

Before the Independent Hearings Panel

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF a submission by the New Zealand Transport Agency (submitter 240, further submitter 331) on the Whangarei District Plan

AND

IN THE MATTER OF the hearing of submissions on Proposed Plan Changes 82A&B, 88A-J, 109, 115, 136, 143, 144, 145, 147 & 148 – Urban and Services to the Whangarei District Plan

**LEGAL SUBMISSIONS ON BEHALF OF
THE NEW ZEALAND TRANSPORT AGENCY**

Dated 22 November 2019

BUDDLEFINDLAY
NEW ZEALAND LAWYERS

Barristers and Solicitors
Auckland

Solicitor Acting: **Mathew Gribben**
Email: mathew.gribben@buddlefindlay.com
Tel 64 9 358 2555 Fax 64 9 363 0734 PO Box 1433 DX CP24024 Auckland 1140

1. INTRODUCTION

- 1.1 These submissions are presented on behalf of the New Zealand Transport Agency (the **Transport Agency**) in relation to its submission and further submission on Proposed Plan Changes 82A & B, 88A-J, 109, 115, 136, 143, 144, 145, 147 & 148 – Urban and Services – to the Whangarei District Plan (**Plan Changes**).
- 1.2 The Transport Agency lodged a submission on the Plan Changes on 3 July 2019, followed by a further submission on 22 August 2019. The Transport Agency has considered the Section 42A Report (**s 42A Report**) and the recommendations contained within this report. The Transport Agency acknowledges the analysis and work done by the Council officers in preparing the s 42A Report. Many matters have been constructively resolved. The Transport Agency's evidence and legal submissions focus on areas of dispute.
- 1.3 Appendix A to these submissions is a consolidated document outlining the outstanding amendments requested by the Transport Agency.

Key concerns for the Transport Agency

- 1.4 The statutory planning documents that apply to the state highway network are of critical importance to the Transport Agency. For this reason, the Transport Agency monitors, and in some instances, plays an active role in the development of planning documents under the Resource Management Act 1991 (**RMA**) by lodging submissions to ensure that appropriate consideration is given to both the transport system and surrounding land uses which may impact on it.
- 1.5 In summary, the Transport Agency seeks provisions within the Whangarei District Plan that:¹
- (a) Recognises and provides for the benefits of infrastructure and allows a fair and balanced assessment of new regionally significant infrastructure (**RSI**) and major upgrades to existing RSI;
 - (b) Protects and manages the existing transport network, especially effects on the state highway network. This includes protecting the safety of users of the network, providing for adequate capacity and

¹ Evidence of Ms Nita Chhagan, paragraph 3.2.

ensuring appropriate access to economic, social and cultural opportunities;

- (c) Encourages the integration of land use and transportation, including through strategic planning and providing for greater intensification in appropriate locations. Strategic planning helps align development of land with infrastructure provision and upgrades;
- (d) Include robust and comprehensive provisions for Integrated Transport Assessments, with appropriate triggers; and
- (e) Improves people's health through mode shift and making active modes (such as walking and cycling) more attractive and better manages the effects of road noise (from state highways) on new sensitive activities. A key mechanism proposed to better manage those effects is the introduction of a new set of rules for those noise sensitive activities which are designed to provide amenity protection and protect human health.

Witnesses

1.6 The Transport Agency has provided statements of evidence from the following witnesses:

- (a) Nita Chhagan, a Principal Planning Advisor at the Auckland Regional Office of the Transport Agency, who provides corporate evidence regarding the objectives and functions of the Transport Agency, its current and future projects in the Northland region and its approach to rezoning requests;
- (b) Dr Stephen Chiles, an independent expert in acoustics, who provides evidence about the potential health effects of road and rail noise, the costs and benefits of addressing that effect and the need to manage new noise sensitive activities near road and rail corridors. Dr Chiles' evidence is presented on behalf of both the Transport Agency and KiwiRail;
- (c) Mathew Collins, of Flow Transportation Specialists, a Principal at the Auckland office who provides evidence relating to the proposed provisions for Port Nikau and the Marsden Technology Park

Precinct, as well as the Council proposed re-zoning of land on Rewa Rewa and Kioreroa Roads;

- (d) Tim Elliott, who is employed by the Transport Agency as a Senior Safety Engineer at the Whangarei Office. Mr Elliott provides evidence on the proposed introduction of a transport chapter and the Hospital regionally significant zone;²
 - (e) Stephen Muir, a director of Essential Lighting Consultancy Ltd, who provides evidence about signs and lighting and comments on the specific amendments sought by the Transport Agency, technical terms and definitions, best practice guidance and the s 42A Report;
 - (f) Richard Landon-Lane, of the Transport Agency, who provides evidence on the effects of digital signs and the road safety concerns which the Transport Agency has with the installation of signs and digital billboards; and
 - (g) Catherine Heppelthwaite, of Eclipse Group Limited, is an independent planner engaged by the Transport Agency for specific projects. Ms Heppelthwaite provides planning evidence on the changes sought by the Transport Agency and responds to some of the changes proposed by other parties, including Transpower New Zealand.
- 1.7 All witnesses will be available to answer questions from the Commissioners. In addition, the witnesses have prepared a short summary statement to present at the hearing, subject to approval from the Commissioners. This will address the key points from their evidence and respond to evidence from other submitters.
- 1.8 The Transport Agency has worked closely with KiwiRail in relation to the Plan Changes and especially to prepare a combined set of rules for noise sensitive activities near road and rail corridors. They have jointly engaged Dr Chiles to present expert evidence and will be presenting within the same hearing time. The Transport Agency intends to present its evidence first,

² Tim Elliot is presenting evidence as an expert, in light of his experience and expertise and the subject matter of his evidence. It is not acceptable for in-house experts and employees to give expert evidence as long as they agree to the Expert Code of Conduct in *Briggs v Christchurch City Council* Environment Court, Christchurch, 24/4/2008, C045/08.

with Dr Chiles being one of the later witnesses. KiwiRail will then present its case.

Outline of submissions

- 1.9 The balance of these legal submissions will focus on the key legal principles and case authorities that are relevant to this plan change process, and will also address the following matters:
- (a) The Transport Agency's statutory obligations and the transport framework;
 - (b) The plan making framework, relevant legal tests and case law authority, including the importance of words and directive language referenced to;
 - (c) Providing for RSI in the objective and policy framework;
 - (d) Proposed new amenity provisions for noise sensitive activities;
 - (e) Rules regarding ITAs;
 - (f) Kaianga Ora / Housing New Zealand;
 - (g) Specific issues and response to other submitters, including Port Nikau;
 - (h) Signs;
 - (i) The classification of State highway 15; and
 - (j) Conclusion.

2. THE TRANSPORT AGENCY'S STATUTORY OBLIGATIONS AND TRANSPORT FRAMEWORK

- 2.1 The Transport Agency is a Crown entity whose purpose is to deliver transport solutions for a thriving New Zealand. This includes investing:
- (a) In public transport, local roads, pedestrian and cycle networks;

- (b) The construction and operation of the state highway network on behalf of the government;³ and
 - (c) Integration of the network including with the rail network.
- 2.2 The Transport Agency's functions and operating principles are set out in the Land Transport Management Act 2003 (**LTMA**) and the Government Roothing Powers Act 1989 (**GRPA**).
- 2.3 The Transport Agency's statutory objective under the LTMA is:

To undertake its function in a way that contributes to an effective, efficient, and safe land transport system in the public interest.⁴
- 2.4 "Land transport system" is defined broadly in the LTMA as including "*transport on land by any means*" and "*coastal shipping and associated infrastructure*".⁵ The functions of the Transport Agency include:⁶
 - (a) to contribute to an effective, efficient, and safe land transport system in the public interest...
 - (c) to manage the State highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with this Act and the Government Roothing Powers Act 1989...
- 2.5 In meeting its objectives and functions, the Transport Agency is required under section 96(1) of the LTMA to exhibit a sense of social and environmental responsibility and use its revenue in a manner that seeks value for money.⁷ This means the Transport Agency aims to provide environmentally and socially responsible outcomes in particular transport projects, within the overall funding allocation.
- 2.6 The above functions reflect the Transport Agency's general duty to ensure that all forms of land transport (not just state highways) operate in an effective and integrated manner. For this reason, the Transport Agency is an approved requiring authority not only for the construction and operation (including the maintenance, improvement, enhancement, expansion,

³ Government Roothing Powers Act 1989, section 61 provides the Transport Agency with the sole power of control for all purposes, including construction and maintenance, of all State highways and has the power to do all things necessary to construct and maintain in good repair any State highway.

⁴ LTMA, section 94.

⁵ LTMA, section 5.

⁶ LTMA, section 95.

⁷ LTMA, section 96(1)(a) and (1)(b).

realignment and alteration) of state highways, but also cycleways and shared paths.⁸

Government Policy Statement

- 2.7 The Government Policy Statement on Land Transport (**GPS**) sets out the Government's strategy to guide land transport investment over the next 10 years. The GPS also provides direction to the National Land Transport Programme (**NLTP**) and to the Transport Agency's policy provisions and project development.
- 2.8 Ms Chhagan's evidence sets out in detail the strategic priorities included within the GPS. These priorities include safety, access, value for money and the environment.
- 2.9 The 2018 – 2021 NLPT was adopted in August 2018 and provides that \$480 million is to be invested in Northland, in order to contribute to the region's economic growth, transport network resilience, accessibility and road safety performance.

The Transport Agency's Network in Whangarei

- 2.10 The state highway network in Whangarei includes State Highway 1, 14 and 15. Much of the work in Northland will focus on maintaining the current network but there are a number of current investigations and projects.⁹
- 2.11 The state highway network is highly significant to the Whangarei and wider Northland communities. They are the critical link between the different communities and to key economic assets such as Northport.

3. PLAN MAKING FRAMEWORK AND RELEVANT LEGAL TESTS

- 3.1 The Panel will be familiar with the relevant legal tests for changes to a district plan, but for completeness these are outlined below.
- 3.2 Under section 72 of the RMA, the purpose of a district plan is to assist a territorial authority to carry out its function in order to achieve the purpose of the Act.
- 3.3 Under section 74(1) of the RMA, a district council must prepare its plans in accordance with specified matters. These include its functions under

⁸ Resource Management (Approval of Transit New Zealand as Requiring Authority) Notice 1994; Resource Management (Approval of NZ Transport Agency as a Requiring Authority) Notice 2015.

⁹ Evidence of Nita Chhagan, paragraph 6.7 and section 7.

section 31, the provisions of Part 2, any obligation to prepare and have regard to a section 32 evaluation, and any regulation.

- 3.4 Under section 74(2) a district council must have regard to a further range of matters, including any management plans and strategies prepared under other Acts and any relevant iwi planning documents.
- 3.5 Section 75 requires a district plan to state objectives, policies and any proposed rules. Further, a district plan must give effect to any national policy statements, the NZCPS, a national planning standard and any regional policy statement.
- 3.6 In summary:
- (a) A district plan must state the objectives for the district;¹⁰
 - (b) The objectives should give substance to Part 2 and must implement higher order planning documents;¹¹
 - (c) Under section 32, there must be an evaluation as to whether the objectives are the most appropriate way to achieve Part 2;¹²
 - (d) Once finalised, objectives can then be considered the most appropriate way to achieve the purpose of the Act; and¹³
 - (e) Policies and rules must implement the objectives.¹⁴

Section 32

- 3.7 Under the RMA, a section 32 and 32AA evaluation must:
- (a) Examine whether the proposed objectives are the most appropriate way to achieve the purpose of the RMA;
 - (b) Examine whether the proposed provisions are the most appropriate way to achieve the objectives by identifying other reasonably practicable options, assessing their efficiency and effectiveness and summarising the reasons for deciding on provisions;

¹⁰ Section 75(1).

¹¹ Section 75(3). Albeit it is the district plan which must give effect to the higher order documents rather than the objectives specifically.

¹² Section 33(2).

¹³ *King Salmon* para [33].

¹⁴ Section 33(1)(b).

- (c) Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from implementing the proposal; and
 - (d) Include an assessment of the benefits and costs of the effects anticipated from implementing the provisions.
- 3.8 The test that has been established in case law is essentially a two-step process involving, first, a consideration of whether the plan addresses all the relevant mandatory requirements in the RMA, followed by a s 32 evaluation of the provisions.¹⁵
- 3.9 The Environment Court's decision in *Long Bay-Okura Great Park Society Inc v North Shore City Council*¹⁶ distilled and summarised the mandatory requirements for plan changes into a list¹⁷ that has been considered in a number of cases since. The *Long Bay* list has subsequently been updated by the Courts to reflect various legislative amendments in *High Country Rosehip Orchards Ltd v Mackenzie District Council*¹⁸ and most recently in *Colonial Vineyard Ltd v Marlborough District Council*.¹⁹ The full list, as contained in *Colonial Vineyard*, is outlined in **Appendix B**.
- 3.10 The Court in *Colonial Vineyard* described the process as a series of questions as follows:
- (a) What are the benefits and costs of the proposed plan and the alternatives?
 - (b) Does the proposed plan give effect to any relevant national policy statements, the NZCPS, and the regional policy statement?
 - (c) Does the proposed plan achieve the purpose of the RMA?²⁰

¹⁵ While distinctions have been made in recent case law between whole of plan reviews, plan changes and variations for scope reasons, for example *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* (2016) 19 ELRNZ 595, the "test" by which they are evaluated *de novo* by the Environment Court is essentially the same. The High Court decision of *Royal Forest & Bird v Bay of Plenty Regional Council*, discussed below, emphasised that both obligations need to be considered.

¹⁶ *Long Bay-Okura Great Park Society Inc v North Shore City Council* (NZEnvC Auckland, A 78/08, 16 July 2008).

¹⁷ *Ibid* at [34]. The *Long Bay* list is comprised of a series of general requirements coupled with specific requirements for objectives, policies, methods, rules and other matters.

¹⁸ *High Country Rosehip Orchards Ltd v MacKenzie District Council* [2011] NZEnvC 387 at [19].

¹⁹ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

²⁰ Although this final step may be redundant in circumstances where it is not necessary to resort to Part 2.

National Planning Standards

- 3.11 Finally, under sections 58I and 58J of the RMA a district council must amend its district plan in accordance with the directions within the National Planning Standards. Standard 15.4 states that a district plan needs to be amended to implement the Standards within 5 years of the date when the standards came into effect. This will be May 2024. Unusually, the definitions in the Standards do not need to be implemented until May 2026.
- 3.12 It appears that the Whangarei District Council has adopted many aspects of the Standards (for example a District Growth and Development Chapter) but is leaving full implementation of the Standards to another plan process. This is a sensible approach and consistent with the rolling review the Council has adopted. Counsel's experience with another current district plan review is that incorporation of the Standards into a proposed plan can be fraught.

4. CASE LAW PRINCIPLES

- 4.1 The Supreme Court in *King Salmon*²¹ makes a number of relevant findings regarding the plan change process, and how higher order documents should be given effect to as part of this process. In *King Salmon*, the Supreme Court described the following principles relevant to plan change applications:
- (a) The obligation to give effect to a national policy statement or regional plan simply means to implement;
 - (b) That, on the face, is a strong directive, creating a firm obligation on the part of those subject to it;
 - (c) A requirement to give effect to a policy that is framed in a specific and unqualified way may, in a practical sense be more prescriptive than a more general policy;
 - (d) Decision-making on plans and plan changes occurs under the relevant plan making sections, not under Part 2;
 - (e) The hierarchal nature of RMA plans mean it is generally not necessary to resort to Part 2 or higher order documents to determine

²¹ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*].

appropriate plan provisions unless there is invalidity, uncertainty or incompleteness (although see below for a contrary approach from the High Court);

- (f) The NZCPS is, in effect, Part 2 for the coastal environment and there will be few instances when it is necessary to consider Part 2; and
- (g) Although a plan may appear to pull in different directions, a thorough analysis of the relevant provisions, paying careful attention to the words used, should be done to resolve or minimise areas of conflict.²²

The importance of words and directive language

4.2 Given the role and prominence of plan policy frameworks, it follows that the specific wording of the objectives (and policies) matters. The Supreme Court in *King Salmon* outlined a number of principles regarding the interpretation of plan provisions which are highly relevant when formulating new plan provisions, such as for the Plan Changes.

- (a) Careful attention must be paid to how plan provisions are worded;
- (b) Some policies give decision-makers more flexibility or are less prescriptive than others. By contrast, other policies are expressed in more specific and directive terms;²³
- (c) Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it;²⁴
- (d) Particular care must be taken with the use of “avoid”, which the Supreme Court held means “not allow” or “prevent the occurrence of”;²⁵
- (e) A directive avoid policy may in effect create an environmental bottom line; and

²² Ibid at [73].

²³ *King Salmon* para [127].

²⁴ Ibid, para [129].

²⁵ Ibid, para [67].

- (f) If blanket avoidance of an effect or activity is not intended, then the objectives and policies should be appropriately qualified.
- 4.3 The significance of “avoidance policies” was raised most recently by the High Court in *Port Otago v Otago Regional Council* which observed, in obiter, that the avoidance policies in the NZCPS should naturally lead to prohibited activity status for any activity that could potentially have an adverse effect on the protected values.²⁶ While policies that direct “protection” or “enhancement” have yet to be subject to the same scrutiny by the Courts, there is certainly a risk that objectives drafted in such direct terms without appropriate qualification could be interpreted in a similar way.
- 4.4 The Court in *Port Otago* found that a policy which *recognised* the need for network of ports was, in the event of a direct conflict, subservient to a policy about *avoiding* adverse effects.
- 4.5 The Court of Appeal's recent decision in *Davidson Family Trust*²⁷ is not strictly relevant to this plan change process, since it relates to resource consents. However, this decision has reinforced the need to pay careful attention to plan provisions (and the directives they provide), and ensure all Part 2 matters are competently reflected in a plan. The Court of Appeal has commented that clear environmental outcomes in a plan (inside and outside the coastal environment) cannot be overridden by reference to Part 2 considerations.

5. PROVIDING FOR RSI IN OBJECTIVE AND POLICY FRAMEWORK

- 5.1 The emphasis from the Courts on the hierarchy of planning documents, the importance of objectives and policies and the importance of specific words provides the context for the changes the Transport Agency is seeking to the objectives and policies in the Proposed Plan, especially in relation to the *Growth and Development Chapter* (previously the Strategic Direction chapter).
- 5.2 As outlined in Ms Chhagan's evidence, the Transport Agency has a number of improvements and projects within Northland and Whangarei, and more may be required to service anticipated growth. Whangarei to Te Hana is the major future project, although its form, location and timing is still under

²⁶ [2019] NZHC 2278 at [55].

²⁷ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

- investigation. In addition, the existing network needs to be maintained and in places upgraded. The existing state highway is a physical resource that must be sustainably managed just like the natural environment. It is the result of investment over a number of decades. The value of that investment should be reflected appropriately in the Plan.
- 5.3 Many of the state highways in Whangarei are designated and this is the Transport Agency's preferred method to authorise new developments. The improvements at Tarewa Road are a recent example within Whangarei. The objectives and policies of the District Plan are an important aspect
- 5.4 As a result, the Transport Agency seeks provisions that:
- (a) Recognise and enable new RSI. The use of recognise and enable, without caveats, is critical to give the necessary policy support to development of infrastructure;
 - (b) Recognise that RSI, especially new RSI and major upgrades, can generate significant adverse effects but that this needs to be weighed against the benefits of RSI;
 - (c) Provide for an effects management hierarchy so that effects are avoided, remedied and mitigated;
 - (d) Provide for upgrades of RSI that have the same level of effects in a clear and efficient manner; and
 - (e) Do not unintentionally create environment bottom lines in other provisions through the use of "avoid" without suitable caveats.
- 5.5 Failure to provide a clear consenting pathway or the imposition of restrictive requirements and bottom lines (outside the coastal environment) can significantly impede the development of new and vital infrastructure and may ultimately lead to its decline.
- 5.6 The s 42A Report has proposed a series of amendments to the RSI provision (SD-013, 14 and 15 and SD-P32, 33 and 34) of the *Growth and Development Chapter*. A number of these amendments are helpful, including a separate objective (SD-O14) to provide for the benefits of RSI and a policy to enable the development and upgrade of RS1 (SD-P32).
- 5.7 However, the amendments fail to go far enough to achieve the necessary outcomes for the Transport Agency. Revised Policy SD-P33 is particularly

problematic, as it implies that all effects of RSI need to be addressed so that they are more than minor.

- 5.8 RSI, especially new RSI, will in some circumstances have significant adverse effects, despite all the best efforts to avoid, remedy and mitigate those effects. Those effects, which are often local, are balanced though with the benefits, which are often for the wider community. Policy SD-P33, as proposed in the s 42A Report, would likely prevent that type of project getting approval. It is simply not possible to reduce all effects to be no more than minor.
- 5.9 It is necessary to amend the Policy to recognise this reality and expressly recognise that those more than minor adverse effects need to be weighed against the benefits of RSI and the route selection method. The amended policy reads:²⁸

To manage adverse effects created by new or Upgraded network utilities and Regionally Significant Infrastructure by:

1. Allowing adverse effects that have been avoided, remedied and mitigated to the extent that they are no more than minor and for other effects take into account matters listed in the Northland Regional Policy Statement 5.3.3(3); and
2. Ensuring damage to or loss of the relationship of iwi . . .

- 5.10 These amendments are consistent with the Northland Regional Policy Statement (**NRPS**) Policy 5.3.3, in particular clause (3), which states that when managing adverse effects of RSI weight must be given to a range of matters. Clause (1) of the same policy does refer to allowing adverse effects from RSI only when they are no more than minor but clause (3) addresses the scenario when there are more than minor adverse effects and how they should be weighed against other relevant matters.
- 5.11 A number of other RSI providers, like Transpower, have proposed amendments to the RSI provisions. The Transport Agency supports amendments that enable RSI and achieve the same outcomes. However, has a significant concern about the changes proposed by Transpower²⁹ to SD-P16 which will be explained further by Ms Hepplethwaite at the hearing.

Overview to the Strategic Direction Chapter

- 5.12 The Transport Agency did not seek any specific amendments to the introduction to the notified Strategic Direction but it agrees with the

²⁸ Evidence of Catherine Heppelthwaite paragraph 9.23.

²⁹ Evidence of Ainsley McLeod, paragraph 61-64.

amendments in the s 42A Report to clarify that the provisions in this chapter need to be read alongside other provisions. This is important to ensure that plan readers do not give undue or excessive weight to the provision in the Chapter. The provisions in the chapter are meant to be integrating and co-ordinating and address district wide matters (like RSI) rather than being directive or superior.³⁰

6. NEW AMENITY PROVISIONS

- 6.1 The Transport Agency and KiwiRail are proposing a range of provisions to provide amenity protection and protect human health for new noise sensitive activities in close proximity to the state highway and rail network. In addition, the provisions will help to reduce reverse sensitivity effects on the two transport networks from the establishment of new activities.
- 6.2 Dr Chiles' evidence outlines the potential health effects from road and rail noise and vibration.³¹ Mr Styles, the Council's noise expert, is in agreement about those potential effects. The expert acoustic opinion is clear and uncontested - there is a potential adverse effect and it should be addressed.
- 6.3 Mr Styles' expert view³² is that the indoor road and rail noise provisions and the mechanical ventilation controls should both be adopted. He has reservations about the costs and benefits of the outdoor noise controls, but not the health benefits.
- 6.4 The reporting planner sets aside the Council's expert's opinion, adopts a planning perspective and recommends not including any provisions based on the following grounds:³³
- (a) The economic implications of the changes have not been fully substantiated;
 - (b) Costs have not been fully understood and assessed in terms of section 32AA;

³⁰ See for example the criticisms from the MGG Environment Court of the undue weight that has been given to the strategic directions within the Christchurch Replacement Plan and the Queenstown Lakes District Plan. *Rogers v Christchurch City Council* [2019] NZEnvC 119 and *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 at [27].

³¹ Evidence of Stephen Chiles, paragraphs 4.1 – 4.6.

³² As recorded in the Section 42A report, page 57, paragraph 346.

³³ *Ibid*, paragraph 349-359.

- (c) There should be an obligation, at least in part, on infrastructure providers, to reduce their impacts;
 - (d) The implications on feasible residential capacity, as outlined in the National Policy Statement on Urban Development Capacity 2016; and
 - (e) The Building Act 2004 already provides an adequate level of protection.
- 6.5 It is important to place the obligations under section 32AA into the proper legal context.
- 6.6 The High Court has commented that while economic evidence can be useful, a s 32 evaluation *"requires a wider exercise of judgment"*.³⁴ The Court further explained that it is not possible to express some benefits or costs in economic terms, stating, *"...in this situation it is necessary for the consent authority to weigh market and non-market impacts as part of its broad overall judgment under Part 2 of the RMA"*.³⁵
- 6.7 The test in *Colonial Vineyard* is the starting point of any section 32 assessment. It requires an assessment of costs and benefits, but perfect information on all costs and benefits is not required. A broad judgement of all the relevant matters is what is required.
- 6.8 In any event, there is clear evidence about the potential costs referred to in the s 42A Report³⁶ and confirmed by Dr Chiles.³⁷ The costs are between 1% and 8% of the building cost. Further analysis would not assist in making a decision on whether the rules are appropriate. The costs are clear, albeit within a large range, and they can be weighed against the benefits of the rules. Those benefits are to enable residential development and protect the health and amenity of residents and reduce reverse sensitivity effects on existing RSI.
- 6.9 There is clear policy support for the proposed provisions:
- (a) The NRPS and the objectives of the Plan Changes identify the protection of RSI and the management of reverse sensitive effects,³⁸

³⁴ *Contact Energy Ltd v Waikato RC* (2007) 14 ELRNZ 128 (HC) at [48].

³⁵ *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482, [2010] NZRMA 477 at [107].

³⁶ Paragraph 350.

³⁷ Evidence of Stephen Chiles, paragraphs 7.8 – 7.9.

³⁸ Evidence of Catherine Heppelthwaite, paragraphs 9.5, 9.9 and 9.15 and evidence of Pam Butler, paragraph 8.2.

- (b) Section 7(c) of the Act requires particular regard of the maintenance and enhancement of amenity values; and
 - (c) Section 5 includes the health and safety of people and communities.
- 6.10 There is the potential for the increased cost of the provisions to impact on the commercial viability of some residential and business development and so may have some impact on the feasible residential and business capacity. The scale of that impact is unknown. A 1% increase in building cost would be negligible. But even if the costs make development unfeasible along state highway and road corridors, there may be many other options to provide the necessary capacity in other locations or through other rule changes. The costs to meet the new provisions are no different from other similar development costs and reflect the nature and characteristics of the land (for example, land with geotechnical limitations may still be suitable for construction, but there will likely be extra costs).
- 6.11 In section 32 terms, there is a far greater risk from not acting and causing a certain adverse effect on future residents than from acting and causing some level of cost increase.
- 6.12 The new provisions do not disproportionately impose costs on landowners and new activities compared to the costs on the Transport Agency. The provisions are part of a combined package of measures to address the issue. As outlined in Dr Chiles' evidence the Transport Agency has a wide range of measures it implements in relation to new and upgrades to state highways. The Transport Agency takes responsibility for the additional effects from these new developments and in response new noise sensitive activities take responsibility when they exacerbate an existing problem. This assists to protect the existing network.
- 6.13 Dr Chiles comprehensively refutes the argument that the Building Act 2004 can adequately address the issue. The Building Act may work well to regulate noise between tenancies and within a building but does a poor job of regulating noise between different land uses. That is the role of the RMA.
- 6.14 Finally, the proposed rules are common in many district plans through-out the country and are not unusual or novel.

7. INTEGRATED TRANSPORT ASSESSMENTS

- 7.1 ITAs are a critical management tool. They are very common throughout district plans, especially in urban areas. They serve a number of purposes:
- (a) Identify transport effects of a proposal;
 - (b) Identify the transport improvements required to address any effect;
 - (c) Identify how and when they will be provided;
 - (d) Describe linkages between the proposal and its effects with the wider transport network; and
 - (e) Identify use of non-car transport modes and assist to implement mode shift. An ITA requires an applicant to specifically turn their mind to this issue and provide the consenting authority (and ideally the road controlling authority) with information and explanation.
- 7.2 They are comprehensive and bring together a range of transport considerations. An ITA by itself does not compel an outcome, although it may identify improvements needed to avoid, remedy or mitigate adverse effects on the transport network.
- 7.3 The Transport Agency therefore strongly supports the use of ITAs and their retention in the Plan Changes. At worst, the notified provisions need to be maintained. A district plan without such provisions would be inadequate and fail to meet best practice transport planning.
- 7.4 However, the notified plan changes used parking numbers as the trigger for when an ITA was required. The Transport Agency considers parking numbers are a poor proxy for trip generation and impact on the network.³⁹ Mr Elliott and Mr Collins provide their expert view on this issue and suggest alternative triggers. The key point is that parking numbers alone are not adequate and other triggers, such as GFA or vehicle generation are required.
- 7.5 Mr Elliott's evidence outlines two potential types of thresholds:
- (a) GFA or dwelling numbers for different activities (as per the Transport Agency original submission); and

³⁹ Evidence of Tim Elliott, paragraphs 5.12 - 5.13.

- (b) A method to calculate trip vehicle generation based on the GFA of an activity. ON reflection that evidence was not as clear as it could be and Mr Elliott will clarify at the hearing the particular trip generation rates that would trigger the need for an ITA, based on those calculations.

Scope – legal tests

- 7.6 It appears that the District Council has concerns whether the amendments in Mr Elliott's evidence are within scope. These matters are addressed within the submissions of counsel for Whangarei District Council dated 21 November 2019.⁴⁰ It is unclear whether the Panel has similar concerns.
- 7.7 The well-known legal test is whether an amendment is reasonably and fairly raised within submissions. The WDC submissions accurately refers to this test but does not elaborate on the relevant case law. To assist the Panel, a more detailed explanation is outlined below.
- 7.8 Importantly, the scope for an amendment is not set just by the original submission of a submitter but also the further submissions that they made on other original submissions. If an amendment is proposed by a further submitter to address another person's submission, then it can be within the scope of the submissions, taken as a whole.
- 7.9 The Panel of course can rely on scope created by all the submissions, so the situation may be more complex than simply reviewing the original submission of the submitter in question.
- 7.10 The "*reasonably and fairly raised*" test was first established by the High Court in *Countdown Properties (Northlands) Ltd v Dunedin City Council* and applied by subsequent authorities.⁴¹ According to this test, a decision maker must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change. This will usually be a question of degree, to be judged by the terms of the proposed plan change and the content of the submissions.⁴²

⁴⁰ Paragraph 30.

⁴¹ *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 at 166 and confirmed by the High Court in *Albany North Landowners v Auckland Council* [2017] NZHC 138. The Environment Court most recently considered and confirmed these test in *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150.

⁴² *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145. The High Court referenced the danger of substituting a test which relies solely upon the court endeavouring to ascertain the mind or appreciation of a hypothetical person. The question of whether it is "*plausible*" or "*certain*" that a person would

- 7.11 The High Court in *Royal Forest and Bird Protection Society Inc v Southland District Council* adopted the *Countdown Properties* approach and explained that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached "*in a realistic and workable fashion, rather than from the perspective of legal nicety*".⁴³
- 7.12 In *Re Vivid Holdings*, the Environment Court considered that in order to start to establish jurisdiction, a submitter must raise a relevant resource management issue in its submission in a general way. Then, any decision of the Council or requested of the Environment Court in a reference, must be fairly and reasonably within the general scope of an original submission, or the proposed plan as notified or somewhere in between, provided that the summary of the relevant submissions was fair, accurate and not misleading.⁴⁴

Application to NZTA requested amendments

- 7.13 The Transport Agency's original submission did not outline the specific amendments contained within Mr Elliott's evidence. However, there is no requirement that the exact provisions must be outlined in the original submission, rather, they must be fairly and raised in the submission as a whole. This includes the relief sought, the reasons and general parts of the submission.
- 7.14 The issue of appropriate triggers for ITAs and the need to not rely just on parking numbers was clearly raised in the original submission and within the summary of submissions. Specific new triggers based on GFA were suggested within the original submission as an example. The original submission point and the summary of submissions are outlined in Appendix C.
- 7.15 The summary of submissions is an accurate reflection of the original submissions and importantly contains both the relief and the reasons for the change. The summary was a clear signal to the public about the types of changes sought, albeit not the exact same detail, and a number of

have appreciated the ambit of submissions and the need to then lodge a submission was described as unhelpful, with the High Court emphasising that the local authority or tribunal must make a decision based upon its own view of the extent of the submissions and whether the amendments came fairly and reasonably within them.

⁴³ *Royal Forest and Bird Protection Society of New Zealand v Buller Coal* [2012] NZRMA 522 at [13]. In *Royal Forest and Bird* the Court held that the "substance" of Rule HER.3 was properly raised in submissions relevant to the Southland Plan.

⁴⁴ *Re an application by Vivid Holdings* (1999) 5 ELRNZ 264, [1999] NZRMA 467 at [19]-[20].

submitters identified the change and lodged further submissions in opposition.

- 7.16 On the basis of considering the Transport Agency's submission as a whole, and when approached in a realistic and workable manner, the type of amendments outlined in Mr Elliott's evidence (using a vehicle per day trigger rather than GFA or parking numbers) were fairly and reasonably raised in the original submission.
- 7.17 The scope for an amendment is set not just by the specific submission point but also by consequential changes and changes arising from further submissions. As discussed below, the Transport Agency opposed the Kaianga Ora original submissions particularly in relation to the upzoning of residential land. The revised ITA triggers now proposed by Kaianga Ora are a way to address the concern about transport effects and so, at least for residential activities, fall within the scope of the Transport Agency's further submission in opposition to Kaianga Ora.

8. KAIANGA ORA

- 8.1 Kaianga Ora has lodged an extensive submission seeking a number of significant changes to the Plan Changes. The Transport Agency lodged further submissions opposing the entirety of the original submission, including the proposed upzoning of large parts of the city.
- 8.2 The Transport Agency agrees with many of the rezoning principles⁴⁵ and the intended outcomes but is concerned about potential effects on the transport network. It has not seen any information regarding the nature and scale of such potential effects.
- 8.3 The majority of Kaianga Ora's evidence was filed yesterday and so the Transport Agency has not had time to review and consider its implications, including the proposed zoning pattern. As a result, the Transport Agency is not yet in a position to support the changes sought.
- 8.4 No traffic or transportation evidence was provided by Kaianga Ora, however, the planning evidence of Ms Masefield proposes amendments to TRA-15 and TRA-16, including triggers for an ITA based on the number of dwellings.⁴⁶ This step may address some of the Transport Agency's

⁴⁵ One potential area of disagreement is up-zoning around public open space, without corresponding access to the transport network.

⁴⁶ Paragraphs 6.39-6.43.

concerns about potential effects but there has been inadequate time to confirm if that is the case and what other amendment, if any, would be required. The Transport Agency will endeavour to reach a position by the time of its hearing, but may need to return at a later date to address the issues.

9. SIGNS

9.1 One of the Transport Agency's primary statutory obligations is to the safety of users of the state highway network. The importance of safety has been reinforced within the GPS 2018 as one of the national priorities and, as outlined by Mr Landon-Lane, the commitment to a Safe System philosophy.⁴⁷

9.2 There are many aspects to the Safe System but the most relevant aspect to the Plan Changes is the need to regulate advertising signs and digital billboards. As Mr Landon-Lane explains:⁴⁸

...the Transport Agency recognises that such devices are, by their nature, designed to distract the driver from their driving. This affects two of the four pillars, namely:

- (a) Safe Road Use – a distracted driver is not safe use of the road; and
- (b) Safe Roads & Roadsides – a roadside device designed specifically to create an unsafe driver is not considered part of a 'safe roadside'.

The evidence that advertising signs cause distraction, and that digital signs have an even greater distracting effect, is well-established...

9.3 The Transport Agency's original submission sought a range of changes to the signs provisions. Some of those were accepted in the s 42A Report but the majority were rejected on the basis of a lack of technical justification and support.

9.4 The evidence of Mr Landon-Lane and, in particular, Mr Muir, provide a strong technical basis for the amendment sought. Mr Muir refers extensively to the Australia/New Zealand Standard 4282 (AS/NZS:2019) *Control of the obtrusive effects of outdoor lighting*. That standard outlines best practice relating to outdoor signage, including digital signage, and should be followed as closely as possible.

⁴⁷ Evidence of Richard Landon-lane, paragraph 4.1.

⁴⁸ Ibid, paragraph 4.4 – 4.5.

Scope for requested amendments to rules regarding signs

- 9.5 The legal submissions on scope from the District Council address whether certain amendments sought by Mr Muir are within the scope of the original submission.
- 9.6 The exact amendments are not listed in the original submission but increased controls on digital signage is very clearly raised throughout the submission. For example, the submission requested amendment to the overview as follows:

However, controls on the design, number, size and location of signage are also required in order to ensure that the amenity values of the various zones within the District are maintained and so that signs do not compromise the safe and efficient operation of the transport network ~~traffic safety~~ and/or the legibility of certain areas.

~~Illumination~~ Illuminated and digital signage of signage is becoming increasingly used within the Whangarei District and may be associated with businesses or advertising. Illuminated signage is generally considered an effective method of advertising and attracting business due to its predominance against a dark background. However careful consideration needs to be applied to the design and location of illuminated and digital signage. This is because poorly designed and located illuminated and/or digital signage can have a detrimental impact on the surrounding environment including amenity and the safe and efficient operation of the region's transport network.

- 9.7 The amendments proposed by Mr Muir are within the ambit of the submission as a whole and are consequential to the amendments sought to the overview for the Significant chapter.

10. SPECIFIC ISSUES

Port Nikau

- 10.1 The Transport Agency has opposed submissions by Port Nikau Joint Venture in relation to the Port Nikau Precinct. Access to the Port Nikau area is constrained and the Transport Agency is concerned about the potential effects on the Rewa Rewa Road/ State Highway 1 intersection as a result of development in the area.
- 10.2 The Transport Agency has presented evidence from Mr Collins that Rules TRA-R15/R16 and TRA-REQ1/REQ2 are not sufficient to provide confidence to the Transport Agency that effects will be assessed and mitigated.
- 10.3 Mr Collins has reviewed the primary evidence of Mr Hood on behalf of the submitter. That evidence contains an Integrated Transport Assessment

from July 2008. In Mr Collins' opinion, this is out of date and cannot be relied upon as an accurate assessment of transport effects. As a result, there is a lack of evidence confirming the existence and availability of sufficient transport-infrastructure to support the development of Port Nikau and the specific new rules outlined in the Transport Agency's evidence should be adopted.

Quality Developments Limited

- 10.4 The Transport Agency lodged a further submission opposing the rezoning of land in Maunu by Quality Development Limited. Ms Miller's evidence for the submitter has outlined how the land in question is zoned as residential in the operative district plan and so the submitter is simply seeking to restore the status quo.
- 10.5 The fact that the site is already zoned as residential addresses the Transport Agency's concern and it no longer opposes the zoning.

Classification of State Highway 15

- 10.6 As outlined in Ms Chhagan's evidence the Transport Agency uses the One Road Network Classification (ONRC) to classify the function of state highways, roads and streets. It is predominantly used in asset management but increasingly has an impact on levels of service and urban design approaches.
- 10.7 Part of SH 15 is currently unclassified under the ONRC and the Transport Agency team has been seeking to obtain a formal classification, so that it can be reflected in the District Plan. Unfortunately a formal classification has not been made so yet. Ms Chhagan will update the Panel on progress at the hearing but in the absence of a formal classification she requests that the SH15 remain unclassified in the District Plan.

Transport system v transport network

- 10.8 Ms Chhagan's evidence signalled that the Transport Agency sought consistency between the use of transport system and transport network.⁴⁹
- 10.9 On further consideration, the Transport Agency no longer seeks that the plan provisions be amended to make the two terms consistent but instead requests the inclusion of explanatory text in the Transport Chapter which

⁴⁹ Evidence of Nita Chhagan, paragraph 8.30.

explains the difference between the two terms. The purpose is to ensure plan users have a better understanding of the two terms and what each included.

- 10.10 The requested text is based on wording used in the Auckland Unitary Plan and is included in Appendix A. There may be some overlap with the existing overview in that chapter, which does discuss the transport network, and so a combined set of provisions could be developed.

Northland District Health Board

- 10.11 Following the exchange of evidence, the District Health Board (**DHB**) and the Transport Agency have been involved in ongoing discussions in an effort to reach an agreed position. As a result, the Transport Agency has arranged with the hearing co-ordinator Mr Burgoyne to appear again at the same time as the DHB on 6 December. At that point, either an agreed position will be reached or the Transport Agency will present its evidence on the issue and Hearing Panel can question both parties at the same time.

11. CONCLUSION

- 11.1 The Transport Agency respectfully requests the Plan Changes be amended in the manner outlined in its submissions and evidence in order to provide for the:

- (a) Maintenance and development of RSI, including the state highway network;
- (b) Safe and efficient operation of the state highway network including managing potential adverse effects on the network and its users; and
- (c) Improved integration between land use and transportation and mode shift.



M Gribben / G Lintott

Counsel for the New Zealand Transport Agency

22 November 2019

Appendix A
Outstanding amendments

Plan Change 148	Strategic Direction and Subdivision
UFD-03 (SD-013) Unanticipated Activities	Manage, and where appropriate avoid the establishment of activities that are incompatible with existing or anticipated use, or unanticipated in the zone.
SD-015 (SD-023) Adverse Effects	Avoid remedy, mitigate or offset (<u>where practicable</u>) adverse effects of the development, operation, maintenance and upgrading of Regionally Significant Infrastructure
SD-P2 Reverse Sensitivity (Incompatible Land Uses)	To manage the establishment and location of new activities and expansion of existing activities to avoid <u>minimise</u> conflicts between incompatible land uses.
SD-P6 Urban Expansion	To avoid inappropriate urban expansion by: <ol style="list-style-type: none"> 1. Ensuring that urban development occurs: <ol style="list-style-type: none"> a. In a planned and coordinated manner. b. Where appropriate infrastructure and services can be provided. c. In areas which are served by multi modal transport options or, if not currently serviced, <u>and where future connection is likely</u>, by providing active transport mode infrastructure in new urban developments
SD-P7 Transport System	To <u>enable a safe, effective, efficient and accessible</u> manage an effective and efficient transport system by: <ol style="list-style-type: none"> 1. Integrating and coordinating transport and land use planning. 2. Improving access to alternative transport options. 3. Enhancing the walkability <u>and cycle connections within</u> of neighbourhoods. 4. <u>Concentrating more intensive urban development in close proximity to public transport infrastructure.</u>
SD-P32 (SD-P15) Benefits of Regionally Significant Infrastructure	To have regard to the social, economic and cultural benefits of Regionally Significant Infrastructure by enabling its ongoing operation, maintenance, development and upgrading where adverse effects can be avoided, remedied, or mitigated or off-set (<u>where practicable</u>).
SD-P33 (SD-P16) Adverse Effects of New Regionally Significant Infrastructure	To manage adverse effects created by new or Upgraded network utilities and Regionally Significant Infrastructure by: <ol style="list-style-type: none"> 1. Allowing adverse effects that have been avoided, remedied and mitigated to the extent that they are no more than minor and for other effects take <u>into account matters listed in the Northland Regional Policy Statement 5.3.3(3)</u>; and 2. Ensuring damage to or loss of the relationship of iwi [...]

Plan Change 109	Transport
Overview	<p>New text:</p> <p><u>The Plan uses the terms ‘transport system’ and ‘transport network’. The transport system encompasses both the physical infrastructure of the transport network and the wider environment or factors which can influence the operation of transport e.g. parking, land use planning, transport users and their behaviours. For the purpose of these transport provisions, the term ‘transport network’ is used in the context of managing effects or impacts on the operation of the ‘transport network’ as a physical resource. The transport network comprises the physical infrastructure or conduit along which transport modes move or travel along. The transport network also comprises a series of sub-networks or types which generally relate to a particular mode of travel or type of movement e.g. public transport network, freight network, rail and walking and cycling networks. In regard to public transport networks, the network can also include the supporting services which utilise the physical network.</u></p> <p><u>Parking is an essential component of Whangarei’s transport network and transport system and the management of parking can have major implications for the convenience, economic viability, design and layout of an area and the function of the transport network. Therefore, it is important that parking is managed and provided in a manner that supports urban amenity, efficient use of land and the functional requirements of activities</u></p> <p>The transport network in Whangarei is essential...</p>
TRA-P11	<p>To require safe and secure bicycle parking spaces and end-of-trip facilities for activities with high numbers of employees, students or residents, except where not appropriate</p>
TRA-15 Restricted Discretionary Integrated Transport Assessments	<p>TRA-15 Restricted Discretionary Integrated Transport Assessments</p> <p>All Zones Activity Status: Restricted Discretionary</p> <p>1. The activity (or activities) requires an increase of more than 50 car parking spaces in accordance with TRA Appendix 1 <u>or results in a trip generation, capacity or gross floor area increase in excess of Table 1.</u></p>

Table 1

Land Use	Trip Generation Rates	
	Daily (vpd)	Peak hour (vph)
Dwelling houses	10.4/dwelling	1.2/dwelling
Medium density residential flat building	6.8/dwelling	0.8/dwelling*
Housing for aged and disabled persons	2.0/available bed	0.5/available bed
Motels	11/occupiable unit	1.5/occupiable unit
Commercial premises/offices	20/100m ² GFA	2.0/100m ² GFA*
Shopping centres (<4,000m ²)	160/100m ² GFA	23.8/100m ² GFA
Shopping centres (4,000-10,000m ²)	87/100m ² GFA	14.5/100m ² GFA
Shopping centres (>10,000m ²)	47/100m ² GFA	9.9/100m ² GFA*
Service stations with retail facilities	600/100m ² GFA	120/100m ² GFA
	174/filling position	10/filling position
Supermarkets	130/100m ² GFA	17.8/100m ² GFA
Markets	-	0.5/100m ² GFA
Bulky goods/home improvement stores	40/100m ² GFA	5.9/100m ² GFA*
Video stores	250/100m ² GFA	36/100m ² GFA*
Drive-in fast food restaurant	320/100m ² GFA	30/100m ² GFA
Restaurants	66/100m ² GFA	3.7-155.5/100m ² GFA
Gymnasiums	35/100m ² GFA	8.7/100m ² GFA
Factories	30/100m ² GFA	2.0/100m ² GFA*
		0.3/100m ² SA
Road transport terminals	-	0.6/100m ² GFA*
Medical centres	58/100m ² GFA	6.5/doctor
	31/doctor	
Hospitals	10/100m ² GFA	1.4/100m ² GFA
	12/bed	

<p>TRA-XX New Amenity Provision</p>	<p>At any point within 100 metres of a state highway carriageway or 100 metres from the legal boundary of any railway corridor</p>	<p>Activity status: Permitted</p> <p>Where:</p> <p><i>Outdoor road noise</i></p> <ol style="list-style-type: none"> 1. Any new building, or alteration to an existing building, that contains an activity sensitive to noise where <ol style="list-style-type: none"> a. external road noise levels are less than 57 dBL_{Aeq(24h)} at all points 1.5 metres above ground level within the proposed notional boundary; or b. there is a noise barrier at least 3 metres high which blocks the line-of-sight to the road surface from all points 1.5 metres above ground level within the proposed notional boundary. <p><u>1A. A minor addition or alteration to an existing building containing noise sensitive activities, which is not a habitable room, or to be occupied by noise sensitive activities, is a permitted activity.</u></p> <p><i>Indoor road and railway noise</i></p> 2. Any new building, or alteration to an existing building, that contains an activity sensitive to noise where the building or alteration is: <ol style="list-style-type: none"> a. designed, constructed and maintained to achieve indoor design noise levels resulting from the road or railway not exceeding the maximum values in the following table; or 	<p>Activity status when compliance not achieved:</p> <p>Restricted discretionary</p> <p>Matters of discretion are restricted to:</p> <ol style="list-style-type: none"> 1. Whether the activity sensitive to noise could be located further from the state highway or railway corridor. 2. The extent to which the noise and vibration criteria are achieved and the effects of any non-compliance. 3. The character of and degree of amenity provided by the existing environment and proposed activity. 4. The reverse sensitivity effects on the state highway or railway corridor,
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Occupancy / activity	Maximum road noise level L _{Aeq} (24h)	Maximum railway noise level L _{Aeq} (1h)	and the extent to which mitigation measures can enable their ongoing operation, maintenance and upgrade.
<i>Building type: Residential</i>			5. Special topographical, building features or ground conditions which will mitigate vibration impacts;
Sleeping spaces	40 dB	35 dB	
All other habitable rooms	40 dB	40 dB	6. The outcome of any consultation with the New Zealand Transport Agency or KiwiRail.
<i>Building type: Education</i>			
Lecture rooms/theatres, music studios, assembly halls	35 dB	35 dB	<p>Notification:</p> <p>Application for resource consent under this rule will be decided without public notification. The New Zealand Transport Agency or KiwiRail (as relevant) are likely to be the only affected person determined in accordance with section 95B of the Resource Management Act 1991.</p>
Teaching areas, conference rooms, drama studios, sleeping areas	40 dB	40 dB	
Libraries	45 dB	45 dB	
<i>Building type: Health</i>			
Overnight medical care, wards	40 dB	40 dB	
Clinics, consulting rooms, theatres, nurses' stations	45 dB	45 dB	
<i>Building type: Cultural</i>			
Places of worship, marae	35 dB	35 dB	
<p>b. at least 50 metres from the carriageway of any state highway or 50 metres from any railway corridor, and is designed so that a noise barrier entirely blocks line-of-sight from all parts of doors and windows, to the road surface and to all points 3.8 metres above railway tracks.</p>			
<i>Mechanical ventilation</i>			
<p>3. If windows must be closed to achieve the design noise levels in clause 2(a), the building is designed, constructed and maintained with a mechanical ventilation system that</p>			
<p>a. For habitable rooms for a residential activity, achieves the following requirements:</p>			

		<ul style="list-style-type: none"> i. provides mechanical ventilation to satisfy clause G4 of the New Zealand Building Code; and ii. is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and iii. provides relief for equivalent volumes of spill air; iv. provides cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18°C and 25°C; and v. does not generate more than 35 dBL_{Aeq(30s)} when measured 1 metre away from any grille or diffuser. <p>b. For other spaces, is as determined by a suitably qualified and experienced person.</p> <p><i>Indoor road and railway vibration</i></p> <p>4. Any new buildings or alterations to existing buildings containing an activity sensitive to noise, closer than 40 metres to the carriageway of a state highway or 60 metres from the boundary of a railway corridor, is designed, constructed and maintained to achieve road and rail vibration levels not exceeding 0.3 mm/s <small>V_{w.95}</small>.</p> <p><i>Design report</i> [may be replaced with a construction schedule]</p> <p>5. A report is submitted to the council demonstrating compliance with clauses (1) to (4) above (as relevant) prior to the construction or alteration of any building containing an activity sensitive to noise. In the design:</p> <ul style="list-style-type: none"> a. railway noise is assumed to be 70 dBL_{Aeq(1h)} at a distance of 12 metres from the track, and must be deemed to reduce at a rate of 3 dB per doubling of distance of up to 40 metres and 6 dB per doubling of distance beyond 40 metres; and b. road noise is based on measured or predicted noise levels plus 3 dB. <p>Where this activity complies with the following rule requirements:</p> <p>Nil</p>	
Plan Change 82A	SIGNS		
SI-R2 (1)(b)	Is visible from a road which has a speed limit of < 70kph or greater , and is located so as to provide an unrestricted view to the motorist for a minimum distance of <u>100m</u> .		
SI-R2-1(e)	Where		
	<ul style="list-style-type: none"> 1. The sign: <ul style="list-style-type: none"> a. [...] 		

	<u>e. No sign shall resemble any Official Sign, Road Sign or traffic signal.</u>								
SI-R2-1(g)	<u>Within legal road corridors with a posted speed limit of < 70 km/h, no signs shall be located 100m from an intersection and/or a Road Sign and/or an Official Sign and/or pedestrian crossing and/or a traffic signal.</u> <u>Within legal road corridors with a posted speed limit of ≥ 70 km/h, no signs shall be located 200m from an intersection and/or a Road Sign and/or an Official Sign and/or pedestrian crossing and/or a traffic signal.</u>								
SI-R2-1(f);	Signs shall not: <ul style="list-style-type: none"> i. <u>contain any reflective material;</u> ii. <u>contain any flashing and/or revolving lights;</u> iii. <u>contain any moving parts, images, text, animation or a dynamic display.</u> 								
SI-R9	3. <u>No more than one freestanding sign is permitted per road frontage where a single establishment occupies a site. If a site has two frontages the signs shall have a separation distance of 25m.</u> 4. <u>On a site with a frontage of less than 25m, the total signage area does not exceed 3m².</u> 6. <u>On a site with a frontage greater than 25m:</u> <ul style="list-style-type: none"> a. <u>The total signage area does not exceed 0.12m² per metre of frontage up to a maximum area of 6m².</u> b. <u>No sign has an area greater than 3m²</u> 								
SI-R17-2(c);	c. <u>is not located within 100m 20m of any road intersection with a posted speed limit of <70km/h or within 200m of any road intersection with a posted speed limit of >70km/h;</u>								
SI-R17-2(e) and (f)	e. <u>for any digital signs, the maximum transition time between images shall be 0.5 seconds.</u> f. <u>for any digital sign facing a State highway, the minimum dwell time between images shall be 10 seconds.</u>								
SI-R17-2(h)	<u>h. for any digital sign facing a State highway, is not located within 100m of any road intersection with a posted speed limit of <70km/h or within 200m of any road intersection with a posted speed limit of >70km/hr</u>								
Table following SI-R17(2)(e)	[REPLACE TABLE FOLLOWING SI-R17(2)(e) WITH NEW TABLE]: <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th>Low Light Environment (Rural and Rural Residential)</th> <th>Medium Light Environment (Suburban and Urban Areas)</th> <th>High Light Environment (Town and City Centres)</th> </tr> </thead> <tbody> <tr> <td>Maximum candelas per m² (cd/m²)</td> <td>150</td> <td>300</td> <td>350</td> </tr> </tbody> </table>		Low Light Environment (Rural and Rural Residential)	Medium Light Environment (Suburban and Urban Areas)	High Light Environment (Town and City Centres)	Maximum candelas per m ² (cd/m ²)	150	300	350
	Low Light Environment (Rural and Rural Residential)	Medium Light Environment (Suburban and Urban Areas)	High Light Environment (Town and City Centres)						
Maximum candelas per m ² (cd/m ²)	150	300	350						
Plan Change 82B	Lighting								
LIGHT-R2	Activity Status: Permitted Where:								

	<p>1. [...]</p> <p>3. The artificial light is located in the Sport and Active Recreation Zone or the Open Space Zone and it complies with the AS/NZS 1158 and AS/NZS 4282 standards.</p> <p>4. The added illuminance onto any other site or a road reserve, measured at the boundary does not exceed <u>AS/NZS 4282</u> the following limits in all :a. All zones (excluding the Sport and Active Recreation Zone and the Open Space Zone):</p> <ul style="list-style-type: none"> i. Artificial lighting measured at the receiving allotment boundary with a road reserve — 15 Lux. ii. Artificial lighting measured at the receiving allotment boundary other than with a road reserve — 10 Lux. <p>b. Active Sport and Active Recreation Zone and Open Space Zone:</p> <ul style="list-style-type: none"> i. Artificial lighting measured at the receiving site boundary with a road reserve — 15 Lux. ii. Artificial lighting measured at the receiving allotment boundary with the Residential, Conservation, Natural Open Space, Rural Living, Rural Village Residential and Rural (Urban Expansion) Zones — 10 Lux. iii. Artificial lighting measured at the receiving site boundary with all other zones — 20 Lux. <p>Note: The limits identified do not apply to internal allotment boundaries where multiple allotments are held in the same ownership.</p>
Plan Change 88A	City Centre Zone
New Policy CC-PXX	<u>4. Enable activities that encourage best practice urban design to support a transition from private vehicle to public transport, active and shared modes.</u>
Plan Change 88J	Precincts
Port Nikau Precinct:	
PNP-R3(1)	The activity increases the number of traffic movements from the Port Nikau Precinct by 200 one way movements <u>in any 24-hour period.</u>
PNP-R3 Matters of Discretion (3)	The impact of the proposal on the intersection of State Highway 1 and Rewa Road <u>should the proposal cause a reduction in the existing</u> level of service is proposed to be exceeded.
PNP-REQ3	Commercial or Retail Activity within the Buffer Area Information Requirement – <u>Traffic Transport</u> Impact Assessment.
Port Nikau Development Area:	
	I recommend that amendments are made such that the intent of Policy PNE.50.2.2(14), Rule PNE.50.5.1.5(a), and Rule PNE.50.7.5 are carried across to the PNDA
New rule	Restricted Discretionary (RD) status for any activity that generates more than 200 vehicle movements within any 24 hour period, or results in the subdivision of any lot larger than 7,500m ²

New provision	An assessment of the Rewa Road/State Highway 1 intersection for any activity that triggers RD status on transport matters
New provision	A peer review of the assessment undertaken by or on behalf of the Transport Agency which confirms that there is sufficient capacity or planned capacity within the State Highway network to accommodate the predicted increase in traffic, or otherwise triggers a discretionary activity.
Marsden Technology Park Precinct:	
New Provision	<p><u>Industrial LIZ-PREC2-R6 Restricted Discretionary Activity:</u></p> <p><u>All new buildings Restricted Discretionary Activity</u></p> <p><u>Matters of discretion</u></p> <p><u>Refer to TRA-15</u></p> <p><u>Assessment Criteria</u></p> <p><u>Refer to TRA-15</u></p> <p><u>Addition rules which:</u></p> <p>(a) Identify an appropriate trigger to upgrade the McCathie Road/One Tree Point Road/State Highway 15A intersection to a roundabout to manage safety and efficiency effects; and</p> <p>(b) Identify an appropriate mechanism to provide a complying sightline from the McCathie Road/State Highway 15A intersection towards the northeast, across private land within the MTPP.</p>
Consequential changes	
Definition Illuminated Sign	Illuminated sign means any sign with a specifically designed means of illumination of the whole or any portion of its <u>visible area</u> . face . Includes internally illuminated and externally illuminated (floodlit) signs, and reflective signs, digital signs, and <u>excludes</u> signs that incorporate flashing, animation and variable message displays.

Appendix B

List of mandatory requirements for plan changes/making

Full list of plan making matters from *Colonial Vineyard* (footnotes omitted and emphasis in the original):

[17] ...

A. General requirements

1. A district plan (change) should be designed **to accord with**¹⁸ – and assist the territorial authority **to carry out** – its functions¹⁹ so as to achieve, the purpose of the Act²⁰.
2. The district plan (change) must also be prepared **in accordance with** any regulation²¹ (there are none at present) and any direction given by the Minister for the Environment²².
3. When preparing its district plan (change) the territorial authority **must give effect to**²³ any national policy statement of New Zealand Coastal Policy Statement²⁴.
4. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement²⁵;
 - (b) **give effect to** any operative regional policy statement²⁶.
5. In relation to regional plans:
 - (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order²⁷; and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc²⁸.
6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations²⁹ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities³⁰;
 - **take into account** any relevant planning document recognised by an iwi authority³¹; and
 - **not have regard to trade competition**³² or the effects of trade competition;

7. *The formal requirement that a district plan (change) must³³ also state its objectives, policies and the rules (if any) and may³⁴ state other matters.*
- B. *Objectives [the section 32 test for objectives]*
8. *Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act³⁵.*
- C. *Policies and methods (including rules) [the section 32 test for policies and rules]*
9. *The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies³⁶;*
 10. *Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives³⁷ of the district plan **taking into account**:*
 - (i) *the benefits and costs of the proposed policies and methods (including rules); and*
 - (ii) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods³⁸; and*
 - (ii) *if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances³⁹.*
- D. *Rules*
11. *In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment⁴⁰.*
 12. *Rules have the force of regulations⁴¹.*
 13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive⁴² than those under the Building Act 2004.*
 14. *There are special provisions for rules about contaminated land⁴³.*
 15. *There must be no blanket rules about felling of trees⁴⁴ in any urban environment⁴⁵.*
- E. *Other statutes: [sic]*
16. *Finally territorial authorities may be required to comply with other statutes.*
- F. *(On Appeal)*
17. *On appeal⁴⁶ the Environment Court **must have regard to** one additional matter – the decision of the territorial authority⁴⁷.*

Appendix C

New Zealand Transport Agency Submission: Plan Change 109 Transport

<p>TRA-R15 Restricted Discretionary Integrated Transport Assessments</p>	<p>All Zones Activity Status: RD Where:</p> <ol style="list-style-type: none"> 1. Any activity (or activities) that requires an increase of more than 50 car parking spaces in accordance with Appendix 1 within a parent allotment or allotments that existed at [Operative Date]. 2. Any subdivision of an allotment that existed at [Operative Date] where the area of the parent allotment is equal to or larger than: <ol style="list-style-type: none"> a. 1,000m² within the Rural (Urban Expansion) Zone where any allotment will be connected to Council reticulated water, wastewater and stormwater services. b. 5,000m² within the High-density Residential Zone. c. 1ha within the Medium- density Residential Zone or Rural Village Residential Zone. d. 4ha within the Residential Zone. e. 6ha within the Low-density Residential Zone. 	<p>Submission: Retain with amendment. Reason: An amendment to the prefacing text is proposed to ensure it is clear that the rule requires an ITA.</p> <p style="text-align: center;">TRA-R15 Restricted Discretionary Integrated Transport Assessments <u>An integrated transport assessment is required</u> Wwhere:</p> <ol style="list-style-type: none"> 1. Any activity (or activities) that requires an increase [...]
<p>TRA-R15 Restricted Discretionary Integrated Transport Assessments</p>	<p>Matters of discretion:</p> <ol style="list-style-type: none"> 1. Effects on the sustainability, safety, efficiency, effectiveness and convenience of the adjacent transport network. 2. Required improvements, alterations or extensions to the adjacent transport network to mitigate adverse effects. 3. The need for pedestrian and cyclist connections to adjacent destinations. 4. Adverse effects on streetscape and amenity. 5. Recommendations and proposed mitigation measures of the Integrated Transport Assessment. 	<p>Submission: Retain with amendment. Reason: A minor amendment is proposed to reflect accessibility of the transport network.</p> <ol style="list-style-type: none"> 1. Effects on the sustainability, safety, efficiency, effectiveness and <u>accessibility</u> convenience of the adjacent transport network.

<p>TRA-R15 Restricted Discretionary Integrated Transport Assessments</p>	<p>Compliance Standard: 1. TRA-R15 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R15.</p>	<p>Submission: Retain with amendment. Reason: Clarification is sought to ensure this provision applies where there has been an ITA produced previously and activity / land use remains the same.</p> <p>1. TRA-R15 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R15 <u>and there is no proposed change to allotment size or land use activity.</u></p>
<p>TRA-R15 Restricted Discretionary Integrated Transport Assessments</p>	<p>Compliance Standard: 1. [...]</p> <p>Note: Any application shall comply with information requirement TRA-REQ1.</p>	<p>Submission: Retain with amendment. Reason: The note should be reworded as a compliance standard to ensure that TRA-REQ1 is met.</p> <p>Compliance Standard: 1. [...] <u>2. Note: Any Applications shall comply with information requirement TRA-REQ1.</u></p>
<p>TRA-R15 Restricted Discretionary Integrated Transport Assessments</p>		<p>Submission: Retain with amendment. Reason: It is unclear what the activity status of a proposal would be where an ITA is not provided. The Agency requests a non-complying activity status applies in this situation.</p>
<p>TRA-R16 Discretionary Integrated Transport</p>		<p>Submission: Retain with amendment. Reason: An amendment to the prefacing text is proposed to ensure it is clear that the rule requires an ITA.</p> <p>TRA-R16 Discretionary Integrated Transport Assessments: <u>An integrated transport assessment is required where:</u> 1. Any activity (or activities) that requires an increase [...]</p>

<p>TRA-R16 Discretionary Integrated Transport Assessments All Zones Activity Status: D</p>	<p>Where:</p> <ol style="list-style-type: none"> 1. Any activity (or activities) that requires an increase of more than 100 car parking spaces in accordance with Appendix 1 within a parent allotment or allotments that existed at [Operative Date]. 2. Any subdivision of an allotment that existed at [operative date] where the area of the parent allotment is equal to or larger than: <ol style="list-style-type: none"> a. 1ha within the High-density Residential Zone. b. 2.5ha within the Medium-density Residential Zone or Rural Village Residential Zone. c. 8ha within the Residential Zone. 	<p>Submission: Retain with amendment. Reason: The Agency considers additional ITA triggers are needed as the reliance on car park numbers (compared with actual activities) does not necessarily reflect the trip generation characteristics. For example, a car park for an industrial use (no retail) is likely to have a different trip generation profile compared with a visitor/parent park for a child care.</p> <ol style="list-style-type: none"> 3. <u>For any of the following:</u> <ol style="list-style-type: none"> a. <u>100 or more dwellings</u> b. <u>1,500+ seat events centre or similar;</u> c. <u>1,000 m² and above gross retail, entertainment, leisure floor space;</u> d. <u>2,500 m² and above gross office, education, health floor space;</u> e. <u>5,000 m² and above gross industrial floor space; and/or</u> f. <u>10,000 m² and above gross warehousing floor space.</u>
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<p>TRA-R16 Discretionary Integrated Transport Assessments</p>	<p>Compliance Standard:</p> <ol style="list-style-type: none"> 1. TRA-R15 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R16. 	<p>Submission: Retain with amendment. Reason: Clarification is sought to ensure this provision applies where there has been an ITA produced previously and activity / land use remains the same.</p> <ol style="list-style-type: none"> 1. TRA-R16 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R16 <u>and there is no proposed change to allotment size or land use activity.</u>
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<p>TRA-R16 Discretionary Integrated Transport Assessments</p>	<p>Compliance Standard:</p> <ol style="list-style-type: none"> 1. [...] <p>Note: Any application shall comply with information requirement TRA-REQ2.</p>	<p>Submission: Retain with amendment. Reason: The note should be reworded as a compliance standard to ensure that TRA-REQ2 is met.</p> <p>Compliance Standard:</p> <ol style="list-style-type: none"> 1. [...] 2. Note: Any a Applications shall comply with information requirement TRA-REQ2.
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Extract from Summary of Submissions prepared by Whangarei District Council

240	41 NZ Transport Agency	Nita Chhagan	Seek Amendment	PC109	Rules: Landuse	Amend TRA-R15 as follows: TRA-R15 Restricted Discretionary Integrated Transport Assessments <u>An integrated transport assessment is required where where...</u> 1. Effects on the sustainability, safety, efficiency, effectiveness and accessibility <u>convenience</u> of the adjacent transport network....1. TRA-R15 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R15 <u>and there is no proposed change to allotment size or land use activity. ...2. Note: Any a Applications shall comply with information requirement TRA-REQ1.</u> The Agency requests a non-complying activity status applies in this situation.	An amendment to the prefacing text is proposed to ensure it is clear that the rule requires an ITA. A minor amendment is proposed to reflect accessibility of the transport network. Clarification is sought to ensure this provision applies where there has been an ITA produced previously and activity / land use remains the same. It is unclear what the activity status of a proposal would be where an ITA is not provided	Yes	Yes
240	42 NZ Transport Agency	Nita Chhagan	Seek Amendment	PC109	Rules: Landuse	Amend TRA-R16 as follows: TRA-R16 Discretionary Integrated Transport Assessments <u>An integrated transport assessment is required where where:</u> 1. Any activity (or activities) that requires an increase [...]	An amendment to the prefacing text is proposed to ensure it is clear that the rule requires an ITA.	Yes	Yes
240	43 NZ Transport Agency	Nita Chhagan	Seek Amendment	PC109	Rules: Landuse	Amend TRA-R16 as follows: <u>3. For any of the following: a. 100 or more dwellings b. 1,500+ seat events centre or similar; c. 1,000 m2 and above gross retail, entertainment, leisure floor space; d. 2,500 m2 and above gross office, education, health floor space; e. 5,000 m2 and above gross industrial floor space; and/or f. 10,000 m2 and above gross warehousing floor space.</u>	The Agency considers additional ITA triggers are needed as the reliance on car park numbers (compared with actual activities) does not necessarily reflect the trip generation characteristics.	Yes	Yes
240	44 NZ Transport Agency	Nita Chhagan	Seek Amendment	PC109	Rules: Landuse	Amend TRA-R16 as follows: <u>1. TRA-R16 does not apply for any allotment where consent has previously been granted for the allotment under Rule TRA-R16 and there is no proposed change to allotment size or land use activity. Compliance Standard: 1. [...]</u> 2. <u>Note: Any a Applications shall comply with information requirement TRA-REQ2.</u>	Clarification is sought to ensure this provision applies where there has been an ITA produced previously and activity / land use remains the same. The note should be reworded as a compliance standard to ensure that TRA-REQ2 is met.	Yes	Yes

Further Submissions

Sub #	Sub Point	Surname/ Company	First Name/ Agent Name	Support/ Oppose	Plan Change #		Further Sub #	Surname/ Company	First Name/ Agent Name
240	41	New Zealand Transport Agency	Nita Chhagan	Seek amendment	PC109		X357	Northport Ltd	Brett Hood
							X383	Port Nikau Joint Venture	Brett Hood
240	42	New Zealand Transport Agency	Nita Chhagan	Seek amendment	PC109		X358	Northport Ltd	Brett Hood
							X383	Port Nikau Joint Venture	Brett Hood
240	43	New Zealand Transport Agency	Nita Chhagan	Seek amendment	PC109		X334	Fonterra Limited	Dean Chrystal
							X337	University of Auckland	Tim Sinclair – Management Space & Policy
							X371	124 Tauroa Street Limited	Bentley & Co, Mark Arbuthnot
							X372	Heron Construction Holdings Limited	