

DECISION REPORT

PLAN CHANGE 84 – PUBLIC TRAILS (WALKWAYS, CYCLEWAYS, BRIDLEWAYS & SIMILAR)

INTRODUCTION

Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on the provisions of the District Plan First Review and matters raised in submissions and further submissions to Plan Change 84 – Public Trails (Walkways, Cycleways, Bridleways and Similar).

The decision is set out as follows:

- Decisions on submissions and further submissions
- Decisions on the provisions of the District Plan First Review

DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

The purpose of this part of the report is to show the decisions made on submissions and further submissions on a topic by topic basis with reasons and Section 32AA Analysis. Decisions are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and further changes as the result of decisions in blue.

TOPIC 1: DEFINITION – PUBLIC TRAIL/TRAILS

DECISION

That the definition of *public trail* be retained as notified with amendments as follows:

"Public Trail" means a path either on or off road for the purpose of public recreational or commuter cycle or pedestrian transport (including mobility scooters and other wheeled pedestrians), or can be a bridle trail or similar. A public trail can be for one or more of the above uses, but is not for the use of combustion engine and similar motorised vehicles. Public trail includes activities associated with creating the path, and which includes but is not limited to, 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.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
2	1	Gael Stevens
17	3	Bay Of Plenty Regional Council

Accepted in Part

Submission	Point Number	Name
9	14	J Swap Contractors Ltd

Rejected

Submission	Point Number	Name
18	2	Katikati Waihi Beach Residents and Ratepayers Association
FS35	2	J Swap Contractors Ltd
18	3	Katikati Waihi Beach Residents and Ratepayers Association
FS35	1	J Swap Contractors Ltd

REASONS / SECTION 32AA ANALYSIS

This is the preferred option and is considered to be the most effective and efficient method for providing a clear definition of *public trails*. It assists in providing a more enabling framework for the construction of *public trails* (walkways, cycleways, bridleways and similar) whilst ensuring that effects on ecological, landscape, heritage and natural hazard features continue to be managed appropriately. The amendments made to the notified version of the definition are to clarify the definition further.

The preferred option addresses the identified District Plan administrative issue and makes it clear via the definition what a *public trail* is and therefore what its activity status is. This in turn gives direction in relation to the establishment of new *public trails*.

It is noted that Council's Reserves and Facilities Bylaw 2018 contains clear direction relating to the use of vehicles, motorcycles and bicycles in reserves. Minor amendments have therefore been made to the definition to remove references to the use of vehicles. The purpose of the Plan Change is to allow the establishment of public trails as a permitted activity. It is not to prescribe what uses of vehicles will be permitted or not. The amendments are aimed at clarifying and better reflecting the purpose of the Plan Change and do not alter the meaning or effect of the Plan Change.

The benefits and effectiveness / efficiency reasons indicate that this option is likely to achieve the best outcome for the WBOP District.

The following provides a further evaluation of the changes made to Plan Change 84 since the original evaluation report under s32 of the Resource Management Act 1991. The level of detail corresponds to the scale and significance of the changes.

Amend notified definition of *public trail* to make it clear that the definition includes the path only and does not include support infrastructure such as un-reticulated public toilets or carparks

Costs	<ul style="list-style-type: none"> No costs identified.
Benefits	<ul style="list-style-type: none"> The amendments and issues raised through submissions presents an opportunity to include clarification amendments in the definition. Having a clear and robust definition will remove confusion and possibly remove the need for unnecessary resource consents and reduce time delays and financial costs for the community, consent applicants and Council. Users of the District Plan will know what a public trail is (and that it excludes support infrastructure) as there will be a clear definition.

	<ul style="list-style-type: none"> • A clearer and more streamlined District Plan framework for a defined public trail activity will result. • Only public trails that require a thorough assessment of specific ecological, landscape, heritage and natural hazard features will have to go through a resource consent process. • Public trails will be mainly established and administered by Council meaning a multi-disciplinary approach will ensure that provisions of other legislation are considered and met (HNZPT Act, Health and Safety legislation etc.). • Bylaws will still be able to provide a layer of structure via signage and provisions for the use of Council administered public trails (around dual-/multi-use of the public trails, and dog management for example).
Effectiveness	<ul style="list-style-type: none"> • The option is effective. Amending the definition to make it clear that it does not include support infrastructure will allow public trail projects to be established without unnecessary confusion.
Efficiency	<ul style="list-style-type: none"> • The option is efficient as it will result in a clearer definition meaning fewer costs, including financial expenses, time wasting, confusing processes for staff and customers, use of staff and resources.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> • Sufficient information is available

TOPIC 2: POLICY FRAMEWORK AND QUARRY EFFECTS MANAGEMENT AREA (QEMA)

DECISION

That PC 84 be retained as notified with no new policy added to Section 10 of the District Plan in relation to reverse sensitivity for quarry operations, and no specific Quarry Effects Management Area (QEMA) mechanism applied to restrict activities including *public trails*.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
9	12	J Swap Contractors Ltd
9	13	J Swap Contractors Ltd

REASONS

The option to retain PC84 as notified i.e. no new policy in relation to reverse sensitivity for quarry operations and no Quarry Effects Management Area (QEMA), is considered to be the most effective and efficient means of providing a better outcome for the provision of *public trails* in the WBOP District.

The option is effective in removing uncertainty over activity status for *public trails* and making the process more enabling, cost-effective and simpler over a variety of zones and within the context of a variety of environments where no significant ecological, landscape, heritage and natural hazard features and overlays require a full assessment via resource consent.

The introduction of Katikati Quarry Limited (KQL) and Tauranga Quarry Limited (TQL) QEMAs into the District Plan as requested by the submitter is outside the scope of Plan Change 84. The Committee members heard from the submitter the reasons why a QEMA was desirable and sought in relation to their quarrying interests and the Committee understood the reasons and their concerns.

However it was noted that persons potentially directly affected by the introduction of a QEMA would have been denied an opportunity to respond if the submitter’s relief was accepted. New QEMAs would restrict the establishment of dwellings, minor dwellings, accommodation facilities and education facilities. This is not within scope of a Plan change which seeks to enable *public trails*. This would generate significant restrictions on private property, and a new QEMA framework would need to be developed if the submitter’s relief was accepted because the existing District Plan QEMA framework does not currently restrict the establishment of recreation facilities or *public trail* activities.

J Swap Contractors Ltd quarries within the WBOP District are located in remote rural locations and there is a low likelihood of *public trails* being established in close proximity to these quarries where the land has not already been assigned for public access. Users of *public trails* are temporary and transient, and it is generally accepted that *public trails* are located in a number of differing environments not all of which are natural or pristine. Providing QEMAs around KQL and TQL operations to restrict *public trails* as proposed by J Swap Contractors Ltd is considered to be excessive and unnecessary.

TOPIC 3: SECTION 10 – TABLE 10.3 ACTIVITY TABLE FOR INFRASTRUCTURE AND NETWORK UTILITIES

DECISION

That the notified addition to the Section 10.3 Activity Table for Infrastructure and Network Utilities be adopted but reworded to ensure clarity as follows:

<p><u>(bd) Public trails</u></p> <p>*Within Identified Significant Features, a public trail activity shall have the same activity status as provided in the section of the District Plan relevant to the Identified Significant Feature/s.</p> <p><u>*The activity status of a public trail within an identified significant feature shall be determined by any relevant specific provision in Sections 5, 6 and 7 of the District Plan.</u></p> <p><u>**In this context Road Reserve includes formed and unformed roads.</u></p>	P	-	P	P	P	P	P	P	P**
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That an advice note be included as requested by HNZPT.

4 Note:

Archaeological sites are subject to a separate consent process under the Heritage New Zealand Pouhere Taonga 2014. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand.

This is the case regardless of whether the land on which the site is located is designated, or the activity is permitted under the District Plan or a Regional Plan or a resource or building consent has been granted. The Heritage New Zealand

[Pouhere Taonga Act 2014 also provides for substantial penalties for unauthorised destruction, damage or modification.](#)

Accepted

Submission	Point Number	Name
7	1	Heritage New Zealand Pouhere Taonga
7	2	Heritage New Zealand Pouhere Taonga

Rejected

Submission	Point Number	Name
9	15	J Swap Contractors Ltd
18	1	Katikati Waihi Beach Residents and Ratepayers Association
26	1	Matheson Day

REASONS / SECTION 32AA ANALYSIS

The purpose of this Plan change is to increase clarity around the establishment of *public trails* and amend District Plan provisions to enable them whilst ensuring that identified significant features are protected by requiring necessary resource consents where these features are involved. To ensure this purpose is achieved, the note in the activity table needs to be amended to clarify that activity status will be determined by the relevant provisions of Section 5, 6 and 7 as opposed to implying that *public trails* are given a specific activity status in those sections which they are not.

Heritage New Zealand Pouhere Taonga (HNZPT) submitted that an advice note reminding people of their obligations under the HNZPT Act 2014 would be useful for District Plan users, and they tabled evidence to reinforce this at the hearing. The addition of a non-statutory advice note to Table 10.3 as requested by this submitter provides helpful advice and a reminder to *public trail* providers. Although District Plan Section 7 already contains the advice note suggested, it is considered that an additional advice note at the end of Table 10.3 is beneficial as a reminder of the HNZPT Act 2014 provisions when no resource consent is necessary. This would be consistent with other advice notes that remind applicants of their obligations under other legislation or standards.

The introduction of Quarry Effects Management Areas (QEMAs) for Katikati Quarry Limited and Tauranga Quarry Limited into the District Plan is outside the scope of Plan Change 84 as outlined in Topic 2 above. It is therefore not appropriate to include additional wording in new line (bd) of Table 10.3 to specifically exclude *public trails* from a QEMA.

The following provides a further evaluation of the changes made to Plan Change 84 since the original evaluation report under s32 of the Resource Management Act 1991. The level of detail corresponds to the scale and significance of the changes.

Inclusion of an advice note as requested by HNZPT

Costs	None
Benefits	Will assist to ensure that HNZPT provisions relating to archaeology are less likely to be overlooked.

Effectiveness	Effective in informing plan users of their requirements under the Heritage New Zealand Pouhere Taonga Act 2014.
Efficiency	No inefficiencies identified.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	Sufficient and certain information is available.

TOPIC 4: SECTION 10.4 ACTIVITY PERFORMANCE STANDARDS FOR INFRASTRUCTURE AND NETWORK UTILITIES

DECISION

That Section 10.4 be retained as notified with amendments suggested by submitters as follows:

(r) Public trails

(a) Any part of a public trail shall be a minimum of 30m from any title boundary.

Except that:

(b) The above Clause (a) shall not apply if the public trail location is closer than 30m from a title boundary and # the public trail:

- has been confirmed via a Reserve Management Plan, Town Centre Plan, Structure Plan, or similar plan that has been through a public process identified in a plan prepared under the Reserves Act 1977, the Local Government Act 2002, or the Resource Management Act 1991; or
- is on land that is an esplanade reserve, esplanade strip, formed or unformed road, or an access strip; or
- is on land where a public trail in the position proposed is specifically provided for by another legal mechanism.

(c) Provided that:

A public trail may be located closer than 30m to a title boundary where the written approval of the owner/s of the title/s has been obtained.

(d) Where the written approval/s have not been obtained under (c) above, limited notification of the application shall be required, with notice being served on those who have not provided written approval.

Accepted

Submission	Point Number	Name
1	5	Daniel Kinnoch
1	6	Daniel Kinnoch
1	7	Daniel Kinnoch

1	8	Daniel Kinnoch
1	9	Daniel Kinnoch

Accepted in Part

Submission	Point Number	Name
19	3	Federated Farmers Of New Zealand (Inc)
FS35	3	J Swap Contractors Ltd

Rejected

Submission	Point Number	Name
9	16	J Swap Contractors Ltd

REASONS

The Committee appreciated the verbal presentations made by the submitter J Swap Contractors Ltd. The concerns raised by this submitter in relation to the potential impacts of reverse sensitivity complaints about noise, dust and other matters were noted, and the Committee acknowledged and appreciated that these issues were significant for the submitter.

The Committee however resolved to adopt the recommendations in the planners report for the following reasons.

The amendments proposed to the notified version of Section 10.4 make the rule clearer and more concise.

Public trails are established in a wide variety of environments, the submitter has two quarry operations located in remote areas, and users of *public trails* are temporary and transient meaning that complaints of a reverse sensitivity nature in relation to their quarry operations are unlikely. It is considered that the Plan change does not give rise to a need to provide additional significant setbacks as requested to avoid the potential for reverse sensitivity effects on quarrying activities. It is noted that the specified notified 30m setback distance for *public trails* from title boundaries is consistent with setbacks required for other activities in the Rural Zone.

Other *public trails* mentioned during discussion, for example those at Waihi township and the Poplar Lane quarry within the WBOP District, are in close proximity to operational quarry areas. The Martha Mine quarry in Waihi is seen as an attraction for users of the adjacent *public trail*. In relation to the use of the *public trail* at the Papamoa Hills Regional Park that is very close to the Poplar Lane quarry, the Council's compliance team were not aware of any record of complaints from users.

The two quarries owned and operated by the submitter already appear to have control over much of the land surrounding their operational areas through land ownership or lease.

Public trails will primarily be located on public land, and will be constructed by or in conjunction with Council. Council is aware of the submitter's concerns and issues, and would be happy to engage with quarry operators if any new *public trails* are proposed in the vicinity of quarries. It was noted that signage could be of pragmatic assistance in helping to manage some health and safety issues that were identified by the submitter where public areas are close or adjacent to quarry operations.

There was no specific rationale provided by the submitter for a 300m setback from *public trails*, although during discussion it was understood that an alternative lesser setback (but greater than 30m) may be acceptable. The MfE guidelines for dust that refer to 250m was raised by the submitter. It was noted that there was a WBOP District Plan Quarry Effects Management Area around the

Otamarakau Quarry, and that other Councils had District Plan rules that required similar 300m setbacks from quarries for activities that may be sensitive to adverse effects such as noise and dust arising from quarry operations. Required setbacks specified by District Plan rules in those instances related to separation distances from activities such as permanent dwellings (more sensitive to a quarry's operational effects) rather than from recreational activities such as *public trails* where people do not spend significant periods of time.

The Committee understands the significance of quarrying and mineral extraction to the region and notes the number of existing District Plan objectives and policies that support this industry. It is understood that Tauranga Quarry Limited and Katikati Quarry Limited operations still have significant operational lifetimes remaining on their current sites (50-120 years), and that future applications for quarry expansions are likely.

On balance therefore, the Committee considers that the issues the submitter has raised in relation to reverse sensitivity concerns are best contemplated through the upcoming District Plan review (or a private Plan change). This will allow a wholesale regard for all activities that are considered to create reverse sensitivity concerns, rather than just *public trails*, and to address all quarries in the District. There is value in spending time to consider the needs of quarry operations and to formulate a comprehensive rule framework. It is more appropriate to deal with this through the District Plan review than in this Plan change.

TOPIC 5: SECTION 8 – NATURAL HAZARDS

DECISION

Adopt amendments to Rule 8.3.3(c)(ii) as notified under Plan Change 84 with minor editorial changes as follows.

8.3.3 Restricted Discretionary Activities

...

- (c) Floodable Areas and Coastal Inundation Areas
 - (i) *Buildings/Structures* not within an *Approved Building Site – Natural Hazards*
 - (ii) *Earthworks over 5m³* (except for:
 - ~~m~~Maintenance, operation, upgrade and development of above ground lineal network utility structures and underground network utilities where the ground is reinstated to the same contour as existed immediately prior to the works being undertaken. ~~of~~
 - ~~Public trails where the finished surface is not more than 200mm above the pre-existing ground level/contour and where any other ground within the surrounding area that has been disturbed is reinstated to the same contour as existed immediately prior to the works being undertaken.~~
 - (iii) Closed board fences, retaining walls, raised gardens, concrete and block walls

Accepted in Part

Submission	Point Number	Name
1	3	Daniel Kinnoch
17	4	Bay Of Plenty Regional Council

REASONS

An increase in the level of the ground surface by a maximum of 200mm for *public trail* construction does not affect the drainage or overland flow functions of floodable areas and coastal inundation areas by a significant amount.

Making an amendment to proposed Rule 8.3.3(c)(ii) to allow for the construction of some low or no effect earthworks within floodable areas and coastal inundation areas adds to the efficiency of the proposed District Plan framework for *public trails*.

Making minor amendments to proposed Rule 8.3.3(c) to ensure that Plan Changes 84 and 86 do not conflict is good practice.

DECISIONS ON THE PROVISIONS OF THE DISTRICT PLAN FIRST REVIEW

The purpose of this part of the report is to show the decisions to change the provisions of the District Plan First Review.

Decisions are shown as follows; existing District Plan text in black and decisions in red.

Section 3 - Definitions

“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.

Section 10 – Infrastructures, Network Utilities and Designations

Amend Table 10.3 Activity Table as follows:

Activity	<u>Surface of Water</u>	<u>Identified Significant Features</u>	<u>Residential, Future Urban, Rural Residential and Lifestyle Zone</u>	<u>Commercial Zone</u>	<u>Industrial Zone</u>	<u>Rural Zone, Post Harvest Zone</u>	<u>All Terrain Park Zone (ATP)</u>	<u>Public Reserves</u>	<u>Road Reserve</u>
Miscellaneous									
<u>(bd) Public trails</u>	P	*	P	P	P	P	P	P	P**
<u>The activity status of a public trail within an identified significant feature shall be determined by any relevant specific provision in Sections 5, 6 and 7 of the District Plan.</u>									
<u>**In this context Road Reserve includes formed and unformed roads.</u>									

4 Note:

Archaeological sites are subject to a separate consent process under the Heritage New Zealand Pouhere Taonga 2014. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to destroy, damage or modify the whole or any part of an archaeological site without the prior authority of Heritage New Zealand.

This is the case regardless of whether the land on which the site is located is designated, or the activity is permitted under the District Plan or a Regional Plan or a resource or building consent has been granted. The Heritage New Zealand Pouhere Taonga Act 2014 also provides for substantial penalties for unauthorised destruction, damage or modification.

Amend Rule 10.4(r) as follows:

10.4(r) Public trails

(a) Any part of a public trail shall be a minimum of 30m from any title boundary.

Except that:

(b) Clause (a) shall not apply if the public trail location is closer than 30m from a title boundary and the public trail:

- has been identified in a plan prepared under the Reserves Act 1977, the Local Government Act 2002, or the Resource Management Act 1991; or
- is on land that is an esplanade reserve, esplanade strip, formed or unformed road, or an access strip.

(c) Provided that:

A public trail may be located closer than 30m to a title boundary where the written approval of the owner/s of the title/s has been obtained.

Section 8 - Natural Hazards

8.3.3 Restricted Discretionary Activities

(c) Floodable Areas and Coastal Inundation Areas

(i) *Buildings/Structures* not within an *Approved Building Site – Natural Hazards*

(ii) *Earthworks* over 5m³ except for:

- Maintenance, operation, upgrade and development of above ground lineal network utility structures and underground network utilities where the ground is reinstated to the same contour as existed immediately prior to the works being undertaken.
- Public trails where the finished surface is not more than 200mm above the pre-existing ground level/contour and where any other ground within the surrounding area that has been disturbed is reinstated to the same contour as existed immediately prior to the works being undertaken.

(iii) Closed board fences, retaining walls, raised gardens, concrete and block walls