

0.0 PLANNING REPORT FOR PLAN CHANGE 90 - HOME ENTERPRISES - SALE OF GOODS

File Number: A3735966

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RECOMMENDATION

1. That the report titled "Planning Report for Plan Change 90 – Home Enterprises – Sale of Goods" dated 4 May 2020 be received.
2. That pursuant to Clause 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on Plan Change 90 ...*decisions to be inserted here.*
3. That staff be authorised to make minor editorial changes to the decision of the District Plan Committee in consultation with the Committee Chairperson.
4. That pursuant to Clause 10(4)(b) of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 90 be publicly notified.
5. That pursuant to Clause 11 of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 90 be served on every person who made a submission on the Plan Change and be made available at all Council offices and all public libraries in the District.

INTRODUCTION

The purpose of this report is to provide recommendations on submissions to Plan Change 90 – Home Enterprises – Sale of Goods. This plan change proposes to clarify and refine the performance standard associated with the sale of goods from Home Enterprises.

For a full background to the Plan Change and explanation of the proposed provisions, please refer to the Section 32 Report (s32 Report) (Attachment 1).

Any recommended changes (by the author of this report) to the District Plan First Review 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 blue.

BACKGROUND

Through the development of Plan Change 90, it was identified that the performance standard (in Rules 13.4.1(g)(iii), 14.4.3(c), 15.4.1(e)(iv), 16.4.1(f)(iii), 17.4.1(e)(v), and 18.4.1(h)(v)) relating to the sale of goods from home enterprises is unclear and causes confusion for plan users.

The performance standard is unclear in terms whether or not internet sales can occur as part of a 'Home Enterprise' if the goods are manufactured off-site, but stored on, and distributed from, the site where the Home Enterprise is located. This, for example, could include an on-line clothing retailer who has clothes manufactured off-site and then stores them on their property (as part of a Home Enterprise) for direct sale via the internet, and where deliveries are made via courier (i.e. from the home enterprise site to the customer).

In addition, the existing standard does not allow for the sale of goods that are ancillary to a legitimate Home Enterprise that offers a service. This, for example, could include a hairdresser working from home who sells shampoo to clients during their appointment.

Plan Change 90 therefore proposed that the performance standard be amended to clarify that goods manufactured off-site and sold via the internet can be stored on, and distributed from, the site of a 'Home Enterprise'. It also allows for the sale of goods from a service based business operating as a Home Enterprise.

The proposed changes, as notified, are as follows:

Replace existing activity performance standards 13.4.1(g)(iii), 14.4.3(c), 15.4.1(e)(iv), 16.4.1(f)(iii), 17.4.1(e)(v), and 18.4.1(h)(v) as follows:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

SUBMISSIONS

One submission point was made in support of the plan change subject to amendments.

In this regard, Daniel Kinnoch supports the proposed change subject to a minor addition being made to sub-clause (iii) of the performance standard (refer to submission points 1.29 to 1.34). The addition requested by Mr Kinnoch is underlined as follows:

(iii) *goods ancillary and related to a service provided on site by the home enterprise.*

Mr Kinnoch has requested that the additional words 'on site' be added because he considers the proposed wording (as notified) would allow for goods to be sold where related to a service provided by the home enterprise, but not with that service necessarily being undertaken on the specific site.

Home enterprises, by definition, are a secondary and incidental activity undertaken on the same site as a residential dwelling. It is therefore unclear how the additional words requested by Mr Kinnoch would add value to the activity performance standard.

OPTIONS & ANALYSIS

Option 1 – As Proposed (Option 2 of the s32 Report)

Option 1 (as notified) proposed to amend the performance standard associated with the sale of goods from Home Enterprises in the Residential, Medium Density, Future Urban, Rural Residential, Lifestyle and Rural Zones to clarify that the following are permitted activities:

- (a) The sale of goods ancillary to a Home Enterprise offering a service; and
- (b) The storage and distribution of products sold off-site where they are sold via the internet, telephone or by mail order, and redistributed by post or courier.

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| Costs | <ul style="list-style-type: none"> • No costs identified. |
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| Benefits | <ul style="list-style-type: none"> • The change would clarify how the performance standard is to be interpreted. • The change recognises that in many cases goods may be offered for sale from a Home Enterprise (either as the main part of that business or as an incidental component) and that they do not have additional off-site effects. • Allows for the sale of goods ancillary to a home enterprise that provides a service. • Makes it clear that goods produced off-site that are sold via the internet can be stored and distributed from the site of a home enterprise. |
| Effectiveness | <ul style="list-style-type: none"> • Effective because an amendment to the activity performance standard would address the issue regarding interpretation. |
| Efficiency | <ul style="list-style-type: none"> • Amending the performance standards is an efficient method for addressing anomalies in the rule and the identified issue, and would avoid unnecessary time spent regarding interpretation issues. |
| Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter | <ul style="list-style-type: none"> • N/A – Sufficient information is available. |

Option 2 – As Requested – Retain the proposed performance standard (as notified and outlined in Option 1 above) with a minor amendment to include the words ‘on site’ within sub-clause (iii).

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| Costs | <ul style="list-style-type: none"> • The additional words may over-complicate the activity performance standard because, by their definition, home enterprises operate from the site of a residential activity. |
| Benefits | <ul style="list-style-type: none"> • As per Option 1. |
| Effectiveness | <ul style="list-style-type: none"> • Partially effective because an amendment to the activity performance standard would address the issue regarding interpretation, however, the additional change sought by Mr Kinnoch may add unnecessary confusion. |
| Efficiency | <ul style="list-style-type: none"> • Somewhat efficient as the activity performance standard would address anomalies in the rule. However, the additional words requested by Mr Kinnoch may result in unnecessary confusion and greater time spent resolving interpretation issues. |
| Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter | <ul style="list-style-type: none"> • N/A – Sufficient information is available. |

RECOMMENDATION

Replace Rules 13.4.1(g)(iii), 14.4.3(c), 15.4.1(e)(iv), 16.4.1(f)(iii), 17.4.1(e)(v), and 18.4.1(h)(v) with the changes as notified and the minor amendment outlined in Option 1 (above) and as shown below:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Any goods sold must be:

- (iv) goods produced on site; and/or
- (v) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (vi) goods ancillary and related to a service provided by the home enterprise.

The following submission is therefore:

Accepted

| Submission | Point Number | Name |
|------------|--------------|----------------|
| 1 | 29-34 | Daniel Kinnoch |

REASON

Adopting the plan change as notified (Option 1) is considered to be the most effective and efficient method to address the issue regarding interpretation of the activity performance standards relating to the sale of goods from Home Enterprises.

The proposed change also reflects the way many legitimate Home Enterprises operate and enables the sale of goods not produced on the site recognising that they are unlikely to result in off-site effects.

The need for the amendment requested by Mr Kinnoch is unclear, particularly given the definition of Home Enterprises means that the activity must operate from the site of a residential activity (and therefore that the service must be operating from the site to be a Home Enterprise).

PLAN CHANGE 90 - RECOMMENDED CHANGES TO THE DISTRICT PLAN FIRST REVIEW

The purpose of this part of the report is to show the proposed plan change in full including any recommended changes in response to the submission.

Recommended changes to the District Plan First Review 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 blue.

Amend Rule 13.4.1(g)(iii) by replacing the standard relating to the sale of goods from Home Enterprises in the Residential Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

Amend Rule 14.4.3(c) by replacing the standard relating to the sale of goods from Home Enterprises in the Medium Density Residential Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

Amend Rule 15.4.1 (e)(iv) by replacing the standard relating to the sale of goods from Home Enterprises in the Future Urban Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

Amend Rule 16.4.1(f)(iii) by replacing the standard relating to the sale of goods from Home Enterprises in the Rural Residential Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

Amend Rule 17.4.1(e)(v) by replacing the standard relating to the sale of goods from Home Enterprises in the Lifestyle Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

Amend Rule 18.4.1(h)(v) by replacing the standard relating to the sale of goods from Home Enterprises in the Rural Zone as follows:

Delete the following:

~~Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;~~

Replace with:

Any goods sold must be:

- (i) goods produced on site; and/or
- (ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or
- (iii) goods ancillary and related to a service provided by the home enterprise.

ATTACHMENTS

- 1. Section 32 Report - Plan Change 90 - Home Enterprises - Sale of Goods**



*Western Bay of Plenty
District Council*

Change to the District Plan - First Review

Plan Change 90

Home Enterprises - Sale of Goods

Section 32 Report



1.0 Introduction

The purpose of this report is to consider a plan change to clarify and refine the performance standard associated with the sale of goods from Home Enterprises.

2.0 Resource Management Act 1991

2.1. Section 32 – Requirements for Preparing Evaluation Reports

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Resource Management Act 1991 ('the Act' or 'RMA') to carry out an evaluation of alternatives, costs and benefits of the proposal. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (1) *An evaluation report required under this Act must—*
 - (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 - (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- (2) *An assessment under subsection (1)(b)(ii) must—*
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*
- (3) *If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) *the provisions and objectives of the amending proposal; and*
 - (b) *the objectives of the existing proposal to the extent that those objectives—*
 - (i) *are relevant to the objectives of the amending proposal; and*
 - (ii) *would remain if the amending proposal were to take effect.*
- (4) *If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether*

the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

(4A) If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—

- (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and*
- (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.*

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority that has been lodged with Council. None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this Plan Change.

2.3. Clause 3 of Schedule 1 - Consultation

Clause 3(1) of Schedule 1 of the RMA requires the Council to consult the following during the preparation of a proposed plan:

- a. The Minister for the Environment;
- b. Other Ministers of the Crown who may be affected;
- c. Local authorities who may be affected;
- d. Tangata Whenua of the area who may be affected (through iwi authorities); and
- e. Any customary marine title group in the area.

Information was provided to the Minister for the Environment on a range of proposed plan changes and feedback was requested. No feedback has been received.

No other Ministers of the Crown or local authorities are considered affected by this proposed plan change. Nevertheless, the Bay of Plenty Regional Council has been consulted and they advised they have no issues with the proposed change. No marine title groups are considered affected.

Under Clause 3B of Schedule 1, with respect to Tangata Whenua, the Council is treated as having consulted iwi authorities if it:

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) consults with those iwi authorities; and*
- (d) enables those iwi authorities to identify resource management issues of concern to them; and*
- (e) indicates how those issues have been or are to be addressed.*

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019. No specific feedback has been provided in relation to this proposed plan change.

In addition, the Council engaged with the public to request input prior to the writing of this report. This was done through notices in local newspapers and the Council's 'Have Your Say' website.

Two people provided feedback on the sale of goods from home enterprises. One person was not concerned with the sale of goods, whereas the second person was. The person concerned about the sale of goods from home enterprises raised issues about increased traffic in residential areas and concern that courier drivers often do not comply with road rules. It was suggested that traffic generation associated with the home enterprise be limited to weekdays between 10am and 2pm (when children are at school), and that the number of vehicle movements be limited to three per day.

Council also engaged with the following groups and stakeholders on a range of proposed plan changes:

- a. Representatives of the kiwifruit industry through NZKGI;
- b. New Zealand Transport Agency ('the Agency');
- c. Toi Te Ora Public Health.

No specific issues were raised by any of these stakeholders regarding this proposed plan change.

3.0 Issue 1 – Home Enterprises – Sale of Goods Performance Standard

3.1. Introduction

Home Enterprises are listed as permitted activities in the District Plan¹, subject to compliance with several performance standards. One of these standards is that the Home Enterprise:

"Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;"

The intent of this standard is to place limits on the sale of goods from 'Home Enterprises' to ensure that the integrity of the District's Commercial Zones is protected, and that adverse effects associated with 'Home Enterprises' (e.g. people and traffic movement) are appropriately managed.

¹ Applicable to the Residential, Medium Density, Future Urban, Rural-Residential, Lifestyle, and Rural Zones

The existing performance standard provides for the sale of goods produced on the site (e.g. sale of artwork produced in a studio on site), and also for the sale of goods not produced on the site if they are sold via the internet.

However, there is confusion about whether internet sales can occur as part of a 'Home Enterprise' if the goods are manufactured off-site, but stored on, and distributed from the site where the Home Enterprise is located. This, for example, could include an on-line clothing retailer who has clothes manufactured off-site and then stores them on their property (as part of a Home Enterprise) for direct sale via the internet, and where deliveries are made via courier (i.e. from the home enterprise site to the customer).

In addition, the existing standard does not allow for the sale of goods that are ancillary to a legitimate Home Enterprise that offers a service. This, for example, could include a hair dresser working from home who sells shampoo to clients during their appointment.

A review of other District Plans from around the country shows that there are a range of ways that other Councils deal with the sale of goods from Home Enterprises. Some allow the sale of goods, subject to a restriction on floor area, while others do not specifically control the sale of goods as part of a Home Enterprise.

There is an opportunity to amend the standard through a plan change to ensure it is clear and reflects the way Home Enterprises operate. Such a change could acknowledge that Home Enterprises often provide goods for sale that are ancillary to the main service or business activity (e.g. shampoo sold by a hairdresser) and, in most cases these sales will not generate any additional off-site effects.

In addition, the sale of goods manufactured off-site and distributed from a Home Enterprise is considered appropriate if the current performance standards are met and there are restrictions to avoid adverse effects associated with people and traffic movements to and from the site (e.g. limits on the way goods can be sold and re-distributed from the site).

3.2. Option 1 – Status Quo – Retain the Sale of Goods Performance Standard without Change

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|-----------------|---|
| Costs | <ul style="list-style-type: none"> ▪ Does not address the issue that the performance standard is unclear and can be interpreted in different ways. ▪ Does not adequately reflect that goods may be sold from a legitimate Home Enterprise and that such sales do not result in additional adverse effects. ▪ Does not allow the sale of goods ancillary to a home enterprise that provides a service. ▪ Continues to be unclear whether goods sold via the internet that are produced off-site can be stored and distributed from the site of a home enterprise. ▪ Does not address the issue raised through public consultation regarding the potential need for restrictions on hours for traffic generated by home enterprises. |
| Benefits | <ul style="list-style-type: none"> ▪ No identified benefits. |

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| Effectiveness/ Efficiency | <ul style="list-style-type: none"> ▪ Not effective because the District Plan rule will continue to be unclear. ▪ Not efficient as may result in unnecessary time spent by staff and customers associated with interpretation of District Plan provisions. |
| Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter | <ul style="list-style-type: none"> ▪ N/A – Sufficient information is available. |

3.3. Option 2 – Amend the sale of goods performance standard in the Residential, Medium Density, Future Urban, Rural Residential, Lifestyle and Rural Zones to clarify that the following are permitted as part of Home Enterprise activities:

- (a) the sale of goods ancillary to a Home Enterprise offering a service; and**
- (b) the storage and distribution of products produced off-site where they are sold via the internet, telephone or by mail order, and are re-distributed by post or courier.**

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| Costs | <ul style="list-style-type: none"> ▪ Does not address the issue raised through public consultation regarding the potential need for restrictions on hours for traffic generated by home enterprises. |
| Benefits | <ul style="list-style-type: none"> ▪ The change would clarify how the performance standard is to be interpreted. ▪ The change recognises that in many cases goods may be offered for sale from a Home Enterprise (either as the main part of that business or as an incidental component) and that they do not have additional off-site effects. ▪ Allows for the sale of goods ancillary to a home enterprise that provides a service. ▪ Makes it clear that goods produced off-site that are sold via the internet can be stored and distributed from the site of a home enterprise. |
| Effectiveness/ Efficiency | <ul style="list-style-type: none"> ▪ Effective because an amendment to the performance standard would address the issue regarding interpretation. ▪ Amending the performance standards is an efficient method for addressing anomalies in the rule and the identified issue, and would avoid unnecessary time spent regarding interpretation issues. |
| Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter | <ul style="list-style-type: none"> ▪ N/A – Sufficient information is available. |

3.4. Preferred Option

The preferred option is Option 2:

Replace existing activity performance standards 13.4.1(g)(iii), 14.4.3(c), 15.4.1(e)(iv), 16.4.1(f)(iii), 17.4.1(e)(v), and 18.4.1(h)(v) as follows:

~~*Does not involve sales of products other than those produced on the site. This does not apply to the sale of any goods stored, distributed and manufactured off the site that are sold via the internet;*~~

Any goods sold must be:

(i) goods produced on site; and/or

(ii) goods that are ordered by the customer by telephone, mail or electronic transaction and redistributed to them by post, courier, or electronically; and/or

(iii) goods ancillary and related to a service provided by the home enterprise.

3.5. Reasons

Option 2 is the preferred option as it is considered to be the most effective and efficient method to address the issue regarding interpretation of the activity performance standards relating to the sale of goods from Home Enterprises. The proposed change also reflects the way many legitimate Home Enterprises operate and enables the sale of goods in situations where this is unlikely to result in off-site effects. In particular, the proposed change clarifies that goods produced off-site can be stored, distributed and sold from a Home Enterprise if the sale is undertaken via telephone, mail or electronic transaction and the goods are distributed to the customer by post, courier, or electronic means. Further to this, the proposed change also allows for the sale of goods ancillary to a Home Enterprise that provides a service.

Consideration was given to controlling traffic associated with Home Enterprises to school hours, however, it is considered that this may unreasonably restrict many legitimate Home Enterprises. In addition, it would be impractical for deliveries via courier to be restricted to school hours as the time of delivery is outside the Home Enterprise owner's control. As courier deliveries generally occur during daytime hours, it is considered that there is no need for place further restrictions on these activities.