

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 42 Maximum Height of Radio and Telecommunication Facilities

Section 32 Report

Prepared by: Russell De Luca, Resource Management & Planning Consultant

1.0 Introduction

The purpose of the Plan Change to which this report relates is to address an existing "loophole" in the District Plan rules which potentially allows the total height of certain radio or telecommunication facilities (such as a cell-phone mast or tower) to exceed the height actually intended when the District Plan rules were drafted. The loophole is created by virtue of the fact that the District Plan definition of "*building/structure*" includes a mast, pole or aerial exceeding 7.0m in height.

2.0 Resource Management Act 1991 (RMA)

2.1. Section 32

2.1.1 Before a proposed plan change can be publically notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (3) *An evaluation must examine-*
 - (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account-*
 - (a) *The benefits and costs of policies, rules or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs include benefits and costs of any kind, whether monetary or not.

In short, this report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the RMA.

2.1.2 Because of the limited scope of this particular Plan Change, a comprehensive RMA Section 32 analysis is not considered necessary. The only realistic options to consider are either the status quo (ie not remedying the existing loophole) or amending the relevant District Plan rules so as to remove the loophole.

2.2. Section 74

In accordance with Section 74(2A), Council must take into account any relevant planning document recognised by an Iwi authority lodged with Council. This particular plan change is not considered to raise any issues of relevance to the Iwi Management Plans that have been lodged with Council.

3.0 Consultation

Public notices about a raft of possible plan changes (including Plan Change 32) were put in local newspapers and an information page was also put on the Council website. In addition, notice of these changes was put in the Council's regular "Surveyors' Newsletter". One response has been received, being from Chorus New Zealand Ltd (previously part of Telecom) and is attached to this report as Attachment A.

4.0 Issues statement

4.1 Rules 10.3(o) to 10.3(y) of the District Plan provide for and specify the activity status of various radio and telecommunication facilities, including:

- Masts, poles and towers;
- Antennas, dishes and aerials.

The rules stipulate standards to be met by the various facilities, including maximum height.

4.2 Rules 10.3(t) and 10.3(u) relate to aerials, dishes and antennas which are to be attached to existing buildings or structures. The rules provide for the overall height (building/structure plus the attachment) to exceed by varying degrees the usual maximum height for the zone in question.

4.3 In the context of the above, there is a potential loophole created by the fact that the District Plan definition of "*building/structure*" includes:

(d) Any mast, pole or radio or television aerial which exceeds 7m in height above the point of attachment or its base support.

The effect of the foregoing definition is that under rule 10.3(r) the height of a mast, pole or tower which is limited to a maximum height of 20m (or 22m if an aerial is included in the structure) could be increased under rules 10.3(t) or 10.3(u) by up to 5m by virtue of the fact that the principal structure is defined as a building.

4.4 Potentially therefore, a radio or telecommunication facility could achieve a height greater than that intended under the District Plan rules and accordingly create adverse environmental effects which were not anticipated when the rules were drafted.

4.5 The Chorus letter (Attachment A) seeks changes to the existing District Plan rules which are considered to go beyond the intended scope of the currently proposed plan change. As stated in the letter, the existing rules resulted from a negotiation/mediation process which culminated in an Environment Court consent order being issued in February 2011. The loophole which is the subject of the currently proposed plan change was not apparent at the time, having only recently been identified. It should be noted that in their current form the District Plan rules concerned (10.3(t) and 10.3(u)) do not use the maximum zone height as their starting point but rather the height of the existing building to which the equipment is to be attached. Such building may already exceed the maximum height permitted in the relevant zone. The proposed plan change does not alter that.

5.0 Options

5.1. Option 1 – Status Quo – no change to District Plan

Advantages	<ul style="list-style-type: none"> ▪ None.
Disadvantages	<ul style="list-style-type: none"> ▪ The existing loophole in the District Plan perpetuates the risk that the rules will be used in an unintended manner, thereby creating unanticipated adverse environmental effects.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Allowing the loophole to remain is neither efficient nor effective in addressing adverse environmental effects which could otherwise be created.

5.2. Option 2 – amend District Plan to close existing loophole

Advantages	<ul style="list-style-type: none"> ▪ Remedies an existing flaw in the drafting of the District Plan rules, thereby avoiding adverse environmental effects which may otherwise be created.
Disadvantages	<ul style="list-style-type: none"> ▪ None.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Remedying the existing flaw in the District Plan rules is both efficient and effective in terms of removing the potential for otherwise unanticipated adverse environmental effects to be created.

6.0 Preferred Option

It is recommended that Option 2 be adopted through the following specific amendments to the District Plan provisions:

[Note: New text to be added to the District Plan is shown in red underlined font.]

Rule 10.3 – Activity Table for Infrastructure and Network Utilities

Amend clauses (s) and (t) as follows:

- (t) When attached to a *building* or *structure* (other than a mast, pole or aerial falling within the District Plan definition of “building/structure”) permitted within an activity zone, that complies with the maximum *height* of the zone for which it will be located, the following are provided for:
- (i) Radio and telecommunication *aerials* up to 4m in *height*;
 - (ii) Dishes not exceeding 1.8m in diameter for Residential/Future Urban/Rural Residential/Lifestyle Zones, and 5m in all other zones;
 - (iii) *Antennas* not exceeding 1.2m² in area for Residential/Future Urban and Rural Residential Zones, and not exceeding 2m² in all other zones.

- (u) Telecommunication and radio communication facilities (including *aerials, antennas, dish antennas* and associated mounts) attached to *buildings/structures* (other than a mast, pole or aerial falling within the District Plan definition of "building/structure") can exceed the maximum *height* limit of the zone for which it will be located provided it is contained within the following dimensions:
- (i) Residential Zones – 2m high x 1m wide x 1m long ie 2m³ in volume;
 - (ii) All other zones – 5m high x 1m wide z 1m long ie 5m³ in volume.



District Plan Team
Western Bay of Plenty District Council
Private Bag 12803
Tauranga Mail Centre
Tauranga 3143

12 October 2012

To Whom It May Concern:

RE: Comments on "Possible" Proposed Plan Change 42: Cell Phone Antennae

Thank you for the opportunity to provide comment on "Possible Proposed Plan Change 42 – Cell Phone Antennae".

Chorus 'demerged' from Telecom as a separate company on 30 November 2011. As part of its business activities, Chorus maintains and builds a world class network made up of local telephone exchanges, radio communications infrastructure, cabinets and copper and fibre cables. In addition to supporting our customers deliver fixed line services, Chorus also works on behalf of Telecom NZ to maintain Telecom's extensive mobile phone network within Western Bay of Plenty, which provides a wide range of mobile services to residents and visitors to the district. In order to ensure that the local network operates to world-class standards, Chorus constantly improves and develops both the fixed line and mobile infrastructure to ensure services meet the needs of customers in the community.

Chorus has reviewed the proposed change and discussed the intention with Council in order to clarify the context within which the proposed changes are to be considered.

Chorus and Telecom New Zealand were extensively involved in the submission process associated with the Proposed Western Bay of Plenty District Plan. This culminated in the lodgement of a number of appeals to the provisions contained under Section 10.3 (Infrastructure, Network Utilities, Designations) of the Proposed Plan. These appeals were resolved by way of consent order in February 2011.

Council has identified that the drafting of Rule 10.3(u) inadvertently allows for antennas to be attached to a mast/ tower/ pole under Rule 10.3(r) to achieve an overall height of 25 metres as a permitted activity within a number of zones (including the rural and industrial zone). With respect to this matter, Chorus considers that an overall permitted height of 25 metres is appropriate in industrial and rural areas, given the utilitarian nature of industrial sites and the open space characteristics of rural sites, which provide the opportunity to accept larger scale structures into the landscape. On this basis Chorus requests that Council consider retaining the rule as drafted or alternatively consider amending the current rule as part of the Proposed Plan Change to more clearly provide for masts to a height of 25 metres in rural and industrial areas as a permitted activity.

It is noted that Council's summary of the proposed change includes the statement "The intention is to allow antennae as permitted, but they should still comply with the height rules for the zone". It is unclear how Council proposes to enact this change. The rule, as currently drafted, provides permitted activity status within most zones (excluding Surface of Water, Identified Significant Features and Public Reserves) for:

Telecommunication and radio communication facilities (including aerials, antennas, dish antennas and associated mounts) attached to buildings/structures can exceed the maximum height limit of the zone for which it will be located provided it is contained within the following dimensions:

- (i) Residential Zones – 2m high x 1m wide x 1m long ie. 2m³ in volume;*
- (ii) All other zones – 5m high x 1m wide x 1m long i.e. 5m³ in volume.*

Chorus considers that this rule is appropriate and should be extended to provide permitted activity status for such activities on Public Reserves. The controls set out in the rule limit the extent to which an antenna could protrude above the height of a building (2 metres in residential zones and 5 metres in other zones) and as such ensures that such infrastructure is of a suitable scale to be accommodated within the relevant receiving environments.

Where existing buildings are available, particularly in areas where there are multi level buildings, antennas are often sited on the building rather than on a standalone mast. Should Council wish to alter Rule 10.3(u) Chorus seeks that the allowable antenna height be linked to the building height as an alternative to requiring compliance with the zone height as is suggested in the "Possible Plan Change" documentation. Such an approach ensures that antenna would be viewed within the context of the height and scale of existing structures, rather than just applying a notional zone height.

Chorus welcomes the opportunity be involved with the development of Proposed Plan Change 42 to the Western Bay of Plenty District Plan. As such we would be pleased to provide your team a wider overview of the telecommunications industry and deployment of our infrastructure should you consider this to be of assistance.

We trust that the above comments are of use to the Western Bay of Plenty District Council in the preparation of Proposed Plan Change 42 for public submission. If you have any questions regarding the above comments, please feel free to contact me on either telephone (04) 382 5465 or email mary.barton@chorus.co.nz.

Yours sincerely



Mary Barton
Senior Environmental Planner