

Proposed Plan Change 7 to the Whakatāne District Plan 2017

Removal of Significant Indigenous
Biodiversity Site BS6 B / 8 Koromiko
Street, Murupara

Section 32 Evaluation Report

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1 Summary

The Indigenous Biodiversity chapter of the Operative Whakatāne District Plan (District Plan) addresses the maintenance of indigenous biodiversity and the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna across the Whakatane District.

The District Plan has identified significant sites where the District's biodiversity is best represented, and these sites have been called Significant Indigenous Biodiversity Sites (SIBS).

Part Lot 61 DPS 7321, 8 Koromiko Street, Murupara is a Department of Conservation (DOC) owned 3,070 m² / 0.3ha Light Industrial zoned parcel located in close proximity to the Murupara Town Centre.

Ownership of 8 Koromiko Street is currently in the process of being transferred from DOC to Te Rūnanga o Ngāti Manawa and is crucial to the Manawa Oho project which intends to revitalise Murupara.

It has been identified by DOC and Whakatāne District Council (Council) that 8 Koromiko Street has been incorrectly included in the SIBS schedule of the District Plan.

Council is proposing a Plan Change to the District Plan to remove **Conservation Area – Murupara, BS6 B** (8 Koromiko Street, Murupara) from Section 15.7.2 Schedule B Foothills of the SIBS schedule of the District Plan.

2 Overview

2.1 Purpose

This report has been prepared to fulfil the obligations of the Council to prepare an evaluation report under section 32 of the Resource Management Act 1991 (RMA) for a Plan Change to the District Plan.

Council is required under section 32 of the RMA to carry out an evaluation to examine the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA.

The evaluation must have regard to the efficiency and effectiveness of policies, rules and other methods in considering whether they are the most appropriate means of achieving the objective.

The evaluation must consider the benefits and costs associated with each policy, rule or method and the risk of acting or not acting if there is uncertain or insufficient information on the subject matter of the provisions.

2.2 Background

8 Koromiko Street, Murupara

The purpose of the District Plan's SIBS is to identify areas that have been deemed significant because they have particularly important values and are often sites where indigenous biodiversity is best represented¹.

8 Koromiko Street is a DOC owned 3,070 m² / 0.3ha Light Industrial zoned parcel located in close proximity to the Murupara Town Centre. The parcel is comprised of mown grass with a few native and exotic trees.



Figure 1 - 8 Koromiko Street Murupara

In the development of the District Plan and review of probable sites for indigenous biodiversity protection, 8 Koromiko Street was included in the SIBS schedule simply because it was DOC owned land, the parcel was not field checked before its inclusion.

An ecological assessment has confirmed that 8 Koromiko Street has no ecological value and should not have been included as a SIBS when the District Plan was developed². Therefore, it is appropriate to remove 8 Koromiko Street from the SIBS schedule.

2.3 Scope of Plan Change

The scope of Proposed Plan Change 7 (PC7) is to remove 8 Koromiko Street from the SIBS schedule of the District Plan.

¹ Whakatāne District Plan 2017 – Indigenous Biodiversity Section 32 Analysis

² Wildlands Consultants – Ecological Assessment of 8 Koromiko Street, Murupara – August 2022

3 Consultation

Under clause 3(1) of Schedule 1 to the RMA, local authorities are required to consult the Minister for the Environment, local authorities who may be affected by the plan, and the tangata whenua of the area who may be so affected, through iwi authorities.

3.1 Ministry for the Environment

The Minister for the Environment (MfE) has been advised of PC7 and feedback has been sought. No issues or concerns related to PC7 were raised by MfE.

3.2 Advice from Iwi Authorities

Under clause 4A of Schedule 1 to the RMA local authorities are required to:

- provide a copy of any draft policy statement or plan to any iwi authority previously consulted under clause 3 of Schedule 1 prior to notification;
- allow adequate time and opportunity for those iwi authorities to consider the draft and to supply advice; and
- have particular regard to any advice received before notifying the plan.

Section 32(4A) requires evaluation reports prepared in relation to proposed policy statements and / or plans to include summaries of:

- all advice received from iwi authorities concerning the proposal; and
- the response to that advice, including any proposed provisions intended to give effect to the advice.

The following is a summary of the advice received from iwi authorities specific to the draft / proposed provisions evaluated within this report:

Te Rununga o Ngāti Manawa and Te Rununga o Ngāti Whare are both in support of PC7.

4 Resource Management Act Policy Direction

4.1 Purpose and Principles

In carrying out a section 32 analysis, an evaluation is required of how the proposal achieves the purpose and principles contained in Part 2 of the RMA. Section 5 sets out the purpose of the RMA, which is to promote the sustainable management of natural and physical resources.

Sustainable management means managing the use, development, and protection of natural and physical resources to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety, 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 assessment contained within this report considers the proposal in the context of advancing the purpose of the RMA to achieve the sustainable management of natural and physical resources.

In achieving the purpose, decision-makers also need to recognise and provide for the matters of national importance identified in section 6, have particular regard to other matters referred to in section 7 and take into account the principles of the Treaty of Waitangi under section 8.

4.2 Section 6 – Matters of national importance

Section 6 outlines the seven matters of national importance that all persons exercising functions and powers under the RMA are required to recognise and provide for. The matters of national importance are:

- a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- f) the protection of historic heritage from inappropriate subdivision, use, and development:
- g) the protection of protected customary rights:
- h) the management of significant risks from natural hazards.

PC7 is consistent with Section 6 of the RMA.

4.3 Section 7 - Other matters

Section 7 sets out “other matters” that all persons exercising functions and powers under the RMA must “have particular regard to”. These other matters are:

- a) kaitiakitanga:

- aa) the ethic of stewardship:
- b) the efficient use and development of natural and physical resources:
- ba) the efficiency of the end use of energy:
- c) the maintenance and enhancement of amenity values:
- d) intrinsic values of ecosystems:
- e) *[Repealed]*
- f) maintenance and enhancement of the quality of the environment:
- g) any finite characteristics of natural and physical resources:
- h) the protection of the habitat of trout and salmon:
- i) the effects of climate change:
- j) the benefits to be derived from the use and development of renewable energy.

PC7 is consistent with Section 7 of the RMA.

4.4 Section 8 – Treaty of Waitangi

Section 8 requires that all persons exercising functions and powers under the RMA must take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

In this regard, consultation has occurred with tangata whenua in the development of PC7.

4.5 Section 30 – Functions of Regional Councils under the RMA

Section 30(1)(ga) requires regional councils to have the following function of “ the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity”. This is reflected in the Regional Policy Statement (RPS) Matters of National Importance policies which requires district plans to give particular consideration to protecting significant indigenous habitats and ecosystems. PC7 gives effect to the RPS Matters of National Importance policies.

4.6 Section 31 – Functions of Territorial Authorities under the RMA

Section 31(1)(b)(iii) sets out that the control of any actual or potential effects of the use, development, or protection of land, for the maintenance of indigenous biological diversity is a function of district councils under the RMA. Section 31 is directly relevant to PC7 as the plan change allows Council to control the protection of land for the maintenance of indigenous biological diversity.

4.7 The Bay of Plenty Regional Policy Statement (RPS)

Section 75(3)(c) of the RMA requires a district plan to give effect to the RPS. The RPS promotes the sustainable management of the Bay of Plenty region’s natural and physical resources and identifies the resource management issues facing the region.

Appendix F of the RPS sets out the criteria that are used to determine the significance of indigenous vegetation and habitats of indigenous fauna.

The criteria in Appendix F were used in the development of the District Plan to determine the significance of indigenous vegetation and habitats of indigenous fauna and create the SIBS schedule.

4.8 National Direction Instruments

National direction instruments support local decision making under the RMA. There are no National Policy Statements or National Environmental Standards in effect that are directly relevant to the assessment of PC7.

The government is proposing a National Policy Statement for indigenous biodiversity and is currently seeking feedback on an exposure draft.

Subpart 2, section 3.8 of the exposure draft requires that every territorial authority must undertake a district-wide assessment to identify areas that qualify as Significant Natural Areas (SNAs). Appendix 1 of the exposure draft contains the criteria for identifying areas that qualify as SNAs.

An area qualifies as an SNA if it meets any of the attributes of the following four criteria:

- (a) representativeness:
- (b) diversity and pattern:
- (c) rarity and distinctiveness:
- (d) ecological context.

Based on these qualifying criteria for identifying SNAs, 8 Koromiko Street would not qualify as an SNA under the NPSIB exposure draft³.

4.9 Whakatāne District Plan 2017

The objectives and policies of the District Plan that are relevant to PC7 are:

Objective IB1

Maintenance of the full range of the District's indigenous habitats and ecosystems, including through restoration and enhancement.

³ Wildlands Consultants – Ecological Assessment of 8 Koromiko Street, Murupara – August 2022

*Policy 1: To promote and encourage the protection, restoration and enhancement of indigenous biodiversity, using a range of methods such as subdivision incentives, assistance, education and **ecological corridors**, whilst giving priority to significant biodiversity sites.*

Objective IB2

Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.

*Policy 1: To ensure that subdivision, use and development, is undertaken in a manner that protects scheduled **Significant Indigenous Biodiversity Sites** by:*

- a. in the coastal environment, avoiding adverse effects including the loss, fragmentation or degradation of those sites and cumulative effects on **ecosystems**; and*
- b. outside the coastal environment, avoiding, and where avoidance is not practicable, remedying or mitigating adverse effects including the loss, fragmentation or degradation of those sites and the cumulative effects on **ecosystems**.*

Policy 2: To enable and encourage subdivision, land use and development that enhances indigenous biodiversity through the protection and enhancement of significant biodiversity sites.

*Policy 3: To determine the significance of indigenous vegetation and habitats of **indigenous fauna** using criteria in Appendix F Set 3 Indigenous Vegetation and Habitats of Indigenous Fauna of the Bay of Plenty Regional Policy Statement and for sites in the coastal environment using the criteria listed in Policy 11 of the New Zealand Coastal Policy Statement 2010.*

4.10 Iwi Management Plans

When preparing or changing a district plan, Section 74(2A)(a) of the RMA states that Councils must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the District.

The following Iwi Management Plans are considered relevant to this topic:

- Ngāti Manawa Environmental Scoping Report
- Ngāti Whare Iwi Management Plan

Neither of these documents raise any issues relevant to what PC7 is proposing.

5 Resource Management Issue

This section identifies the resource management issue that PC7 is trying to address.

During the development of the District Plan and review of probable sites for indigenous biodiversity protection, 8 Koromiko Street has been included in the SIBS schedule.

Inclusion in the SIBS means that any land use activities undertaken at 8 Koromiko Street would require a resource consent complying with the restrictive rules outlined for activities in the Indigenous Biodiversity chapter of the District Plan.

This is an impractical outcome for the site considering that 8 Koromiko Street is a mown parcel of land located in close proximity to the Murupara town centre with an underlying Light Industrial zoning.

Removal of 8 Koromiko Street from the SIBS schedule would remove an inappropriate restriction on possible future land use activities.

An ecological assessment undertaken for 8 Koromiko Street has shown that the parcel has no significant indigenous vegetation types, very low conservation value for indigenous fauna, including avifauna and the parcel does not satisfy any of the criteria outlined in Appendix F Set 3 of the RPS⁴.

The ecological assessment concluded that it is appropriate to remove 8 Koromiko Street from the SIBS schedule based on the lack of ecological significance when assessed using the criteria outlined in Appendix F Set 3 of the RPS⁵.

6 Scale and Significance

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

The level of analysis in this evaluation is low, to reflect the scale and significance of the effects of removing 8 Koromiko Street from the SIBS.

7 Evaluation of Provisions

Section 32(1)(a) requires that an evaluation report must examine the extent to which the

⁴ Wildlands Consultants – Ecological Assessment of 8 Koromiko Street, Murupara – August 2022

⁵ Wildlands Consultants – Ecological Assessment of 8 Koromiko Street, Murupara – August 2022

objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA.

Objective IB1 of the District Plan is:

Maintenance of the full range of the District's indigenous habitats and ecosystems, including through restoration and enhancement.

Objective IB2 of the District Plan is:

Areas of indigenous vegetation and habitats of indigenous fauna identified as significant in Schedules 15.7.1, 15.7.2 and 15.7.3 are protected.

These objectives are consistent with, and assessed as the most appropriate way to achieve, the purpose of the RMA which is to promote the sustainable management of natural and physical resources.

The meaning of sustainable management includes:

"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety ..."

No changes are proposed to these objectives of the District Plan.

As outlined in the resource management issues section, removing 8 Koromiko Street from the SIBS is consistent with Obj IB1 and Obj IB2 because the parcel holds no ecological value and was incorrectly included.

8 Evaluation of PC7

8.1 Section 32 Requirements for preparing and publishing evaluation reports

Section 32(1)(b) requires that an evaluation report must:

"...examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by-

- i. Identifying other reasonably practicable options for achieving the objectives; and*
- ii. assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
- iii. summarising the reasons for deciding on the provisions; and ..."*

Section 32(1)(c) requires that an evaluation must “contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.”

Section 32(2) states: “An assessment under subsection (1)(b)(ii) must:

- a) identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for-
 - i) economic growth that are anticipated to be provided or reduced; and
 - ii) employment that are anticipated to be provided or reduced; and
- b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
- c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.”

8.2 Evaluation Method

8.2.1 Reasonably Practicable Options

The reasonably practicable option for addressing the resource management issue identified in section 5 of this report is:

- Remove **Conservation Area – Murupara, BS6 B, Part Lot 61 DPS 7321** (8 Koromiko Street, Murupara) from Section 15.7.2 Schedule B Foothills of the SIBS of the District Plan.

8.2.2 Evaluating Effectiveness

Effectiveness generally means consideration of the extent to which an intended outcome will be achieved by an option.

In this case, the relevant outcome against which the effectiveness of an option should be assessed are:

- a) The removal of 8 Koromiko Street from the SIBS.

8.2.3 Evaluating Efficiency

The most efficient option will be the one that can achieve the outcome at least overall or net cost, taking into account all costs and benefits arising from the intervention.

This is confirmed and emphasised by the Environment Court in *Royal Forest & Bird Protection Society Inc v Whakatāne District Council* [2017] NZEnvC 051 (*Royal Forest & Bird*)⁶.

The obligation under section 32(b)(ii) is to give effect to the objective in the least restrictive manner possible or at the least cost possible.

8.2.4 Risk of Acting or Not Acting

Risks of acting are:

- There are no risks associated with acting.

Risks of not acting are:

- 8 Koromiko Street is still incorrectly identified in the SIBS schedule.

9 District Plan Options

Reasonably practicable options for achieving the objectives of the proposal through changes to the District Plan are described and evaluated below.

9.1 Option 1 – Do Nothing

Retain 8 Koromiko Street in the SIBS, as described above in the resource management issue section.

9.2 Option 2 – Remove 8 Koromiko Street from the SIBS

Remove **Conservation Area – Murupara, BS6 B, Part Lot 61 DPS 7321** (8 Koromiko Street, Murupara) from Section 15.7.2 Schedule B Foothills of the SIBS of the District Plan.

⁶ “(59) In considering what rule may be the most appropriate in the context of the evaluation and section 32 of the Act, we consider that notwithstanding the amendments that have been made to that section in the meantime, the presumptively correct approach remains as expressed in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council*: that where the purpose of the Act and the objectives of the plan can be met by a less restrictive regime then that regime should be adopted. Such an approach reflects the requirement in section 30(1)(b)(ii) to examine the efficiency of the provision by identifying, assessing and, if practicable, quantifying all of the benefits and costs anticipated from its implementation. It also promotes the purpose of the Act by enabling people to provide for their well-being while addressing the effects of their activities.

9.3 Evaluation of District Plan Options

The following table evaluates the District Plan options described above.

Option	Costs (Environmental, Economic, Social and Cultural)	Benefits (Environmental, Economic, Social and Cultural)	Effectiveness / Efficiency
<p>Option 1 – Do Nothing</p>	<p>8 Koromiko Street is still incorrectly identified in the SIBS and this does not align with Obj IB2.</p> <p>Any proposed development at 8 Koromiko Street would need to go through an unnecessary resource consent process in order to satisfy the relevant provisions of the District Plan relating to sites identified in the SIBS.</p> <p>Having the parcel identified in the SIBS is an unnecessary impediment to development. Doing nothing potentially has economic, social and cultural costs to the Murupara community.</p>	<p>There is no need for a Plan Change and the associated costs.</p>	<p>The option of do nothing is ineffective as it does not achieve or align with Obj IB1 or Obj IB2.</p> <p>The option of do nothing is also inefficient because there are economic, social and cultural costs to the Murupara community associated with this option.</p>
<p>Option 2 – Remove 8 Koromiko Street from the SIBS</p>	<p>There are no ecological costs associated with removing 8 Koromiko Street from the SIBS.</p> <p>There are costs associated with a Plan Change process.</p>	<p>Any proposed development will be more appropriately assessed against the Industrial provisions of the District Plan.</p> <p>Removing 8 Koromiko Street from the SIBS will enable the development of the parcel which will have economic, social and cultural</p>	<p>Removing 8 Koromiko Street from the SIBS improves the effectiveness of the outcomes for Obj IB2.</p> <p>Removing 8 Koromiko Street from the SIBS will improve the effectiveness of its current Light Industrial zoning by aligning the parcel with the relevant Objectives, Policies and intended</p>

		benefits for the Murupara community.	outcomes for Light Industrial zoned land. Removing 8 Koromiko Street from the SIBS will improve the efficiency of the resource consent process.
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9.4 District Plan Option Evaluation Summary

Option 1

Option 1 means that 8 Koromiko Street is still incorrectly included in the SIBS. Its inclusion in the SIBS is a barrier to potential development because any attempt to develop the land would need to go through an unnecessary resource consent process which could be an impediment to future use of the site.

Option 1 has economic, social and cultural costs for the Murupara community.

Option 2

There are no ecological costs associated with Option 2. This option will improve the efficiency of the resource consent process whilst making more effective outcomes for Obj IB2. Removing 8 Koromiko Street will improve the effectiveness of its current Light Industrial zoning by aligning the parcel with the relevant Objectives, Policies and intended outcomes for Light Industrial zoned land.

Option 2 provides economic, social and cultural benefits for the Murupara community.

9.5 Outcome of Evaluation

Option 2 – Removing 8 Koromiko Street from the SIBS is assessed as having the highest efficiency and highest effectiveness and is the most appropriate way to achieve the purpose of the RMA.