



Proposed Plan Change 3 to the Whakatāne District Plan

Matters of Control

Section 42A Planner's Report

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1 Introduction

Qualifications and Experience

- 1.1 My name is Nicholas Charles Woodley. I am employed by Whakatāne District Council as the Manager Policy, Planning and Consent Compliance. My role includes responsibility for maintaining the effectiveness of the Whakatāne District Plan.
- 1.2 I hold the degrees of Bachelor of Science and Master of Science (Hons) from the University of Auckland and a Master of Resource and Environmental Planning (Hons) from Massey University. I am an Associate Member of the New Zealand Planning Institute.
- 1.3 I have been a practising planner for 15 years and have worked in both the public and private sector.
- 1.4 I have worked for Whakatāne District Council since 2017, and have been in my current role since 2019.

2 Scope of Report

- 2.1 This report is prepared under the provisions of section 42A of the Resource Management Act 1991 (RMA). The purpose of this s42A report is to provide analysis and recommendations on submissions and further submissions on Proposed Plan Change 3 – Matters of Control (PC3) to the Whakatāne District Plan 2017 (District Plan).

Background of Proposed Plan Change 3

- 2.2 The District Plan was made operative on 21 June 2017. During the development of the District Plan several assessment criteria for various activities were not provided. In May 2019, legal advice was sought regarding two activities that lacked the associated matters of control or assessment criteria.
- 2.3 In a memorandum dated 28 May 2019, Brookfields lawyers advised Whakatāne District Council (Council) that activity statuses will likely be found to be void on the basis that they are ultra vires the RMA and also uncertain as to their application.
- 2.4 Brookfields also recommended that Council undertake a limited review of the District Plan to identify any other activities lacking matters of control or assessment criteria. Our review identified:
 - Seven activities in one or more planning zones that had no matters of control or restricted discretionary assessment criteria;

- One activity in one or more planning zones that lacked matters of control / assessment criteria, but which could be referenced to the controls elsewhere in the District Plan; and
- Two activities in the Subdivision chapter that contained some assessment criteria but lacked criteria to assess the impact of these activities on environmental outcomes.

2.5 Brookfields also advised Council to undertake a plan change to insert the matters of control and assessment criteria.

Purpose of Proposed Plan Change 3

2.6 The purpose of PC3 is to provide assessment criteria for activities identified either as Controlled or Restricted Discretionary Activities in the District Plan. These changes will update eight activities that currently lack either assessment criteria for restricted discretionary activities or matters of control for controlled activities in one or more zones. In total, PC3 involves 17 sets of changes to the District Plan, this is due to the structure of the District Plan which differentiates activities between different zones.

2.7 The lack of matters of control / assessment criteria for controlled and restricted discretionary activities in the District Plan means that there is uncertainty regarding the application of those rules. This uncertainty affects anyone applying for consents relating to those activities, although in their opinion Brookfields stated that treating the activity as discretionary under these circumstances was sound.

2.8 These 17 changes seek to bring about clarity and certainty for District Plan users and enable Council to more accurately manage and control the effects of those activities on the environment.

Notification Process – Submissions and Further Submission

2.9 PC3 was publicly notified under clause 5 of Schedule 1 of the RMA on Friday 9 October and closed for public submission on Monday 9 November 2020. Four submissions were received in total, from:

- Whakatāne District Council (WDC);
- Waka Kotahi NZ Transport Agency (NZTA);
- Forest & Bird – Eastern Bay of Plenty Branch (Forest & Bird); and
- Fire and Emergency New Zealand (FENZ).

2.10 The summary of submissions and availability for further submissions were publicly notified under clause 7 and 8 of Schedule 1 of the RMA on Friday 15 January 2021 with further submissions closing Friday 29 January 2021.

2.11 One further submission was received by Events Promotions Initiatives Community Whakatāne Town Centre Incorporated (EPIC).

Overview of Submissions

2.12 Within the four submissions and one further submission, 39 submission points and 1 further submission point were identified on the proposed new sections (provisions) in PC3. Further:

- 15 out of the 17 provisions proposed in PC3 were submitted on;
- 15 submissions points were received in support of provisions in PC3;
- 10 submission points were received that supported in part the provisions in PC3; and
- 14 submission points were received that opposed provisions in PC3.

2.13 EPIC made a further submission that supported in part and opposed in part an original submission made by Waka Kotahi NZTA.

Structure of this report

2.14 PC3 seeks to implement 17 separate changes to the District Plan. These proposed changes were included in a tracked changes report that accompanied the PC3 section 32 report as an appendix with each section (provision) assigned a tracked change number.

2.15 This report assesses the submission points and further submission against the provisions / tracked change number to which they relate.

2.16 The PC3 section 32AA (s32AA) further evaluation report for all recommended changes in response to submissions is provided in Appendix 1 of this report.

2.17 Recommended changes in PC3 are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 report in red, and recommendations as a result of this Planning Report in green. Minor amendments made under clause 16(2) of Schedule 1 are shown in blue.

3 Assessment criteria for four or more dwellings in the Mixed Use Zone / Tracked Change 1

3.1 Tracked change 1 / proposed new provision **5.4.7** provides assessment criteria for four or more dwellings per lot in the Mixed Use Zone.

Submissions received on Tracked Change 1

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.1	Forest & Bird	Oppose. Amend 5.4.7.1.(a) xii. Lack of specificity and not consistent with Council's climate change agenda.
4.1	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – Forest & Bird: Submission Point 3.1

- 3.2 Submission point 3.1 relates to the proposed assessment criterion **5.4.7.1(a) xii**, that provides for the degree to which the building incorporates elements that promote sustainability.
- 3.3 Forest & Bird requested that criterion **5.4.7.1(a) xii** be amended to be more specific in terms of what sustainability measures will be anticipated.
- 3.4 Council's proposed wording of criterion **5.4.7.1 (a) xii** is consistent with the wording of other criterion for similar activities found in the District Plan, including the following rules: **4.3.1.1 (k)** (*Two or Three Dwellings per Lot*), **4.3.3.1 (b)** (*Retirement Villages which exclude a Hospital*), **4.4.1.1 (a) xii** (*Four or More Dwellings Per Lot and Retirement Villages which include a Hospital*), **5.3.5.1 (k)** (*Two or more dwellings per Lot (see Activity Status Table 3.4 Item 2)*).
- 3.5 I consider that it is appropriate for the proposed assessment criterion **5.4.7.1(a) xii** to be consistent with those in the aforementioned rules. I recommend that Forest & Bird's submission on submission point 3.1, tracked change 1, is rejected. I do not consider the rewording of criterion **5.4.7.1 (a) xii** necessary.

Submission Analysis – FENZ: Submission Point 4.1

- 3.6 FENZ has an interest in the land use provisions provided in the District Plan that allow for the consideration of operational firefighting requirements and fire safety.
- 3.7 FENZ has submitted in support of tracked change 1 because Council has proposed assessment criteria that enables FENZ to carry out their responsibility under the Fire and Emergency Act 2017.

3.8 I recommend that submission point 4.1 made by FENZ is accepted.

Recommendation

3.9 For the reasons given above I recommend that proposed new provision 5.4.7 be retained as notified in PC3.

4 Assessment criteria for Papakāinga Housing in the Mixed Use Zone / Tracked Change 2

4.1 Tracked change 2 / proposed new provision 5.4.8 provides assessment criteria for Papakāinga Housing in the Mixed Use Zone.

Submissions received on Tracked Change 2

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.2	Forest & Bird	Oppose. Amend 5.4.8.1.(a) xiii. Lack of specificity and not consistent with Council's climate change agenda.
4.2	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – Forest & Bird: Submission Point 3.2

4.2 Submission point 3.2 relates to assessment criterion 5.4.8.1 (a) xiii, that provides for the degree to which the building incorporates elements that promote sustainability.

4.3 Forest & Bird requests to amend criterion 5.4.8.1 (a) xiii to be more specific in terms of what sustainability measures will be anticipated.

4.4 Council's proposed wording of criterion 5.4.8.1 (a) xiii is consistent with the wording of other criterion for similar activities found in the District Plan, including the following Rules: 4.3.1.1 (k) (Two or Three Dwellings per Lot), 4.3.3.1 (b) (Retirement Villages which exclude a Hospital), 4.4.1.1 (a) xii (Four or More Dwellings Per Lot and Retirement Villages which include a Hospital), 5.3.5.1 (k) (Two or more dwellings per Lot (see Activity Status Table 3.4 Item 2)).

4.5 I consider that it is appropriate for the proposed assessment criterion 5.4.7.8(a) xii to be consistent with those in the aforementioned rules. I recommend that Forest & Bird's submission on submission point 3.2, tracked change 2, is rejected. I do not consider the rewording of criterion 5.4.8.1 (a) xiii necessary.

Submission Analysis – FENZ: Submission Point 4.2

4.6 FENZ has submitted in support of tracked change 2 because Council has proposed criteria that enables FENZ to carry out their responsibility under the Fire and Emergency Act 2017.

4.7 I recommend accepting submission point 4.2 made by FENZ.

Recommendation

4.8 For the reasons given above I recommend that proposed new provision **5.4.8** be retained as notified in PC3.

5 Matters of Control for Places of Assembly in the Rural Ōhiwa Zone / Tracked Change 3

5.1 Tracked change 3 / proposed new provision **7.3.2** provides matters of control for places of assembly designed to have a maximum attendance of less than 10 people at any one time in the Rural Ōhiwa Zone.

Submissions received on Tracked Change 3

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.3	Forest & Bird	Oppose. Add new criterion to 7.3.3.1. Lack of specificity and not consistent with Council’s climate change agenda.
3.8	Forest & Bird	Oppose. Use the phrase “landscaping and planting” for this controlled activity. Make consistent with other assessment criteria.
4.3	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – Forest & Bird: Submission Point 3.3

5.2 Forest & Bird seeks to add a new criterion to **7.3.3.1** to be more specific in terms of what sustainability measures will be anticipated.

5.3 The matters of control that have been provided for this activity are appropriate to achieve the purpose of the RMA as outlined in the PC3 section 32 assessment.

5.4 For the reason given I do not consider adding new sustainability criterion to this activity necessary. I recommend that Forest & Bird’s submission on submission point 3.3, tracked change 3, is rejected.

Submission Analysis – Forest & Bird: Submission point 3.8

- 5.5 Submission point 3.8 made by Forest & Bird requests that criterion **7.3.3.1.m** be amended to “landscaping and planting”. Forest & Bird consider that there is inconsistency in the wording of landscaping criteria found elsewhere in the District Plan that could result in an incomplete assessment of effects.
- 5.6 The purpose of PC3 was to bring about clarity and certainty for District Plan users. I agree that the inconsistency in the wording of landscaping criteria used in PC3 does not achieve the purpose of PC3. Section 6.1.1 of the s32AA further evaluation shows the changes proposed by submission point 3.8 is the best option for achieving the purpose of the RMA.
- 5.7 I recommend submission point 3.8 made by Forest & Bird be accepted to allow a broader assessment of effects and to bring consistency in the wording for landscaping criteria for controlled activities.

Submission Analysis – FENZ: Submission Point 4.3

- 5.8 FENZ has submitted in support of tracked change 3 because Council has proposed criteria that allows FENZ to carry out their responsibility under the Fire and Emergency Act 2017.
- 5.9 I recommend accepting submission point 4.3 made by FENZ.

Recommendation

- 5.10 That the matters of control for provision **7.3.2** be amended as requested by submission point 3.8 made by Forest & Bird. That the matters of control be amended to:

7.3.23 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

7.3.23.1 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 and planting;
- 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;
- p. the provision of on-site effluent treatment as set out in ~~Section~~ Rule 13.2.27; and
- q. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the Coastal Environment, particularly Ōhiwa Harbour.

6 Assessment Criteria for Places of Assembly in the Large Format Retail Zone / Tracked Change 4

6.1 Tracked change 4 / proposed new provision 5.4.9 provides assessment criteria for places of assembly designed to have a maximum occupancy of between 10 to 50 people in the Large Format Retail Zone.

Submissions received on Tracked Change 4

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.1	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
3.4	Forest & Bird	Oppose. Add new criterion to 5.4.9.1. Lack of specificity and not consistent with Council's climate change agenda.
3.9	Forest & Bird	Oppose. Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.
4.4	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – NZTA: Submission Point 2.1

6.2 NZTA is required to maintain a safe and efficient state highway network. The only existing area zoned Large Format Retail in the District Plan is at the Hub development located adjacent to

State Highway 30, near Whakatāne. The sole location of the Large Format Retail Zone means the activity would occur in close proximity to a state highway and would have a direct effect on the state highway network of the District.

6.3 NZTA consider the assessment of traffic effects provided in provision **5.4.9** is suitable to assess any traffic concerns that may arise in the District's transport network.

6.4 I recommend accepting submission point 2.1 made by NZTA.

Submission Analysis – Forest & Bird: Submission Point 3.4

6.5 Forest & Bird seeks Council to add new criterion to **5.4.9.1** to be more specific in terms of what sustainability measures will be anticipated.

6.6 The assessment criteria provided for this activity are sufficient to meet the purpose of the RMA as outlined in the PC3 section 32 assessment.

6.7 I do not consider adding new sustainability criterion to this activity necessary. I recommend that Forest & Bird's submission on submission point 3.4, tracked change 4, is rejected.

Submission Analysis – Forest & Bird: Submission point 3.9

6.8 Submission point 3.9 made by Forest & Bird seeks Council to amend criterion **5.4.9.1.e** to "landscaping and on-site amenity as outlined in Rule 3.7.1". Forest & Bird consider there is inconsistency in the wording of landscaping criteria that could result in an incomplete assessment of effects. This is because other assessment criteria in PC3 reference Rule **3.7.1** (*Landscape and Visual Effects*) and the landscaping criterion for this activity does not.

6.9 The purpose of PC3 was to bring about clarity and certainty for District Plan users. I agree that the inconsistency in the wording of landscaping criteria used in PC3 does not achieve the purpose of PC3. Section 6.1.2 of the s32AA further evaluation shows the changes proposed by submission point 3.9 is the best option for achieving the purpose of the RMA.

6.10 I recommend accepting submission point 3.9 made by Forest & Bird to allow a broader assessment of effects and to bring consistency in the wording for landscaping criteria for restricted discretionary activities.

Submission Analysis – FENZ: Submission Point 4.4

6.11 FENZ has submitted in support of tracked change 4 because Council has proposed criteria that allows FENZ to carry out their responsibility under the Fire and Emergency Act 2017.

6.12 I recommend accepting submission point 4.4 made by FENZ.

Recommendation

6.13 That the assessment criteria for provision **5.4.9** be amended as requested by submission point 3.9 made by Forest & Bird. That the assessment criteria be amended to:

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;
 - iii. where visible from a public road, buildings have been designed to present an attractive appearance to passing traffic; and
- b. 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 accessways serving more than one site or lot);
- c. 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;
- d. landscaping; and on-site amenity as outlined in Rule 3.7.1;
- e. signage as outlined in Rule 11.2.19;
- f. noise; and
- g. hours of operation.

7 Assessment Criteria for Places of Assembly of more than 50 people / Tracked Change 5

7.1 Tracked change 5 / proposed new provision **5.4.10** provides assessment criteria for places of assembly designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Mixed Use, Business Centre, Commercial and Large Format Retail Zones.

Submissions received on Tracked Change 5

Submission Point	Submitter	Summary of Submission Point & Decision Requested
1.1	WDC	Support in part. Delete the reference to “internal noise and noise insulation” and replace with reference to the criteria listed in 3.7.10 (Noise Effect). Incorrect reference to noise that lacks consistency.
1.2	WDC	Support in part. Delete entire reference to 5.4.10.2 and include intended hours of use as a new assessment criterion in 5.4.10.1. Make changes to improve the interpretation of the assessment criteria.
1.3	WDC	Support in part. Remove advice note. Advice note is an incorrect reference.
2.2	NZTA	Support in part. Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.
3.5	Forest & Bird	Oppose. Add new criterion to 5.4.10.1. Lack of specificity and not consistent with Council’s climate change agenda.
4.5	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – WDC: Submission Point 1.1, 1.2, 1.3

- 7.2 The purpose of PC3 was to bring about clarity and certainty for District Plan users. Some potential improvements were identified by Council staff after PC3 was notified.
- 7.3 Section 4.1.1 of the s32AA further evaluation shows the changes proposed by submission point 1.1, 1.2 and 1.3 are the best option for achieving the purpose of the RMA.
- 7.4 I recommend accepting submission point 1.1, 1.2 and 1.3 made by WDC to improve clarity and certainty in the application of tracked change 5 / proposed new provision **5.4.10**.

Submission Analysis – NZTA: Submission Point 2.2

- 7.5 NZTA is required to maintain a safe and efficient state highway network. The consideration of the effect on the transport network and in particular state highways was somewhat overlooked in the assessment of this activity when PC3 was notified.
- 7.6 The proposed criterion that reflected a traffic assessment for this activity only considered the movement of traffic, access and egress to the site. The zoning of this activity means it can be located in close proximity to state highways giving the activity a direct effect on the state highway network throughout the District.
- 7.7 The relief sought from submission point 2.2 was to broaden the assessment of traffic effects outlined in Rule **3.7.17** (*Traffic Effects*) as found in the District Plan.

7.8 Section 5.1.1 of the s32AA further evaluation shows the changes proposed by submission point 2.2 is the best option for achieving the purpose of the RMA.

7.9 I recommend accepting submission point 2.2 made by NZTA.

Submission Analysis – Forest & Bird: Submission Point 3.5

7.10 Forest & Bird seeks Council to add new criterion to **5.4.10.1** to be more specific in terms of what sustainability measures will be anticipated.

7.11 The assessment criteria provided for this activity are appropriate to meet the purpose of the RMA as outlined in the PC3 section 32 assessment.

7.12 I do not consider adding new sustainability criterion to this activity necessary. I recommend that Forest & Bird's submission on submission point 3.5, tracked change 5, is rejected.

Submission Analysis – FENZ: Submission Point 4.5

7.13 FENZ has submitted in support of tracked change 5 / proposed new provision **5.4.10** because Council has proposed criterion that allows FENZ to carry out their responsibility under the Fire and Emergency Act 2017.

7.14 I recommend accepting submission point 4.5 made by FENZ.

Recommendation

7.15 That the assessment criteria for provision **5.4.10** be amended as requested by submission points 1.1, 1.2 and 1.3 made by WDC and submission point 2.2 made by NZTA. That the assessment criteria be amended to:

5.4.10 Places of Assembly (not provided for by any other category) in the Mixed Use, Business Centre, Commercial and 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;~~ the criterion listed in 3.7.10 (Noise Effect);
- 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 traffic effects as outlined in Rule 3.7.17;~~
- h. ~~signage as outlined in Rule 11.2.19; and~~
- i. ~~the intended hours of use.~~

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~~

~~Advice Note: Refer to Section 10.2.5.~~

8 Assessment Criteria for Places of Assembly in Industrial Zones / Tracked Change 6

8.1 Tracked change 6 / proposed new provision 6.4.5 provides assessment criteria for places of assembly designed to have a maximum occupancy or attendance of more than 50 people at any one time in the Light Industrial and Industrial Zones.

Submissions received on Tracked Change 6

Submission Point	Submitter	Summary of Submission Point & Decision Requested
1.4	WDC	Support in part. Amend the criterion regarding the hours of operation. Make changes to improve the interpretation of the assessment criteria.
1.5	WDC	Support in part. Delete the reference to “internal noise and noise insulation” and replace with reference to the criteria listed in 3.7.10 (Noise Effect). Incorrect reference to noise that lacks consistency.
1.6	WDC	Support in part. Delete the entire reference to 6.4.5.2 due to uncertainty over its application. Make changes to improve the interpretation of the assessment criteria.
1.7	WDC	Support in part. Remove advice note. Advice note is an incorrect reference.
2.3	NZTA	Support in part. Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.
3.6	Forest & Bird	Oppose. Add new criterion to 6.4.5.1. Lack of specificity and not consistent with Council’s climate change agenda.
4.6	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – WDC: Submission Point 1.4, 1.5, 1.6, 1.7

- 8.2 The purpose of PC3 was to bring about clarity and certainty for District Plan users. Some potential improvements were identified by Council staff after PC3 was notified.
- 8.3 Section 4.1.2 of the s32AA further evaluation shows the changes proposed by submission points 1.4, 1.5, 1.6 and 1.7 are the best option for achieving the purpose of the RMA.
- 8.4 I recommend accepting submission points 1.4, 1.5, 1.6 and 1.7 made by WDC to bring about clarity and certainty in the application of tracked change 6 / proposed new provision **6.4.5**.

Submission Analysis – NZTA: Submission Point 2.3

- 8.5 NZTA is required to maintain a safe and efficient state highway network. The consideration of the effect on the transport network and in particular state highways was somewhat overlooked in the assessment of tracked change 6 when PC3 was notified.
- 8.6 The proposed criterion that reflected a traffic assessment for this activity only considered the movement of traffic, access and egress to the site. The zoning of this activity means it can be located in close proximity to state highways giving the activity a direct effect on the state highway network throughout the District.
- 8.7 The relief sought from submission point 2.3 made by NZTA was to broaden the assessment of traffic effects as outlined in Rule **3.7.17** (*Traffic Effects*) from the District Plan. Rule **3.7.17** will allow the activity to be assessed against a broader range of traffic effects including the effects on the state highway network.
- 8.8 Section 5.1.2 of the s32AA further evaluation shows the changes proposed by submission point 2.3 is the best option for achieving the purpose of the RMA.
- 8.9 I recommend accepting submission point 2.3 made by NZTA.

Submission Analysis – Forest & Bird: Submission Point 3.6

- 8.10 Forest & Bird seeks Council to add new criterion to 6.4.5.1 to be more specific in terms of what sustainability measures will be anticipated.
- 8.11 The restricted discretionary criteria that have been provided for this activity are sufficient to meet the purpose of the RMA as outlined in the PC3 section 32 assessment.

8.12 For the reason given I do not consider adding new sustainability criterion to this activity necessary and recommend rejecting Forest & Bird's submission on submission point 3.6, tracked change 6.

Submission Analysis – FENZ: Submission Point 4.6

8.13 FENZ has submitted in support of tracked change 6 because Council has proposed criterion that provides for FENZ to carry out their responsibilities under the Fire and Emergency Act 2017.

8.14 I recommend accepting submission point 4.6 made by FENZ.

Recommendation

8.15 That the assessment criteria for provision **6.4.5** be amended as requested by submission points 1.4, 1.5, 1.6 and 1.7 made by WDC and submission point 2.3 made by NZTA. That the assessment criteria be amended to:

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;~~ the intended hours of use and other criteria outlined in 3.7.36;
- 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;~~ traffic effects as outlined in Rule 3.7.17;
- g. **signage as outlined in Rule 11.2.19;**
- h. ~~internal noise and noise insulation;~~ and the criteria listed in 3.7.10 (Noise Effect); 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.~~

9 Assessment Criteria for Places of Assembly in Rural Zones / Tracked Change 7

9.1 Tracked change 7 / proposed new provision **7.4.7** provides assessment criteria for places of assembly 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.

Submissions received on Tracked Change 7

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.4	NZTA	Support in part. Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.
3.10	Forest & Bird	Oppose. Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.
4.7	FENZ	Support. Retain as notified. Support for criteria that relates to site access, manoeuvring and access to water supply.

Submission Analysis – NZTA: Submission Point 2.4

9.2 The proposed criterion that reflected a traffic assessment for this activity only considered the movement of traffic, access and egress to the site. The zoning of this activity means it can be located in close proximity to state highways giving the activity a direct effect on the state highway network throughout the district.

9.3 The relief sought from submission point 2.4 made by NZTA was to broaden the assessment of traffic effects as outlined in Rule **3.7.17** (*Traffic Effects*) as found in the District Plan. Rule **3.7.17** will allow the activity to be assessed against a broader range of traffic effects including the effects on the state highway network.

9.4 Section 5.1.3 of the s32AA further evaluation shows the changes proposed by submission point 2.4 is the best option for achieving the purpose of the RMA.

9.5 I recommend accepting submission point 2.4 by NZTA.

Submission Analysis – Forest & Bird: Submission point 3.10

9.6 Submission point 3.10 made by Forest & Bird seeks to amend the criterion of **7.4.7.1.b** to “landscaping and on-site amenity as outlined in Rule 3.7.1”. Forest & Bird believes there is inconsistency in the wording of landscaping criteria that could result in an incomplete assessment of effects. This is because other assessment criteria in PC3 reference Rule **3.7.1** (*Landscape and Visual Effects*) and the landscaping criterion for this activity does not.

9.7 The purpose of PC3 was to bring about clarity and certainty for District Plan users. Section 6.1.3 of the s32AA further evaluation shows the changes proposed by submission point 3.10 is the best option for achieving the purpose of the RMA.

9.8 I recommend accepting submission point 3.10 made by Forest & Bird to allow a broader assessment of effects and to bring consistency in the wording for landscaping criteria for restricted discretionary activities that are similar to this elsewhere in the District Plan.

Submission Analysis – FENZ: Submission Point 4.7

9.9 FENZ has submitted in support of tracked change 7 because Council has proposed criterion that allows FENZ to carry out their responsibility under the Fire and Emergency Act 2017.

9.10 I recommend accepting submission point 4.7 made by FENZ.

Recommendation

9.11 That the assessment criteria for provision **7.4.7** be amended as requested by submission point 2.4 made by NZTA and submission point 3.10 made by Forest & Bird. That the assessment criteria be amended to:

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;

- a. hours of operation;
- b. landscaping and on-site amenity as outlined in Rule 3.7.1;
- c. ~~the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site;~~ traffic effects as outlined in Rule 3.7.17;

- d. the level of parking proposed;
- e. signage as outlined in Rule 11.2.19;
- f. 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.

10 Matters of Control for Alterations to Places of Assembly in the Rural Ōhiwa Zone / Tracked Change 8

- 10.1 Tracked change 8 / proposed new provision **7.3.3** provides matters of control for places of assembly: 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.

Submissions received on Tracked Change 8

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.11	Forest & Bird	Oppose. Use the phrase "landscaping and planting" for this controlled activity. Make consistent with other assessment criteria.

Submission Analysis – Forest & Bird: Submission Point 3.11

- 10.2 Submission point 3.11 made by Forest & Bird seeks to amend the criterion of 7.3.3.1.m. to “landscaping and planting”. Forest & Bird considers there is inconsistency in the wording of landscaping criteria that could result in an incomplete assessment of effects.
- 10.3 The purpose of PC3 was to bring about clarity and certainty for District Plan users. Section 6.1.4 of the s32AA further evaluation shows the changes proposed by submission point 3.11 is the best option for achieving the purpose of the RMA.
- 10.4 I recommend accepting submission point 3.11 made by Forest & Bird to allow a greater assessment of effects and to bring consistency in the wording for landscaping criteria for controlled activities already found in the District Plan.

Recommendation

- 10.5 That the matters of control for provision **7.3.3** be amended as requested by submission point 3.11 made by Forest & Bird. That the matters of control be amended to:

7.3.34 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

7.3.34.1 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. 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;
- k. the provision of on-site effluent treatment as set out in ~~Section~~ [Rule 13.2.27](#).
- l. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the Coastal Environment, particularly Ōhiwa Harbour; and
- m. landscaping [and planting](#).

Advice Note: Refer to Section 17.2.4.

11 Assessment Criteria for Emergency Service Facilities in the Rural Coastal Zone / Tracked Change 9

11.1 Tracked change 9 / proposed new provision **7.4.8** provides assessment criteria for Emergency Service Facilities in the Rural Coastal Zone.

Submissions received on Tracked Change 9

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.5	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
4.8	FENZ	Support. No specific change requested. Activity will be assessed against criteria for 3.7.10 Noise Effect. Council should carefully consider the crucial role of emergency sirens in any future assessment for an emergency service facility or similar.

Submission Analysis – NZTA: Submission Point 2.5

11.2 NZTA believes the assessment of traffic effects provided in tracked change 9 / provision **7.4.8** are appropriate to assess any traffic concerns that may arise in the District’s transport network.

11.3 I recommend accepting submission point 2.5 made by NZTA.

Submission Analysis – Submission Point 4.8

- 11.4 FENZ needs to be able to construct and operate fire stations in order to carry out their responsibility under the Fire and Emergency Act 2017. Emergency sirens play a crucial role in the operation of emergency service facilities allowing FENZ staff and volunteers to be notified of emergencies.
- 11.5 The criteria proposed for tracked change 9 has made emergency service facilities subject to resource consent assessment against the criteria in **3.7.10 Noise Effects**.
- 11.6 Submission point 4.8 has been made in support of tracked change 9, but FENZ wants Council to consider the important role of emergency service facilities and whether they should be assessed against noise provisions in the future.

Recommendation

- 11.7 For the reasons given above I recommend that proposed new provision **7.4.8** be retained as notified in PC3.

12 Assessment Criteria for Emergency Service Facilities in the Rural Ohiwa Zone / Tracked Change 10

- 12.1 Tracked change 10 / proposed new provision **7.3.4** provides assessment criteria for Emergency Service Facilities in the Rural Ohiwa Zone.

Submissions received on Tracked Change 10

Submission Point	Submitter	Summary of Submission Point & Decision Requested
4.9	FENZ	Support. No specific change requested. Activity will be assessed against criteria for 3.7.10 Noise Effect. Council should carefully consider the crucial role of emergency sirens in any future assessment for an emergency service facility or similar.

Submission Analysis – FENZ: Submission Point 4.9

- 12.2 FENZ has an interest in land use and noise provisions provided in the District Plan. FENZ needs to be able to construct and operate fire stations in order to carry out their responsibility under the Fire and Emergency Act 2017. Emergency sirens play a crucial role in the operation of emergency service facilities allowing FENZ staff and volunteers to be notified of emergencies.
- 12.3 The criteria proposed for tracked change 10 / provision **7.3.4** has made emergency service facilities subject to resource consent against assessment criteria **3.7.10 Noise Effects**.

12.4 Submission point 4.9 has been made in support of tracked change 10, but FENZ wants Council to consider the important role of emergency service facilities and whether they should be assessed against noise provisions in the future.

Recommendation

12.5 For the reasons given above I recommend that proposed new provision **7.3.4** be retained as notified in PC3.

13 Assessment Criteria for Car Parking in the Business Centre and Commercial Zones / Tracked Change 11

13.1 Tracked change 11 / proposed new provision **5.4.11** provides assessment criteria for Car Parking in the Business Centre and Commercial Zones.

Submissions received on Tracked Change 11

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.6	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
Further Submission	Further Submitter	Summary of Further Submission Point
1	EPIC	Opposes in part and supports in part Submission Point 2.6 made by original submitter NZTA.

Submission Analysis – NZTA: Submission Point 2.6

13.2 NZTA believes the assessment of traffic effects provided in tracked change 11 / provision **5.4.11** are appropriate to assess any traffic concerns that may arise in the District’s transport network.

13.3 I recommend accepting submission point 2.6 made by NZTA.

Further Submission Analysis – EPIC: Further Submission 1

13.4 EPIC has made a further submission that opposes in part and supports in part submission point 2.6 made by NZTA. NZTA believes that the matters of discretion that Council has provided for traffic effects are appropriate to assess any traffic, safety and efficiency concerns that may arise. EPIC considers the wording used for traffic effects would have a subjective element of input in their determination. EPIC also want new material included in the list of traffic effects.

- 13.5 A further submission made under clause 8 of Schedule 1 of the RMA is limited to a matter of support or opposition to an original submission made under clause 6 of Schedule 1 of the RMA and can only give the reasons for support or opposition and may not seek the introduction of any material. Council did receive legal advice which confirmed this further submission went beyond these matters¹.
- 13.6 I cannot consider the new material proposed by EPIC’s further submission because it would affect the ability for public participation in the plan change process. Being a further submission, the public has not had an opportunity to consider the new material proposed by EPIC.
- 13.7 I consider EPIC’s further submission beyond the scope of what can be considered in terms of the NZTA submission on PC3, and therefore recommend it be rejected.

Recommendation

- 13.8 For the reasons given above I recommend that proposed new provision **5.4.11** be retained as notified in PC3.

14 Assessment Criteria for Car Parking in Rural Zones / Tracked Change 12

- 14.1 Tracked change 12 / proposed new provision **7.4.9** provides assessment criteria for Car Parking in the Rural Plains and Rural Foothills Zones.

Submissions received on Tracked Change 12

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.7	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
3.12	Forest & Bird	Oppose. Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.

¹ Brookfields Determination – Submissions on Plan Change 3 - 27 May 2021

Submission Analysis – NZTA: Submission Point 2.7

- 14.2 NZTA believes the assessment of traffic effects provided in tracked change 12 / provision **7.4.9** are appropriate to assess any traffic concerns that may arise in the District’s transport network.
- 14.3 I recommend accepting submission point 2.7 made by NZTA.

Submission Analysis – Forest & Bird: Submission Point 3.12

- 14.4 Forest & Bird considers there is inconsistency in the wording of landscaping criteria that would result in an incomplete assessment of effects. The decision requested for submission point 3.12 is to add a cross reference to Rule **3.7.1 Landscape and Visual Effects**. The reason for this is other restricted discretionary criteria in PC3 reference Rule **3.7.1** and this activity does not.
- 14.5 Protecting the amenity values of the Rural Plains and Rural Foothills Zone from the visual effects from Car Parking is an important consideration and this could be achieved through landscaping.
- 14.6 Section 6.1.5 of the s32AA further evaluation shows the changes proposed by submission point 3.12 is the best option for achieving the purpose of the RMA.
- 14.7 I recommend accepting Forest & Bird’s submission point 3.12 to bring consistency in the wording for landscaping criteria and to allow a complete assessment of effects for this activity in order to protect the amenity of these zones.

Recommendation

- 14.8 That the assessment criteria for provision **7.4.9** be amended as requested by submission point 3.12 made by Forest & Bird. That the assessment criteria be amended to:

7.4.910 Car Parking in the Rural Plains and Rural Foothills Zones

7.4.910.1 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; [and](#)
- 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
- k. [landscaping and on-site amenity as outlined in Rule 3.7.1.](#)

15 Matters of Control for Exploration Activities in Rural Ōhiwa Zone / Tracked Change 13

- 15.1 Tracked change 13 / proposed new provision **7.3.5** provides matters of control for exploration of aggregate, sand, gravel or pumice in the Rural Ōhiwa Zone.
- 15.2 There were no submissions received on Tracked Change 13.

Recommendation

- 15.3 That the proposed new provision **7.3.5** be retained as notified in PC3.

16 Matters of Control for Accessory Buildings in Rural Ōhiwa Zone / Tracked Change 14

- 16.1 Tracked change 14 / proposed new provision **7.3.6** provides matters of control for accessory buildings to any permitted activity (not for habitation) in the Rural Ōhiwa Zone.
- 16.2 There were no submissions received on Tracked Change 14.

Recommendation

- 16.3 That the proposed new provision **7.3.6** be retained as notified in PC3.

17 Assessment Criteria for Accessory Buildings in Large Format Retail Zone / Tracked Change 15

17.1 Tracked change 15 proposes a minor change to include activity 45 in the list of activities in existing Rule 5.3.1, *Activities in the Large Format Retail Zone*. Activity 45 provides assessment criteria for accessory buildings to any permitted activity not for habitation.

Submissions received on Tracked Change 15

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.7	Forest & Bird	Oppose. Add a new criterion to 5.3.1.1. Lack of specificity and not consistent with Council's climate change agenda.

Submission Analysis – Forest & Bird: Submission Point 3.7

17.2 Forest & Bird seeks to add new criterion to 5.3.1.1 to be more specific in terms of what sustainability measures will be anticipated.

17.3 The matters of control that have been provided for this activity are sufficient to meet the purpose of the RMA as outlined in the PC3 section 32 assessment.

17.4 I do not consider adding new sustainability criterion to this activity necessary. I recommend rejecting Forest & Bird's submission on submission point 3.7, tracked change 15.

Recommendation

17.5 For the reasons given above I recommend that tracked change 15 be retained as notified in PC3.

18 Assessment Criteria for Esplanade Reserve or Strip Waivers / Tracked Change 16

18.1 Tracked change 16 proposes to add new assessment criteria to existing rule 12.8.6, Esplanade Reserve or Strip Waivers (Subdivision). The proposed addition was the criteria listed in rule 12.7.1 (a-v): Subdivision With or Without Public Roads.

Submissions received on Tracked Change 16

Submission Point	Submitter	Summary of Submission Point & Decision Requested
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2.8	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.
3.13	Forest & Bird	Oppose. Amend the Activity Status of Esplanade/Reserve Strips to Non – Complying.

Submission Analysis – NZTA: Submission Point 2.8

- 18.2 The purpose of tracked change 16 was to broaden the assessment criteria of an operative rule to allow a greater consideration of the environmental impacts of the activity.
- 18.3 NZTA is required to maintain a safe and efficient state highway network and the zoning of this activity means it could have a direct effect on the state highway network throughout the District.
- 18.4 Submission point 2.8 by NZTA has supported the additional assessment criteria as they provide an assessment for the consideration of the effects that this activity could have on the District’s transport network and state highways.
- 18.5 I recommend accepting submission point 2.8 made by NZTA.

Submission Analysis – Forest & Bird: Submission Point 3.13

- 18.6 Submission point 3.13 made by Forest & Bird seeks various forms of relief. This was reviewed as part of a legal opinion provided to Council², which concluded that some of this relief was beyond the scope of PC3, in that it seeks changes which are beyond the purpose of the plan change.
- 18.7 The part of submission point 3.13 that is within scope and on PC3, relates to the new criteria proposed by Forest & Bird that would provide for public access, public land use and conservation values.
- 18.8 Forest & Bird has submitted on tracked change 16 because they consider waivers or reductions of esplanade reserves or strips a matter of national importance and of considerable public interest.
- 18.9 Section 6.1.6 of the s32AA further evaluation shows the changes proposed by submission point 3.13 is the best option for achieving the purpose of the RMA.

²Brookfields Determination – Submissions on Plan Change 3 - 27 May 2021

- 18.10 I believe the criteria Forest & Bird is proposing will help strengthen the assessment criteria for this activity and recommend accepting submission point 3.13 to the extent that new assessment criteria are included.

Recommendation

- 18.11 That the assessment criteria for Rule **12.8.6** be amended with the addition notified in PC3 and as requested by submission point 3.13 made by Forest & Bird. That the assessment criteria be amended to:

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; whether public access is impractical due to topography and/or alternative free and practical public access is available or provided;~~
- d. ~~the public's use of the land both existing and potentially in the future;~~
- e. ~~whether there are no conservation values to be protected and restoration and rehabilitation are not practicable;~~
- f. whether the subdivision is a boundary adjustment only;
- g. 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;
- h. 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; [and](#)
- i. **Rule 12.7.1.1(a-v).**

19 Assessment Criteria for Subdivision within Kawerau Geothermal Exploration Area / Tracked Change 17

- 19.1 Tracked change 17 proposes to add new assessment criteria to existing rule 12.8.7, Subdivision Within Kawerau Geothermal Exploration Area. The proposed addition was the criteria listed in Rule 12.7.1 (a-v): Subdivision With or Without Public Roads.

Submissions received on Tracked Change 17

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.9	NZTA	Support. Retain. The matters of discretion are able to assess any traffic, safety and efficiency concerns that may arise.

Submission Analysis – NZTA: Submission Point 2.9

- 19.2 The purpose of tracked change 17 was to broaden the assessment criteria of an operative rule to allow a greater consideration of the environmental impacts of the activity.
- 19.3 NZTA is required to maintain a safe and efficient state highway network and the zoning of this activity means it could have a direct effect on the state highway network throughout the District.
- 19.4 Submission point 2.9 by NZTA has supported the additional assessment criteria as they provide an assessment for the consideration of the effects that this activity could have on the District’s transport network and state highways.
- 19.5 I recommend accepting submission point 2.9 made by NZTA.

Recommendation

- 19.6 That tracked change 17 be retained as notified in PC3.

20 Amendments to PC3 made under Clause 16 (2) of Schedule 1 of the RMA

- 20.1 Council has the ability, under Clause 16(2) of Schedule 1 of the RMA, without using the Schedule 1 process, “to alter any information, where such an alteration is of minor effect, or may correct any minor errors”. The test for “minor effect” is whether the amendment affects the rights of some members of the public, or whether it is merely neutral. Only if it is neutral may such an amendment be made under clause 16.
- 20.2 Appendix 3 to this report contains a list of minor amendments that have been made to PC3 under clause 16 (2).

Appendix 1: Section 32AA Further Evaluation Report

Section 42A Planners Report -
Appendix 1

Proposed Plan Change 3 to the
Whakatāne District Plan

Matters of Control

Section 32AA Further Evaluation
Report

1 Introduction

- 1.1 The purpose of this report is to provide a further evaluation of the changes that will be made in response to submissions received on Proposed Plan Change 3 (PC3) to the Whakatāne District Plan 2017 (District Plan).
- 1.2 This further evaluation is set out in accordance with section 32AA (s32AA) of the Resource Management Act 1991 (RMA) which requires that any changes that have been made to, or are proposed for, PC3 since the initial section 32 report was notified are to be subject to a similar evaluation.
- 1.3 The scope of the s32AA further evaluation in this report must be undertaken with a level of detail that corresponds to the scale and significance of the changes to PC3.

2 Structure of this Report

- 2.1 PC3 sought to include 17 separate changes (provisions) to the District Plan. These 17 changes were assigned a tracked change number in the tracked changes report that accompanied the PC3 section 32 report as an appendix.
- 2.2 The proposed changes that will be subject to this s32AA further evaluation will be referenced by their tracked change number and the relating submission point from the PC3 summary of submissions.

3 S32AA Further Evaluation:

- 3.1 The proposed changes that require further evaluation:
- Amendments to tracked changes 5 and 6: WDC submission points 1.1 - 1.7;
 - Changes to broaden traffic effects for tracked changes 5, 6 and 7: NZTA submission points 2.2, 2.3 and 2.4;
 - Changes to landscaping criteria for tracked changes 3, 4, 7, 8 and 12: Forest & Bird submission points 3.8 – 3.12;
 - Changes to tracked change 16: Forest & Bird submission point 3.13.

4 Whakatāne District Council Submission

4.1.1 Further Evaluation of Changes to Tracked Change 5: WDC Submission Point 1.1, 1.2, 1.3

Submission Point	Submitter	Summary of Submission Point & Decision Requested
1.1	WDC	Delete the reference to “internal noise and noise insulation” and replace with reference to the criteria listed in 3.7.10 (Noise Effect). Incorrect reference to noise that lacks consistency.
1.2	WDC	Delete entire reference to 5.4.10.2 and include intended hours of use as a new assessment criterion in 5.4.10.1. Make changes to improve the interpretation of the assessment criteria.
1.3	WDC	Remove advice note. Advice note is an incorrect reference.

The recommended changes to tracked change 5 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Bus1 and Obj Bus3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 5 as requested by WDC’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be ambiguity and uncertainty in this provisions application.	
Efficiency & Effectiveness	
The changes provided in WDC’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

4.1.2 Further Evaluation of Changes to Tracked Change 6: WDC Submission Point 1.4, 1.5, 1.6, 1.7

Submission Point	Submitter	Summary of Submission Point & Decision Requested
1.4	WDC	Amend the criterion regarding the hours of operation. Make changes to improve the interpretation of the assessment criteria.
1.5	WDC	Delete the reference to “internal noise and noise insulation” and replace with reference to the criteria listed in 3.7.10 (Noise Effect). Incorrect reference to noise that lacks consistency.
1.6	WDC	Delete the entire reference to 6.4.5.2 due to uncertainty over its application. Make changes to improve the interpretation of the assessment criteria.
1.7	WDC	Remove advice note. Advice note is an incorrect reference.

The recommended changes to tracked change 6 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Ind1, Obj Ind2. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 6 as requested by WDC’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be ambiguity and uncertainty in this provisions application.	
Efficiency & Effectiveness	
The changes provided in WDC’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

5 Waka Kotahi – NZTA Submission

5.1.1 Further Evaluation of Changes to Tracked Change 5: NZTA Submission Point 2.2

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.2	NZTA	Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.

The recommended changes to tracked change 5 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Bus1 and Obj Bus3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 5 as requested by NZTA's submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be an incomplete assessment of traffic effects on the District's State Highway network.	
Efficiency & Effectiveness	
The changes provided in NZTA's submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

5.1.2 Further Evaluation of Changes to Tracked Change 6: NZTA Submission Point 2.3

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.3	NZTA	Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.

The recommended changes to tracked change 6 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Ind1, Obj Ind2. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 6 as requested by NZTA's submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be an incomplete assessment of traffic effects on the District's State Highway network.	
Efficiency & Effectiveness	
The changes provided in NZTA's submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

5.1.3 Further Evaluation of Changes to Tracked Change 7: NZTA Submission Point 2.4

Submission Point	Submitter	Summary of Submission Point & Decision Requested
2.4	NZTA	Broaden section to include all traffic effects. The terminology provided does not adequately allow for consideration of all traffic effects on state highways.

The recommended changes to tracked change 7 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Rur1, Obj Rur2, Obj Rur 3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 7 as requested by NZTA's submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be an incomplete assessment of traffic effects on the District's State Highway network.	
Efficiency & Effectiveness	
The changes provided in NZTA's submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6 Forest & Bird Submission

6.1.1 Further Evaluation of Changes to Tracked Change 3: Forest & Bird Submission Point 3.8

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.8	Forest & Bird	Use the phrase “landscaping and planting” for this controlled activity. Make consistent with other assessment criteria.

The recommended changes to tracked change 3 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Rur2, Obj LS3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 3 as requested by Forest & Bird’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there would be an incomplete assessment of landscaping effects.	
Efficiency & Effectiveness	
The changes provided in Forest & Bird’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6.1.2 Further Evaluation of Changes to Tracked Change 4: Forest & Bird Submission Point 3.9

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.9	Forest & Bird	Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.

The recommended changes to tracked change 4 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Bus1, Obj Bus3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 4 as requested by Forest & Bird’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there would be an incomplete assessment of landscaping effects.	
Efficiency & Effectiveness	
The changes provided in Forest & Bird’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6.1.3 Further Evaluation of Changes to Tracked Change 7: Forest & Bird Submission Point 3.10

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.10	Forest & Bird	Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.

The recommended changes to tracked change 7 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Rur1, Obj Rur2 and Obj Rur3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 7 as requested by Forest & Bird’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there would be an incomplete assessment of landscaping effects.	
Efficiency & Effectiveness	
The changes provided in Forest & Bird’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6.1.4 Further Evaluation of changes to Tracked Change 8: Forest & Bird Submission Point 3.11

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.11	Forest & Bird	Use the phrase "landscaping and planting" for this controlled activity. Make consistent with other assessment criteria.

The recommended changes to tracked change 8 (the provision) are the most appropriate way to achieve these Objectives of the District Plan: Obj Rur2, Obj LS2 and Obj LS3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 8 as requested by Forest & Bird's submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there would be an incomplete assessment of landscaping effects.	
Efficiency & Effectiveness	
The changes provided by Forest & Bird's submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6.1.5 Further Evaluation of Changes to Tracked Change 12: Forest & Bird Submission Point 3.12

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.12	Forest & Bird	Add a cross reference to 3.7.1. Inconsistency of wording in landscaping criteria.

The recommended changes to tracked change 12 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Rur1, Obj Rur 3, Obj TS4 and Obj TS5. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 12 as requested by Forest & Bird’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there would be an incomplete assessment of landscaping effects.	
Efficiency & Effectiveness	
The changes provided by Forest & Bird’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

6.1.6 Further Evaluation of Changes to Tracked Change 16: Forest & Bird Submission Point 3.13

Submission Point	Submitter	Summary of Submission Point & Decision Requested
3.13	Forest & Bird	Amend the Activity Status of Esplanade/ Reserve Strips to Non - Complying

The recommended changes to tracked change 16 (the provision) are the most appropriate way to achieve these Objectives of the District Plan; Obj Sub1, Obj CP2 and Obj CP3. The reasons for this are summarised in the table below.

Options	
The options available are to do nothing or amend tracked change 16 as requested by Forest & Bird’s submission. To do nothing would not address the issue raised in the submission and would not be the most appropriate way to achieve the purpose of the RMA.	
Benefits	Costs
Environmental	
The proposed change will provide a greater assessment of environmental effects.	No change.
Economic	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Social	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Cultural	
The proposed change will provide clarity and certainty to plan provisions.	No change.
Risk of Acting or Not Acting	
The risk of not acting means there will be an incomplete assessment of effects for Esplanade Reserve or Strip Waivers.	
Efficiency & Effectiveness	
The changes provided by Forest & Bird’s submission will make the provision more efficient and effective enabling the purpose of the RMA to be achieved.	

Appendix 2: Recommended Changes

PC3 and Recommended Changes

The purpose of this section is to show PC3 in full including any recommend changes in response to submissions.

Recommended changes for PC3 are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 report in **red**, and recommendations as a result of the s42A Planner’s Report in **green**. Minor amendments made under Clause 16(2) are shown in **blue**.

Activity Status Table						
Change #	Activity #	Activity	Zone	Activity Status	Section #	Proposed Changes
1	3	Four or more dwellings per lot	Mixed Use	RD	5.4.7	<p>Add a new section (5.4.7) to the Operative District Plan:</p> <p>5.4.7 Four or more dwellings per lot in the Mixed Use Zone</p> <p>5.4.7.1 Council shall restrict its discretion to;</p> <p>a. amenity of the site and adjacent public areas in terms of;</p> <ul style="list-style-type: none"> 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; <ul style="list-style-type: none"> • will enhance privacy and mitigate physical domination by buildings; • does not 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.

2	5	Papakāinga Housing	Mixed Use	RD	5.4.8	<p>Add a new section (5.4.8) to the Operative District Plan:</p> <p>5.4.8 Papakāinga Housing in the Mixed Use Zone</p> <p>5.4.8.1 Council shall restrict its discretion to;</p> <p>a. amenity of the site and adjacent public areas in terms of;</p> <ul style="list-style-type: none"> 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; <ul style="list-style-type: none"> • will enhance privacy and mitigate physical domination by buildings; and • does not exacerbate shadowing and vehicle-pedestrian conflict; <p>xiii.xii. the degree to which the building incorporates elements that promote sustainability including but not limited to energy efficiency and water conservation; <u>and</u></p> <p>xv.xiii. the manner in which the matters identified in section 7.3.1.1a-g are met.</p> <p>Advice Note: Refer to Rule 3.5.1.1e</p>
3	11	Places of assembly (not provided for by any other category): designed to have a maximum occupancy or attendance of less	Rural Ōhiwa	C	7.3.2	<p>Add a new section (7.3.2) to the Operative District Plan:</p> <p>7.3.23 7.3.23 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</p> <p>7.3.23.1 7.3.23.1 Council shall exercise its control over;</p>

		than 10 people at any one time.				<ul style="list-style-type: none"> 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 <u>and planting</u>; 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; p. the provision of on-site effluent treatment as set out in Section Rule 13.2.27; <u>and</u> q. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the Coastal Environment, particularly Ōhiwa Harbour.
4	11	Places of assembly (not provided for by any other category); Designed to have a maximum occupancy or	Large Format Retail	RD	5.4.9	<p>Add a new section (5.4.9) to the Operative District Plan:</p> <p>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</p> <p>5.4.9.1 Council shall restrict its discretion to;</p> <ul style="list-style-type: none"> a. design development and site development, the degree to which:

		attendance of between 10-50 people				<ul style="list-style-type: none"> 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; iii. where visible from a public road, buildings have been designed to present an attractive appearance to passing traffic; and <ul style="list-style-type: none"> b. 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 accessways serving more than one site or lot); c. 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; d. landscaping; <u>and on-site amenity as outlined in Rule 3.7.1;</u> e. signage as outlined in Rule 11.2.19; f. noise; and g. hours of operation.
5	11	<p>Places of assembly (not provided for by any other category);</p> <p>Designed to have a maximum occupancy of more than 50 people at any one time.</p>	Mixed Use, Business Centre, Commercial, Large Format Retail	RD	5.4.10	<p>Add a new section (5.4.10) to the Operative District Plan:</p> <p>5.4.10 Places of Assembly (not provided for by any other category) in the Mixed Use, Business Centre, Commercial and Large Format Retail Zones</p> <p>5.4.10.1 Council shall restrict its discretion to;</p> <ul style="list-style-type: none"> 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. <u>internal noise and noise insulation; the criterion listed in 3.7.10 (Noise Effect);</u> f. landscaping as outlined in Rule 3.7.1;

						<p>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 traffic effects as outlined in Rule 3.7.17;</p> <p>h. signage as outlined in Rule 11.2.19; and</p> <p>i. the intended hours of use.</p> <p>5.4.10.2 Council shall have regard to:</p> <p>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;</p> <p>b. the numbers of people to be accommodated;</p> <p>c. the intended hours of use</p> <p>Advice Note: Refer to Section 10.2.5.</p>
6	11	<p>Places of assembly (not provided for by any other category);</p> <p>Designed to have a maximum occupancy of more than 50 people at any one time.</p>	Light Industrial, Industrial	RD	6.4.5	<p>Add a new section (6.4.5) to the Operative District Plan:</p> <p>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</p> <p>6.4.5.1 Council shall restrict its discretion to;</p> <p>a. design development and site development;</p> <p>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;</p> <p>c. landscaping and on-site amenity as outlined in Rule 3.7.1;</p> <p>d. hours of operation as outlined in Rule 17.2.4; the intended hours of use and other criteria outlined in 3.7.36;</p> <p>e. reverse sensitivity as outlined in Rule 3.7.41;</p> <p>f. the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site; traffic effects as outlined in Rule 3.7.17;</p> <p>g. signage as outlined in Rule 11.2.19;</p> <p>h. internal noise and noise insulation; and the criterion listed in 3.7.10 (Noise Effect); and</p> <p>i. the screening of buildings from beyond the boundary of the site and consistency with surrounding buildings within the zone.</p> <p>6.4.5.2 Council shall have regard to:</p>

						<p>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;</p> <p>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</p> <p>c. whether the effects of any community activity will be sensitive to the operation of industrial and other business activities anticipated by the zone.</p> <p>6.4.5.3 Refer to section 10.2.5.</p>
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	7.4.7	<p>Add a new section (7.4.7) to the Operative District Plan:</p> <p>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</p> <p>7.4.7.1 Council shall restrict its discretion to;</p> <p>a. hours of operation;</p> <p>b. landscaping and on-site amenity as outlined in Rule 3.7.1;</p> <p>c. the management of traffic movements and the effect traffic movements will have on the area, including access to and egress from the site; traffic effects as outlined in Rule 3.7.17;</p> <p>d. the level of parking proposed;</p> <p>e. signage as outlined in Rule 11.2.19;</p> <p>f. 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;</p> <p>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;</p> <p>h. reverse sensitivity as outlined in Rule 3.7.41;</p> <p>i. the use of versatile land for non-rural purposes such as:</p>

						<ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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.
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	Rural Ōhiwa	C	7.3.3	<p>Add a new section (7.3.3) to the Operative District Plan:</p> <p>7.3.34 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</p> <p>7.3.34.1 Council shall exercise its control over;</p> <ul style="list-style-type: none"> 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;

		will not increase the existing occupancy or attendance.				<ul style="list-style-type: none"> 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; k. the provision of on-site effluent treatment as set out in Section Rule 13.2.27; l. the effect of stormwater resulting from within the development on māhinga kai and the natural character of the Coastal Environment, particularly Ōhiwa Harbour; and m. landscaping and planting. <p>Advice Note: Refer to Section 17.2.4.</p>
9	15	Emergency Services facilities	Rural Coastal	RD	7.4.8	<p>Add a new section (7.4.8) to the Operative District Plan.</p> <p>7.4.89 Emergency services facilities in the Rural Coastal Zone</p> <p>7.4.89.1 Council shall restrict its discretion to;</p> <ul style="list-style-type: none"> 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; and g. Rule 3.7.2.1(a-i);
10	15	Emergency Services facilities	Rural Ōhiwa	C	7.3.4	<p>Add a new section (7.3.4) to the Operative District Plan.</p> <p>7.3.45 Emergency services facilities in the Rural Ōhiwa Zone</p> <p>7.3.45.1 Council shall exercise its control over;</p>

						<ul style="list-style-type: none"> 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; and g. Rule 3.7.2.1(a-i).
11	29	Car parking	Business Centre, Commercial	RD	5.4.11	<p>Add a new section (5.4.11) to the Operative District Plan.</p> <p>5.4.11 Car Parking in the Business Centre and Commercial Zones</p> <p>5.4.11.1 Council shall restrict its discretion to;</p> <ul style="list-style-type: none"> 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 accessways serving more than one site or lot); b. landscape and visual effects as outlined in Rule 3.7.1; 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.
12	29	Car Parking	Rural Plains, Rural Foothills	RD	7.4.9	<p>Add a new section (7.4.9) to the Operative District Plan:</p> <p>7.4.9 Car Parking in the Rural Plains and Rural Foothills Zones</p> <p>7.4.9.1 Council shall restrict its discretion to;</p> <ul style="list-style-type: none"> 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,

						<p>pedestrian and cyclist safety, construction traffic, and traffic volumes and traffic mix;</p> <p>d. site design including formation and marking;</p> <p>e. versatile land used for non-rural purposes:</p> <ol style="list-style-type: none"> 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; asand <p>f. adverse effects on riparian margins on the Ōhiwa Harbour and tributaries within the catchment of the harbour;</p> <p>g. indigenous biodiversity effects;</p> <p>h. amenity values and rural character effects;</p> <p>i. reverse sensitivity as outlined in Rule 3.7.41;</p> <p>j. signage as outlined in Rule 11.2.19; and</p> <p>k. <u>landscaping and on-site amenity as outlined in Rule 3.7.1.</u></p>
13	36	Exploration of aggregate, sand, gravel or pumice. See also Rules 11.2.1-11.2.4	Rural Ōhiwa	C	7.3.5	<p>Add a new section (7.3.5) to the Operative District Plan:</p> <p>7.3.57 Exploration of aggregate, sand, gravel or pumice in the Rural Ōhiwa Zone</p> <p>7.3.57.1 Council shall exercise its control over;</p> <ol style="list-style-type: none"> 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 orLandscape 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;

						<ul style="list-style-type: none"> 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. <p>Advice Note: Refer also to Rules 11.2.1 – 11.2.4.</p>
14	45	Accessory buildings to any permitted activity (not for habitation); See also Item 10 Buildings on Public Reserves	Rural Ōhiwa	C	7.3.6	<p>Add a new section (7.3.6) to the Operative District Plan:</p> <p>7.3.68 Accessory Buildings to any Permitted Activity (not for habitation); See also Item 10 Buildings on Public Reserves in the Rural Ōhiwa Zone</p> <p>7.3.68.1 Council shall exercise its control over;</p> <ul style="list-style-type: none"> 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 natural 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.
15	45	Accessory buildings to any permitted activity (not for habitation) See also Item 10	Large Format Retail	C	5.3.1	<p>5.3.1 Activities in the Large Format Retail Zone (see Activity Status Table 3.4 Items 19, 26, 45 and 48).</p> <p>5.3.1.1 Council shall exercise its control over;</p> <ul style="list-style-type: none"> a. design development and site layout, the degree to which;

		Buildings on Public Reserves			<ul style="list-style-type: none"> 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; <ul style="list-style-type: none"> • 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; <ul style="list-style-type: none"> 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; <ul style="list-style-type: none"> 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
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						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.
16	56	Subdivision - Esplanade Reserve or Strip Waivers	All Zones	RD	12.8.6	<p>Add new criteria to 12.8.6.1 of the Operative District Plan</p> <p>12.8.6 Esplanade Reserve or Strip Waivers</p> <p>12.8.6.1 Council shall restrict its discretion to;</p> <p>a. whether the watercourse is an artificial watercourse;</p> <p>b. whether protection of the riparian area is more appropriately achieved by an alternative protection mechanism;</p> <p>c. whether there are any conservation or public access benefits to be gained; <u>whether public access is impractical due to topography and/or alternative free and practical public access is available or provided;</u></p> <p>d. <u>the public's use of the land both existing and potentially in the future;</u></p> <p>e. <u>whether there are no conservation values to be protected and restoration and rehabilitation are not practicable;</u></p> <p>f. whether the subdivision is a boundary adjustment only;</p> <p>g. 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;</p> <p>h. 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; <u>and</u></p> <p>i. Rule 12.7.1.1(a-v).</p>
17	56	Subdivision within the Kawerau Geothermal Exploration Area	Rural Plains, Rural Foothills – Kawerau Geothermal	RD	12.8.7	<p>Add new criteria to 12.8.7.1 of the Operative District Plan</p> <p>12.8.7 Subdivision within the Kawerau Geothermal Exploration Area</p> <p>12.8.7.1 Council shall restrict its discretion to the following matters;</p>

			Exploration Area.			<ul style="list-style-type: none">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)); andc. Rule 12.7.1.1(a-v).
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Appendix 3: Clause 16(2) Amendments of the Proposed Plan Change 3

Section 42A Planner's Report -
Appendix 3

Proposed Plan Change 3 to the
Whakatāne District Plan

Matters of Control

Clause 16 (2) Amendments of
Proposed Plan Change 3

Amendments to PC3 made under Clause 16 (2) of Schedule 1 of the RMA

Council has the ability, under Clause 16(2) of Schedule 1 of the RMA, without using the Schedule 1 process, “to alter any information, where such an alteration is of minor effect, or may correct any minor errors”. The test for “minor effect” is whether the amendment affects the rights of some members of the public, or whether it is merely neutral. Only if it is neutral may such an amendment be made under clause 16.

Tracked Change Number	Amendment
2	xiii -xii, xv xiii, Papakāinga Housing
3	Section # 7.3.23, Section -Rule13.2.27
8	Section # 7.3.34, Section -Rule13.2.27
9	Section # 7.4.89
10	Section # 7.3.45
11	Section # 5.4.112, and
12	Section # 7.4.910
13	Section # 7.3.57
14	Section # 7.3.68, 7.3.8.1