



Proposed Plan Change 3

Matters of Control

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Proposed Plan Change 3: Matters of Control

Whakatāne District Council has proposed the following change to the Operative District Plan 2017:

Plan Change 3 consists of 17 separate changes to the District Plan that have been identified since the District Plan was made operative in 2017. Plan Change 3 will update eight Activities which currently lack either assessment criteria for restricted discretionary activities or matters of control for controlled activities in one or more zone.

Section 32 of the Resource Management Act 1991 (RMA) requires that the Whakatāne District Council undertakes an evaluation of a proposed plan change before the plan change is publicly notified. Section 32 sets out the requirements for such an evaluation and requires the benefits and costs of implementing provisions to be assessed in terms of the environmental, economic, social and cultural effects anticipated.

The Section 32 evaluation has shown that the 17 proposed changes will address the lack of matters of control issue and give the Whakatāne District Council the necessary controls required to protect the environment and manage development in the District.

This document contains:

- Activity Status Table of Proposed Changes
- Section 32 Report of Proposed Plan Change 3

For the Track Changes Report, please refer to [Appendix 1](#).

**Operative Whakatāne District Plan
Proposed Plan Change 3
Activity Status Table of Proposed Changes
October 2020**

Activity Status Table of Proposed Changes

Activities Lacking Matters of Control or Assessment Criteria

Note: **RD** is a **Restricted Discretionary Activity**; **C** is a **Controlled Activity**

Table of Activities Lacking Matters of Control or Assessment Criteria.					
The change numbers in the table below correspond to their respective change numbers in the Section 32 assessment and Track Changes report. The Activity numbers in the table below corresponds to their item number in the Activity Status Table 3.4.1.1 in the current Operative District Plan.					
Change #	Activity #	Activity	Zone(s)	Activity Status	Proposed Change
1	3	Four or more dwellings per lot	Mixed Used	RD	New Assessment Criteria added
2	5	Papakāinga	Mixed Used	RD	New Assessment Criteria added
3	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of less than 10 people at any one time.	Rural Ōhiwa	C	New Matters of Control added
4	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of between 10 to 50 people	Large Format Retail	RD	New Assessment Criteria added
5	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of more than 50 people at any one time.	Mixed Use, Business Centre, Commercial, Large Format Retail	RD	New Assessment Criteria added
6	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of more than 50 people at any one time.	Light Industrial, Industrial	RD	New Assessment Criteria added
7	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of more than 50 people at any one time.	Rural Plains, Rural Foothills	RD	New Assessment Criteria added

8	11	Places of assembly (not provided for by any other category): additions, alterations or extensions where the extension is to buildings less than 50m ² in floor area used for a place of assembly which will not increase the existing occupancy or attendance.	Rural Ōhiwa	C	New Matters of Control added
9	15	Emergency services facilities	Rural Coastal	RD	New Assessment Criteria added
10	15	Emergency services facilities	Rural Ōhiwa	C	New Matters of Control added
11	29	Car parking	Business Centre, Commercial	RD	New Assessment Criteria added
12	29	Car parking	Rural Plains, Rural Foothills	RD	New Assessment Criteria added
13	36	Exploration of aggregate, sand, gravel or pumice See also Rules 11.2.1-11.2.4.	Rural Ōhiwa	C	New Matters of Control added
14	45	Accessory buildings to any permitted activity (not for habitation) See also Item 10 Buildings on Public Reserves)	Rural Ōhiwa	C	New Matters of Control added
15	45	Accessory buildings to any permitted activity (not for habitation) See also Item 10 Buildings on Public Reserves	Large Format Retail	C	Addition of Activity 45 to the list of Activities in section 5.3.1
16	56	Subdivision - Esplanade Reserve or Strip Waivers	All Zones	RD	New criteria added which will enable Council to consider the environmental outcomes of this activity. Reference made to Rule 12.7.1.

17	56	Subdivision within the Kawerau Geothermal Exploration Area	Rural Plains, Rural Foothills – Kawerau Geothermal Exploration Area.	RD	Reference made to the assessment criteria contained in Rule 12.7.1.
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Section 32 Report
Operative Whakatāne District Plan
Proposed Plan Change 3
October 2020

1. INTRODUCTION

- 1.1 Section 32 of the Resource Management Act 1991 (RMA) requires that the Whakatāne District Council undertakes an evaluation of a proposed plan change before the plan change is publicly notified. Section 32 sets out the requirements for such an evaluation and requires the benefits and costs of implementing provisions to be assessed in terms of the environmental, economic, social and cultural effects anticipated. This report addresses the requirements of section 32 for the Proposed District Plan Change 3.
- 1.2 The purpose of this Proposed Plan Change is to make a number of minor additions and alterations to the provisions of the Whakatāne District Plan, which became operative in March 2017. The Plan Change will modify the status of 17 Restricted Discretionary or Controlled Activities in the District Plan currently lacking the appropriate assessment criteria or matters of control in some zones.
- 1.3 Section 32 of the RMA requires that a proposed plan change must be accompanied by an evaluation report at the time of public notification.

Section 32(1)(a) requires an examination of the extent to which the objectives of the proposal are the most appropriate¹ way to achieve the purpose of the RMA.

- 1.4 Section 32(1)(b) of the RMA requires examination of whether the provisions (being policies, rules and other methods) in the Plan Change are the most appropriate way to achieve the objectives. The appropriateness must be considered in relation to:

- “(i) identifying other reasonable 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”.*

- 1.5 The assessment must be at a level of detail that correspond to the scale and significance of the environmental, economic, social and cultural effects of the change. Section 32 of the RMA states:

(1) An evaluation report required under this Act must –

- (a) Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
- (b) Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –*

¹ The Ministry for the Environment *A Guide to section 32 of the Resource Management Act 1991* states: ‘S32 case law has interpreted ‘most appropriate’ to mean “suitable, but not necessarily superior”.’

- (i) Identifying other reasonably practicable options for achieving the objectives; and
 - (ii) Summarising the reasons for deciding on the provisions; and
 - (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 the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must –
- (a) Identify and assess the benefits and costs of 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.
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to –
- (a) The provisions and objectives of the amending proposal; and
 - (b) The objectives of the existing proposal to the extent that those objectives –
 - (i) are relevant to the amending proposal and
 - (ii) would remain if the amending proposal were to take effect.

1.6 Proposed Plan Change 3 amends rules by including matters of control or assessment criteria that are missing. There are no changes to the wording of objectives and policies. For the changes proposed, a full evaluation is not required and this report must therefore:

- Assess the efficiency and effectiveness of the rules and other methods contained in the proposed plan at achieving the objectives (and policies);
- Consider alternative options for achieving the objectives;
- Assess the risk of taking or not taking action if there is uncertain or insufficient information about the identified issues; and
- Contain a level of detail that corresponds to the scale of significance of the effects anticipated from implementing the proposed changes.

1.7 Section 32(4) requires that:

- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

None of the proposed changes impose a greater prohibition or restriction on an activity than any national standard.

- 1.8 Section 32(2) requires the benefits and costs of implementing provisions be assessed in terms of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment. If practical, these benefits and costs should be quantified.

2. STATUTORY CONTEXT

- 2.1 Section 73 requires the Council to prepare a district plan for its district to assist with carrying out its functions (section 31) to achieve the purpose of the RMA (section 72). The purpose of the RMA is set out in section 5 as follows:
- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, sustainable management means 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 while –*
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.*
- 2.2 The proposed changes in the Plan Change are intended to achieve the purpose of the Act and in particular control the effects of activities on the environment.
- 2.3 The lack of assessment criteria / matters of control for some controlled and restricted discretionary activities in the Operative District Plan means that there is uncertainty regarding the application of those rules. This uncertainty affects anyone applying for consents relating to those activities and limits the legal ability of the Council to control those activities. The proposed changes to the District Plan will enable the Council to more accurately manage and control the effects of those activities on the environment.
- 2.4 The Council's functions under section 31 are to achieve the integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the District. In particular, Council must control any actual or potential effects of the use, development, or protection of land including for the purpose of:
- The avoidance or mitigation of natural hazards; and
 - The prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - The prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;
 - The maintenance of indigenous biological diversity
 - The control of emission of noise and the mitigation of the effects of noise;
 - The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes.

- 2.5 Section 75 requires that district plans give effect to national policy statements and regional policy statements; there are none relevant to this Plan Change. Section 75 also requires that a district plan must not be inconsistent with a regional plan (Section 75(4)).
- 2.6 Section 44A of the Act requires that a rule must not duplicate or be in conflict with a National Environmental Standard (NES). There are no NES affected by this Plan Change.
- 2.7 The proposed changes to the Operative District Plan will not affect its consistency with objectives and policies of the Regional Policy Statement and will potentially be better aligned to achieve these.
- 2.8 The Regional Council has a range of regional plans that Council has considered in the development of the Operative District Plan. The Plan Changes will remain consistent with the relevant provisions of these plans.
- 2.9 Section 66(2a)(a) requires that, when Council is changing or developing a plan under the RMA, it must take into account relevant planning documentation recognised by an iwi authority.
- 2.10 Te Rūnanga o Ngāti Awa has recently developed an Iwi Environmental Plan which outlines their common vision for kaitiakitanga, issues relating to resource and environmental management with their rohe, their position regarding activities and development within their rohe, and their expectations with regards to consultation by others, in particular the Council. Consultation will occur with Ngāti Awa prior to public consultation.
- 2.11 Other Iwi in the District who Council has identified to be engaged with are:
- Ngāi Tūhoe
 - Ngāti Whare
 - Ngāti Rangitīhi
 - Ngāti Manawa
 - Te Upokorehe
 - Tūwharetoa ki Kawerau
- 2.12 At present, the Council applies the assessment criteria or matters of control outlined below to the relevant Restricted Discretionary and Controlled activities, even though they are not contained in the District Plan. The proposed changes will not have any material impact on the manner in which resource applications are considered. However, the proposed changes will provide clarity for applicants around the issues they need to consider when preparing an application and ensure the Council is able to protect the environment and manage development in the District.

3. PROPOSED CHANGES, EXPLANATION AND EVALUATION

3.1 Introduction

This section sets out changes to a number of provisions that need to be clarified or made more consistent with other similar rules. They are generally minor changes and have not required detailed investigation. The changes are described in the sections below with the reasons for the changes. Changes are shown with new text underlined and deleted text is shown as ~~strikethrough~~.

3.2 Changes to multiple chapters

Change 1 FOUR OR MORE DWELLINGS PER LOT (MIXED USED ZONE)
(Change 1 in Track Changes document: Refer to Rule 3.4.1.3)

EXPLANATION:

Activities within the Mixed Use Zone need to be controlled to avoid the incompatibility of effects of different activities and to manage adverse effects on the visual amenity, acoustic environment, air quality, integrated transport, traffic safety and other factors that contribute to a level of amenity. Together, the proposed assessment criteria listed below achieve these outcomes.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity.

PROPOSED CHANGES:

Add the following new section (5.4.7) to the Operative District Plan:

5.4.7 Four or more dwellings per lot in the Mixed Use Zone

5.4.7.1 Council shall restrict its discretion to:

- a. amenity of the site and adjacent public areas in terms of;
 - i. shadowing;
 - ii. physical domination;
 - iii. privacy;
 - iv. noise;
 - v. lighting;
 - vi. visual character and variety through variation in building form and building materials (including but not limited to building facades and roof forms);

- vii. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone as outlined in Rule 5.4.5;
- viii. traffic safety;
- ix. safe access to, and egress from the site;
- x. safe on-site manoeuvring of vehicles;
- xi. landscaping including vegetation that:
 - will enhance privacy and mitigate physical domination by buildings; and
 - doesn't exacerbate shadowing and vehicle-pedestrian conflict; and
- xii. the degree to which the building incorporates elements that promote sustainability including but not limited to energy efficiency and water conservation.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural).	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 2 PAPA KĀINGA (MIXED USE ZONE)

(Change 2 in Tracked Changes document: Refer to Rule 3.4.1.1.5)

EXPLANATION:

Activities within the Mixed Use Zone need to be controlled in order to avoid incompatibility of effects of different activities and to manage adverse effects on the visual amenity, acoustic environment, air quality, integrated transport, traffic safety and other factors that contribute to a level of amenity.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. Including a reference to the relevant assessment criteria contained elsewhere in the District Plan will achieve the desired outcomes for the Mixed Use Zone.

PROPOSED CHANGES:

Add the following new section (5.4.8) to the Operative District Plan:

5.4.8 Papakainga in the Mixed Use Zone

5.4.8.1 Council shall restrict its discretion to:

- a. amenity of the site and adjacent public areas in terms of:
 - i. shadowing;
 - ii. physical domination;
 - iii. privacy;
 - iv. noise;
 - v. lighting;
 - vi. visual character and variety through variation in building form and building materials (including but not limited to building facades and roof forms);
 - vii. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone as outlined in Rule 5.4.5;
 - viii. traffic safety;
 - ix. safe access to, and egress from the site;
 - x. safe on-site manoeuvring of vehicles;
 - xi. landscaping including vegetation that:
 - will enhance privacy and mitigate physical domination by buildings; and
 - does not exacerbate shadowing and vehicle-pedestrian conflict;
 - xii. the degree to which the building incorporates elements that promote sustainability including but not limited to energy efficiency and water conservation.
 - xiii. the manner in which the matters identified in section 7.3.1.1a-g are met

Advice Note: Refer to Rule 3.5.1.1e.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 3 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY); DESIGNED TO HAVE A MAXIMUM OCCUPANCY OR ATTENDANCE OF LESS THAN 10 PEOPLE AT ANY ONE TIME (RURAL ŌHIWA)

(Change 3 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

The purpose of Objective LS2 is to maintain the character and diversity of rural landscapes. Objective LS3 seeks to protect the visual amenity and ecological values of the Ōhiwa Harbour and Rural Ōhiwa Zones. Currently the Operative District Plan does not contain any matters of control for this activity which makes the controlled status void and uncertain in its application. Making the proposed change will provide an appropriate level of protection in the Ōhiwa Rural Zone.

PROPOSED CHANGES:

Add the following new section (7.3.4) to the Operative District Plan:

7.3.3 Places of Assembly (not provided for by any other category): designed to have a maximum attendance of less than 10 people at any one time in the Rural Ōhiwa Zone

7.3.3.1 Council shall exercise its control over:

- a. the nature of the surrounding landform(context) and how the proposed activity is sympathetic with these values;
- b. any adverse effect on vegetation, particularly kanuka stands, which contributes to the natural character of the site;
- c. the extent and nature of other vegetative mitigation proposed;
- d. proposed building location;
- e. proposed building materials and finish and, in particular, choice of finishes that tone with the surrounding environment;
- f. reverse sensitivity as outlined in Rule 3.7.41;
- g. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone (see Rule 5.4.5);
- h. adverse effects on identified cultural heritage places;
- i. adverse effects on riparian margins of the Ōhiwa Harbour and tributaries within the catchment of the harbour;
- j. the hours of operation;
- k. the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site;
- l. the level of parking proposed;
- m. landscaping
- n. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, rubbish disposal, electricity, telecommunications, gas, utility;

- o. signage as outlined in Rule 11.2.19; and
- p. the provision of on-site effluent treatment as set out in Section 13.
- q. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the coastal environment, particularly Ōhiwa Harbour;

EVALUATION

Options considered are:

1. Status Quo
2. Proposed change set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur2; Objective LS3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 4 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY): DESIGNED TO HAVE A MAXIMUM OCCUPANCY OF BETWEEN 10 TO 50 PEOPLE (LARGE FORMAT RETAIL ZONE)
(Change 4 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

Controls are needed to manage the interaction of people, the level of amenity and the overall quality of the environment in Large Format Retail Zones. It is also important to ensure there is no conflict between the use of a community facility and business activities on neighbouring sites.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The proposed changes will help to achieve the desired objectives for this Zone.

PROPOSED CHANGES:

Add the following new section (5.4.19) to the Operative District Plan:

5.4.9 Places of assembly (not provided for by any other category); designed to have a maximum occupancy of between 10 to 50 people in the Large Format Retail Zone

5.4.9.1 Council shall restrict its discretion to:

- a. design development and site development, the degree to which:
 - i. buildings have been designed and located to minimise any adverse effects, including noise, dust, fumes, and glare;
 - ii. a suitable buffer has been provided where activities adjoin existing dwellings;
- b. where visible from a public road, buildings have been designed to present an attractive appearance to passing traffic;
- c. traffic effects (including but not limited to access, on-site vehicle manoeuvring areas, the provision of bus bays, drop off zones, measures to separate pedestrians, buses, cyclists and vehicles, traffic volumes and traffic mix, parking and loading, pedestrian and cyclist safety, construction traffic and the practicability of combining access ways serving more than one site or lot);
- d. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;
- e. landscaping;
- f. signage as outlined in Rule 11.2.19;
- g. noise; and
- h. hours of operation.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposal as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 5 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY): (MIXED USE; BUSINESS CENTRE; COMMERCIAL; LARGE FORMAT RETAIL ZONES)
(Change 5 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

Controls are needed to manage the interaction of people in an industrial zone and the level of amenity and the overall quality of the environment in Mixed Use, Business, Commercial and Large Format Retain Zones. Consideration is also needed regarding the use of a community facility and whether it will be in conflict with business activities on neighbouring sites.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The proposed changes will help achieve the desired objectives for this Zone.

PROPOSED CHANGES:

Add the following new section (5.4.10) to the Operative District Plan:

5.4.10 Places of Assembly (not provided for by any other category); Designed to have a maximum occupancy of more than 50 people at any one time in the Mixed Use, Business Centre, Commercial, Large Format Retail Zones

5.4.10.1 Council shall restrict its discretion to:

- a. reverse sensitivity as outlined in Rule 3.7.41;
- b. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone as outlined in Rule 5.4.5;
- c. design development and site development
- d. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;
- e. internal noise and noise insulation;
- f. landscaping as outlined in Rule 3.7.1;
- g. the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site; and
- h. signage as outlined in Rule 11.2.19.

5.4.10.2 Council shall have regard to:

- a. whether the use of the community facility will be in conflict with the business activities on neighbouring sites and elsewhere in Mixed Use, Business Centre, Commercial and Large Format Zones;
- b. the numbers of people to be accommodated;
- c. the intended hours of use; and

Advice Note: Refer to Section 10.2.5

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 6 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY): DESIGNED TO HAVE A MAXIMUM OCCUPANCY OR ATTENDANCE OF MORE THAN 50 PEOPLE AT ANY ONE TIME (LIGHT INDUSTRIAL, INDUSTRIAL ZONES)
(Change 6 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

It is important to ensure the establishment and operation of a range of industrial activities are compatible with the character of the relevant industrial zone. Characteristics to be considered include levels of noise and vibration, levels of glare and light spill into neighbouring industrial properties, and the levels of heavy vehicles travelling through and within industrial sites and zones. In addition, development must be managed so that it does not adversely affect the safe and efficient operation of the transport network. It is also important that to exclude activities (such as community, educational or medical facilities) that do not support the primary function of the Light Industrial and Industrial Zones and are sensitive to industrial activities.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The proposed changes will achieve the desired objectives for these Zones.

PROPOSED CHANGES:

Add the following new section (6.4.5) to the Operative District Plan:

6.4.5 Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Light Industrial and Industrial Zones

6.4.5.1 Council shall restrict its discretion to:

- a. design development and site development;
- b. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;
- c. landscaping and on-site amenity as outlined in Rule 3.7.1;
- d. hours of operation as outlined in Rule 17.2.4;
- e. reverse sensitivity as outlined in Rule 3.7.41;
- f. the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site;
- g. signage as outlined in Rule 11.2.19;
- h. internal noise and noise insulation; and
- i. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone.

6.4.5.2 Council shall have regard to:

- a. whether the use of the community activity will be in conflict with the business activities on neighbouring sites and elsewhere in the Light Industrial or Industrial Zone. Particular regard will be given to the numbers

of people to be accommodated, the intended hours of use, and the level of parking proposed;

- b. whether the noise, odour or dust from business activities, or from the storage or transportation of hazardous substances, and permitted activities in the adjoining zone, and the ability to safely evacuate people in an emergency, will present a risk to the concentration of people attending the community activity; and
- c. whether the effects of any community activity will be sensitive to the operation of industrial and other business activities anticipated by the zone.

6.4.5.3 Refer to section 10.2.5

EVALUATION;

Options considered are:

- 1. Status Quo
- 2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Ind1; Objective Ind2.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 7 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY) DESIGNED TO HAVE A MAXIMUM OCCUPANCY OR ATTENDANCE OF MORE THAN 50 PEOPLE AT ANY ONE TIME (RURAL PLAINS; RURAL FOOTHILLS)
(Change 7 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

Productive land resources which includes versatile land, needs to be protected for primary productive use now and for the future. Controls are needed for the Rural Plains and Rural Foothills Zones to:

- maintain and where appropriate enhance rural amenity values, including natural light and buffers to boundaries, within and around dwellings in the rural zones;
- avoid activities locating in the rural environment where they may compromise development or the operation of existing and consented activities;
- avoid remedy or mitigate the adverse effects of structures (including signs) in terms of location, size, height, bulk and materials;
- ensure that land use activities that are sensitive to the effects of rural activities such as horticulture, farming, production forestry and mining do not constrain the operations of these rural activities through the use of physical separation requirements.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The proposed changes will help achieve the desired objectives for the Rural Plains and Rural Foothills Zones.

PROPOSED CHANGES:

Add the following new section (7.4.7) to the Operative District Plan:

7.4.7 Places of assembly (not provided for by any other category) designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Rural Plains and Rural Foothills Zones

7.4.7.1 Council shall restrict its discretion to:

- hours of operation;
- landscaping and on-site amenity;
- the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site;
- the level of parking proposed;
- signage as outlined in Rule 11.2.19;
- provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;

- g. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone as outlined in Rule 5.4.5;
- h. reverse sensitivity as outlined in Rule 3.7.41;
- i. the use of versatile land for non-rural purposes such as:
 - i. the degree to which versatile land on the site is already compromised or has lost its life supporting capacity;
 - ii. constraints on the ability to use the soil. For example, stability of slopes, climatic conditions, drainage, topography, gradient of land, need for irrigation or the location of small isolated pockets of higher quality soil;
 - iii. the loss of future productive rural land use options resulting from the proposal;
 - iv. the requirements of the land use to be located on versatile land, including technical or logistical requirements; and
- j. amenity values and rural or urban character effects such as:
 - i. the likelihood that the proposed activity will contribute to cumulative adverse effects on rural character, the coastal environment, general amenity values and recreational values;
 - ii. the nature and degree of adverse effects from the proposed activity upon the existing and future amenities of the locality, including recreational values, and on the health and safety of the community;
 - iii. the nature and extent of any planting including the replacement of specimen trees;
 - iv. the cumulative visual effect of the length and height of building bulk;
 - v. potential adverse effects on people such as neighbouring property owners or the immediate community through increased overshadowing or loss of visual privacy; and
 - vi. compatibility with the existing character and pattern of land development in proximity to the site.

EVALUATION

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur1; Objective Rur2; Objective Rur3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 8 PLACES OF ASSEMBLY (NOT PROVIDED FOR BY ANY OTHER CATEGORY): ADDITIONS, ALTERATIONS OR EXTENSIONS WHERE THE EXTENSION IS TO BUILDINGS LESS THAN 50M² IN FLOOR AREA USED FOR A PLACE OF ASSEMBLY WHICH WILL NOT INCREASE THE EXISTING OCCUPANCY OR ATTENDANCE (RURAL ŌHIWA)
(Change 8 in Track Changes document: Refer to Rule 3.4.1.1.11)

EXPLANATION:

Controls are needed to manage the effects of land based activities on the landscape and the functioning of Ōhiwa Harbour as an ecological resource based on a sustainable ecosystem. In addition, controls are needed to avoid adverse effects resulting from building development on the visual character of rural open spaces and to enable the continued operation of rural activities in the Rural Ōhiwa Zone.

The District Plan does not contain any matters of control to achieve these desired outcomes for this activity, which makes this controlled activity status void and uncertain in its application. The proposed changes will help to achieve the desired objectives for the Rural Ōhiwa Zone.

PROPOSED CHANGES:

Add the following new section (7.3.4) to the Operative District Plan:

7.3.4 Places of assembly (not provided for by any other category): additions, alterations or extensions where the extension is to buildings less than 50m² in floor area used for a place of assembly which will not increase the existing occupancy or attendance in the Rural Ōhiwa Zone

7.3.4. Council shall exercise its control over:

- a. the nature of the surrounding landform(context) and how the proposed activity is sympathetic with these values;
- b. any adverse effect on vegetation, particularly kanuka stands, which contributes to the natural character of the site;
- c. the extent and nature of other vegetative mitigation proposed;
- d. proposed building location;
- e. proposed building materials and finish and, in particular, choice of finishes that tone with the surrounding environment;
- f. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone (see Rule 5.4.5);
- g. adverse effects on identified cultural heritage places;
- h. adverse effects on riparian margins of the Ōhiwa Harbour and tributaries within the catchment of the harbour;
- i. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, rubbish disposal, electricity, telecommunications, gas, utility;

- j. signage as outlined in Rule 11.2.19; and
- k. the provision of on-site effluent treatment as set out in Section 13.
- l. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the coastal environment, particularly Ōhiwa Harbour;
- m. landscaping

Advice Note: Refer to Section 17.2.4.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rural 2; Objective Landscape 2; Objective LS3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 9

EMERGENCY SERVICES FACILITIES (RURAL COASTAL ZONE)
(Change 9 in Track Changes document: Refer to Rule 3.4.1.1.15)

EXPLANATION:

Emergency Service facilities are needed within the District, but the location of them in a Rural Coastal Zone must ensure that the character and diversity of rural and coastal landscapes and the visual quality and character of the coastal environment is maintained. This will help contribute to the protection of all outstanding natural feature landscapes and significant amenity landscapes.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The proposed changes will ensure that the objectives for the Rural Coastal Zone can be achieved.

PROPOSED CHANGES:

Add the following new section (7.4.9) to the Operative District Plan.

7.4.9 Emergency Service Facilities in the Rural Coastal Zone

7.4.9.1 Council shall restrict its discretion to:

- a. reverse sensitivity as outlined in Rule 3.7.41;
- b. traffic effects as outlined in Rule 3.7.17;
- c. the level of parking proposed
- d. noise effects as outlined in Rule 3.7.10;
- e. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;
- f. adverse effects on identified cultural heritage places and values.
- g. Rule 3.7.2.1(a-i)

EVALUATION:

Options considered are:

- 1. Status Quo
- 2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur2; Objective LS1.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.

Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 10 EMERGENCY SERVICES FACILITIES (RURAL ŌHIWA ZONE)
(Change 10 in the Track Changes document: Refer to Rule 3.4.1.1.15)

EXPLANATION:

Emergency Service facilities are required within the District, but the location of these within a Rural Ohiwa Zone must ensure that the character and diversity of rural and coastal landscapes and the visual quality and character of the coastal environment is maintained. It is important to protect all outstanding natural feature landscapes and significant amenity landscapes.

The District Plan does not contain any matters of control to achieve the desired outcomes for this activity, which makes this controlled activity status void and uncertain in its application. The proposed changes will ensure that the objectives for the Rural Ohiwa Zone can be achieved.

PROPOSED CHANGES:

Add the following new section (7.3.5) to the Operative District Plan.

7.3.5 Emergency Service Facilities in the Ōhiwa Zone

7.3.5.1 Council shall exercise its control over:

- a. reverse sensitivity as outlined in Rule 3.7.41;
- b. traffic effects as outlined in Rule 3.7.17;
- c. the level of parking proposed;
- d. noise effects as outlined in Rule 3.7.10;
- e. provision and location of network utilities including supply or upgrading of access, stormwater treatment and disposal facilities, water supply, effluent and rubbish disposal, electricity, telecommunications, gas, utility;
- f. adverse effects on identified cultural heritage places and values.
- g. Rule 3.7.2.1(a-i)

EVALUATION:

Options considered are:

- 3. Status Quo
- 4. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur1; Objective LS1.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.

Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 11 CAR PARKING (BUSINESS CENTRE, COMMERCIAL ZONE)
(Change 11 in the Track Changes document: Refer to Rule 3.4.1.1.29)

EXPLANATION:

The District Plan needs to ensure sufficient practical parking in Business and Commercial Zones is available, together with manoeuvring areas and pedestrian connectivity. The design of car parking must not allow the uncontrolled disposal of stormwater into the environment and it must ensure the safety of traffic and pedestrians entering, leaving and within sites.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The addition of these criteria will ensure that the objectives of these Zones can be achieved.

PROPOSED CHANGES:

Add the following new section (5.4.12) to the Operative District Plan.

5.4.12 Car Parking in the Business Centre and Commercial Zones

5.4.12.1 Council shall restrict its discretion to:

- a. traffic effects (including but not limited to access, on-site vehicle manoeuvring areas, the provision of bus bays, drop off zones, measures to separate pedestrians, buses, cyclists and vehicles, traffic volumes and traffic mix, parking and loading, pedestrian and cyclist safety, construction traffic and the practicability of combining access ways serving more than one site or lot);
- b. landscape and visual effects and outlined in Rule 3.7.1.1;
- c. site design, including formation and marking;
- d. natural light as outlined in Rule 5.4.1 and lighting;
- e. shadowing and physical domination if the proposal is for a carpark building;
- f. signage as outlined in Rule 11.2.19; and
- g. on-site stormwater management.

EVALUATION:

Options considered are:

- 1. Status Quo
- 2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus4; Objective TS4; Objective TS5.
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Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 12 CAR PARKING in the Rural Plains and Rural Foothills Zones
(Change 12 in the Track Changes document: Refer to Rule 3.4.1.1.29)

EXPLANATION:

Car parking in the Rural Plains and Rural Foothills Zones needs to be safe for vehicles and pedestrians and be designed in such a way that it does not reduce or compromise existing and future primary productive use options. The development of car parking must not compromise the development and operation of existing and consented activities or generate adverse effects, including the uncontrolled disposal of stormwater on the rural environment.

The District Plan does not contain any assessment criteria for this restricted discretionary activity, which means that the activity becomes by default a Discretionary Activity. The inclusion of these criteria will mean that the objectives for the Rural Plains and Rural Foothills Zones can be achieved.

PROPOSED CHANGES:

Add the following new section (7.4.10) to the Operative District Plan.

7.4.10 Car Parking in the Rural Plains and Rural Foothills Zones

7.4.10.1 Council shall restrict its discretion to:

- a. on-site stormwater management;
- b. the visual quality, visual absorption and visibility of the proposal in the context of the surrounding natural environment;
- c. traffic effects (including but not limited to access, on-site vehicle manoeuvring areas, the provision of bus bays, drop off zones, measures to separate pedestrians, buses, cyclists and vehicles, parking and loading, pedestrian and cyclist safety, construction traffic, and traffic volumes and traffic mix);
- d. site design including formation and marking;
- e. versatile land used for non-rural purposes:
 - i. the degree to which versatile land on the site is already compromised or has lost its life-supporting capacity;
 - ii. constraints on the ability to use the soil. For example, stability of slopes, climatic conditions, drainage, topography, gradient of land, need for irrigation or the location of small isolated pockets of higher quality soil;
 - iii. the loss of future productive rural land use options resulting from the proposal
 - iv. the requirements of the land use to be located on versatile land, including technical or logistical requirements;
- f. adverse effects on riparian margins on the Ōhiwa Harbour and tributaries within the catchment of the harbour;
- g. indigenous biodiversity effects;
- h. amenity values and rural character effects;

- i. reverse sensitivity as outlined in Rule 3.7.41;
- j. signage as outlined in Rule 11.2.19; and

EVALUATION:

Options considered are:

- 1. Status Quo
- 2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur1; Objective Rur3; Objective TS4; Objective TS5.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this restricted discretionary activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 13 EXPLORATION OF AGGREGATE, SAND, GRAVEL OR PUMICE in the Rural Ōhiwa Zone.
(Change 13 in the Track Changes document: Refer to Rule 3.4.1.1.36)

EXPLANATION:

Any exploration for and/or the removal of aggregate, sand, gravel or pumice should not create nuisance effects, effect the health and safety of people or communities or adversely affect the environment.

The District Plan does not contain any matters of control for this controlled activity. The District Plan does not contain any matters of control to achieve the desired outcomes for this activity, which makes this controlled activity status void and uncertain in its application. Making the proposed change will provide a higher level of protection to the community and environment in the Rural Ōhiwa Zone.

PROPOSED CHANGES:

Add the following new section (7.3.7) to the Operative District Plan:

7.3.7 Exploration of aggregate, sand, gravel or pumice in the Rural Ōhiwa Zone

7.3.7.1 Council shall exercise its control over:

- a. any temporary adverse effects of earthworks associated with the exploration of aggregate, sand, gravel or pumice on land uses in the vicinity of the site, including noise, dust, vibration or traffic movements;
- b. adverse effects on identified cultural heritage places and values.
- c. any adverse effects on indigenous biodiversity;
- d. any adverse effects on underground aquifers and/or groundwater seepage;
- e. any adverse visual or landscape effect on an outstanding natural feature or landscape listed in Appendix 17.7, or dominant landscape feature listed in Objectives LS2 Policy 4;
- f. reverse sensitivity as outlined in Rule 3.7.41;
- g. amenity values and rural or urban character effects;
- h. any increased risk associated with a natural hazard event that may arise from undertaking exploration for aggregate, sand, gravel or pumice;
- i. how the site will be restored and the timing of the restoration, or where the site or part of the site is not intended to be restored, the effects of this on the environment;
- j. the control of erosion, sediment and stormwater, including riparian planting;
- k. any adverse effect on the ecological values of the Rural Ōhiwa Zone that adversely affects the ecological diversity and healthy function of the Ōhiwa Harbour; and
- l. site restoration as outlined in Rule 11.2.5.

Advice Note: Refer also to Rules 11.2.1 – 11.2.4.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur2; Objective Rur3; Objective Gen1; Objective LS1.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 14 ACCESSORY BUILDINGS TO ANY PERMITTED ACTIVITY (NOT FOR HABITATION). SEE ALSO ITEM 10 BUILDINGS ON PUBLIC RESERVES (RURAL ŌHIWA ZONE)

(Change 14 in Track Changes document: Refer to Rule 3.4.1.1.45)

EXPLANATION: The District Plan does not contain any matters of control for the construction of accessory buildings to any permitted activity in the Rural Ōhiwa Zones. This makes this controlled activity status void and uncertain in its application.

PROPOSED CHANGES:

Add the following new section (7.3.8) to the Operative District Plan:

7.3.8 Accessory Buildings to any Permitted Activity (not for habitation). See also Item 10 Buildings on Public Reserves in the Rural Ōhiwa Zone

7.3.8.1 Council shall exercise its control over:

- a. the nature of the surrounding landform (context) and how the proposed activity is sympathetic with these values;
- b. the visual quality, visual absorption and visibility of the proposal in the context of the location as outlined in Rule 17.2.2;
- c. proposed building materials and finish and, in particular, choice of finishes that tone with the surrounding environment as outlined in Rule 17.2.4;
- d. adverse effects on identified cultural heritage places and values;
- e. earthworks and temporary construction effects;
- f. landscaping and planting;
- g. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone as outlined in Rule 5.4.5; and
- h. adverse effects on indigenous biodiversity.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Rur1; Objective Rur2; Objective Rur3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.

Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 15 ACCESSORY BUILDINGS TO ANY PERMITTED ACTIVITY (NOT FOR HABITATION) SEE ALSO
ITEM 10 BUILDINGS ON PUBLIC RESERVES (LARGE FORMAT RETAIL)
(Change 15 in Track Changes document: Refer to Rule 3.4.1.1.45)

EXPLANATION:

The District Plan does not contain any assessment criteria for this controlled activity. However, section 5.3.1 already contains the appropriate controls, but does not include Activity 45. The addition of Activity 45 to the list of activities in section 5.3.1 will address this shortcoming and ensure that the objectives for the Large Format Retail Zone can be achieved.

PROPOSED CHANGES:

Make a minor change to include Activity 45 in section 5.3.1:

5.3.1 Activities in the Large Format Retail Zone (see Activity Status Table 3.4 Items 19, 26, 45 and 48).

5.3.1.1 Council shall exercise its control over;

- a. design development and site layout, the degree to which;
 - i. buildings have been designed and located to minimise any adverse effects, including noise, dust, fumes, and glare;
 - ii. a suitable buffer has been provided where activities adjoin existing industrial or any nuisance producing activities; and
 - iii. where visible from a public road, buildings have been designed to present an attractive appearance to passing traffic and, in particular;
 - large featureless building facades facing the road are avoided;
 - any plant or machinery relating to the activity (except where displayed for sale) is not placed at the front of the building unless fully screened;
 - any loading, storage, or service areas should not be located in an area immediately adjoining the road;
 - the location of buildings, parking areas and outdoor storage areas has had regard to their potential impact on the amenity of any adjoining land; and
- b. vehicular, cycle and pedestrian provision, the degree to which;
 - i. car parking areas have been designed to ensure they are, readily accessible and convenient for users and are designed to promote passive surveillance;
 - ii. access has been designed and located to allow safe and efficient movement to and from the adjacent road network;
 - iii. access has been designed to minimise effects on major arterial roads;
 - iv. internal vehicular layout has been designed in order to minimise conflicts between pedestrian, cycle, vehicular, and service access; and
- c. landscaping, the degree to which landscaping;

- i. mitigates the impacts of development on the amenity values of the surrounding neighbourhood and on the arterial roading network;
 - ii. incorporates plants that form a green edge to the site;
 - iii. accentuates particular features of plants against a less prominent background;
 - iv. uses plants to vary the width of the green edge;
 - v. incorporates plants of different heights and textures;
 - vi. incorporates a mixture of evergreen and deciduous plants;
 - vii. is planted in lines and clumps, depending on visual context, including topography and surface appearance of the surrounds;
 - viii. uses established plants (at least 3 years old) to reduce the exposure period and to provide amenity and mitigate potential adverse effects as soon as possible; and
- d. retail activities, the degree to which the activity has the potential to compromise by itself, or in combination with other existing or consented activities, the vitality and viability of any Business Centre Zone.

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Bus1; Objective Bus3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 16 ESPLANADE RESERVE OR STRIP WAIVERS (SUBDIVISION)

(Change 16 in Track Changes document: Refer to Rule 3.4.1.1.56)

EXPLANATION:

Currently, the Council has very limited discretion over the impacts of this activity on the immediate or wider environment during construction or in the longer term. Broadening the criteria to include consideration of environmental and amenity impacts will enable the Council to better fulfil its role as outlined in Section 31 of the RMA of:

- Managing the effects of development, protecting the land and associated natural and physical resources of the District; and
- Controlling the actual and potential effects of development.

PROPOSED CHANGES:

Add a new assessment criteria to Section 12.8.6.1 of the Operative District Plan:

g. the criteria listed in Rule 12.7.1(a-v).

12.8.6 Esplanade Reserve or Strip Waivers

12.8.6.1 Council shall restrict its discretion to;

- a. whether the watercourse is an artificial watercourse;
- b. whether protection of the riparian area is more appropriately achieved by an alternative protection mechanism;
- c. whether there are any conservation or public access benefits to be gained;
- d. whether the subdivision is a boundary adjustment only;
- e. whether the land is already protected under a QEII Trust Covenant, protective covenant under the Reserves or Conservation Act, marginal strip under the Conservation Act, or the land is already protected for conservation purposes by a Land Improvement Agreement with the Bay of Plenty Regional Council or New Zealand Forests Accord; and appropriate alternative provision has been made for public access to land along the water body concerned.
- f. whether for reasons of public safety and/or security, an esplanade reserve would be inappropriate and security cannot be assured by some other means; For example, where there are Defence lands, existing public road reserve, sensitive machinery, network utilities or works. Where appropriate, alternative access to deviate around the facility and maintain a continuous public access route in the vicinity may be required.
- g. Rule 12.7.1.1(a-v).

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Sub1; Objective CP2; Objective CP3.
Benefits (Environmental, Economic, Social and Cultural)	The proposed change will provide clarity and certainty to plan provisions.
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

Change 17 SUBDIVISION WITHIN KAWERAU GEOTHERMAL EXPLORATION AREA (SUBDIVISION)
(Change 17 in the Track Changes document: Refer to Rule 3.4.1.1.56)

EXPLANATION:

Currently, the Council has very limited discretion over the impacts of this activity on the immediate or wider environment during construction or in the longer term. Broadening the criteria to include consideration of environmental and amenity impacts will enable the Council to better fulfil its role as outlined in Section 31 of the RMA of:

- Managing the effects of development, protecting the land and associated natural and physical resources of the District; and
- Controlling the actual and potential effects of development.

PROPOSED CHANGES:

Add a new assessment criteria to Section 12.8.7.1 of the Operative District Plan:

- c. the criteria listed in Rule 12.7.1

12.8.7 Subdivision within the Kawerau Geothermal Exploration Area

12.8.7.1 Council shall restrict its discretion to the following matters:

- a. the extent to which the subdivision design, including the location of building platforms minimises the potential for reverse sensitivity effects on existing and consented geothermal electricity generation activities. The potential reverse sensitivity effects arising from new dwellings are limited to subsidence risk, noise, vibration, lighting/glare, dust, odour and traffic
- b. whether written approval has been secured from the holder of the relevant geothermal consent, which includes the land to be subdivided (the extent of such person's interest is limited to the matters listed in paragraph (a)).
- c. Rule 12.7.1.1(a-v).

EVALUATION:

Options considered are:

1. Status Quo
2. Proposed change as set out above.

Retaining the status quo is not considered supportable for the reasons set out in the Explanation above.

Under section 32(1)(b)(ii), the efficiency and effectiveness of the amended provisions in achieving the objectives are evaluated as follows:

Objectives	Objective Sub1; Objective CP2; Objective CP3.
Benefits (Environmental,	The proposed change will provide clarity and certainty to plan provisions.

Economic, Social and Cultural)	
Costs (Environmental, Economic, Social and Cultural)	There are unlikely to be costs resulting from the amended provisions.
Risk of Acting or Not Acting	The risk of not acting is that this controlled activity status will remain void on the basis that it is <i>ultra vires</i> the Act and will continue to be uncertain in its application.
Overall Assessment	The proposed change is supported as enabling the purpose of the Act to be met and will be more effective than the status quo.

4. CONCLUSIONS

The lack of assessment criteria for restricted discretionary activities or matters of control for controlled activities in the Operative District Plan means that the validity of the activity status rule is questionable. This creates uncertainty for anyone applying for consents relating to those activities and limits the legal ability of the Council to adequately control the effects of these activities.

If the Plan Changes are not made, there is a risk that the Council could legally be required to grant resource consents that lack the necessary controls required to protect the environment and manage development in the District.

The 17 proposed changes outlined above will address these shortcomings by providing clarity around the assessment criteria or matters of control that Council will consider when evaluating resource consents.