

SECTION 24 – NATURAL OPEN SPACE

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INTRODUCTION

The Natural Open Space Zone is a proposed new zone for Ōmokoroa that has been applied generally over (and to replace) some of the areas that are currently zoned Future Urban in the Operative District Plan. It provides for areas of constrained land that support the urbanisation of the area primarily through having a stormwater management function, coastal interface role, providing ecological corridors and potential public recreation capabilities.

This zone labelling is consistent with the National Planning Standards zone conventions.

The areas that have been zoned Natural Open Space had been provisionally zoned Rural-Residential in earlier concept plans based on the similarities of those areas to currently zoned Rural-Residential land on the Peninsula. The Operative District Plan identifies the purpose of the more recent Rural-Residential zones in Ōmokoroa as being: “to provide a less intensive interface with the Harbour and to manage areas that have development constraints.” The Natural Open Space Zone has separated out from the Rural-Residential Zone those areas that have a stormwater management function, ecological values, coastal interface and potential public recreation role. The remaining land within the Rural-Residential Zone provides a transition between residential areas and a less intensive interface with the Industrial Zone.

Within the Natural Open Space Zone there may be pockets of “better land” which may be able to support some limited intensification but generally if land has this ability, it is likely to have a proposed Rural-Residential or Medium-Density Residential zoning.

As development proceeds and there is more certainty regarding specific stormwater requirements and related design responses it is likely that parts of the Natural Open Space Zone areas will either be vested in the Council as part of the development process and/or designated by Council for the specified public work, usually being for stormwater management.

The Natural Open Space Zone provisions have however been designed to acknowledge the dominant existing use of the area being farming which remains a permitted activity within the proposed zone recognising that in some areas the actual urbanisation will not occur for some time. This is similar to the situation under the Operative District Plan provisions for the Future Urban Zone which was applied across the whole of Ōmokoroa Stage 3 as a holding zone until this Plan Change could be implemented. A key difference between the zones is that the Natural Open Space Zone does not provide for dwellings and other activities such as education and accommodation facilities that require buildings for their operation. This reflects the nature of the land being generally unsuitable for this type of development.

The zone is currently largely in private ownership but due to natural constraints has very limited development potential. The provisions allow for activities that are compatible with the zone's values and attributes including activities required for reserve purposes and the management of the stormwater network. As appropriate, areas may be obtained by Council for stormwater management, walkways and cycleways, other recreational purposes or to provide for the maintenance and enhancement of natural and cultural values.

The permitted activities list provides for a range of activities including farming, planting of indigenous vegetation, fencing and pest control and accordingly the zoning is not exclusively for a public purpose.

As per the part of the Section 42A Report on Ōmokoroa Zoning Maps, the zone boundaries have been recommended to be adjusted based on submissions from a number of parties and subsequent reinspection.

TOPIC 1 – EXPLANATORY STATEMENT, SIGNIFICANT ISSUES, OBJECTIVES & POLICIES

BACKGROUND

As a new section of the District Plan, a new explanatory statement, and significant issues, objectives and policies were developed.

SUBMISSION POINTS

Three submission points were received. Three further submissions were received. The submission points on this topic are summarised as follows:

N and M Bruning (31.4) sought amendment of the explanatory statement, objectives, policies and rules to ensure that the chapter excludes private land and only relates to land which has a history of use as recreational open space/public reserve. This was supported in a further submission by Waka Kotahi (FS 79.2) although the relief varied. It is noted that similar matters are discussed under Topic 2 (Plan Provisions) which follows this report.

Pete Linde (19.20) sought amendments to the wording to provide greater clarity as to the purpose of the zone (Explanatory Statement) and related wording amendments for significant issues, objectives and policies (19.31, 19.32 & 19.33). Jace Investments (FS 69.19) supported suggested amendments to the explanatory statement and the proposed changes to policies (FS 69.26) (FS 69.25). The Bay of Plenty Regional Council made a further submission (FS 67.32) against the changes sought to Policies 24.2.2.1 and 24.2.2.3.

The Bay of Plenty Regional Council also made a primary submission (25.46) seeking amendments to Policy 24.2.2.3.

OPTIONS

Option 1 – Retain explanatory statement, significant issues, objectives and policies as notified.

Option 2 – Modify explanatory statement, significant issues, objectives and policies as requested to exclude private land and only include land which has a history of use as recreational open space/public reserve.

Option 3 – Modify explanatory statement, significant issues and policies in part to better reflect the intent of the zone and functions of a District council.

DISCUSSION

Explanatory Statement

Pete Linde sought the following changes to the explanatory statement (underlined new text, strike through wording to be removed):

The Natural Open Space Zone applies to land within Ōmokoroa Stage 3 that is currently likely to be unsuitable for urban development due to steep terrane contours and natural hazards. The zone has stormwater and/or coastal inundation management functions as it contains the generally natural drainage systems (including gullies) directing overland run-off towards Tauranga Harbour. The zone will ideally also provides for open space, maintenance and restoration of natural character, green corridor links and visual separation between areas that are planned to be fully urbanised. These areas can ~~it also~~ contains a variety and combination of ecological, cultural, recreational and amenity values.

Land within ~~t~~The zone is currently largely in private ownership but due to physical geotechnical ~~natural~~ constraints is anticipated to have ~~has very~~ limited development potential. This section allows for activities that are compatible with the zone's values and attributes including activities required for reserve purposes and the management of the stormwater network. As appropriate, areas may be obtained by Council for stormwater management, walkways and cycleways, other recreational purposes or to provide for the maintenance and enhancement of natural and cultural values. Subdivision will generally be required to facilitate this transfer of land from private ownership to Council.

In general, the intent of the requested changes sought by the submitter is considered appropriate. To a large extent some of the rationale for the changes are not as strong as previously with the proposed adjustments to the Natural Open Space Zone boundaries more correctly identifying the values of various areas, however it is accepted that there may be areas that remain within the proposed zone that may not fit within the general zone description and it is considered appropriate to acknowledge this.

The reasons for the area being described as having very limited development potential is not just related to "physical geotechnical" constraints however and it is considered important to include references to the 'natural features,' which includes as waterways and wetlands, that similarly make the area generally inappropriate for urban development.

Significant Issues

Mr Linde sought the following changes to the Significant Issues (underlined new text, strike through wording to be removed):

1. *The area is unlikely to be ~~unsuitable~~ for residential subdivision and urban development due to geotechnical constraints associated with topography and natural hazards.*
2. *The area contains land that has stormwater and/or coastal inundation management functions. ~~and inappropriate~~ development could compromise its ability to perform this role.*
3. *Inappropriate ~~D~~development of the land within this zone ~~area~~ for urban activities would result in a loss of ~~in~~ open space, natural character and ecological, cultural, recreational and amenity values.*
4. *People living in more intensive living environments will likely desire ~~require~~ easy access to quality open space and nature areas to provide for their physical and mental wellbeing.*

In part the proposed changes are considered appropriate on the basis that there may be areas where these matters are not significant. As with the explanatory statement the issue of concern is broader than just geotechnical issues.

It is considered that there is no need to separate Issue 2 into two sentences as the issue relates to the combined sentence.

In regard to Issue 4, easy access to good quality open space is considered a fundamental of good urban design providing well-being benefits, especially in a more intensive residential setting, and accordingly is considered a requirement in addition to being a desire.

Objectives and Policies

Pete Linde sought the following changes to the Objectives and Policies (underlined new text, strike through wording to be removed):

24.2.1 Objectives

1. Subdivision and land use can occur when it ~~that~~ is compatible with the underlying topographical and natural hazard constraints.

24.2.2 Policies

1. Avoid or control subdivision and development within this zone that is not complimentary to its purpose. ~~which is for urban purposes.~~

3. Avoid or control the obstruction, modification or diversion of natural watercourses in a manner that could ~~which~~ adversely affects their stormwater management functions.

The proposed changes to the above policies were subject to further submissions from Jace Investments (who supported the submission) and from the Bay of Plenty Regional Council who opposed the relief sought. The Regional Council sought retention of Policy 1 as notified but also sought the reconsideration of Policy 3 to more clearly relate to District Council functions. The latter is technically outside of the scope of the Further Submission as the relief sought is different than that of the linked submission, however the relief is included in the Regional Council's primary submission (see below).

The Bay of Plenty Regional Council supported in part Policy 3 but submitted that the policy should be framed in a way that is able to be linked back clearly to a District council's functions under the RMA, rather than reading like regional provisions. The suggested relief suggested replacing the term natural watercourse with overland flow path/flood plain or other changes with similar effect.

The requested change to the Objective is not supported as worded as the phrase "land use can occur" is not considered as clear as the original wording. The original objective is framed as an outcome-based objective rather than an occurrence.

Similarly, the policies are framed to identify the desired action and for control to be useful in this context there is a need for a greater explanation of what is being controlled and how to action the purpose of the linked objective. The Regional Council have opposed the relief sought on the basis of it being unclear as to what subdivision and development would be complementary to the Natural Open Space Zone or how this would be assessed.

It is acknowledged that the wording of Policy 1 could be improved as the descriptor "for urban purposes" is very broad and there may be activities that generally fall under that description which may still be compatible with the site-specific area and from a bigger picture perspective the area is part of and supports the urbanisation of the wider area. Although the areas have been

defined based on the best available information there may still be areas that are suitable for some form of development using the term in a broad sense. Accordingly, some acknowledgement of this is considered appropriate and acknowledging that “development” will encompass some activities that are considered appropriate in the zone.

In regard to Policy 3 the Regional Council have suggested that the wording be amended to be linked back clearly to a District council’s functions under the RMA, rather than reading like regional provisions. The functions of territorial authorities under the RMA are prescribed in Section 31. The Regional Council submission appears to be focussing on a territorial authority’s natural hazards functions however the responsibilities are much broader. As per the Act these include:

Section 31 (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:

(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:

(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

(i) the avoidance or mitigation of natural hazards; and

(iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:

(iii) the maintenance of indigenous biological diversity...

As part of administrating the District Plan and related land development it is appropriate to have policies that reflect this. There is a degree of overlap in the District Plan with Section 8 - Natural Hazards and Section 12 - Subdivision and Development also dealing with matters pertaining to natural hazard, and suitability of land for development matters. In regard to the specific policy the suggested change from the Regional Council is making the policy a natural hazard policy which is covered within Section 8 of the District Plan.

The linked objective is Objective 2 which states the following:

Maintenance and enhancement of the stormwater and coastal inundation management functions of the area.

There are no submissions in regard to Objective 2.

Pete Linde (and supported by Jace Investments) has suggested that in addition to using the word “avoid”, “or control” should also be added to policy 3. He has also suggested that “which adversely affects their stormwater management functions” be replaced by “that could adversely affect their stormwater management functions”. The Regional Council have opposed this on the basis that the proposed addition of control implies it is appropriate to obstruct, modify or divert natural watercourses in a manner that could adversely affect their stormwater management function if it is controlled. The Regional Council further state that the modification of natural watercourses is a regional planning matter and is not regulated under the District Plan.

As per the RMA a District council's functions include the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the District. The functions also include the control of any actual or potential effects of the use, development, or protection of land. This provides for a range of responses and as part of an integrated management approach and does not place a prohibition on a territorial authority including policies which include natural watercourses associated with stormwater functions being considered in a development context.

Although it is considered that the intent of Mr Linde's amendments is to acknowledge the "control of effects" element of a District council's function, the proposed wording of Pete Linde is not considered to achieve this in a clear way.

A significant portion of the land within the Natural Open Space Zone is in need of restoration and other enhancement work and it is important to recognise that works will be required within the zone.

It is agreed however that the wording of Policy 3 could be improved to better reflect a District council's functions and the linked Objective 2.

In summary the refinement to the Explanatory Statement, Significant Issues and Policies provides an improved framework that better reflects the purpose of the zone, managing areas of constrained land that have a stormwater management function, coastal interface role and potential public recreation capabilities. The land areas affected are for the most part in private ownership at this point in time and some are within wider areas that will not be developed for urban purposes for some time. The zone does not address just land that is in public ownership and accordingly the exclusion of privately owned land would undermine the usefulness of the zone.

The recommended changes provide improved clarity on matters relevant to the Council's functions. The refinements acknowledge that the zone includes a wide area and that not all parts of the zone will have the same values.

RECOMMENDATION

That Option 3 be accepted.

Modify explanatory statement, significant issues and policies in part to better reflect the intent of the zone and functions of a District council.

This requires that the District Plan be amended as follows:

Section 24 Natural Open Space

Explanatory Statement

The Natural Open Space Zone applies to land within Ōmokoroa Stage 3 that is generally unsuitable for urban development due to steep terrain contour and natural hazards. The zone has stormwater and/or coastal inundation management functions as it contains the generally natural drainage systems (including gullies) directing overland run-off towards Tauranga Harbour. The zone provides for open space, maintenance and restoration of natural character, green corridor links and visual separation between areas that are planned to be fully urbanised. It also contains ecological, cultural, recreational and amenity values.

The Land within the zone is currently largely in private ownership but due to natural constraints, including geotechnical and ecological matters, has very limited development potential. This section allows for activities that are compatible with the zone's values and attributes including activities required for reserve purposes and the management of the stormwater network. As appropriate, areas may be obtained by Council for stormwater management, walkways and cycleways, other recreational purposes or to provide for the maintenance and enhancement of natural and cultural values. Subdivision will generally be required to facilitate this transfer of land from private ownership to Council.

24.1 Significant Issues

1. The area is generally unsuitable for residential subdivision and urban development due to constraints associated with topography and natural hazards.
3. Inappropriate development of the area for urban activities would result in a loss in open space, natural character and ecological, cultural, recreational and amenity values.

24.2.2 Policies

1. Avoid subdivision and development which is for urban purposes. that is not complementary to the purpose of the zone
3. Avoid the obstruction, modification or diversion of natural watercourses in a manner which adversely affects their stormwater management functions.

Control activities to avoid adverse effects on the functioning of the stormwater system, including the natural gully network and coastal interface, and promote improvement of these areas by providing for development that supports restoration of the values of these areas.

The following submissions are therefore:

ACCEPTED IN PART

Submission	Point Number	Name
19	20	Pete Linde
19	31	Pete Linde
19	32	Pete Linde
19	33	Pete Linde
25	46	Bay of Plenty Regional Council
FS 69	19	Jace Investments
FS 69	25	Jace Investments
FS 69	26	Jace Investments
FS 67	32	Bay of Plenty Regional Council

REJECTED

Submission	Point Number	Name
31	4	N and M Bruning
FS 79	2	Waka Kotahi

SECTION 32AA ANALYSIS

The changes proposed to the policies are minor and refine matters being considered. Accordingly, no s32AA analysis is required.

TOPIC 2 – PLAN PROVISIONS – ACTIVITY LISTS, MATTERS OF DISCRETION AND OTHER METHODS**BACKGROUND**

As a new section of the District Plan, a new set of Activity Lists, Activity Performance Standards, Matters of Discretion and Other Methods were developed to give effect to the Section's Explanatory Statement, Significant Issues, Objectives and Policies.

SUBMISSION POINTS

Four submission points were received. One further submission point was received. The submission points on this topic are summarised as follows:

Robert Hicks (4.11) requested that this section be reviewed and removed on the basis that the provisions are overly restrictive and impractical. As there is ambiguity as to whether the review and removal aspects were two different actions, clarification has been sought from Mr Hicks who confirmed he was seeking the specific sub-section on Restricted Discretionary Activities be removed and the wider provisions reviewed to better provide for farming and associated activities. This is noting that a lot of the area will continue to be in private ownership and used as part of farming operations for some time.

Pete Linde (19.34) sought amendments to the wording of the Restricted Discretionary Activities provisions for soil disturbance/earthworks and vegetation clearance on the basis that the proposed provisions were not practical. This submission was supported by a further submission from Jace Investments (FS 69.27).

Bay of Plenty Regional Council (25.47) supported the intent of the restricted discretionary activity provision for the diversion or modification of any natural water courses but sought amendments to ensure that the provisions were linked back clearly to a District council's functions under the RMA.

Pete Linde (19.36, 19.37) and the Bay of Plenty Regional Council (25.48) also sought changes to the Restricted Discretionary Activities matters of discretion. The submission requested changes to improve the wording to assist in resource consent assessments, while the Regional Council sought amendments aligned with their above submission to ensure the provisions were linked back clearly to a District council's functions under the RMA.

Jace Investments and Kiwi Green New Zealand (58.8), Jace Orchards and Kiwi Green New Zealand (59.1) and Pete Linde (19.35) opposed the non-complying activity status of subdivision that is not in general accordance with the Structure Plan on the basis that this was too stringent.

OPTIONS

Option 1 – Retain activity lists and matters of discretion as notified.

Option 2 – Modify activity lists and matters of discretion as requested.

Option 3 – Amend some activity list provisions and matters of discretion to provide greater clarity and more practical provisions in regard to providing for existing uses, land disturbance and vegetation clearance, and District council functions.

DISCUSSION

The submissions range from review and removal requests to refinement of specific matters. The provisions are written as a set and accordingly the review of the practicality of specific provisions has consequential effects on others. The majority of the submissions identified issues with the practicality of the proposed provisions notably the restricted discretionary activity list. This imposes very stringent limits on how much soil disturbance, vegetation clearance, fill or diversion of watercourses can occur in the zone including in relation to permitted farming. Other permitted activities related to planting indigenous vegetation, pest control, reserves and network utilities are exempted from the limits. Therefore, the concerns being raised are that the activity thresholds for soil disturbance and vegetation clearance were so low that resource consents would be triggered for almost any works associated with farming or other activities which added uncertainty and cost.

To some extent it is considered that the review of the Natural Open Space Zone boundaries (please refer to the part of the Section 42A Report for Ōmokoroa Zoning Maps) has addressed the majority of concerns. This is based on the recommended zone boundaries now more accurately identifying the areas that are highly constrained or have a stormwater function and which therefore should be Natural Open Space Zone. As a result, the remaining areas can now be rezoned to medium density, rural-residential, industrial, or commercial as applicable and activities undertaken in accordance with the respective zone provisions. It is acknowledged however that the zone boundaries have not been fixed by survey and there may still remain areas within the Natural Open Space Zone where works such as soil disturbance and vegetation removal is required beyond what is provided for.

To provide the appropriate context for this report the relevant provisions are discussed.

Permitted Activities

As notified the Plan Change provides for the following as permitted activities within the Natural Open Space Zone:

24.3.1 Permitted Activities:

- a. Farming.

- b. Planting and management of indigenous vegetation, restoration, and perimeter fencing, and plant or animal pest control measures.
- c. Activities approved in a reserve management plan or reserve concept plan prepared under the Reserves Act 1977 or Local Government Act 2002.
- d. Works and network utilities as provided for as a permitted activity in Section 10. Note: This includes public trails (see Rule 10.3 (bc)).
- e. Buildings accessory to 24.3.1 (c) and (d).

The District Plan's definition of farming includes "agriculture, pastoral farming and horticulture" which covers the likely activities affected. Allowing farming to continue in the Natural Open Space Zone acknowledges that in some areas it will be some considerable time before the area is used for its zoned purpose and the surrounding land urbanised. A number of the landowners have undertaken enhancements of the area and will remain as guardians for some time. The intent of the zone was to effectively provide for 'business as usual' for those parties while signalling the longer-term objectives. There are opportunities for partnerships between private land owners and the Council to manage these areas in the interim.

It has been recognised however that some of the linked restricted discretionary provisions are very restrictive and unnecessarily limit works associated with permitted farming and other activities. As pointed out in Mr Hicks's submission the "rules are overly restrictive and largely unworkable in what will continue to be farming land for many years to come." It is also recognised that some areas include existing access tracks. To ensure that there is clarity that access tracks can be maintained a specific provision in this regard is recommended as a permitted activity.

The linked restricted discretionary activity provisions are addressed below.

Restricted Discretionary Activities

As notified the Plan Change provides for the following as restricted discretionary activities:

24.3.3 Restricted Discretionary Activities

- a. The following activities within a Floodable Area and/or Coastal Inundation Area as identified on the District Plan Maps (except where associated with activities which are permitted under 24.3.1 (b) – (e)):
 - i. The disturbance of greater than 1m³ of soil;
 - ii. The disturbance of greater than 1m² of vegetation (including natural ground cover);
 - iii. The deposition of fill or any other material;
 - iv. The diversion or modification of any natural watercourse.
- b. Native vegetation removal, destruction or clearance greater than 2m² except as identified in (a) above or where associated with activities which are permitted under 24.3.1 (b) – (e).

- c. Buildings/structures except where associated with activities which are permitted under 24.3.1 (b) – (e).
- d. Works and network utilities as provided for as a restricted discretionary activity in Section 10.
- e. Subdivision for the creation and/or management of land for exercising public stormwater management powers, functions or duties.
- f. Subdivision for the creation and/or management of public reserves.

Clause (a) Activities within a floodable area and/or coastal inundation area:

Land within a floodable area and/or coastal inundation area (on the District Plan Maps) is also subject to Section 8 - Natural Hazards. It would be consistent to have the same performance standards between sections. As notified, this is not the case as the Natural Open Space Zone provisions are less enabling. For example, the Natural Open Space Zone, as a permitted activity, only provides for the disturbance of 1m³ of soil while under Section 8 the permitted earthworks volume is 5m³.

It is recommended that Clause (a) be consistent with Section 8. This can be done by duplicating the provisions of Section 8 or by removing the provisions that relate to the floodable/coastal inundation areas and relying on Section 8. The Operative District Plan is drafted in a manner that avoids undue repetition and applies cross referencing. To be consistent it is recommended to remove provisions from Section 24 that are covered under Section 8 and rely on the existing cross reference in Rule 24.4.1 (n) which directs readers to Section 8.

Section 8 also uses the term “earthworks” rather than “disturbance ... of soil” and “deposition of fill” which is used in Section 24. Earthworks covers both cut and fill activities and is defined in the District Plan. The proposed provisions in Section 24 also include a restriction on the disturbance of greater than 1m² of vegetation (including natural ground cover). Noting that disturbance or soil / earthworks effectively includes vegetation removal, it is considered unnecessary to include a specific provision for vegetation removal, although this could be considered under a wider zone provision.

The remaining matter is “the diversion or modification of any natural watercourse”. As submitted by the Regional Council the management of this activity sits more within their responsibilities and accordingly there is no need for a specific provision in Section 24. This would also require amendment to the applicable matter of discretion. Overall, this is considered to be a more consistent approach and is easier to administer. For clarity, the District Council would still manage effects on overland flowpaths within floodable and coastal inundation areas using Section 8 in accordance with their functions relating to management of natural hazards.

It is also noted that the provisions of the NPS/NES Freshwater Management and the Bay of Plenty Natural Resources Plan also have requirements which may further control any works in some of these areas. For example, the NES Freshwater Management has extensive controls on vegetation clearance and earthworks associated with natural inland wetlands.

Clause (b) Native vegetation removal, destruction or clearance:

For areas in the zone outside of the floodable and/or coastal inundation areas there are no soil disturbance restrictions as such, however there are controls over native vegetation removal which may involve soil disturbance. There are also other operative provisions which restrict permitted earthworks to 300m² in any six month period (Section 12.4.1 (j)). Additionally, although not being within the floodable and/or coastal inundation areas, these areas are still subject to the NPS/NES Freshwater Management and the Bay of Plenty Natural Resources Plan.

Noting the recommendation to delete specific activities within the floodable and coastal inundation areas, including vegetation removal, it is appropriate to consider the requirement for native vegetation control as a whole within the zone. Pete Linde suggested increasing the limit from 2m² to a figure of 50m².

The zone objectives include maintenance and enhancement of the open space, natural character and the ecological, cultural, recreational and amenity values of the area and accordingly the maintenance of native vegetation is seen as being part of this. The submitted 50m² is considered as being too large an area that could undermine these values while the notified 2m² is recognised as being too limiting. The latter will trigger resource consent applications at a low threshold. As noted above there are requirements such as those in the NES Freshwater Management which may affect the more sensitive areas such as vegetation within or in close proximity to natural wetlands.

It is also noted that the overall area applicable to the performance standard is not accurately defined by survey and may still include areas that are appropriate for limited development. Accordingly, it is recommended to amend the provision to 15m² within a 12-month period which provides for limited clearance to undertake any works not captured by other provisions/regulations. To balance the increase in permissible clearance it is also recommended to include a new provision to capture the potential removal of significant native trees.

The limit of 15m² does not place a prohibition on removing additional areas beyond these thresholds but requires a resource consent to ensure that the rationale and potential effects are fully addressed.

Additional new provisions:

Given that the Natural Open Space Zone includes areas of operational farms and could potentially land lock areas, there is a need to provide a potential consenting pathway to cover new accesses and tracks for farming and other private use that are not covered by the provisions for public trails. This also requires a subsequent addition to the restricted discretionary activity assessment matters. It is recommended to include changes to this effect.

Non-Complying Activities

Submissions opposed the non-complying activity status of subdivision not in general accordance with the Structure Plan on the basis that this was too stringent. This provision is included in a number of Sections in the District Plan and there has been a consistency of submission on this matter. The part of the Section 42A Report on Section 12– Subdivision and Development (Topic 16) addresses the matter in detail and for the purposes of consistency the findings of that report are

adopted for this matter. The recommendation is therefore that the consent status should be changed to Discretionary.

Summary

In summary the amendments provide improved consistency, clarity and related certainty to enable the continued use of land in the Natural Open Space Zone until such time as surrounding/adjacent areas are urbanised while at the same time providing for the maintenance and restoration of the ecological values and functionality as part of a wider stormwater and coastal inundation management system.

As stated in submissions the provisions as publicly notified were very restrictive and largely unworkable in the context of continuing farming/horticultural operations which will continue to operate for some time. To a reasonable extent this is proposed to be rectified by alterations to zone boundaries to better identify the areas that fit within the purpose of a Natural Open Space Zone and therefore which areas can instead be zoned as medium density residential, rural-residential and commercial, as may be applicable. It is acknowledged however that there may still be areas within the proposed zone that may have other attributes where limited works may be appropriate. The activity lists have been amended to recognise the need to provide for the maintenance of farm tracks and other accesses, potential requirements for new accesses, and increasing some of the limits on soil and vegetation works which provide a more functional zone.

It is noted that there are areas of common interest between the District and Regional Council and there is national level policy direction and related National Environmental Standard in regard to Freshwater Management. These create a potential complexity of overlapping provisions between the District Plan, Regional Plans and the National Environmental Standard. The amendments to this section avoid duplication while still informing parties of the wider compliance requirements.

RECOMMENDATION

That Option 3 - be accepted.

Amend some activity list provisions and matters of discretion to provide greater clarity and more practical provisions in regard to providing for existing uses, land disturbance and vegetation clearance, and District council functions.

This requires that the District Plan be amended as follows:

Section 24.3 Activity Lists

24.3.1 Permitted Activities

a. Farming.

b. Maintenance of existing accesses and tracks.

~~b.c.~~ Planting and management of indigenous vegetation, restoration, and perimeter fencing, and plant or animal pest control measures.

~~e. d.~~ Activities approved in a reserve management plan or reserve concept plan prepared under the Reserves Act 1977 or Local Government Act 2002.

~~e. e.~~ Works and network utilities as provided for as a permitted activity in Section 10.

Note: This includes public trails (see Rule 10.3 (bc)).

~~e f. Buildings accessory to 24.3.1 (e) and (d) Buildings accessory to 24.3.1 (d) and (e)~~

24.3.3 Restricted Discretionary Activities

~~a The following activities within a Floodable Area and/or Coastal Inundation Area as identified on the District Plan Maps (except where associated with activities which are permitted under 24.3.1 (b) – (e)):~~

- ~~i. The disturbance of greater than 1m³ of soil;~~
- ~~ii. The disturbance of greater than 1m of vegetation (including natural ground cover);~~
- ~~iii. The deposition of fill or any other material;~~
- ~~iv. The diversion or modification of any natural watercourse.~~

~~a. New accesses and tracks, except as permitted under 24.3.1.~~

~~b. Native vegetation removal, destruction or clearance greater than 2m² 15m² within any 12-month period except as identified in (a) above or where associated with activities which are permitted under 24.3.1 (b c) – (e f).~~

~~c. Removal, destruction or clearance of any native vegetation greater than 6m in height except where associated with activities which are permitted under 24.3.1 (b) – (e).~~

~~d e. Buildings/structures except where associated with activities which are permitted under 24.3.1 (b c) – (e f).~~

~~e f. Works and network utilities as provided as a restricted discretionary activity for in Section 10.~~

~~f e. Subdivision for the creation and/or management of land for exercising public stormwater management powers, functions or duties.~~

~~g f. Subdivision for the creation and/or management of public reserves.~~

24.3.4 Discretionary Activities

~~c. Subdivision or development that is not in general accordance with the respective structure plan.~~

24.3.5 Non-Complying Activities

~~a. Subdivision or development that is not in general accordance with the respective structure plan.~~

24.5 Matters of Discretion

24.5.1 Restricted Discretionary Activities – Non Compliance with Activity

Performance Standards

Council's discretion is restricted to the actual or potential adverse effects arising from the particular non-compliance, having regard to the extent and nature of the non-compliance.

24.5.2 Restricted Discretionary Activities – All

In assessing a Restricted Discretionary Activity, Council shall consider the following:

a. The potential adverse effects on the natural character, ecological, cultural, recreational and amenity values of the area and how these may be avoided, remedied or mitigated.

~~b. The extent to which a natural watercourse will be obstructed, modified or diverted. The functional need for a new access or track.~~

c. Retaining the efficiency and effectiveness of stormwater infiltration, detention, discharge downstream and discharge to the Tauranga Harbour in accordance with the requirements of relevant stormwater management plans and Regional Council resource consents.

d. The extent to which the proposal would cause land to be susceptible to erosion or instability including from the disturbance of soil or the removal of ground cover or vegetation.

e. Whether the proposal will affect in a positive or negative way the function and/or public amenity values of reserves including public trails.

24.6 Other Methods

24.6.1 The Department of Conservation, Council and Regional Council can provide advice on management of areas with ecological and/or soil and water conservation values.

~~24.6.2 Negotiation of joint management plans with affected landowners to maintain/enhance the area.~~

~~24.6.3 The Bay of Plenty Regional Natural Resources Plan contains provisions that also control works in regard to wetlands and riparian areas.~~

~~24.6.4 The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 provide restrictions on earthworks and vegetation clearance in regard to natural inland wetlands.~~

The following submissions are therefore:

ACCEPTED IN PART

Submission	Point Number	Name
4	11	Robert Hicks
19	34	Pete Linde
19	35	Pete Linde
19	36	Pete Linde

19	37	Pete Linde
25	47	Bay of Plenty Regional Council
25	48	Bay of Plenty Regional Council
58	8	Jace Investments and Kiwi Green New Zealand
59	1	Jace Orchards and Kiwi Green New Zealand
FS 69	19	Jace Investments
FS 69	27	Jace Investments

SECTION 32AA ANALYSIS

The following provides a further evaluation of the changes made to the Plan Change / Proposal since the original evaluation under Section 32 of the RMA. The level of detail corresponds to the scale and significance of the changes.

Efficiency & Effectiveness in Achieving the Objectives	Amend some activity list provisions and matters of discretion to provide greater clarity and more practical provisions in regard to providing for existing uses, land disturbance and vegetation clearance, and District council functions.
Costs Environmental effects Economic effects Social effects Cultural effects Including opportunities for: (i) economic growth that are anticipated to be provided or reduced; and (ii) employment that are anticipated to be provided or reduced	Environmental The recommended changes potentially increase the extent of works that could be carried out within the zone (such as soil disturbance and vegetation removal) which if not managed appropriately could result in adverse effects on land form, ecology and water quality. Economic Although increasing the threshold for some works (such as soil disturbance and vegetation removal) before they need resource consent there are still requirements that will trigger the requirement for resource consent which has cost implications. Social No direct social costs. Cultural No direct cultural costs however the recommended changes potentially increase the extent of works (such as soil disturbance and vegetation removal) that could be carried out within the zone which if not managed appropriately could result in adverse effects on land form, ecology and water quality which could be considered as having cultural effects.
Benefits Environmental Economic Social Cultural	Environmental The recommended changes enable the continuation of limited works (such as soil disturbance and vegetation removal) that allow for the maintenance and environmental enhancement of areas within the proposed zone. Economic

<p>Including opportunities for:</p> <p>(i) economic growth that are anticipated to be provided or reduced; and</p> <p>(ii) employment that are anticipated to be provided or reduced</p>	<p>The recommended changes have a positive effect in not triggering the requirement for resource consent at such a low threshold and provides greater clarity that the predominant existing land use of farming can continue within reasonable parameters.</p> <p>Social</p> <p>The recommended changes have a positive effect in continuing to allow for landowners to 'manage' areas within their property that are in the proposed zone and carry out their farming activities which continues the social ties of the existing rural based community until the area is urbanised.</p> <p>Cultural</p> <p>No direct benefits however enabling the continuation of limited works that allow for the maintenance and environmental enhancement of areas could be considered to support the cultural values of the area.</p>
<p>Quantification</p>	<p>Not practicable to quantify.</p>
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<p>Sufficient and certain information is available.</p>