment for line A on each support struc-
ture (not including any spare line) is not more than 0.4 m$^3$; and
   (c) if an existing support structure (as defined in regulation 41) is moved or
replaced, the location of the moved or replacement structure is not more
than 3 m from the existing support structure’s original location; and
   (d) if an existing support structure is moved or replaced, the structure size
rules in subclauses (3) and (4) are complied with.
(3) The structure size rules are that—
   (a) the height of the replacement structure must not be more than the height
of the existing support structure plus 1 m; and
   (b) the width of the replacement structure must not be more than 1.5 times
the width of the existing support structure.
(4) However, if the minimum road clearance height for the replacement structure is greater than the height permitted under subclause (3)(a), the **structure size rules** are that—
   (a) the height of the replacement structure must not be more than the minimum road clearance height; and
   (b) the width of the replacement structure must not be more than is reasonably necessary for a structure of that height.

(5) The **minimum road clearance height** for a support structure means the minimum height necessary to enable the facility operator to meet its obligations under the Telecommunications Act 2001 relating to the height of line A.

**Underground telecommunication lines**

### 43 Regulated activity and standard

(1) The installation and operation of a telecommunication line by a facility operator is a regulated activity if the line—
   (a) is not a customer connection line; and
   (b) is an underground line.

(2) The standard for the activity is that,—
   (a) to the extent that the activity is carried out in a road reserve, regulation 44, if it applies, must be complied with; and
   (b) to the extent that the activity is carried out at a place that is not in a road reserve, regulations 45 to 51, if they apply, must be complied with; and
   (c) regulation 54 must be complied with.

#### Subpart 5—Application of district and regional rules

### 44 Trees and vegetation in road reserve

(1) This regulation applies to a regulated activity if—
   (a) the activity is carried out at a place that is in a road reserve and within the drip line of a tree or other vegetation; and
   (b) in the absence of these regulations, the relevant district plan or proposed district plan would require the facility operator to obtain a resource consent for the regulated activity.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the district rules about the protection of trees and other vegetation that apply at that place.

### 45 Significant trees

(1) This regulation applies to a regulated activity if the activity is carried out at a place that—
(a) is not in a road reserve; and
(b) is within the drip line of a tree that is, or is in a group of trees that are, identified in the relevant district plan or proposed district plan as being subject to tree protection rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the tree protection rules that apply in relation to that tree.

(3) In this regulation, tree protection rules means district rules about the protection of trees that are identified in the district plan or proposed district plan as being of special significance (however described).

46 Historic heritage values

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to historic heritage rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the historic heritage rules that apply to that place.

(3) In this regulation, historic heritage rules means district rules about the protection of historic heritage values (however described).

47 Visual amenity landscapes

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to visual amenity landscapes rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the visual amenity landscapes rules that apply to that place.

(3) In this regulation, visual amenity landscapes rules means district rules about the protection of landscape features (such as view shafts or ridge lines) identified as having special visual amenity values (however described).

48 Significant habitats for indigenous vegetation

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to significant vegetation rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the significant vegetation rules that apply to that place.

(3) In this regulation, significant vegetation rules means district rules about the protection of significant habitats for indigenous vegetation (however described).
49 Significant habitats for indigenous fauna

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to significant fauna rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the significant fauna rules that apply to that place.

(3) In this regulation, significant fauna rules means district rules about the protection of significant habitats for indigenous fauna (however described).

50 Outstanding natural features or landscapes

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to outstanding natural features or landscapes rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the outstanding natural features or landscapes rules that apply to that place.

(3) In this regulation, outstanding natural features or landscapes rules means district rules about the protection of outstanding natural features or landscapes (however described).

51 Places adjoining coastal marine area

(1) This regulation applies to a regulated activity if it is carried out at a place identified in the relevant district plan or proposed district plan as being subject to coastal protection rules.

(2) This regulation is complied with if the regulated activity is carried out in accordance with the coastal protection rules that apply to that place.

(3) In this regulation, coastal protection rules means district rules that regulate the carrying out of activities in places adjoining the coastal marine area for the purpose of protecting the coastal marine area.

52 Rivers and lakes

(1) This regulation applies to a regulated activity if it is carried out over a river or lake (as referred to in regulation 8(2)).

(2) This regulation is complied with if the regulated activity is carried out in accordance with any applicable regional rules about carrying out that activity over the river or lake.

Subpart 6—Earthworks

53 Earthworks associated with certain antennas

(1) This regulation applies to a regulated activity if it—

(a) is a regulated activity under regulation 30, 32, or 34; and
(b) includes earthworks (as referred to in regulation 5(1)(d)).

(2) This regulation is complied with if—

(a) all special place earthworks are carried out in accordance with the dis-

(b) each time rural earthworks are carried out in relation to the facility,—

(i) the volume of the earthworks is not more than 450 m³; and

(ii) the management plan requirements in subclause (3) are complied

(3) The management plan requirements are that—

(a) before commencing the earthworks, the facility operator must prepare a

(b) the earthworks must be carried out in accordance with that management

(c) the facility operator must give a copy of the management plan to the

(4) An earthworks management plan must set out the following:

(a) where the earthworks will be carried out:

(b) the nature and scale of the earthworks:

(c) when the earthworks will be started and completed:

(d) the measures that will be taken to ensure that the earthworks do not, as

(i) sediment run-off from the site:

(ii) soil or debris from the works entering any water body or the

(iii) instability or subsidence of a slope or another land surface:

(iv) erosion of the bed or bank of a water body or the coastal marine

(v) drainage problems, flooding, or the diversion of overland flow

(vi) dust problems on adjoining land:

(e) the measures that will be taken to complete the earthworks in a way that

(i) restore the site to its previous condition; and

(ii) stabilise the site against subsequent erosion.

(5) The management plan must be set out in a level of detail that is reasonable and

proportionate having regard to the matters referred to in subclause (4)(a) to (c).
(6) The measures referred to in subclause (4)(d) and (e) must be—
(a) designed to minimise the effect on the environment of the earthworks; and
(b) reasonable and proportionate having regard to the matters referred to in subclause (4)(a) to (c).

(7) In this regulation,—
rural earthworks means earthworks that—
(a) are carried out in a rural zone and not in a road reserve; and
(b) are not special place earthworks
special place earthworks means earthworks that are carried out at a place referred to in regulation 45(1), 46(1), 47(1), 48(1), 49(1), 50(1), or 51(1).

54 Earthworks: regional rules apply

(1) This regulation applies to a regulated activity if it includes earthworks (as referred to in regulation 5(1)(d)).

(2) This regulation is complied with if the earthworks are carried out in accordance with any applicable regional rules about earthworks.

Subpart 7—Radiofrequency fields

55 Radiofrequency fields

(1) This regulation applies to an RFG facility.

(2) This regulation is complied with if—
(a) the facility is installed and operated in accordance with NZS 2772.1; and
(b) before the facility becomes operational, the facility operator gives the local authority—
(i) written or electronic notice of the facility’s location; and
(ii) a pre-commencement report that complies with subclause (3); and
(c) either—
(i) the facility operator gives the local authority a post-commencement report that complies with subclause (4) within 3 months after the facility becomes operational; or
(ii) under subclause (5), the facility operator is not required to give a post-commencement report.

(3) A pre-commencement report must—
(a) be prepared in accordance with AS/NZS 2772.2; and
(b) take into account exposures arising from other telecommunication facilities in the vicinity of the facility; and
predict whether the radiofrequency field levels at places in the vicinity of the facility that are reasonably accessible to the general public will comply with NZS 2772.1.

(4) A post-commencement report must—
(a) be prepared in accordance with AS/NZS 2772.2; and
(b) provide evidence that the actual radiofrequency field levels at places in the vicinity of the facility that are reasonably accessible to the general public comply with NZS 2772.1.

(5) The facility operator is not required to give a post-commencement report if the prediction referred to in subclause (3)(c) was that the radiofrequency field levels will not reach 25% of the maximum level authorised by NZS 2772.1 for exposure of the general public.

(6) In this regulation,—
AS/NZS 2772.2 means AS/NZS 2772.2:2016 Radiofrequency fields – Part 2: Principles and methods of measurement and computation – 3 kHz to 300 GHz
NZS 2772.1 means NZS 2772.1:1999 Radiofrequency fields – Maximum exposure levels – 3 kHz to 300 GHz.

Part 4
Miscellaneous

56 District and regional rules may be more stringent
For the purposes of sections 43B and 44A of the Act, the district and regional rules referred to in regulations 25 and 44 to 54 may be more stringent than the standards imposed by the rest of these regulations.

57 District rules about natural hazard areas disapplied
(1) A territorial authority cannot make a natural hazard rule that applies to a regulated activity.
(2) A natural hazard rule that was made before these regulations came into force, does not apply in relation to a regulated activity.
(3) In this regulation, natural hazard rule means a district rule that prescribes measures to mitigate the effect of natural hazards in an area identified in the district plan as being subject to 1 or more natural hazards.

58 Regulations revoked
The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008 (SR 2008/299) are revoked.
Schedule

Transitional, savings, and related provisions

Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 and come into force on 1 January 2017. The regulations are made under the Resource Management Act 1991 (the RMA) and replace the Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2008, which are revoked.

The regulations prescribe standards for installing and operating antennas, cabinets, small cell units, and telecommunication lines (facilities) in the circumstances set out in regulations 19, 26, 28, 30, 32, 34, 36, 38, 39, 41, and 43 (the regulated activities).

Part 2 classifies regulated activities for the purposes of section 87A of the RMA (which sets out the classes of activities for which a resource consent is required and the scope of the consent authority’s power to grant or refuse consent or to impose conditions). If a regulated activity is carried out in accordance with the standard, it will be a permitted activity and resource consent will not be required. If it is not carried out in accordance with the standard, the status of the activity will be determined under regulations 12 to 18 and will depend on the status given to the activity by the relevant district plan. If the activity is classified as a controlled, restricted discretionary, discretionary, or non-complying activity, a resource consent will be required. For controlled and restricted discretionary activities, regulations 14 and 15 limit the scope of the consent authority’s power to grant or refuse consent or to impose conditions.

The standard for each regulated activity is that the specified regulations in Part 3 must be complied with. Some of these regulations, such as those in subpart 5 of Part 3, require compliance with certain district and regional rules.
Even if a regulated activity is a permitted activity under these regulations, other provisions of the RMA, regulations under the RMA, and district and regional plans may also be applicable. For example,—

• section 17 of the RMA requires a person carrying on an activity to avoid, remedy, or mitigate any adverse effects of the activity, even if it is carried on in accordance with a national environmental standard; and

• section 43A(5) of the RMA allows a district plan to impose terms or conditions on an activity to deal with effects of the activity that are different from those dealt with in a national environmental standard.

These regulations do not apply to—

• activities that relate to facilities but that are not within the scope of installing and operating as defined in regulation 5; or

• the installation and operation of facilities in circumstances other than those that constitute regulated activities; or

• the installation and operation of other kinds of telecommunications equipment; or

• anything done in the coastal marine area or in, on, under, or over the bed of a river or lake, although they do apply to things done over rivers or lakes (such as on a bridge).

Those activities are governed by the RMA, other regulations under the RMA, district and regional plans, and other applicable laws.

Regulatory impact statement

The Ministry for the Environment and Ministry of Business, Innovation and Employment produced a regulatory impact statement on 20 August 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

• http://www.mfe.govt.nz/ris/nestf-2016

• http://www.treasury.govt.nz/publications/informationreleases/ris

Issued under the authority of the Legislation Act 2012.

Date of notification in Gazette: 24 November 2016.
These regulations are administered by the Ministry of Business, Innovation, and Employment.
44A Local authority recognition of national environmental standards

(1) Subsections (3) to (5) apply if a local authority’s plan or proposed plan contains a rule that duplicates a provision in a national environmental standard.

(2) Subsections (3) to (5) apply if a local authority’s plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if—
   (a) both of the following apply:
      (i) the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and
      (ii) the standard does not expressly say that a rule may be more stringent than it; or
   (b) the rule is more lenient than the provision.

(3) If the duplication or conflict is dealt with in the national environmental standard in one of the ways described in section 43A(1)(e), the local authority must amend the plan or proposed plan to remove the duplication or conflict—
   (a) without using the process in Schedule 1; and
   (b) in accordance with the specification in the national environmental standard.

(4) If the duplication or conflict arises as described in section 43A(5)(c), the local authority must amend the plan or proposed plan to remove the duplication or conflict—
   (a) without using the process in Schedule 1; and
   (b) as soon as practicable after the date on which the standard comes into force.

(5) In every other case of duplication or conflict, the local authority must amend the plan or proposed plan to remove the duplication or conflict—
   (a) without using the process in Schedule 1; and
   (b) as soon as practicable after the date on which the standard comes into force.

(6) A local authority may amend a plan or proposed plan to include a reference to a national environmental standard—
   (a) without using the process in Schedule 1; and
   (b) after the date on which the standard comes into force.

(7) Every local authority and consent authority must observe national environmental standards.

(8) Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so.
Attachment 4: Track Changes to the Operative District Plan

NTW.1 Network Utilities

NTW.1.1 Description and Expectations

NOTE: Whangarei District Council is undertaking a rolling review of the District Plan. It is intended that all network utility provisions will be reviewed during the rolling review. As part of the rolling review programme this chapter will be populated. Due to Council's requirement to implement the National Policy Statement on Electricity Transmission 2008 and Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009, provisions relating to Electricity Network Utilities have been completed.

Chapter 23 Network Utility Operations of the Operative District Plan remains applicable to all Network Utility Activities. The description and expectations, objectives and policies of NTW.1, NTW.2 and NTW.3 do not supersede those objectives and policies specified in Chapter 23, but provide more specific guidance when considering Electricity Network Utilities.

Council is required to implement Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (NESTF 2016), therefore provision relating to Telecommunication Network Utilities are included. Chapter 23 Network Utility Operations of the Operative District Plan remain applicable to all Telecommunication Facilities.

…

TELECOMMUNICATION:

Communication is provided by Network Utility Operators through telecommunication infrastructure which forms an important aspect of the District’s physical resources. The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 (NESTF 2016) regulates the following activities:

- Cabinets
- Antennas on poles
- Antennas on buildings
- Small cell units
- Telecommunication lines
- Underground telecommunication lines

… Insert the following new rule:

NTW.4.1 TELECOMMUNICATION FACILITIES

1. No rule in any chapter of this Plan that duplicates or conflicts with the NESTF 2016 shall apply. The NESTF 2016 applies in addition to all other rules in any chapter of this Plan.

Implementation Notes:

1. NESTF 2016 regulations 10 – 18 specify the activity status for proposed telecommunication activities by linking back to the relevant District Plan. Each activity must be assessed against the appropriate District Plan definition and rule.

2. NESTF 2016 regulations 44 – 52 specify that proposed telecommunication activities must comply with the following relevant District Plan Resource Area provisions:

   a. Outstanding and Notable Landscape Areas and Outstanding Natural Features (Chapter 57)
   b. Heritage Trees (Chapter 59)
   c. Sites of Significance to Maori (Chapter 60)
   d. Historic Heritage (Chapter HH)
4 PC94B Papakainga Decision

<table>
<thead>
<tr>
<th>Reporting officer:</th>
<th>Melissa McGrath (Team Leader District Plan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of meeting:</td>
<td>16 March 2017</td>
</tr>
</tbody>
</table>

1 Purpose

To seek a Council decision to adopt the report and recommendation of the Hearing Panel relating to a Council-initiated plan change (PC94B Papakainga) and to authorise notification of the plan change decision.

2 Recommendation/s

That the Planning and Development Committee

a) Adopts the report and recommendations of the Hearing Panel dated 14 February 2017 on proposed Plan Change 94B (PC94B) Papakainga, in accordance with Clause 10 of Part 1 of Schedule 1 of the Resource Management Act 1991; and

b) Resolves to publicly notify Council’s decision on PC94B in accordance with Clauses 10 and 11 of Part 1 of Schedule 1 of the Resource Management Act 1991.

3 Background

In 2009 Whangarei District Council (WDC) started a two-phase project to incorporate provisions for papakāinga into the District Plan. PC94 provisions were developed in response to the significant barriers encountered by Māori trying to establish papakāinga developments on their ancestral land. Phase One was the development of the objectives and policies for papakāinga together with provision for papakāinga housing as a discretionary activity. That Plan Change became operative on 28 April 2011.

The purpose of PC94B was to:

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 process as is foreshadowed in the existing papakāinga provisions.
At its 9 March 2016 Planning Committee Meeting, Council resolved to publicly notify proposed Plan Change 94B Papakainga, for submissions. The timeline for the notification and hearing process was as follows:

- **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**: 16 December 2016
- **Hearing closed**: 16 December 2016

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

### 4 Discussion

**Hearing Panel's Recommendations**

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.

Aspects of PC94B which attracted submissions included:

- General opposition, fairness, and rules should not be based on racial preferences.
- General support
- Avoidance of potential effects on adjoining properties
- References to Maori Land Court process and advice notes
- Application of underlying Environment land use rules
- Activity status

In its report, the Hearing Panel has addressed the submissions using topic headings set out in the s42A report. The recommendation of the Hearing Panel in response to all submissions received and heard is attached (as **Attachment 1**) This includes a track change version of the PC94B provisions, a ‘clean’ copy of PC94B provisions.

The Commissioners have recommended that Council accept the majority of the changes recommended by Council’s planner, based on the s42A report and matters reconsidered in light of evidence presented by submitters at the hearing and detailed in the Council officers’ right-of-reply.

The Independent Hearings Panel (the Panel) recommends:

a. Proposed PC94B to the Whangarei District Plan is approved subject to the amendments described in section 8 (of their report) and contained in the Panel's recommendation version of the plan change document.

b. That the submissions and further submissions be accepted, accepted in part or rejected according to the reasons set out in the recommendation report.
**Options Available to Council**

Council is required to make a decision on PC94B, based on the following two options:

1. Adopting the Hearing Panel's recommendation as Council's decision, or
2. Rejecting the Hearing Panel's recommendation and proceeding no further with PC94B by withdrawing the Plan Change.

If the Council adopts the Hearing Panel's recommendation, the Council decision on PC94B is required to be notified in accordance with the RMA. An appeal period of 30 working days then applies.

**5 Significance and engagement**

Council's Significance and Engagement Policy has been considered in relation to this Agenda item.

The decisions or matters of this Agenda item do not trigger the significance criteria outlined in Council's Significance and Engagement Policy, and the public will be informed via Agenda publication on the website.

**6 Attachments**

1. Recommendations of the Hearing Panel dated 14 February 2017
Proposed Plan Change 94B – Papakāinga Provisions (PC94B) to the Whangarei District Plan

Recommendations of the Hearing Panel

14 February 2017
Contents
List of Abbreviations 2

1. Summary of the Recommendations 1
2. Delegation 1
3. Process Matters Relevant to PC94B 1
4. Overview of Plan Change 94B 2
5. Statutory Considerations 3
6. Who We Heard From 4
7. Consideration of Submissions 5
   7.1 Recommendations on Submissions 5
8. Findings and Reasons of the Submissions by Topic 6
   8.1 Whole Plan Change – Support/Opposition 6
   8.2 Scope of Term “Papakāinga” and Chapter Title (PKA.1) 8
9. Conclusion 19
   Attachment 1: Panel's Recommendation Version of Plan Change 94B (Track Change) 1
   Attachment 2: Panel's Recommendation Version of Plan Change 94B (Clean) 2
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discretionary Activity</td>
<td>DA</td>
</tr>
<tr>
<td>General land owned by Māori</td>
<td>GLOBM</td>
</tr>
<tr>
<td>Heritage New Zealand Pouhere Taonga</td>
<td>HNZPT</td>
</tr>
<tr>
<td>Independent Hearings Panel</td>
<td>The Panel or Panel</td>
</tr>
<tr>
<td>Heritage New Zealand Pouhere Taonga Act 2014</td>
<td>HNZPTA</td>
</tr>
<tr>
<td>Māori Land Court</td>
<td>MLC</td>
</tr>
<tr>
<td>Non Complying Activity</td>
<td>NCA</td>
</tr>
<tr>
<td>Northland Regional Council</td>
<td>NRC</td>
</tr>
<tr>
<td>Operative Whangarei District Plan</td>
<td>WDP</td>
</tr>
<tr>
<td>Operative Regional Policy Statement</td>
<td>RPS</td>
</tr>
<tr>
<td>Papakāinga Development Plan</td>
<td>PDP</td>
</tr>
<tr>
<td>Permitted Activity</td>
<td>PA</td>
</tr>
<tr>
<td>Proposed Plan Change 94B Papakāinga Provisions</td>
<td>PC94B</td>
</tr>
<tr>
<td>Resource Management Amendment Act 2013</td>
<td>RMAA2013</td>
</tr>
<tr>
<td>Resource Management Act 1991</td>
<td>RMA</td>
</tr>
<tr>
<td>Restricted Discretionary Activity</td>
<td>RDA</td>
</tr>
<tr>
<td>Te Ture Whenua Māori Act 1993</td>
<td>TTWM Act</td>
</tr>
<tr>
<td>Whangarei District Council</td>
<td>WDC</td>
</tr>
</tbody>
</table>
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 m²;
- That a residential dwelling density limit of one residential unit per 2000 m² 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 |
A total of 126 submissions and 33 further submissions were received.

The submission from Federated Farmers (Northland Province) - PC 94B-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 methods. 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:

<table>
<thead>
<tr>
<th>Council Officers</th>
<th>David Badham</th>
<th>Consultant Planner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melissa McGrath</td>
<td>Team Leader District Plan, Policy and Monitoring</td>
<td></td>
</tr>
<tr>
<td>Lisa McColl</td>
<td>Support Assistant – Policy (Minute preparation)</td>
<td></td>
</tr>
</tbody>
</table>
### Submitters

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

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 Māori and their culture and traditions with their ancestral lands, water, sites, waahitapu 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 Māori 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 Māori 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 m² 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 standalone 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, takeaway 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.
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 paragraphs 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, 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.
   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)
Attachment 1 - Tracked Change Version

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

- shown as underlined and/or struck out

---

Index

<table>
<thead>
<tr>
<th>PKA.1</th>
<th>Papakāinga</th>
</tr>
</thead>
<tbody>
<tr>
<td>PKA.1.1</td>
<td>Description &amp; Expectations</td>
</tr>
<tr>
<td>PKA.1.2</td>
<td>Eligibility</td>
</tr>
<tr>
<td>PKA.1.3</td>
<td>Objectives</td>
</tr>
<tr>
<td>PKA.1.4</td>
<td>Policies</td>
</tr>
<tr>
<td>PKA.1.5</td>
<td>Permitted Activities</td>
</tr>
<tr>
<td>PKA.1.6</td>
<td>Restricted Discretionary Activities</td>
</tr>
<tr>
<td>PKA.1.7</td>
<td>Non-Complying Activities</td>
</tr>
<tr>
<td>PKA.1.8</td>
<td>Transfer of Powers</td>
</tr>
<tr>
<td>PKA.1.9</td>
<td>Decision Making</td>
</tr>
<tr>
<td>PKA.1.10</td>
<td>Advice Note</td>
</tr>
</tbody>
</table>

---

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 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)).

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 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.

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 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 Māori 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.1.2 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:
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 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 500m² in gross floor area on any one site.
iv. The number of residential units per site does not exceed one residential unit per 2,000m² of net site area.
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 2m² 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 500m² 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 1,000m² 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 Non-Complying Activities**

1. On all other land not specified above, Papakāinga developments on all other land not specified above shall be non-complying activities.

**PKA.1.9 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 transfer its powers to the relevant iwi authority for the rohe in which the land is located, for the consideration and determination of discretionary activities in this chapter.

   **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**

   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)
Attachment 2 - "Clean" Version

**Index**

| PKA.1  | Papakāinga               |
| PKA.1.1| Description & Expectations |
| PKA.1.2| Eligibility               |
| PKA.1.3| Objectives                |
| PKA.1.4| Policies                  |
| PKA.1.5| Permitted Activities      |
| PKA.1.6| Restricted Discretionary Activities |
| PKA.1.7| Non-Complying Activities  |
| PKA.1.8| Transfer of Powers        |
| PKA.1.9| Decision Making           |
| PKA.1.10| Advice Note               |

**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 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)).

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 Māori 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.1.2 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 500m² in gross floor area on any one site.

iv. The number of residential units per site does not exceed one residential unit per 2,000m² of net site area.

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.
5 Chairperson’s recommended approach to policy and planning formulation and development

Chairman: Councillor Greg Innes
Date of meeting: 16 March 2017

1 Purpose
To advise the Committee Chairperson’s recommended participatory approach to policy and planning formulation/development.

2 Recommendation/s
That the Planning and Development Committee agree the proposed approach to policy and planning formulation and development as outlined in the Chairperson’s report.

3 Background
At the inaugural Planning and Development Committee I spoke of my desire to set up processes for the committee to be inclusive and to best use the skills of Councillors. Following on from that theme, I am proposing a means through which Councillors can become more engaged in discussion of policy at an early stage.

Suggested Planning and Development Committee participatory approach to policy and planning formulation and development:

Planning and Development Committee should mirror Infrastructure Committee by having regular informal sessions. This will provide consistency of approach across committees and meet the request for early engagement by Councillors.

I suggest it will need to vary in its timing for Planning and Development. The most appropriate time for an Informal Meeting would be following the Planning and Development Standing Committee. This is for increased efficiency and providing a forward looking rather than concentrating on the agenda of the Planning and Development Meeting of the current month. To reflect the informal meetings, I have called them Scoping Meetings.
**Scoping Meetings** - will have topics across the two Departments that report to the Planning and Development Committee.

The purpose of the informal Scoping Meetings is to update committee members on strategic issues, address current topics of interest and, where relevant, establish working parties on specific items.

This will encourage a stronger proactive approach by combining the two Departments. It will also enable more inclusive approach for Councillors by having discussions at an early stage. Formal decision making (resolutions) will only be made at Planning and Development Committee Meetings.

It is intended the informal Scoping Meetings be scheduled following morning tea after the Planning and Development Meetings.

**Working Parties** - there will be some matters that working parties may need to be formed.

The purpose of these forums is to inform Committee Members of current planning and regulatory policy issues and innovations as well as to enable early input into policy development at a strategic level.

We are yet to define the areas where these working parties will be but it is likely they would include, concentrating on policy not management:

- Central Area approach of integrating techniques of influencing land use:
- Growth nodes in the District:
- Defining Councils role in economic development.

**Maori Advisors** - I suggest early engagement of Maori is also important for the Committee Structures. It would seem appropriate there be Maori Advisor presence on matters considered relevant to Maori, especially on RMA considerations. This would be for a Maori Advisor to attend Planning and Development Committee Meetings and informal Scoping Meetings. The advisor would need to be appointed by Te Huinga.

A report formalising the appointment of a Maori Advisor and outlining the appointment process etc will be presented to the next Planning Committee meeting.
RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1. The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}

2. To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {Section 7(2)(f)}.

3. To protect the privacy of natural persons. {Section 7(2)(a)}.

4. Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.

5. To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section 7(2)(c)(i)}.

6. In order to maintain legal professional privilege. {Section 2(g)}.

7. To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(f)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _________ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item ________________.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because_______________________."

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.