

SECTION 10 – INFRASTRUCTURE, NETWORK UTILITIES AND DESIGNATIONS

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INTRODUCTION

This Section sets out the requirements for the establishment, operation, maintenance, upgrade of infrastructure and network utilities within the District and has differing requirements depending on the zones in which these activities occur. Plan Change 92 updated Table 10.3 (Activity Table for Infrastructure and Network Utilities) by adding references to the Medium Density Residential Zone and Natural Open Space Zones. This allows the provision of infrastructure and network utilities in these zones in the same manner allowed for in Residential Zones and public reserves respectively.

TOPIC 1 – RULE 10.4 (R) – SETBACKS FOR PUBLIC TRAILS

BACKGROUND

Within Table 10.3 (Activity Table for Infrastructure and Network Utilities) public trails are proposed to be a permitted activity in the Natural Open Space Zone subject to an existing setback performance standard under Rule 10.4(r). This rule requires a setback of 30m from any title boundary. There are two exemptions to this rule. One being where a public trail is identified on a plan prepared under the Reserves Act 1977, the Local Government Act 2002, or the RMA. The other being where it is on land which is an esplanade reserve, esplanade strip, road or access strip. The setback will also not apply where the written approval of the owner of the adjoining title has been obtained. Plan Change 92 did not propose any changes to the setback performance standard. The submission point below is considered out of scope of Plan Change 92 but has been addressed to provide information to the submitter and the Panel.

SUBMISSION POINT

One submission point was received. No further submission points were received. The submission point on this topic is summarised as follows:

Pete Linde (19.10) requests an amendment to Rule 10.4(r) so that it also includes an exemption where a public trail is on land zoned Natural Open Space. The submitter suggests that this will deal with a gap in the rule framework where the land that a public trail is formed on is still in private ownership as opposed to Council/public ownership. They also suggest it is needed to resolve a potential ultra vires consenting situation.

OPTIONS

Option 1 – Retain operative Rule 10.4(r).

Option 2 – Amend Rule 10.4(r) by adding to the exemptions to include where a public trail is located on land zoned Natural Open Space.

DISCUSSION

The submitter is concerned that the rules for public trails are currently focused on public/Council owned land and that there is no provision for the same exemption from the 30m setback when on private land.

Public trails are defined in the District Plan as follows:

“Public Trail” means a path either on or off road for the purpose of public recreational or commuter cycle or pedestrian transport or can be a bridle trail or similar. Public trail includes activities associated with creating the path, which includes pathways, bridging, boardwalks, walkways and steps, and includes related signage and maintenance activities, but excludes public trail support infrastructure such as public toilets and carparks.

From this definition it is understood that a trail does not need to be owned by Council for it to be a “public trail”. The key requirement is that it is for public use.

The submitter also notes that the District Plan shows walkways/cycleways on the Ōmokoroa Structure Plan in the Natural Open Space Zone and at times potentially within 30m of a boundary. If these walkways/cycleways which would fall under the definition of a “public trail” are not deemed to meet an exemption, then a developer/landowner would need to change the alignment of the trail to meet the 30m setback. However, the consequence of this is that the public trail will then be in non-compliance with the Ōmokoroa Structure Plan and need resource consent.

Of note, the Ōmokoroa Structure Plan has been produced as part of Plan Change 92, and Appendix 7 – Structure Plans includes walkway/cycleway maps. Structure Plans are prepared as part of the District Plan under the RMA. Therefore, the 30m setback exemption relating to public trails which have been prepared under the RMA (Rule 10.4 (r)(ii)) would apply to the public trails identified in the Ōmokoroa Structure Plan. The submitter’s concerns, as they are understood by the Reporting Team, would therefore not eventuate.

While adding a specific exemption for public trails in the Natural Open Space Zone could be seen to provide more certainty around this matter it may have unintended consequential effects. A blanket exemption for all public trails in the Natural Open Space Zone would mean that public trails not shown in the Ōmokoroa Structure Plan could be established as a permitted activity within 30m of a boundary without neighbour approval. Further, this would be without having gone through any formal consultation process prior to that to determine whether the location was supported. Whereas there are consultative processes and requirements when a plan that includes public trails is prepared under the Reserves Act 1977, the Local Government Act 2002, or the RMA. This is why public trails identified in these plans are provided with an exemption because the location has already been approved.

RECOMMENDATION

That Option 1 be accepted.

Retain operative Rule 10.4(r).

The following submission is therefore:

REJECTED

Submission	Point Number	Name
19	10	Pete Linde

SECTION 32AA ANALYSIS

As no changes are proposed, no s32AA evaluation is necessary.