

**OFFICER'S REPORT FOR:** Hearings Committee

**SUBJECT:** Proposed District Plan Change 16 –  
Amendments to notification procedures and  
miscellaneous changes

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**REPORT DATE:** 05 MAY 2011

**DATE OF HEARING:** 23 MAY 2011

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### **EXECUTIVE SUMMARY**

The purpose of Proposed Plan Change 16 is to clarify and correct the technical provisions that make up the notification procedures of the City of Lower Hutt District Plan (the District Plan). In addition, the opportunity has been taken to undertake a number of minor amendments to the District Plan in order to correct spelling and grammatical errors and inconsistencies.

The main reasons for the amendments in Proposed Plan Change 16 are to ensure that the notification procedures are appropriate and enable the effective administration of the District Plan and to update the wording of the notification rules to ensure they are consistent with current legislative requirements.

The notification procedures are within Chapter 17 of the District Plan and they set out the rules for making a notification decision on a resource consent application.

Proposed Plan Change 16 was publicly notified on 21 September 2010 and the submission period closed on 22 October 2010. The summary of submissions was publicly notified on 23 November 2010 and the further submission period closed on 7 December 2010. A total of 7 original submissions and 3 further submissions were received.

The submissions and further submissions seek various forms of relief, including but not limited to:

- Amend 17.1.1 (information to accompany land use consents) and 17.1.2 (information to accompany subdivision consents) by clarifying that information on historic places and archaeological sites is required.
- Delete the non-notification clause for Rule 14H 2.1 (a) for structures and buildings on any site within the Wellington Fault Special Study Area.
- Various amendments to clarify the Explanation and Reasons section of Chapter 17.
- Amendments to clarify Rules 17.2.1, 17.2.2 and 17.2.3, notification procedures for controlled, restricted discretionary and discretionary activities.
- Amendments to Appendix Notification Procedures 1 to better reflect the Resource Management Act.

- Remove the words 'to the above permitted activities' from Rule 4C 2.1 (d).
- Amend Rule 4C 2.1.1 (a) (ii), minimum net site area per permitted activity, to indicate that it only applies to sites smaller than 300m<sup>2</sup>.
- Reject the proposed changes in relation to restricted discretionary activities or clarify when notification is not required for restricted discretionary activities.
- That Proposed Plan Change 16 acknowledges a consent order concerning child care centres.
- That Proposed Plan Change 16 be approved.

A hearing of submissions received to Proposed Plan Change 16 is scheduled to be held on 23 May 2011.

The following report recommends that the Hearings Committee accept or reject the submissions and further submissions for the reasons as outlined under section 4 of this report.

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## **1. INTRODUCTION**

This report discusses and makes recommendations on submissions received in relation to Proposed Plan Change 16 – Amendments to Notification Procedures and Miscellaneous Changes (hereafter referred to as the Plan Change).

The intention of the Plan Change is to clarify and correct where necessary the technical provisions that make up the notification procedures of the District Plan. The reasons for the Plan Change are to ensure that the notification procedures are appropriate and enable the effective administration of the District Plan and to update the wording of the notification rules to ensure they are consistent with current legislative requirements.

The opportunity is also taken to make some minor, miscellaneous amendments to the District Plan. The miscellaneous amendments to the District Plan have no policy implications as they are simply corrections relating to various inconsistencies, spelling and grammar.

Although this report is intended as a stand-alone document, a more in-depth understanding of the Plan Change, the process undertaken and related issues may be gained by reading the Section 32 Evaluation and associated plan change documents as publicly notified on 21 September 2010.

## **2. BACKGROUND**

Making a notification decision is an important step in processing resource consent applications as it determines the level of public involvement in the process. A notification decision is made by the Council on each resource consent application in order to determine whether it should be publicly notified, notified only to affected parties or not notified at all.

Chapter 17, Resource Consent and Notification Procedures, of the District Plan sets out the procedures for making a notification decision on a resource consent application. These procedures determine whether the Council can notify an application, either limited notification to neighbours or full notification to the public. Once this is determined the Council then makes a notification decision using the notification provisions of the Resource Management Act 1991 (the Act), which set out the matters the Council is required to consider.

Since the notification procedures in the District Plan were drafted and made operative there have been a number of changes to the notification provisions in the Act. There is no longer a presumption in the Act that a Council must publicly notify a resource consent application. In addition, the Act now allows the Council to make rules specifying the activities which either must be publicly notified or must not be notified.

A review of the notification procedures in Chapter 17 was undertaken in order to ensure that the provisions are consistent with the Act, are working effectively and contribute to achieving the objectives and policies of the District Plan. This review found that while the current rules were generally consistent with the Act, there were interpretation issues with some of the provisions and the wording of the provisions was out of date. The review also provided an opportunity to consider whether it was appropriate to require public notification for some activities or to preclude notification for some activities.

The Plan Change proposes amendments to the notification procedures, along with some miscellaneous corrections, in order to improve the effectiveness of the provisions within the District Plan. The main purpose of the proposed amendments is to update the wording of the current notification procedures and to ensure that they are consistent with current legislation.

This Plan Change involved consultation with the statutory authorities in accordance with the First Schedule of the Act. No other consultation with the wider community or other external groups has been carried out, besides the formal public notification process, given the minor nature of the Plan Change.

Proposed Plan Change 16 was publicly notified on 21 September 2010 and the submission period closed on 22 October 2010. A public notice was placed in the Hutt News and a public notice and summary flyer was sent to each rate payer in the District.

The summary of submissions was publicly notified on 23 November 2010 and the further submission period closed on 7 December 2010. A total of 7 original submissions and 3 further submissions were received.

### 3. LIST OF SUBMITTERS

The following submitters have lodged submissions on Proposed Plan Change 16:

Submission Number	Name of Original Submitters	Submission Reference
DPP12-5-16-001	New Zealand Historic Places Trust	1.1, 1.2, 1.3
DPP12-5-16-002	Petone Planning Action Group	2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7
DPP12-5-16-003	Simon Byrne	3.1, 3.2, 3.3
DPP12-5-16-004	Petone Residents Association	4.1
DPP12-5-16-005	Petone Beach Trust Incorporated	5.1
DPP12-5-16-006	Angus Gibb	6.1
DPP12-5-16-007	The New Zealand Institute of Surveyors	7.1

Further Submission Number	Name of Further Submitters	Submission Reference
DPP12-5-16-008	East Harbour Environmental Assoc. Inc	2.6
DPP12-5-16-009	Petone Planning Action Group	2.3, 2.6, 3.3
DPP12-5-16-010	Angus Gibb	6.1

#### **4. ANALYSIS OF SUBMISSIONS AND RECOMMENDATIONS**

The following sections of this report provide a brief summary of each submission and a recommendation in response to each of the decisions sought.

The submissions are addressed by submitter. In the heading the submission number, the name of the submitter and the submission reference are printed in bold. The decision sought by the submitter is then outlined and specific comments made by the submitter are summarised. This is followed by a discussion of the issues raised and the officer's recommendation. Where a submitter seeks more than one decision the submission has been split into parts with different submission references (e.g. 3.1, 3.2, 3.3).

If there are any further submissions in support or opposition to a submission they are discussed within the relevant submission. The submission number, the name of the further submitter, the submission reference and whether the further submission is in support or opposition are printed in bold italics.

With respect to determining the scope of a submission, reference is made to Clause 6 of the First Schedule to the Resource Management Act 1991 which states:

*"6. Making submissions*

*Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5."*

A submission on a plan change is therefore limited in that it must be "on" the plan change.

In the case of Proposed Plan Change 16 the purpose of the Plan Change is to address issues with the notification procedures of the District Plan and other minor, miscellaneous changes.

Accordingly, for a submission to be deemed to be within the scope of Proposed Plan Change 16 the submission must relate to any one of the issues addressed in the Plan Change.

A further submission is limited to a matter in support of, or opposition to, an original submission. It cannot raise new issues that haven't been addressed in one of the original submissions.

Submission:

**DPP12-5-16-001 – New Zealand Historic Places Trust – 1.1**

**Request of Submitter**

The New Zealand Historic Places Trust generally supports the Plan Change.

**Specific Comments**

The submitter generally supports the Plan Change subject to the amendments suggested in their submission which seek to ensure that heritage information is provided with resource consent applications. They request that the Plan Change be approved with the amendments suggested in their submissions, which are discussed in the sections below.

**Discussion**

The submitter is generally supportive of the Plan Change. While this report recommends some changes to the proposed rules in response to the submissions, in general it recommends that the intent and concepts of the Plan Change be adopted as notified.

Justification for the Plan Change and reasons for the recommended changes are provided within this report and in the Section 32 Evaluation. It has been concluded that the Plan Change, including recommended changes, is appropriate in terms of achieving the purpose of the Resource Management Act 1991.

**Recommendation**

It is recommended that the submission (1.1), lodged by the New Zealand Historic Places Trust, be **accepted**, taking into consideration the recommendations made to amend the Plan Change as sought by other points of submission.

**Reason**

Some amendments to the Plan Change provisions are recommended within this report, however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of achieving the purpose of the Act.

Submission:

**DPP12-5-16-001 – New Zealand Historic Places Trust – 1.2**

**Request of Submitter**

Replace 17.1.1(g) (viii) with:

The identification of any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works. ~~which affects the cultural and historic heritage of New Zealand, which is to be removed or modified by the application.~~

## Specific Comments

The New Zealand Historic Places Trust (NZHPT) is concerned that Rule 17.1.1 (g) (iii) does not specifically mention archaeological sites and that, as a consequence, they may be missed. They also request that the requirement for a value judgement to be made, as to whether a proposal will affect a historic site or item, be removed from the District Plan.

## Discussion

The Plan Change includes minor amendments to Rule 17.1, information to be provided with a resource consent application (amendment 16). The provision of adequate information is necessary for resource consent applications to be processed. It is important that Rules 17.1.1 and 17.1.2 are correct and up to date in order to provide guidance to District Plan users on the Hutt City Council's information requirements for resource consent applications.

The submitter has identified a miscellaneous issue with Rule 17.1.1, being that the existing rule 17.1.1 (g) (viii) does not mention archaeological sites. Rule 17.1.1 (g) (viii) requires that land use resource consent applications contain information on *'identification of any historic places, or other items which affects the cultural and historic heritage of New Zealand, which is to be removed or modified by the application'*. The submitter is concerned that if archaeological sites are not specially mentioned in Rule 17.1.1 as an information requirement, they are likely to be missed.

It is considered that the wording of Rule 17.1.1 (g) (viii) is intentionally broad; the use of 'historic places, or other items' being inclusive of archaeological sites. However, the wording of the provision could lead District Plan users to focus on places and sites of heritage and cultural value such as buildings, rather than the perhaps more difficult to identify, archaeological sites. Given the importance of protecting archaeological sites from inappropriate development, the wording of the provision should clarify that information on archaeological sites is required with resource consent applications.

The importance of archaeological sites is identified in legislation including the Resource Management Act and the Historic Places Act. The protection of historic heritage from inappropriate subdivision, use and development is listed as a matter of national importance in section 6 of the Resource Management Act.

Historic heritage is defined in the Resource Management Act as *'those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities: archaeological, architectural, cultural, historic, scientific, technological and includes—*

- (i) historic sites, structures, places, and areas; and*
- (ii) archaeological sites; and*
- (iii) sites of significance to Māori, including wāhi tapu; and*
- (iv) surroundings associated with the natural and physical resources'*

The NZHPT website explains that archaeological sites are distinguished from other heritage sites due to the fact that they tend to be the relics and ruins of our past and they may be



located on land, in water, or in the coastal marine area. An archaeological site is defined by the Historic Places Act 1993 as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand, and any site that meets this definition is afforded automatic statutory protection under the Act. It is an offence under the Act to damage, modify or destroy an archaeological site without an Authority from the NZHPT.

Post-1900 archaeological sites, such as World War I or II gun emplacements, are not currently protected under the Act, unless they have been gazetted by the Historic Places Trust as an archaeological site. Post-1900 sites may also be scheduled in a District or Regional Plan, and therefore protected by the rules of that Plan which relate to historic heritage.

The District Plan identifies a number of archaeological sites as Significant Archaeological Resources within Chapter 14E. Any activity or site development works identified on or within the boundaries of a Significant Archaeological or Cultural Resource is a restricted discretionary activity. These archaeological sites are also identified on the Historic Places Trust Register. Pre-1900 archaeological sites that are not listed in the District Plan are protected by the Historic Places Act 1993 and therefore, they should be shown in resource consent applications if identified. The Hutt City Council and the New Zealand Historic Places Trust can assist applicants by providing information about the location of heritage, cultural and archaeological sites.

Overall, it is considered appropriate to specifically mention archaeological sites in the District Plan's information requirements for resource consents in order to provide certainty to District Plan users. The wording suggested by the submitter will clarify that the provision is also referring to archaeological sites so that it is clear that this information is required with resource consent applications.

The submitter also requests that the requirement for a value judgement to be made, as to whether the proposed work will affect a historic place, archaeological site or other heritage items, be removed from the District Plan. The submitter advises that the location of historic places, archaeological sites or other heritage items is important information to be provided up front in any application to ensure a thorough assessment of affects on the environment can be carried out.

It is considered that Rule 17.1.1 (g) (viii) could be interpreted as requiring a value judgement on whether a proposal affects a historic site or item, which is unintentional. Given the location of the provision in a list of information to be provided with resource consent applications it is clear that a value judgement is not appropriate and the provision should simply require the identification of historic places, archaeological sites or other heritage items. In addition, when writing District Plan provisions it is good practice to avoid the use of wording which conveys an element of subjectivity or discretion. As such, it is appropriate to amend the wording of the provision as suggested by the submitter.

It is appropriate to correct the matters raised by the submitter while the opportunity arises as they are considered to be within the scope of the Plan Change, being minor and miscellaneous changes to clarify the provisions of 17.1.

### **Recommendation**

It is recommended that the submission (1.2) lodged by the New Zealand Historic Places Trust be **accepted** and that Proposed Plan Change 16 be amended as follows:

#### 17.1.1(g) (viii)

Identification of any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works. ~~which affects the cultural and historic heritage of New Zealand, which is to be removed or modified by the application.~~

### **Reason**

It is appropriate to specifically mention archaeological sites in Rule 17.1.1 in order to clarify that resource consent applications are required to provide information about archaeological sites. In addition, the amended wording in Rule 17.1.1 will reduce uncertainty regarding the information requirements.

Submission:

**DPP12-5-16-001 – New Zealand Historic Places Trust – 1.3**

### **Request of Submitter**

Add to Rule 17.1.2:

The identification of any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works.

### **Specific Comments**

The submitter has identified that there is no requirement to provide heritage information for a subdivision application in Rule 17.1.2, which they advise is an oversight.

### **Discussion**

Much of the discussion of submission 1.2 above is relevant to this submission and is not repeated here. The submitter is correct that the current list of information requirements for subdivision applications does not include a requirement to provide information on historic places, archaeological sites or other heritage items.

The current practice of the Council is to request that heritage information be provided with subdivision applications where relevant. This enables the effects of subdivision on historic heritage to be assessed when subdivision applications are processed, as required by the provisions of Chapter 11, Subdivision, of the District Plan.

When assessing applications for controlled activity subdivisions, a matter over which control is reserved is the protection of significant sites, including natural, cultural and archaeological sites (Rule 11.2.2.2 (f)). In addition, the matters in which the Council has restricted its discretion to for restricted discretionary activity subdivisions include *'the extent to which the proposed earthworks will affect adversely land and features which have historical and cultural significance'* (Rule 11.2.3.1 (d)).

Although the above provisions enable the Council to request information on heritage places and cultural sites, the additions to Rule 17.1.2 suggested by the submitter are considered to be necessary as they will provide better guidance to subdivision applicants and explain more clearly that information on historic heritage is required with subdivision applications.

Overall, it is considered appropriate to add an information requirement to Rule 17.1.2 for subdivision consents in order to provide greater certainty to District Plan users, to reflect the current procedures of the Council and for consistency with Rule 17.1.1, information for land use consents. The addition of this information requirement to Rule 17.1.2 is considered to be a minor, miscellaneous change and within the scope of the Plan Change.

### **Recommendation**

It is recommended that the submission (1.3) lodged by the New Zealand Historic Places Trust be **accepted** and that Proposed Plan Change 16 be amended as follows:

17.1.2 (e) (ii)

- Any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works.

### **Reason**

The addition to Rule 17.1.2 requiring information on historic places and sites is considered to be appropriate in order to provide additional guidance to applicants on the information requirements for subdivision applications.

Submission:

**DPP12-5-16-002 – Petone Planning Action Group – 2.1**

### **Request of Submitter/Specific Comments**

Petone Planning Action Group states that they agree that signs on sites with frontages to the roads listed in Rule 14B 2.2 (d) (i) become restricted discretionary rather than controlled activities.

### **Discussion**

The submitter is referring to amendment 12 to Rule 14B 2.2 (d) (i). However, Rule 14B 2.2 (d) (i) states that in all Commercial Activity Areas, Business Activity Areas, and Community Iwi Activity Area 3 – Kokiri Centres, excluding the Petone Commercial Activity Area 1: any sign

erected on sites with frontage to the roads listed are a controlled activity (except where 14B 2.3 (b) applies). The only change proposed to Rule 14B 2.2 (d) (i) is a minor, miscellaneous amendment to correct the cross reference within this rule. The reference to '14B 2.3 (b)' is incorrect and is proposed to be amended to '14B 2.3 (c)'.

The existing rule refers to 14B 2.3 (b), which states that signs in Recreation, Open Space and Rural Activity Areas located within a 50 metre distance of the State Highway are a restricted discretionary activity. The cross reference is incorrect and should refer to 14B 2.3 (c), which states that the signs in all Commercial and Business Activity Areas which do not comply with one or more of the Permitted Activity Conditions within Rule 14B 2.1.6 are restricted discretionary activities. The purpose of the cross reference to Rule 14B 2.3 (c) is to ensure that signs with frontage to the State Highway which do not comply with the permitted activity conditions in 14B 2.1.6 and which also have frontage to the roads listed in Rule 14B 2.2 (d) (i) are restricted discretionary activities (otherwise these signs would be controlled activities).

**Recommendation**

It is recommended that the submission (2.1) lodged by Petone Planning Action Group be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

**Reason**

The submitter has misinterpreted amendment 12 to Rule 14B 2.2 (d) (i) as there is no proposal to change the activity status on sites with frontages to the roads listed in the Rule from controlled to restricted discretionary. A change in activity status would be outside the scope of this Plan Change.

Submission: <b>DPP12-5-16-002 – Petone Planning Action Group – 2.2</b>
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**Request of Submitter**

Delete the non-notification clause for Rule 14H 2.1 (a) in Amendment 14.

**Specific Comments**

The submitter advises that there is public interest in the development of habitable buildings and work places in a natural hazard area and therefore these types of applications should not be precluded from notification.

**Discussion**

Background to Rule 14H 2.1 (a)

Rule 14H 2.1 (a) states that all structures and buildings on any site where the whole site or a portion of the site falls within the Wellington Fault Special Study Area (WFSSA) are restricted

discretionary activities, excluding accessory buildings not required for habitable or working purposes and utilities which are permitted.

Natural Hazards Chapter 14H explains that the WFSSA was developed to manage the risk posed from rapture along the Wellington Fault. It extends from Petone to Silverstream, and marks out the area that is expected to suffer permanent ground deformation following the next major Wellington fault rapture. It is based on the Wellington scarp and where there is no evidence of the scarp the location of the fault has been inferred. For this reason, the width of the WFSSA is generally 150 metres wide.

The rules in Chapter 14H seek to implement a separation distance of 20 metres from the Wellington Fault. This is because the area within 20 metres of a fault is commonly subject to intense deformation and secondary ruptures. In addition, structures built near an area of fault rupture could cause rupture to divert around them unpredictably and therefore put neighbouring buildings at greater risk.

Amendment 14 of the Plan Change proposes to add a non-notification clause to Rule 14H 2.1 (a) which means that restricted discretionary resource consent applications for habitable structures and buildings within the WFSSA under this rule would be non-notified.

In general the review of how notification is dealt with in the District Plan and the approach taken to notification, shows that the existing approach within Chapter 17 is favoured, which allows notification of restricted discretionary activities, and that precluding activities from notification should be used sparingly for activities other than controlled activities (meaning that for most types of activities the statutory tests of the Act should apply for each application for resource consent).

As such the Plan Change only proposes to add non-notification clauses to five restricted discretionary activities within the District Plan. In addition to Rule 14H 2.1 (a) described above, the following rules are affected by the proposed non-notification clauses:

- 6C 2.2 (b) The maintenance, replacement and addition of telecommunication facilities supported on the tower of the existing administration building on the Avalon Studios Site, which do not satisfy the requirements for exemption of Permitted Activity Condition 6C 2.1.1 (b) (being works that are the same or similar size, height or scale, within the same or similar position and for the same or similar purpose) in the Avalon Business Activity Area.
- 7B (i) 2.2 (b) car parking areas within the Petone Foreshore Special Recreation Activity Area.
- 7B (ii) 2.2 (b) car parking areas within the Seaview Marina Special Recreation Activity Area.
- 7B (iii) 2.2 (b) car parking areas within the Hutt Park Visitor Accommodation Special Recreation Activity Area.

The criteria used in order to analyse which controlled and restricted discretionary activities would be appropriate for exceptions to the general notification procedures of Chapter 17 is described in section 6 of the Section 32 Evaluation and summarised below:

- The assessment criteria for the activity are limited to technical matters or matters of detail.
- The likelihood of the activity having adverse effects on the wider environment.
- History of notification decisions for that type of activity.

Each of the restricted discretionary activities in the District Plan was then considered using the above criteria.

Rule 14H 2.1 (a), restricted discretionary resource consent applications for habitable structures and buildings within the WFSSA, fitted the above criteria as the assessment criteria for this rule are limited to technical matters (the provision of engineering reports) and the ability to assess wider environmental effects is restricted. In addition, applications for resource consent for structures and buildings within the WFSSA, with no other infringements, have invariably been processed on a non-notified basis. As such, a non-notification clause was proposed to be added to Rule 14H 2.1 (a).

#### Background to the approach taken for restricted discretionary activities

The decisions report on Chapter 17 of the Proposed District Plan, dated June 2001, provides the following background into the District Plan's approach to the notification of restricted discretionary activities: *"With respect to Restricted Discretionary Activities, these are matters where Council has limited the matters to which it can consider the adverse effects of a proposal. It is not considered necessary to seek wider input into the processing of these applications for resource consent as the matters to which Council has restricted its discretion are largely matters of detail"*.

At the time the operative District Plan was written the Act did not allow district plans to preclude restricted discretionary activities from being notified. However, the notification procedures included a presumption of non-notification for restricted discretionary activities by using the words 'need not be notified'.

The 2009 amendments to the Act introduced provisions enabling Local Authorities to include rules either requiring or precluding public notification. Following the amendments to the Act Local Authorities have more scope to make notification provisions in District Plans. It is important to note that the Act allows District Plans to be prescriptive about notification but that Local Authorities do not have to include notification clauses in the District Plan – *"a local authority may make a rule specifying the activities for which the consent authority must give public notification of an application etc..."* (Section 77D).

As such, during the review of the notification procedures of the District Plan, the Council considered whether it was appropriate for any rules to have clauses either requiring or precluding notification. This review found that, although the Council has the ability under the Act to require or preclude activities from notification, it would not be appropriate to

apply these types of provisions to the activities within the District Plan, except in a small number of cases.

The review of the notification procedures considered whether to apply non-notification clauses to controlled and restricted discretionary activities. Controlled or restricted discretionary activity status recognises that such small-scale activities only generate particular localised effects and do not warrant consideration of all potential effects. Therefore some of these types of activities were likely to fit the criteria for non-notification clauses summarised above, such as being limited to technical matters or matters of detail and having localised effects. It is noted that notification clauses which required notification of certain activities were not considered necessary and as such none were included in the Plan Change.

#### Restrictions on assessing restricted discretionary activities

When considering the adverse effects of controlled or restricted discretionary activities for a public and limited notification decision, any adverse effect of the activity that does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion must be disregarded (ss95D(1)(c) and 95E(2)(b)).

In the case of Rule 14H 2.1 (a) for structures and buildings within the Wellington Fault Special Study Area, Rule 14H 2.1.1 (i) of the District Plan has restricted Council's discretion to:

- *Safe Separation Distance of Structures and Buildings from the Wellington Fault: For all structures and buildings, an engineering report will be required to confirm that the Wellington Fault is not within 20.0m of any proposed structure or building, or that the necessary engineering precautions have been taken.*

Therefore the only matter that can be considered when assessing the effects of a proposal which requires resource consent under Rule 14H 2.1 (a) is the safe separation distance of the structure or building from the Wellington Fault. The construction of habitable buildings and workplaces within the WFSSA may be a matter of public interest and may have other adverse effects such as increased vulnerability of other properties, but these effects cannot be taken into account in the notification decision because of the restrictions to the assessment criteria in Rule 14H 2.1.1 (i).

In practice, processing a resource consent application for a building within the WFSSA (with no other infringements of the District Plan) generally involves ensuring that the application includes an engineering report which supports the proposal. If the engineering report confirms that the building is not within 20 metres of the Wellington Fault the assessment criteria is deemed to have been met and the application can go on to be processed on a non-notified basis. If the engineering report shows that the building is within 20 metres of the Wellington Fault the application must show how suitable engineering precautions will be taken in the design and construction of the building. If this information is provided then the application goes on to be processed on a non-notified basis and the decision would include appropriate conditions of consent. If the application can not show that necessary engineering precautions will be taken, then the application can be declined.

It is important to note that even if public notification is precluded by a rule, a Local Authority may still publicly notify an application if it decides that special circumstances exist in relation to an application (s95 A (4)). Therefore an application for a building within the WFSSA could be publicly notified in special circumstances.

However, in ordinary circumstances, when the assessment of a resource consent application are limited to considering only technical matters, such as those within Rule 14H 2.1.1 (i), it is difficult to see how public or limited notification could enhance the assessment of the application. This is because of the restrictions on assessing restricted discretionary activities set out in sections 87A (3) and 104C of the Act:

Section 87A (3) of the Act states that: *If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—*

- (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and*
- (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.*

Section 104C of the Act states that: *(1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—*

- (a) a discretion is restricted in national environmental standards or other regulations:*
- (b) it has restricted the exercise of its discretion in its plan or proposed plan.*

*(2) The consent authority may grant or refuse the application.*

*(3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—*

- (a) a discretion is restricted in national environmental standards or other regulations:*
- (b) it has restricted the exercise of its discretion in its plan or proposed plan.*

In conclusion, for the reasons discussed above, it is considered that the non-notification clause proposed for Rule 14H 2.1 (a) is appropriate.

It is of relevance to this discussion to note that the Natural Hazards chapter of the District Plan will need to be reviewed in the near future (as this chapter hasn't been reviewed since the District Plan became operative and as some interpretation issues have arisen with Rule 14H 2). The review could consider whether the current assessment criteria of Rule 14H 2.1.1 (i) are effective and adequate and whether the activity status is still appropriate. This review could also remove the non-notification clause if it is not proving to be appropriate or if the assessment criteria were widened.

## **Recommendation**



It is recommended that the submission (2.2) lodged by Petone Planning Action Group be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

### **Reason**

The non-notification clause proposed for Rule 14H 2.1 (a) is appropriate as the assessment criteria for this rule is limited to technical matters only.

It is important to note that even if public notification is precluded by a rule, a Consent Authority may still publicly notify an application if it decides that special circumstances exist in relation to an application (s95 A (4)).

Submission:

### **DPP12-5-16-002 – Petone Planning Action Group – 2.3**

#### **Request of Submitter**

Amend the Explanation and Reasons of Chapter 17:

- Controlled activities: Are precluded from public notification and limited notification unless special circumstances exist in relation to the application.
- Restricted discretionary activities: There is a presumption of non-public notification and non-limited notification for all restricted discretionary activities, with some exceptions or where there are affected persons or where there are special circumstances. The presumption of non-public notification and non-limited notification for restricted discretionary activities allows public notification or limited notification in appropriate circumstances, for example where a restricted discretionary activity will have adverse effects on the environment which are more than minor.

Delete from the explanation and reasons:

~~District Plan users should note that for activities where public notification is precluded, there are circumstances under the Act where the resource consent application may still be publicly notified, for example the Council may publicly notify an application if it decides that special circumstances exist.~~

#### **Specific Comments**

The submitter requests a number of amendments to the Explanation and Reasons section of Chapter 17 in order to clarify this section and better reflect the provisions of the Act.

Further Submission:

### **DPP12-5-16-009 – Petone Planning Action Group - 2.3 – Opposition**

#### **Purpose of Further Submission:**

*To clarify their original submission regarding the position of the additional wording 'or where there are affected persons or where there are special circumstances' within the Explanation and Reasons of Chapter 17.*

### **Specific Comments**

The submitter requests that this wording be added at the end of the second sentence under restricted discretionary activities (not at the end of the first sentence as shown in the summary of submissions) as follows:

Amend the Explanation and Reasons:

- *Controlled activities: Are precluded from public notification and limited notification unless special circumstances exist in relation to the application.*
  
- *Restricted discretionary activities: There is a presumption of non-public notification and non-limited notification for all restricted discretionary activities, with some exceptions. The presumption of non-public notification and non-limited notification for restricted discretionary activities allows public notification or limited notification in appropriate circumstances, for example where a restricted discretionary activity will have adverse effects on the environment which are more than minor or where there are affected persons or where there are special circumstances.*

Delete from the explanation and reasons:

~~District Plan users should note that for activities where public notification is precluded, there are circumstances under the Act where the resource consent application may still be publicly notified, for example the Council may publicly notify an application if it decides that special circumstances exist.~~

### **Discussion**

The Petone Planning Action Group requests that the wording of the explanation and reasons for Chapter 17 be amended to clarify the explanation and to ensure alignment with the Act.

Provision for public notification in special circumstances is provided by section 95A (4) of the Act as follows:

#### ***S95A Public notification of consent application at consent authority's discretion***

- (1) *A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.*
- (2) *Despite subsection (1), a consent authority must publicly notify the application if—*
  - (a) *it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or*
  - (b) *the applicant requests public notification of the application; or*
  - (c) *a rule or national environmental standard requires public notification of the application.*
- (3) *Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—*
  - (a) *a rule or national environmental standard precludes public notification of the application; and*
  - (b) *subsection (2)(b) does not apply.*
- (4) *Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.*

Section 95A (4) means that a council may decide to publicly notify an application if it considers that special circumstances exist, even if the relevant plan or national environmental standard expressly provides that the application must not be publicly notified. Therefore, even though a District Plan rule precludes notification, the Council may still publicly notify an application if special circumstances exist. This does not need to be stated in the District Plan, although the Plan Change proposes to add an explanation regarding this matter in the explanation and reasons section.

Special circumstances have been defined as circumstances that are unusual or exceptional, but may be less than extraordinary or unique (*Peninsula Watchdog Group (Inc.) v Minister of Energy* [1996] 2 NZLR 529 (Court of Appeal)). Case law has also shown that special circumstances must be more than:

- where a council has had an indication that people want to make submissions.
- the fact that a large development is proposed.
- the fact that some persons have concerns about a proposal.

In practice there are few situations where special circumstances are used as a reason to publicly notify an application for resource consent. It would be particularly rare to use special circumstances to publicly notify a controlled activity.

It is considered unnecessary to add 'unless special circumstances exist in relation to the application' to the explanation of controlled activities and restricted discretionary activities as requested by the applicant. It is sufficient for the explanation and reasons to include a sentence which explains that there are circumstances when an application can be publicly notified, as proposed by amendment 15 of the Plan Change. This general sentence relates to both controlled activities and restricted discretionary activities and is more appropriate than the wording suggested by the submitter as it uses special circumstances as just one example of a situation where an activity, precluded from notification by a rule, could still be notified. Other examples are if the applicant requests notification or if the applicant does not agree to provide or respond to further information requests and/or the commissioning of reports (section 95A (2) (b) and section 95C). It wouldn't be appropriate for the explanation and reasons section to include all of the examples where notification could occur. The explanation and reasons are intended to be a simple explanation of the complex notification provisions of the Act.

However, it is considered appropriate to add another example to the explanation of restricted discretionary activities by including the words suggested by the submitter: 'where there are affected persons'. The approach taken by the notification procedure for restricted discretionary activities is a presumption of non-notification for all restricted discretionary activities, except those that have special non-notification clauses located within the relevant rule. This approach is explained in the proposed explanation and reasons section for Chapter 17. This section goes on to explain that the presumption of non-notification for restricted discretionary activities allows public notification or limited notification in appropriate circumstances and provides an example of where the activity will have more than minor adverse effects on the environment (which would result in public notification). Another example is where the Council has decided not to publicly notify an activity, it must then

decide whether there are any affected persons by the application under section 95B (which would result in limited notification). It is considered appropriate to add another example to the explanation of when restricted discretionary activities can be notified by including the wording 'where there are affected persons'. The provision of an additional example will further clarify the explanation of the notification procedures.

### **Recommendation**

It is recommended that the submission (2.3) lodged by Petone Planning Action Group be **accepted in part** and that Proposed Plan Change 16 be amended as follows:

It is recommended that the further submission lodged by Petone Planning Action Group be **accepted in part** and that Proposed Plan Change 16 be amended as follows:

Amend the Explanation and Reasons of Chapter 17:

- Controlled activities: Are precluded from public notification and limited notification.
- Restricted discretionary activities: There is a presumption of non-public notification and non-limited notification for all restricted discretionary activities, with some exceptions. The presumption of non-public notification and non-limited notification for restricted discretionary activities allows public notification or limited notification in appropriate circumstances, for example where a restricted discretionary activity will have adverse effects on the environment ~~which~~ that are more than minor or where there are affected persons.

District Plan users should note that for activities where public notification is precluded, there are circumstances under the Act where the resource consent application may still be publicly notified, for example the Council may publicly notify an application if it decides that special circumstances exist.

### **Reason**

The explanation and reasons section as proposed by the Plan Change is consistent with the Act and is considered to be sufficiently clear. It is unnecessary to amend the wording of the explanation and reasons section in relation to special circumstances as the proposed wording is more appropriate. However, it is considered necessary to add another example to the explanation of the notification procedures for restricted discretionary activities, being if there are affected persons, in order to provide additional clarity for District Plan users.

Submission:

**DPP12-5-16-002 – Petone Planning Action Group – 2.4**

### **Request of Submitter/Specific Comments**

The submitter supports the additions of "Cross section drawings of any earthworks showing cut and fill and any retaining structures" and "Any areas of the site which contain contaminated land" to Rule 17.1.2, information requirements for subdivision consent applications.

## Discussion

The submitter supports amendment 16 to Rule 17.1.2 (e) (ii), information requirements for subdivision consent applications. These amendments to the information requirements for resource consent applications were required in order to reflect the current resource consent processing procedures of the Council.

## Recommendation

It is recommended that the submission (2.4) lodged by Petone Planning Action Group be **accepted** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

## Reason

No change is requested by the submitter to amendment 16 of the Plan Change.

Submission:

**DPP12-5-16-002 – Petone Planning Action Group – 2.5**

## Request of Submitter

Amend 17.2.1 Controlled Activities:

Except where Council considers that special circumstances exist in relation to the application

- (a) Public notification of applications for resource consent for all controlled activities is precluded.
- (b) Limited notification of applications for resource consent for all controlled activities is precluded.

## Specific Comments

The submitter advises that the rule stating that public and limited notification for all controlled activities is precluded is not strictly true in terms of the Act, which still allows for notification in special circumstances.

## Discussion

The Act provides a specific exception to a rule precluding public notification where the Council decides that special circumstances exist in relation to an application (section 95A (4)). Accordingly, despite the fact that a rule may preclude public notification, Council may still notify the application in special circumstances. This exception for special circumstances doesn't need to be stated in the District Plan, but the Plan Change proposes to add a note about this matter in the explanation and reasons section of Chapter 17.

The way in which the submitter proposes that Rule 17.2.1 be amended would read that the exception for special circumstances would apply to both public notification and limited notification of resource consent applications for controlled activities. However, this is incorrect as the exception within section 95A (4) does not apply to rules which preclude limited notification of resource consent applications. Public notification and limited notification are separately defined in the Act and therefore the fact that limited notification

was not included in section 95A (4) shows an intention not to provide this exception for rules precluding limited notification. Section 95B deals with rules for giving limited notification of consent applications and this section does not contain an exception allowing limited notification if special circumstances exist.

However, if it is considered to be of assistance to District Plan users, a note could be added to Rule 17.2.1 (a) in order to provide additional clarity on the exception for public notification of controlled activities if special circumstances exist. Although this exception is described in the explanation and reasons, it could be overlooked by some District Plan users.

### **Recommendation**

It is recommended that the submission (2.5) lodged by Petone Planning Action Group be **accepted in part** and that Proposed Plan Change 16 be amended as follows:

Amend 17.2.1 Controlled Activities

- (a) Public notification of applications for resource consent for all controlled activities is precluded.

Note: Despite Rule 17.2.1 (a), section 95A (4) of the Resource Management Act 1991 provides that the Council may still publicly notify an application if special circumstances exist.

- (b) Limited notification of applications for resource consent for all controlled activities is precluded.

### **Reason**

It is considered that the addition of a note to Rule 17.2.1 (a) would be appropriate in order to provide additional clarification on the exception for public notification of controlled activities in special circumstances.

Submission:

**DPP12-5-16-002 – Petone Planning Action Group – 2.6**

### **Request of Submitter**

Amend 17.2.2 Restricted Discretionary Activities:

Or the Plan provides otherwise

- (a) Public notification of applications for resource consent for all restricted discretionary activities need not be required.
- (b) Limited notification of applications for resource consent for all restricted discretionary activities need not be required

Amend 17.2.3 Discretionary and Non-complying Activities

Or the Plan provides otherwise

The notification provisions of the Act or any subsequent amendments shall apply to notification decisions on applications for resource consent for all discretionary and non-complying activities.

### **Specific Comments**

The submitter agrees with the wording 'need not be required' as this provides for officer discretion for public and limited notification of resource consents for restricted discretionary activities. However, they submit that the words 'Or the Plan provides otherwise' needs to be added under the heading of 17.2.2 Restricted Discretionary Activities, before (a) and (b) and 17.2.3 Discretionary and Non-complying Activities.

*Further Submission:*

**DPP12-5-16-008 – East Harbour Environmental Association Inc – Opposition to submission 2.6**

### **Purpose of Further Submission:**

*To oppose the wording requested by the Petone Planning Action Group for Rule 17.2.2.*

### **Specific Comments**

*The further submitter would prefer the words requested by the Petone Planning Action Group 'Or the Plan provides otherwise' to be replaced by 'Except where the Plan provides otherwise' in Rule 17.2.2.*

*Amend 17.2.2 Restricted Discretionary Activities*

~~Or~~ Except where the Plan provides otherwise

- (a) Public notification of applications for resource consent for all restricted discretionary activities need not be required.*
- (b) Limited notification of applications for resource consent for all restricted discretionary activities need not be required*

*Further Submission:*

**DPP12-5-16-009 – Petone Planning Action Group – Opposition to submission 2.6**

### **Purpose of Further Submission:**

*To amend the request in their original submission regarding the amendments to Rule 17.2.2 and 17.2.3.*

### **Specific Comments**

*The further submission advises that the use of 'Or' in Rules 17.2.2 and 17.2.3 is a mistake and the wording should read 'Except where the Plan provides otherwise' before points (a) and (b) in Rule 17.2.2 and in front of the sentence in Rule 17.2.3 as follows:*

*Amend 17.2.2 Restricted Discretionary Activities*

~~Or~~ Except where the Plan provides otherwise

- (a) Public notification of applications for resource consent for all restricted discretionary activities need not be required.*
- (b) Limited notification of applications for resource consent for all restricted discretionary activities need not be required.*

### *Amend 17.2.3 Discretionary and Non-complying Activities*

#### ~~Of~~ Except where the Plan provides otherwise

*The notification provisions of the Act or any subsequent amendments shall apply to notification decisions on applications for resource consent for all discretionary and non-complying activities.*

### **Discussion**

The submitter and further submitters would like the wording 'Except where the Plan provides otherwise' to be added to Rules 17.2.2 and 17.2.3, notification procedures.

Amendment 17 of the Plan Change amends the introductory sentence for 17.2 Notification Procedures as follows: 'Except if otherwise stated in the District Plan, the requirements for notification of an application for resource consent are – '. The purpose of this sentence is to explain that the general notification rules apply except where there is a special notification clause stated in another part of the District Plan. This explanation is most appropriately located in the introduction to the rules.

The only types of activities which are proposed by the Plan Change to have exceptions to the general notification rules are restricted discretionary activities. However, if future plan changes add notification clauses to other activities, for example a clause requiring a discretionary activity to be notified, the notification procedures in 17.2 will not require amending because there is already a general statement explaining exceptions to the general rules. The layout of 17.2 in the Plan Change proposes a more flexible structure than that sought by submissions as it will allow for the addition of notification clauses (exception provisions) affecting other activity categories which may be proposed in future plan changes.

Amendment 17 is also consistent with the structure of the existing notification provisions in Chapter 17, which provides a brief introduction to the notification provisions by stating that the requirements for notification for resource consent applications apply to all activity areas in the District Plan. This introductory statement to the notification provisions needed to be amended as a consequence of the addition of exceptions to the general notification rules added by the Plan Change. Keeping the existing format of the provisions is appropriate as it will be familiar to District Plan users.

Overall, it is considered unnecessary to amend Rule 17.2.2 or 17.2.3 as suggested by the submission and further submissions as the Plan Change already adequately explains that the general notification rules apply unless there is an exception stated elsewhere in the District Plan.

### **Recommendation**

It is recommended that the submission (2.6) lodged by Petone Planning Action Group be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.



It is recommended that the further submission lodged by East Harbour Environmental Association Inc be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

It is recommended that the further submission lodged by Petone Planning Action Group be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

### Reason

It unnecessary to amend Rules 17.2.2 or 17.2.3 as suggested by the submission and further submissions as the Plan Change uses a flexible structure that adequately explains that the general notification rules apply unless there is an exception stated elsewhere in the District Plan.

Submission:

### **DPP12-5-16-002 – Petone Planning Action Group – 2.7**

#### Request of Submitter

Amend Appendix Notification Procedures 1:

5. ~~Are the potential adverse environmental~~ Will the adverse effects of the activity on the environment be more than minor or are they likely to be more than minor? ~~considered to be minor?~~

6. Are there any affected persons or affected order holders who will be ~~are~~ adversely affected by the activity in a way that is minor or more than minor? ~~proposal?~~

Explanation of terms:

Limited Notified: Only those persons who ~~are adversely affected by the resource consent application~~ are notified of the application by the Council ~~and~~ can make a submission.

#### Specific Comments

The submitter requests some wording changes to points 5 and 6 of Appendix Notification Procedures 1 to better reflect the Resource Management Act and requests amendments to the explanation of the term 'limited-notified' to simplify the explanation.

#### Discussion

Amendment 20 introduces Appendix Notification Procedures 1 to Chapter 17, which contains a summary of the matters Council considers when making notification decisions and a simplified explanation of the types of notification. The purpose of adding the new appendix to Chapter 17 is to provide guidance to District Plan users on the matters that the Council is required to consider when notification decisions are made. The types of notification are also explained to assist with the use of Chapter 17.

The review of Chapter 17, Notification Procedures, identified that the District Plan should provide general guidance to District Plan users about notification decisions for resource consent applications. The recommended approach to the notification procedures, being

amending the provisions of Chapter 17 and providing exception provisions on a per-chapter basis, also included the provision of specific guidance on the notification procedures and the addition of an explanation of the process to support the use of the notification provisions (see Issue 1: Option 4 and Issue 2: Option 4, summarised on pages 50 – 51 of the Section 32 Evaluation).

The submitter requests amendments to the wording of questions 5 and 6 Appendix Notification Procedures 1. These questions could be written more clearly for the purposes of providing guidance about the matters considered when making a notification decision. The following amendments to questions 5 and 6 are appropriate as they better reflect the wording used in the Act:

*5. Will the activity have, or is the activity likely to have, adverse effects on the environment that are more than minor?*

*6. Are there any affected persons or affected order holders in relation to the activity?*

With regards to the recommended wording of question 6 above, it is considered that it is unnecessary to include the wording ‘who will be adversely effected by the activity in a way that is minor or more than minor’. The Act states that ‘*a consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor)*’(s95E (1)). The full text of section 95E is provided below:

***S95E Consent authority decides if person is affected person***

- (1) A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) The consent authority, in making its decision,—*
  - (a) may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and*
  - (b) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and*
  - (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) Despite anything else in this section, the consent authority must decide that a person is not an affected person if—*
  - (a) the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or*
  - (b) it is unreasonable in the circumstances to seek the person's written approval.*

The list of matters within Appendix Notification Procedures 1 is a simplified version of the notification provisions in the Act for use as a guide to the process of notification decisions.

For example, in order to determine whether a person is an affected person the matters in section 95E (2) and (3) need to be considered, such as whether an adverse effect on a person is able to be taken into account (S95E (2) (b)) or if written approval has been provided (S95E (3) (a)). As such it could be confusing or misleading to only include reference to affected persons who will be adversely affected by the activity in a way that is minor or more than minor' (because, for example, the person may be affected by an activity in a way that is minor but because they have provided written approval they are not 'affected persons'). The recommended wording of question 6 above is legally correct and consistent with the simplicity of the other questions listed in Appendix Notification Procedures 1.

As a consequential amendment to the revision of questions 5 and 6 it is appropriate to amend the introduction to Appendix Notification Procedures 1 and the explanation and reasons for Chapter 17 to clarify that the list provided in Appendix Notification Procedures 1 is only a summary of the matters Council considers when making a notification decision, rather than a comprehensive list.

The submitter also requests an amendment to the explanation of the term limited notified. This term is explained in the explanation of terms in Appendix Notification Procedures 1 of the Plan Change as *'Only those persons who are adversely affected by the resource consent application are notified of the application by the Council and can make a submission'*. The submitter requests that this be amended to *'Only those persons who are notified of the application by the Council can make a submission'* in order to simplify the explanation.

As a result of the 2009 amendments to the Act a person who has provided written approval to an application (and not withdrawn approval) does not need to be included in serving notice for limited notification because if a person has given written approval they are no longer an affected person pursuant to section 95E (3). Whereas prior to the 2009 amendments to the Act the Council was required to serve notice on all persons identified as affected regardless of whether they had already given written approval.

The proposed wording for the explanations is consistent with the Act. However, it is considered that the wording of the explanations could be clarified. It is recommended that the wording requested by the submitter is generally accepted with minor amendments to better reflect the language of the Act.

### **Recommendation**

It is recommended that the submission (2.7) lodged by Petone Planning Action Group be **accepted in part** and that Proposed Plan Change 16 be amended as follows:

### **Explanation and Reasons**

The process the Council follows in order to make a notification decision are:

- The notification procedure which applies to the activity is determined by using the notification rules in the District Plan.
- The Council then uses the notification provisions of the Act to make the notification decision. Appendix Notification Procedures 1 has been provided within Chapter 17 in order to ~~clarify~~

summarise the matters the Council is required to consider when making a notification decision on an application for resource consent.

### **Appendix Notification Procedures 1**

The notification provisions are set out in the Resource Management Act 1991 (the Act). The provisions of the Act which require the Council to consider a number of matters when making a notification decision on an application for resource consent are summarised below:

- 1. Does the Council have sufficient information to consider the application?**
- 2. Has public notification been requested by the applicant?**
- 3. Does a rule or National Environmental Standard require public notification of the application or preclude public or limited notification of the application?**
- 4. Are there any special circumstances which warrant the application being publicly notified?**
- ~~**5. Are the potential adverse environmental effects of the activity on the environment considered to be minor?**~~
- 5. Will the activity have, or is the activity likely to have, adverse effects on the environment that are more than minor?**
- ~~**6. Are there any affected persons or affected order holders who are adversely affected by the proposal?**~~
- 6. Are there any affected persons or affected order holders in relation to the activity?**

#### **Explanation of terms:**

**Public notification:** means giving public notice of the application in the prescribed form. Any person may make a submission on the resource consent application. The Council will place a public notice in the newspaper and may erect a sign on the application site and send a notice to property owners in the vicinity of the application site.

**Limited notification:** means serving notice of the application on any affected person or affected order holder. Only those affected persons who ~~are adversely affected by the resource consent application~~ are notified of the resource consent application by the Council ~~and~~ can make a submission.

**Non-notified:** The resource consent application is not notified and therefore there is no submission process.

#### **Reason**

Revising the wording of questions 5 and 6 of Appendix Notification Procedures 1 is appropriate as it will provide clearer guidance on the matters considered when making a notification decision and better reflect the wording used in the Act. As a consequential amendment to the revision of questions 5 and 6 it is appropriate to amend the introduction to Appendix Notification Procedures 1 and the explanation and reasons for Chapter 17 to clarify that the list provided in Appendix Notification Procedures 1 is a summary of the

matters Council considers when making a notification decision, rather than a comprehensive list.

The revised wording for the explanation of the notification terms is consistent with the Act and has been clarified in order to assist District Plan users.

Submission:

**DPP12-5-16-003 – Simon Byrne- 3.1**

**Request of Submitter**

Remove the words 'to the above permitted activities' in Rule 4C2.1 (d):

4C2.1 Permitted Activities

- (a) Residential Activities
- (b) Home occupations
- (c) Childcare and Kohanga Reo facilities
- (d) Accessory Buildings ~~to the above permitted activities~~

**Specific Comments**

The submitter advises that the words 'to the above permitted activities' are superfluous, potentially confusing and could be interpreted as changing the way accessory buildings are defined for this activity area. The submitter notes that accessory buildings are fully defined in section 3 of the plan as 'incidental' to any other buildings on the site.

**Discussion**

Accessory buildings were not added to the list of permitted activities in the Historic Residential Activity Area as they were included as permitted activities by the term 'residential activities', which is listed in Rule 4C 2.1. The decisions report on the residential permitted activity conditions of the Proposed District Plan, dated November 1998, states that *"Accessory buildings are permitted activities in all residential activity areas provided that the Permitted Activity Conditions are met. Under the Historic Residential Activity Area accessory buildings are Permitted Activities as they are included in the definition of residential activities"*.

However, interpretation issues have arisen with Rule 4C 2.1 as it is not sufficiently clear that accessory buildings are permitted in the Historic Residential Activity Area. Amendment 1 of the Plan Change proposes to add 'accessory buildings to the above permitted activities' to Rule 4C 2.1. Amendment 1 is a minor, miscellaneous amendment required in order to clarify that accessory buildings are a permitted activity in the Historic Residential Activity Area.

The submitter has not objected to the addition of accessory buildings to the list of permitted activities in the Historic Residential Activity Area. The submitter has requested that the words 'to the above permitted activities' be deleted from proposed Rule 4C 2.1 (d).

The definition of accessory building in Chapter 3 of the District Plan is *'a building not being part of the principal building on the site, the use of which is incidental to that of any other building or building on the site. In the case of a site on which no building is erected, it is a building accessory to the use of the principal building permitted on the site. This includes a tool shed, playroom, recreation room, glasshouse, swimming pool and spa pool, but excludes self-contained residential accommodation and in rural activity areas will include buildings accessory to rural land uses'*. This means that an accessory building must be incidental to another building on the site. If there is no building on the site, an accessory building would be accessory to the use of the principal building permitted on the site.

The words *'to the above permitted activities'* are necessary as they clarify that only those accessory buildings to the listed activities are permitted. If the list of permitted activity conditions simply included *'accessory buildings'* (in addition to the other permitted activities), no issues would result for sites which contain no buildings. This is because the definition of accessory building ensures that an accessory building on the site must be accessory to the use of the principal building permitted on the site. For example a residential garage is permitted to be erected on a vacant site within the General Residential Activity Area because a residential garage is accessory to a dwelling, which would be the principal building permitted on the site.

However, if the phrase *'accessory buildings to the above permitted activities'* was not used this could result in the permitted construction of accessory buildings that are not associated with a permitted activity on those sites which contain buildings and activities approved by resource consent. For example, if a hotel was established on a residential site, and the hotel required a new accessory building for storing equipment associated with the hotel operation, this accessory building may be interpreted as a permitted activity if accessory buildings were listed as permitted activities in that activity area. This situation could have adverse effects on residential amenity values as an accessory building for a commercial activity such as a hotel may increase the adverse effects of the hotel activity. As such, the District Plan uses the phrase *'to the above permitted activities'* to control accessory buildings in residential activity areas and maintain residential amenity values.

In addition, the proposed wording of Rule 4C 2.1 (d) is consistent with the wording used for similar provisions within all of the other residential chapters in the District Plan. This provision in the other residential activity areas has not resulted in interpretation issues to date.

The proposed amendment won't change the rules in relation to accessory buildings in this activity area or the way accessory buildings are defined. It is considered that the words *'to the above permitted activities'* serve to clarify Rule 4C 2.1 (d), rather than make it more confusing as suggested by the submitter.

### **Recommendation**

It is recommended that the submission (3.1) lodged by Simon Byrne be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

## **Reason**

The addition of Rule 4C 2.1 (d) is necessary to clarify that accessory buildings to permitted activities in the Historic Residential Activity Area are permitted. This amendment is consistent with the provisions for the other residential activity areas. The words 'to the above permitted activities' are necessary as they clarify that only accessory buildings to the listed permitted activities are permitted.

Submission:

**DPP12-5-16-003 – Simon Byrne – 3.2**

## **Request of Submitter**

Amend Rule 4C 2.1.1 (a) (ii) to indicate that it only applies to sites smaller than 300m<sup>2</sup>.

## **Specific Comments**

The submitter advises that Rule 4C 2.1.1 (a) (ii) states only one 'residential activity' is allowed on sites pre 1995 no matter how large a site is. The submitter proposes that the Council does not believe that this is the intent of this rule and effectively ignores it when a site is much larger than the required minimum. The submitter states that if Council advises that this rule should not be interpreted this way (for pre-1995 large sites) then the Environment Court decision Byrne versus Hutt City Council (W060/09) should be examined. The submitter advises that in this decision the Environment Court found just one dwelling was permitted on the (4ha) site whereas the Council stated in its submissions 2 dwellings were permitted (2 hectares per dwelling), consequently no consent was granted for the breach of the net site area per dwelling rule.

The submitter goes on to state that if the Council does not apply the rule properly to pre 1995 sites larger than the minimum, there will be multiple pre-1995 sites in Lower Hutt (like 395 Moores Valley Rd) that contain multiple dwellings without the required consent for having insufficient net site area for each dwelling. The submitter concludes that Plan Change 16 should not perpetuate this 'pre-1995' error.

## **Discussion**

Rule 4C 2.1.1 (a) (ii) is a permitted activity condition relating to the minimum net site area per permitted activity within the Historic Residential Activity Area. No amendment is proposed to Rule 4C 2.1.1 (a) (ii) by the Plan Change. The Plan Change includes a minor amendment to Rule 4C 2.1 in order to include accessory buildings in the listed permitted activities. The whole of Rule 4C 2.1.1, being the permitted activity conditions, was copied into the Plan Change document in order to provide context for the amendment to Rule 4C 2.1. It is considered that the submission is not within the scope of the Plan Change as the submission is to a rule which is not proposed to be amended by the Plan Change, does not relate to an issue addressed in the Plan Change and the relief sought would not be a minor, miscellaneous amendment.

Although no relief can be provided by the Plan Change to this submission, it is considered appropriate to provide some discussion on this matter for the benefit of the submitter and the Committee as any interpretation issues with these rules could be a matter to consider in a future plan change.

Most of the activity areas provided for by the District Plan have a minimum net site area rule. The net site area rules for the residential activity areas and the Rural Residential Activity Area set out a minimum net site area per dwelling or per permitted activity and then provide a clause (referred to hereon as 'the pre-1995 clause') which states that *'where a Certificate of Title has been issued for a site prior to 5 December 1995, and it can be established that the site has been created with an intention to accommodate a dwelling, then in such circumstances the area of the site shall be the minimum net site area'* or similar wording.

The submitter believes that the correct interpretation of Rule 4C 2.1.1 (a) (ii), and other similar net site area rules with the pre-1995 clause, is that only one residential activity is allowed on pre-1995 sites no matter how large the site is. The submitter is concerned that the Council's interpretation of this rule is incorrect and that the Council ignores the pre-1995 clause when a pre-1995 site is much larger than the minimum net site area.

The submission refers to the Environment Court decision, AP and SP Byrne versus Hutt City Council (W060/09), which involved a site at 395 Moores Valley Road in a Rural Residential Activity Area. The site at 395 Moores Valley Road is just over 4 hectares, was established prior to 1995, and the owners were allowed to construct two dwellings on the site by the Council in 2002. The background to this case is that the Council investigated a complaint that buildings at 395 Moores Valley Road did not comply with several District Plan rules, such as the net site area rule. The Council found that the accessory buildings and other structures at the site at 395 Moores Valley Road required resource consent for infringements to the maximum site coverage and yard setback rules, but that they did not infringe the net site area rule. The resource consent application was limited notified and the only submitter was the adjoining property owner, Mr Byrne. On 22 January 2009 the Hutt City Council granted the application for resource consent for accessory buildings and other structures. Mr Byrne appealed the decision but the Environment Court declined the appeal and the resource consent decision of the Council was confirmed on 07 August 2009.

In order to illustrate that the Council's interpretation of the net site area rule is incorrect, the submitter refers to a statement within the Environment Court decision that only one dwelling was permitted on the 4 hectare site. The submitter believes that, as a consequence, no consent was granted for the breach of the net site area per dwelling rule. However, the submitter's interpretation of this part of the decision is incorrect because the resource consent under appeal was not for the second dwelling on the site; as such the net site area rule was not a matter before the court.

It appears that the submitter is referring to a sentence within the Environment Court decision which describes what is presently permitted on the site *"...one house and*



*associated ancillary structures, provided they comply with the site coverage maximum of 450m<sup>2</sup>, yard and setback requirements and height restrictions*". This sentence of the decision must be read within the context of the discussion on permitted baseline. It is considered that the decision was simply making a statement of what was permitted on the site, one house and associated ancillary structures (which could include the existing granny flat) provided they comply with the permitted activity conditions. However, in this case, the site didn't comply with the permitted activity conditions because some of the ancillary structures didn't comply with the maximum site coverage and yard setback requirements. The decision did not go into further analysis of what was permitted on the site and decided to put the concept of permitted baseline aside. The decision didn't consider the interpretation of the net site area rule as the resource consent before the Environment Court was not for an infringement of the net site area rule (this is because the second dwelling on the site, a granny flat, was accepted by the Council as legally established and no resource consent was required for it). As such, it is considered that the Environment Court decision referred to by the submitter does not provide any guidance on the interpretation of the net site area rules, such as Rule 4C 2.1.1 (a) (ii).

A discussion of the interpretation of the net site area rule is provided below. It is noted that to date, guidance on the interpretation of the Council's net site area rules has not been provided by Environment Court decisions nor has guidance been sought from legal counsel on this specific matter.

In terms of the history of this rule in the District Plan; the pre-1995 clause was not provided within the Proposed District Plan, 5 December 1995, for the residential or rural residential activity areas. The clause was added as a result of submissions to the District Plan which sought an amendment to exempt existing vacant sections with Certificate of Title from the minimum net site area per dwelling. The decisions to the District Plan state that *'it is considered appropriate that a Permitted Activity Condition be added for all residential activity areas to provide for sites where some form of subdivision had been completed but a dwelling not built'*. No changes have been proposed to this clause of the net site area rules since the District Plan became operative.

Records show that the Council's interpretation of this clause of the net site area rule has been consistent. Council's advice has been that this clause addresses those instances where a subdivision has been approved prior to 5 December 1995 with an area of less than the required minimum site size. The rule seeks to ensure that sites created before 5 December 1995 that do not meet the minimum net site area requirement can be used for permitted activities. Essentially, the Council applies this part of the net site area rule to sites that are less than the minimum net site area, to allow them to be used for permitted activities. Where sites created before 5 December 1995 are larger than the minimum net site area the Council applies the minimum net site area for the activity area, rather than requiring that the area of the site is the minimum net site area.

Where sites created prior to 5 December 1995 are larger than the minimum net site area the Council has taken a practical approach that, as a net site area has been established as appropriate for an activity area, it would not make sense for a site created before 1995 to be

required to have a higher standard. The established interpretation and application is that the rule provides for multiple dwellings per title, provided that the minimum net area is available for each one and all other permitted activity conditions are complied with.

Council officers are not aware of other instances where the interpretation of the net site area rules has been an issue and have not analysed these provisions and their interpretation in detail. However, it may be appropriate to include a review of the net site area rules in a future plan change in order to ensure that the wording is clear and achieves the objectives and policies of the District Plan.

### **Recommendation**

It is recommended that the submission (3.2) lodged by Simon Byrne be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

### **Reason**

No relief can be provided to the submission as it is not within the scope of the Plan Change. Rule 4C 2.1.1 (a) (ii) is not proposed to be amended by the Plan Change, the submission does not relate to an issue addressed in the Plan Change and the relief sought would not be a minor, miscellaneous amendment to the District Plan.

Submission:

**DPP12-5-16-00 3 – Simon Byrne- 3.3**

### **Request of Submitter**

With regards to amendment 15, Explanation and Reasons for Chapter 17, the submitter requests that Council either:

1. Not make the proposed changes in relation to notification of restricted discretionary activities (reject the proposed changes as a whole).
2. Clarify when notification is not required for restricted discretionary activities including removing the proposed example of *'when an activity will have adverse effects on the environment which are more than minor'*.

### **Specific Comments**

The submitter considers that the proposed restricted discretionary notification process has been made very confusing, even more so than it currently is. Whilst it is proposed that there is a 'presumption' of non-notification for restricted discretionary activities there is also a statement it will be required where an 'activity will have adverse effects on the environment which are more than minor'. This appears to be the same 'test' for notification as for a discretionary activity and would negate any 'presumption' of non-notification. The submitter goes on to advise that earthworks are identified in the Plan Change as an activity often needing a restricted discretionary consent. The submitter explains that earthworks over the permitted limits will nearly always cause temporary adverse effects of noise, dust and run-off so under the new rules earthworks will require notification whereas previously they did not. The submitter does not believe that was the intent of the Plan Change.

*Further Submission:*

**DPP12-5-16-009 – Petone Planning Action Group – Opposition to submission 3.3**

***Purpose of Further Submission:***

*To oppose submission 3.3 of Simon Byrne regarding amendment 15, Explanation and Reasons for Chapter 17.*

***Specific Comments***

*The Petone Planning Action Group advises that they prefer the wording suggested in their submission (2.3) for the explanation and reasons within Chapter 17.*

**Discussion**

The submitter believes that the Plan Change has made the notification provisions more confusing. The submitter requests that the changes in relation to notification of restricted discretionary activities be rejected or that clarification be provided on when notification is not required for restricted discretionary activities, including removing the proposed example of ‘*when an activity will have adverse effects on the environment which are more than minor*’ within the explanation and reasons section of Chapter 17.

The approach taken by the Plan Change to the notification procedure for restricted discretionary activities is generally the same as the approach currently used in Chapter 17 of the operative District Plan. The notification procedure for restricted discretionary activities within Rule 17.2.2 of the Operative District Plan and the amended Rule 17.2.2 of the Plan Change both mean that most restricted discretionary activities can be either publicly notified or limited notified at the Council’s discretion. Therefore, rejecting the proposed amendments to the notification procedure for restricted discretionary activities as requested by the submitter would be ineffectual.

It is considered that the explanation and reasons for Chapter 17 proposed in the Plan Change are sufficiently clear with regards to the notification procedure for restricted discretionary activities (subject to the amendments recommended in response to submission 2.3). A notification decision is a complex decision undertaken by the Council and involves the consideration of a number of matters, as summarised in Appendix Notification Procedures 1 of the Plan Change. It is not appropriate or practical to include within the District Plan an explanation of when notification is not required for restricted discretionary activities because there will be different reasons for non-notification or notification for each resource consent application. An example is that a restricted discretionary activity would be non-notified if the adverse effects of the activity on the environment were minor and there were no affected persons.

The approach taken for restricted discretionary activities within the general notification procedures in Chapter 17 was to keep the presumption of non-notification but leave discretion to Council officers to overturn that presumption in appropriate cases. As such, the words ‘need not be required’ are used in proposed Rule 17.2.2 (a) and (b) as follows:

- (a) Public notification of applications for resource consent for all restricted discretionary activities need not be required.*
- (b) Limited notification of applications for resource consent for all restricted discretionary activities need not be required.*

The Plan Change uses the phrase ‘presumption of non-notification’, which means that a presumption is provided against full notification and limited notification. However, as it’s only a presumption (rather than the much more directive ‘preclusion’ of notification) full or limited notification is kept open as a possibility in appropriate circumstances. This presumption of non-notification is achieved by using the words ‘need not be required’ in Rule 17.2.2. The practical effect of this approach is that the Council officer needs to specifically consider whether full or limited notification is appropriate for each restricted discretionary activity resource consent application, even though the presumption will be non-notification.

Amendment 15 introduces an explanation and reasons section to Chapter 17 which explains the approach taken by the notification procedures within the District Plan for each activity status. The submitter is concerned that the explanation for restricted discretionary activities is confusing. The explanation and reasons for restricted discretionary activities in the Plan Change states that there is a presumption of non-public and non-limited notification for all restricted discretionary activities, apart from the exceptions listed separately in the District Plan. Then goes on to explain that this presumption allows for notification in appropriate circumstances and uses the example of where a restricted discretionary activity will have adverse effects on the environment which are more than minor.

The explanation for the notification procedures for restricted discretionary activities is correct and consistent with the Act. As discussed above the notification procedures allow restricted discretionary activities to be non-notified but they can be notified if necessary. Pursuant to the Act, a restricted discretionary activity would have to be publicly notified if the effects on the environment of the activity were more than minor. Section 95A (2) (a) of the Act states that a Local Authority must publicly notify the application if there is no rule that precludes notification and it decides that the activity will have or is likely to have adverse effects on the environment that are more than minor.

The submitter refers to earthworks activities and is concerned that, as earthworks usually have adverse effects on the environment, restricted discretionary applications for earthworks will require notification whereas previously they did not. As discussed above, the Plan Change does not propose to change the notification procedure for most types of restricted discretionary activities – the presumption of non-notification is carried on from the Operative District Plan. As such, most restricted discretionary activities, including earthworks, will continue to have a presumption of non-notification but will be notified if necessary. The Section 32 Evaluation uses earthworks exceeding 50m<sup>3</sup> in volume per site as an example of a restricted discretionary activity which the Council often receives resource consent applications for. According to Council’s records, restricted discretionary applications for earthworks are often processed on a non-notified basis. A notification decision is made

for each earthworks application and they are often non-notified if the environmental effects are considered to be minor and there are no affected persons for reasons such as the temporary nature of the effects, the small scale of the earthworks and the mitigation measures proposed. The Plan Change does not change the notification procedure for most types of restricted discretionary activities, including earthworks.

It is considered that the explanation and reasons section of Chapter 17 is sufficiently clear and does not require amendments (except as recommended in response to submission 2.3).

### **Recommendation**

It is recommended that the submission (3.3) lodged by Simon Byrne be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

It is recommended that the further submission lodged by Petone Planning Action Group be **accepted in part** to the extent that the Proposed Plan Change 16 be amended as recommended in submission 2.3.

### **Reason**

It is considered that the explanation and reasons section of Chapter 17 is sufficiently clear and does not require amendments (except as recommended in response to submission 2.3).

Submission:

**DPP12-5-16-004 – Petone Residents Association- 4.1**

### **Request of Submitter**

The submitter supports the submission of the Petone Planning Action Group on specific provisions of the Plan Change and supports their comments to the specific clauses therein identified.

### **Specific Comments**

The submitter states that it is attractive for all residents to support the statement that ‘no significant changes are proposed to how the existing notification rules work; and that the main changes to notification procedures are to the wording etc to make them easier to understand and use’.

The submitter comments that the Residents Association should support and celebrate any minor changes by the Council to review notification procedures so as to ensure they are more effective and easy to use.

### **Discussion**

The submitter supports the submissions of the Petone Planning Action Group which have been discussed above and are not repeated here. In general, the submitter supports minor amendments to the notification procedures of the District Plan in order to make them easier to understand and use, which was the purpose of the Plan Change.

## **Recommendation**

It is recommended that the submission lodged by the Petone Residents Association be **accepted in part**.

Those parts of the submission that are recommended to be accepted relate to the recommendations to accept or accept in part submissions 2.3, 2.4, 2.5 and 2.7 of the Petone Planning Action Group.

## **Reason**

The submitter supports the submissions of the Petone Planning Action Group, some of which have been recommended to accept or accept in part, as discussed above.

Submission:

**DPP12-5-16-005 – Petone Beach Trust Incorporated- 5.1**

## **Request of Submitter**

That Plan Change 16 acknowledges the consent order of the Petone Beach Trust Incorporated concerning child care centres.

## **Specific Comments**

The Petone Beach Trust Incorporated has obtained a consent order in the Environment Court which means that the presumption of non-notification in Rule 17.2.2 does not apply to 4A 2.3.1 (j) in Plan Change 12. The submitter advises that they do not want that consent order affected by Plan Change 16.

## **Discussion**

Proposed Plan Change 12, Amendments to Residential Provisions, was publicly notified on 21 February 2009. One of the amendments proposed by Plan Change 12 was to add 'childcare facilities for more than 5 children and up to a maximum of 30 children' as a restricted discretionary activity within the General Residential Activity Area. Previously, childcare facilities exceeding a maximum of five children (permitted activity condition 4A 2.1.1 (h)) were assessed as discretionary activities.

Submissions to Plan Change 12 requested that the number of children provided as a restricted discretionary activity be reduced or that childcare centres for more than 5 children remain discretionary. In relation to the number of children in a childcare facility, the decision report on Plan Change 12, November 2009, stated that *"the Committee was mindful that the District Plan needs to be careful that it doesn't provide for activities that are fundamentally not viable. The Early Childhood Education department of the Ministry of Education reports that 30 children is the minimum for a viable facility and licenses are granted for up to 50. The Committee therefore considered that 30 children is an appropriate maximum (as a restricted discretionary activity)"*. Therefore the amendment making childcare facilities for more than 5

children and up to a maximum of 30 children a restricted discretionary activity was unchanged by the decisions to Plan Change 12.

Petone Beach Trust Incorporated appealed this part of the decision and stated that provision for up to 30 children as a restricted discretionary activity, which will not be served on neighbours or publicly notified, is too high and will have adverse effects such as noise and traffic. The appeal was resolved by a consent order issued on 17<sup>th</sup> December 2010 which allowed the appeal to the extent that the presumption of non-notification in Rule 17.2.2 of the District Plan does not apply to Rule 4A 2.3.1 (j) of Plan Change 12. This means that the notification provisions of the Act will apply to notification decisions for applications for resource consent for childcare facilities for more than 5 children and up to a maximum of 30 children.

Rule 4A 2.3.1 (j) of Plan Change 12, as amended by the consent order, is now treated as operative. The consent order will not be affected by Plan Change 16 as the provisions within Chapter 17.2 already acknowledge that the general notification rules only apply where there are no exceptions to them within other rules of the District Plan. This is stated in the introduction to 17.2 Notification Procedures *'Except if otherwise stated in the District Plan, the requirements for notification of an application for resource consent are –'*. As a result of the consent order discussed above, Rule 4A 2.3.1 (j) now has an exception to the general notification rules in 17.2.2 which states *'the presumption of non-notification in Rule 17.2.2 does not apply to this Rule'*.

No changes are required to Plan Change 16 as a result of this submission.

### **Recommendation**

It is recommended that the submission lodged by Petone Beach Trust Incorporated be **accepted** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

### **Reason**

The consent order will not be affected by Plan Change 16 as the provisions within Chapter 17.2 already acknowledge that the general notification rules only apply where there are no exceptions to them within other rules of the District Plan. As a result of the consent order discussed above, Rule 4A 2.3.1 (j) now has an exception to the general notification rules in 17.2.2 which states *'the presumption of non-notification in Rule 17.2.2 does not apply to this Rule'*.

Submission:

**DPP12-5-16-006 –Angus Gibb- 6.1**

### **Request of Submitter**

The submitter requests to be kept fully informed about future plans for the adjoining property and requests that any future use of the site be publicly notified even if the land owner wishes to keep the site as residential.

## Specific Comments

The submitter is generally in favour of having as much public notification as possible and advises that the Council should be obliged to notify all concerned even if the application does not have to be publicly notified. The submitter believes that this is the only way that the resource consent process and applications can be fairly administered for all parties concerned.

The submitter makes a special point regarding adverse effects resulting from an adjoining vacant property. The submitter was not notified that the house on the adjoining property would be demolished and advises that as the effects were major, the activity should have been publicly notified or notified to the adjoining property. The submitter believes that there should be more regulations about this, such as a time limit for vacant sections.

*Further Submission:*

### **DPP12-5-16-010 – Angus Gibb – Support of submission 6.1**

#### ***Purpose of Further Submission and Specific Comments***

*The submitter provides comments in support of his original submission. The submitter requests a response as to what the Council intends to do about the illegal public park at 18 Tirangi Road, Moera. The submitter provides an example of an industrial activity which had adverse effects on adjoining properties and should have been publicly notified.*

#### **Discussion**

The submitter supports public notification and asks that any future activities at the adjoining property be notified. Plan Change 16 will not reduce the amount of notified resource consent applications as the notification procedures are essentially unchanged from the current District Plan.

Notification decisions are made by the Council to determine whether a resource consent application should be publicly notified, notified only to affected parties or not notified at all. The notification procedures in Chapter 17 do not affect permitted activities (those activities which do not require resource consent).

The submitter requests to be kept fully informed in writing from council or the land owner about future plans for the adjoining property and requests that any future use of the site be publicly notified even if the land owner wishes to keep the site as residential. Some of the activities that the submitter would like to be notified about are permitted activities, such as a vacant section, the demolition of a dwelling and the construction of a new dwelling that complies with the development controls for the activity area. The notification of permitted activities is not required by the Act and it would be impractical for the Council to notify permitted activities. For example, the cost of notification would be very high given the number of activities which would require notification and notifying a permitted activity gives the impression that the activity could be declined or could be changed as a result of submissions, and this is not the case.



The Council can also not require private landowners to advise their neighbours or the Council of their plans for new activities or development that is permitted. In addition, the Council has no power to compel a private property owner to provide justification to demolish a house, which is permitted under the District Plan and the Building Act (with the appropriate demolition consent).

The requests of the submitter do not relate to an amendment within Plan Change 16 and are therefore outside the scope of the Plan Change. If the submitter is interested in the activities on the adjoining property the only assistance the Council can provide is providing information, upon request, that is held by the Council. The submitter can contact the Council to ask if any applications have been received for the property in question. If an application has been received the submitter can request information about the application. If the application is for resource consent, the Council will make a notification decision using the notification procedures in the District Plan and according to the provisions of the Act.

A response to some of the matters raised by the submitter is provided below in order to explain why the submitter's concerns cannot be addressed by the Plan Change. The submitter requests a response as to what the Council intends to do about an 'illegal public park' on a residential site. The submitter is concerned about the effects of the activities which take place on this vacant section, such as noise and reduced security.

The property of concern to the submitter is not a park or public reserve. This property is held in private ownership and is currently vacant. The site is within the General Residential (Higher Density) Activity Area. The only activities permitted on the site by the District Plan are residential activities which comply with the permitted activity conditions, such as height and site coverage. The demolition of buildings which are not protected by the District Plan does not require resource consent and therefore are not notified by the Council.

With regards to the submitter's concerns about people using the site for recreation, it is not the Council's responsibility to get involved in trespassing on private property. In addition, the Council can't require that the owner of a vacant section develop it with a new dwelling or even that the site be maintained (but it is important to note that every person has a duty to avoid, remedy or mitigate any adverse effect on the environment under section 17 of the Act).

It is noted that concerns about the activities on an adjoining property, such as large rigs using a residential site for parking, the use of a residential site for vehicle access to an industrial service lane and concerns that activities on adjoining properties are not complying with the noise limits in the District Plan, should be addressed to the Council's Environmental Monitoring and Enforcement Officer. Following a review of Council's files, some of these matters have been investigated in the past at the request of the submitter and no enforcement action could be taken at that time.

### **Recommendation**

It is recommended that the submission (6.1) lodged by Angus Gibb be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

It is recommended that the further submission lodged by Angus Gibb be **rejected** to the extent that the provisions of Proposed Plan Change 16 remain unchanged.

### **Reason**

The Plan Change will not reduce the amount of notified resource consent applications as the notification procedures are essentially unchanged from the current District Plan. The requests of the submitter to be notified of future activities on an adjoining vacant site and a solution to the submitter's issues with this vacant site are outside the scope of the Plan Change.

Submission:

**DPP12-5-16-007 – The New Zealand Institute of Surveyors Inc- 7.1**

### **Request of Submitter**

Approve the plan change.

### **Specific Comments**

The submitter generally supports the Plan Change.

### **Discussion**

The submitter generally supports the Plan Change and requests that the plan change be approved.

While this report recommends some changes to the proposed rules in response to the submissions, in general it recommends that the intent and concepts of the Plan Change be adopted as notified.

Justification for the Plan Change and reasons for the recommended changes are provided within this report and in the Section 32 Evaluation. It has been concluded that the Plan Change, including recommended changes, is appropriate in terms of achieving the purpose of the Resource Management Act.

### **Recommendation**

It is recommended that the submission (7.1) lodged by the New Zealand Institute of Surveyors Inc. be **accepted**, taking into consideration the recommendations made to amend the Plan Change as sought by other points of submission.

### **Reason**

Some amendments to the Plan Change provisions are recommended within this report, however the Plan Change intent and concept as notified is recommended to remain unchanged and is considered the most appropriate in terms of achieving the purpose of the Act.

## Appendix 1: Recommended Amendments

The recommendations would result in the following amendments to the Plan Change:

### AMENDMENT 15 [17]

#### 17 Resource Consent and Notification Procedures

##### Introduction

This chapter of the District Plan provides guidance to District Plan users on the information to be supplied with an application for resource consent and the notification procedures for applications for resource consent. The purpose of the provisions of Chapter 17 is to contribute to the effective administration of the District Plan and to provide increased certainty to District Plan users.

##### Issue, Objective and Policies

###### Issue

**It is important that all applications for resource consent provide the information required for the application to be properly assessed and that notification procedures for all applications for resource consent are effective, clear and consistent.**

###### Objective

To identify the information required to be submitted with all applications for resource consent and to establish notification procedures for all applications for resource consent.

###### Policies

- (a) To provide a list of information to be supplied for all applications for resource consent.
- (b) To provide effective, clear and consistent notification procedures for all activities which require resource consent within the District Plan.

###### Explanation and Reasons

The information to be supplied with all applications for resource consent is listed in Chapter 17 in order to assist District Plan users and provide certainty about the information required for applications for resource consent.

The Resource Management Act, 1991 (the Act) enables the Council to make rules which can specify the activities for which it must give public notification and the activities which it is precluded from giving public and limited notification of an application for resource consent. The approach taken by the notification procedures within the District Plan is described below:

- Controlled activities: Are precluded from public notification and limited notification.
- Restricted discretionary activities: There is a presumption of non-public notification and non-limited notification for all restricted discretionary activities, with some exceptions. The presumption of non-public notification and non-limited notification for restricted discretionary activities allows public notification or limited notification in appropriate circumstances, for example where a restricted discretionary activity will have adverse effects on the environment ~~which that~~ are more than minor or where there are affected persons.
- Discretionary and non-complying activities: The notification provisions of the Act will apply to notification decisions for all applications for resource consent for discretionary and non-complying activities.

District Plan users should note that for activities where public notification is precluded, there are circumstances under the Act where the resource consent application may still be publicly notified, for example the Council may publicly notify an application if it decides that special circumstances exist.

The notification procedures apply to all activities which require resource consent. There are exceptions to the general notification rules within 17.2 for some activities and these are located within the relevant rule for that activity.

The process the Council follows in order to make a notification decision are:

- The notification procedure which applies to the activity is determined by using the notification rules in the District Plan.
- The Council then uses the notification provisions of the Act to make the notification decision. Appendix Notification Procedures 1 has been provided within Chapter 17 in order to clarify summarise the matters the Council is required to consider when making a notification decision on an application for resource consent.

## **Amendment 16 [17.1]**

### **17.1.1 Land Use Consents**

Any application for a land use consent shall be accompanied by the following information.

- (a) Description of the activity and location (street address and legal description) and a copy of the Certificate of Title for the site(s).
- (b) An assessment of any actual or potential effects that the activity may have on the environment and the ways in which those adverse effects may be mitigated. Such an assessment shall be prepared in accordance with the Fourth Schedule of the Act.
- (c) A statement specifying all other resource consents that the applicant may require from any consent authority in respect to the activity to which the application relates, and whether or not the applicant has applied for such consents.
- (d) Any information required by the Plan, Bylaws or Regulations.
- (e) Site Plan:
  - (i) shall be drawn to a common scale and include a North Point;
  - (ii) shall have sufficient detail to clearly show the following:
- (f) Site Information:
  - (i) Site area and dimensions;
  - (ii) Spot levels at boundary and spot levels or contours where excavations or filling is likely, or to show compliance with the height requirements of the Plan, or if grades of driveways are likely to exceed 1:5;
  - (iii) Location of existing drainage pipes and watercourses;
  - (iv) Location and dimensions of existing trees and native vegetation, identifying any vegetation to be removed;
  - (v) Land subject to flooding, subsidence, slipping, erosion or inundation, or containing any active fault.
- (g) Site Proposals:

- (i) Location, elevations and dimensions of all proposed buildings;
- (ii) Floor plan of any building;
- (iii) Car parking and vehicle manoeuvre areas, and access points;
- (iv) Loading and unloading requirements (including vehicle type, handling methods and expected time for each loading and unloading operation).
- (v) Location and dimensions of all yards, living courts and service courts;
- (vi) Location and description of any landscaped area required by the Plan;
- (vii) Indication of external appearance and design of all buildings;
- (viii) Identification of any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works. ~~which affects the cultural and historic heritage of New Zealand, which is to be removed or modified by the application.~~

#### 17.1.2 Subdivision Consents

Any application for a subdivision consent shall be accompanied by the following information.

- (a) Address and legal description of the land.
- (b) Where appropriate, an assessment of any actual or potential effects that the activity may have on the environment and the ways in which those adverse effects may be mitigated. Such an assessment shall be prepared in accordance with the Fourth Schedule of the Act.
- (c) A statement specifying all other resource consents that the applicant may require from any consent authority in respect to the activity to which the application relates, and whether or not the applicant has applied for such consents.
- (d) Any information required by the Plan, Bylaws or Regulations.
- (e) Scheme Plan for consideration under the Act:
  - (i) 2 copies of a preliminary plan shall be provided; and
  - (ii) shall be drawn to a scale of 1:500 or any larger scale acceptable to Council for the purposes of clarity of the land being subdivided and shall show:
    - The position of all new boundaries;
    - Approximate areas and dimensions of proposed lots;
    - Location of all buildings;
    - The schedule of existing and proposed easements affecting the land;
    - Existing and proposed contours of 3.0m maximum intervals. All proposed areas of cut and fill to be clearly defined.

Provided that:

spot levels only will be required in small 2 lot subdivisions not requiring earthworks; and

the above requirements shall not apply to minor boundary adjustments;

- The location and areas of new reserves to be created, including any esplanade reserves to be set aside;
  - The location and areas of any existing esplanade reserves, esplanade strips or access strips;
  - The location and areas of esplanade strips to be created;
  - Proposed pedestrian access ways, service lanes, private ways and walkways. Such information shall show that the subdivision complies with the rules in section 11.2.2.1(b)(ii);
  - Areas where stripping or other earthworks are proposed to be carried out. Such information shall show that the subdivision complies with the rules in section 11.2.2.1(b)(viii);
  - Cross section drawings of any earthworks showing cut and fill and any retaining structures.
  - The intended means of controlling stormwater run off. Such information shall show that the subdivision complies with the rules in section 11.2.2.1 (b)(iv);
  - Areas of existing mature vegetation and semi-mature trees and bush showing which trees and vegetation are to remain or to be removed and the location of trees and other vegetation to be planted;
  - Any geological or geomorphological characteristics that may give rise to soil erosion or land instability, including any active fault. In this regard, Council may require the provision of a report by a suitably qualified and experienced person;
  - Classification of soils with regard to any development constraints and engineering properties of soil. In this regard, Council may require the provision of a report by a suitably qualified and experienced person;
  - Areas prone to flooding, ponding or periodic inundation;
  - The orientation of proposed lots;
  - The location and areas of land to be vested as new road. Such information shall show that the subdivision complies with the rules in section 11.2.2.1 (b)(i);
  - All plans shall show all services required to comply with the rules in Chapter 11 - Subdivision, 11.2.2.1(b);
  - Any areas of the site which contain contaminated land.
  - Any historic place, archaeological site or other heritage items, on site or in proximity to the proposed works.
  - Any other information as may be required by Council.
- (f) Final plans forwarded for certification under Sections 223 and 224 of the Act shall be accompanied by a copy for Council records.

## **AMENDMENT 18 [17.2.1]**

### **17.2.1 Controlled Activities**

- (a) Public notification of applications for resource consent for all controlled activities is precluded.

Note: Despite Rule 17.2.1 (a), section 95A (4) of the Resource Management Act 1991 provides that the Council may still publicly notify an application if special circumstances exist.

- (b) Limited notification of applications for resource consent for all controlled activities is precluded.

## **AMENDMENT 20 [17]**

### **Appendix Notification Procedures 1**

The notification provisions are set out in the Resource Management Act 1991 (the Act). The provisions of the Act which require the Council to consider a number of matters when making a notification decision on an application for resource consent are summarised below:

- 1. Does the Council have sufficient information to consider the application?**
- 2. Has public notification been requested by the applicant?**
- 3. Does a rule or National Environmental Standard require public notification of the application or preclude public or limited notification of the application?**
- 4. Are there any special circumstances which warrant the application being publicly notified?**
- ~~**5. Are the potential adverse environmental effects of the activity on the environment considered to be minor?**~~
- 5. Will the activity have, or is the activity likely to have, adverse effects on the environment that are more than minor?**
- ~~**6. Are there any affected persons or affected order holders who are adversely affected by the proposal?**~~
- 6. Are there any affected persons or affected order holders in relation to the activity?**

#### **Explanation of terms:**

**Public notification:** means giving public notice of the application in the prescribed form. Any person may make a submission on the resource consent application. The Council will place a public notice in the newspaper and may erect a sign on the application site and send a notice to property owners in the vicinity of the application site.

**Limited notification:** means serving notice of the application on any affected person or affected order holder. Only those affected persons who ~~are adversely affected by the resource consent application~~ are notified of the resource consent application by the Council ~~and~~ can make a submission.

**Non-notified:** The resource consent application is not notified and therefore there is no submission process.