

0.0 PLANNING REPORT FOR PLAN CHANGE 84 - PUBLIC TRAILS (WALKWAYS, CYCLEWAYS, BRIDLEWAYS AND SIMILAR)

File Number: A3735948

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RECOMMENDATION

1. That the report titled "Planning Report for Plan Change 84 - Public Trails (Walkways, Cycleways, Bridleways and Similar)" dated 4 May 2020 be received.
 2. That pursuant to Clause 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on Plan Change 84 ...*decisions to be inserted here*.
 3. That staff be authorised to make minor editorial changes to the decision of the District Plan Committee in consultation with the Committee Chairperson.
 4. That pursuant to Clause 10(4)(b) of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 84 be publicly notified.
 5. That pursuant to Clause 11 of Schedule 1 of the Resource Management Act 1991, the decision on Plan Change 84 be served on every person who made a submission on the Plan Change and be made available at all Council offices and all public libraries in the District.
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INTRODUCTION

The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 84 – *Public Trails* (walkways, cycleways, bridleways and similar).

The impetus for this Plan change arose from complexities arising out of previous cycleway projects. In general, it was thought that the current District Plan provisions around *public trails* frequently added a layer of (resource) consenting to the process adding significant time and cost, often with no resulting benefit to the environment or to the project.

A review of the District Plan provisions has therefore been undertaken to determine whether there is scope to provide an alternative and more enabling set of provisions for the development and use of *public trails* where there are no significant overlays that require more detailed assessment.

Within the current District Plan framework there is no specific definition that captures *public trails* or similar activities. Neither is there a specifically identified activity status for these activities. Consequently the definition of *places of assembly* has typically been used to "capture" *public trails* as an activity, usually as a Discretionary Activity for which resource consent is inevitably required. This is thought to be often unnecessary and not useful in managing actual and/or potential adverse effects on the environment.

Within all Council's reserves, whatever the underlying zone, the District Plan allows for activities on reserves as provided for within the Reserves Act 1977 as Permitted Activities. This means that if the relevant Reserve Management Plan provides for *public trails* within a specified reserve or reserves, then they are Permitted Activities. This rule, however, does not exempt activities within reserves (including *public trails*) from the need to gain resource consent if the District Plan has identified that it is required for another matter (e.g. vegetation removal or earthworks relating to an ecological, landscape, heritage or natural hazard feature). This is a correct and generally robust approach as overlays are commonly included in the District Plan to protect sensitive areas.

Under Plan Change 84 a number of possible changes to the District Plan which would provide a clearer and more enabling rule framework for *public trails* have been explored. These have included consideration of:

- relevant definitions
- activity status for *public trails*
- effects of *public trails* on adjacent and nearby properties
- earthworks provisions
- *public trails* within natural hazard overlay areas (particularly floodable areas and coastal inundation areas)
- Statutory Acknowledgement Areas

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

Any recommended changes (by the author of this report) to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

TOPIC 1: DEFINITION – PUBLIC TRAIL/TRAILS

BACKGROUND

Section 3 of the District Plan contains definitions which are used in interpretation of the Plan provisions.

To create a clearer and more enabling District Plan framework for *public trails*, a new definition was considered to be necessary and has therefore been developed as follows:

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

Consideration of whether the definition of *earthworks* required amendment was carried out as part of the analysis for Plan Change 84. It was determined that, as provision was to be made in all zones for *public trails* as a Permitted Activity, a change to the *earthworks* definition was not required. This is because under District Plan Rule 4A.5, *earthworks* are permitted if they don't need resource consent under another District Plan rule. *Earthworks* in association with the development of *public trails* will therefore be permitted, except where they require resource consent under another rule e.g. within one of the features mentioned earlier.

For clarification, the current definition of *earthworks* is reproduced below and no changes have been proposed as part of Plan Change 84.

“Earthworks” means the alteration of land contours on any site including, without limitation: deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting, filling or backfilling and recompacting of existing ground, but does not include domestic and reserve gardening, quarrying and normal agricultural and horticultural practices.

SUBMISSION POINTS

Seven submission points relating to definitions were received on Plan Change 84. These included two further submissions.

Katikati Waihi Beach Residents and Ratepayers Association submitted that the formation and maintenance of walkways, cycleways, bridleways and similar trails and car parking areas should not be excluded from the definition of *earthworks*. This was opposed by further submitter J Swap Contractors Ltd who supported the existing *earthworks* definition, including formation and maintenance of *public trails*, provided that reverse sensitivity does not become an issue for quarries.

Katikati Waihi Beach Residents and Ratepayers Association submitted that quarrying should not be excluded from the definition of *earthworks*. This was opposed by further submitter J Swap Contractors Ltd who sought that there should be a specific definition for quarry activities to avoid being caught by unnecessary rules/restrictions.

Gael Stevens supported the inclusion of “bridleway” in the proposed definition.

J Swap Contractors Ltd submitted that they accepted the new definition provided reverse sensitivity does not become an issue for quarries.

Bay Of Plenty Regional Council submitted that the proposed definition should be amended to specifically exclude un-reticulated public toilets.

Option 1 – Retain definition of *public trail* as notified

<p>Costs</p>	<ul style="list-style-type: none"> Retaining the definition as notified would prevent the opportunity to make it clearer and more transparent as a result of submissions. Things such as toilets and carparks are not “part” of a path or trail but rather are support infrastructure that may have effects on the local environment of a different nature to a trail. They were not intended to be part of the definition of <i>public trail</i> and retaining the notified definition thwarts the opportunity to make it absolutely clear to Plan users that these support activities were not intended to be part of the definition.
<p>Benefits</p>	<ul style="list-style-type: none"> The inclusion of a <i>public trail</i> definition will create a clearer and more streamlined approach to these activities than the status quo (being treated as a <i>place of assembly</i> and Discretionary Activity). Only <i>public trails</i> then that require a thorough assessment of ecological, landscape, heritage and natural hazard features will have to go through a resource consent process. People will know what a <i>public trail</i> is as there will be a definition. Bylaws will still be able to provide a layer of structure via signage and provisions for the use of Council administered <i>public trails</i> (around dual/multi-use of the <i>public trails</i>, and dog management for example).
<p>Effectiveness</p>	<ul style="list-style-type: none"> Reasonably effective in removing uncertainty over what a <i>public trail</i> is and making processes simpler where no significant features and overlays require a full assessment via resource consent.

<p>Efficiency</p>	<ul style="list-style-type: none"> Reasonably efficient in creating a clearer and therefore more cost-effective framework within which to assess proposals for <i>public trails</i> over a variety of zones and within the context of a variety of environments.
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<ul style="list-style-type: none"> Sufficient information is available.

Option 2 – Status Quo, no specific provision or definition for *public trails* (therefore being treated as *places of assembly*)

<p>Costs</p>	<ul style="list-style-type: none"> Uncertain outcome for any <i>public trail</i> proposal where resource consent is required as a Discretionary Activity. Creates additional costs (financial and time) for any <i>public trail</i> project. Resource Consent process may not provide any additional benefit to the <i>public trail</i> project in terms of a practical or environmental outcome. Enabling <i>public trail</i> projects to provide for car-free transportation and recreational pursuits is more difficult.
<p>Benefits</p>	<ul style="list-style-type: none"> Enables a rigorous assessment of any and all <i>public trail</i> proposals as resource consent for a Discretionary Activity is required. On a resource consent, advice notes as well as consent conditions can be imposed, which allows non-statutory input.
<p>Effectiveness</p>	<ul style="list-style-type: none"> Retaining the status quo will not result in the most effective outcome being achieved as it does not enable an effective District Plan rule structure. The current provisions will not solve the identified issue or achieve a desirable outcome.
<p>Efficiency</p>	<ul style="list-style-type: none"> Retaining the status quo will not be efficient because it will not be a useful means of providing for <i>public trail</i> projects for the District which are invariably a positive initiative for the community and additional costs (financial expenses, time wasting, confusing processes for staff and customers, use of staff and resources) will result as resource consents will continue to be necessary for every <i>public trail</i> project.
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<ul style="list-style-type: none"> Sufficient and certain information is available.

Option 3 – Amend notified definition of *public trail* to make it clear that the definition includes the path only and does not include support infrastructure such as un-reticulated public toilets or carparks

Costs	<ul style="list-style-type: none"> No costs identified.
Benefits	<ul style="list-style-type: none"> The amendments and issues raised through submissions presents an opportunity to include clarification amendments in the definition. Having a clear and robust definition will remove confusion and possibly remove the need for unnecessary resource consents and reduce time delays and financial costs for the community, consent applicants and Council. Users of the District Plan will know what a <i>public trail</i> is (and that it excludes support infrastructure) as there will be a clear definition. A clearer and more streamlined District Plan framework for a defined <i>public trail</i> activity will result. Only <i>public trails</i> that require a thorough assessment of specific ecological, landscape, heritage and natural hazard features will have to go through a resource consent process. <i>Public trails</i> will be mainly established and administered by Council meaning a multi-disciplinary approach will ensure that provisions of other legislation are considered and met (HNZPT Act, Health and Safety legislation etc.). Bylaws will still be able to provide a layer of structure via signage and provisions for the use of Council administered <i>public trails</i> (around dual-/multi-use of the <i>public trails</i>, and dog management for example).
Effectiveness	<ul style="list-style-type: none"> The option is effective. Amending the definition to make it clear that it does not include support infrastructure will allow <i>public trail</i> projects to be established without unnecessary confusion.
Efficiency	<ul style="list-style-type: none"> The option is efficient as it will result in a clearer definition meaning fewer costs, including financial expenses, time wasting, confusing processes for staff and customers, use of staff and resources.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient information is available

DISCUSSION

There is no specific that captures *public trails* or similar activities within the current District Plan framework. This has resulted in an inefficient way of dealing with *public trails*, inevitably as Discretionary Activities. A Discretionary Activity consent process is thought to be often unnecessary and not useful in managing actual and/or potential adverse effects on the environment.

The purpose of this Plan change is to provide an alternative, more efficient and effective, set of provisions for the development and use of *public trails* (walkways, cycleways, bridleways and similar)

where there are no significant overlays that require more detailed assessment. A clear definition of *public trail* is necessary to underpin the rule framework.

The Bay of Plenty Regional Council suggests it may not be clear enough whether the *public trails* definition includes infrastructure such as public toilets. The Katikati Waihi Beach Residents and Ratepayers Association also query whether it includes carparks. This type of infrastructure which may support a *public trail* is not intended to be included within the definition. Support infrastructure will require an assessment related to resource consent requirements separate from the *public trail* activity.

One submitter has raised concerns that *public trails* should not be able to be established more easily and has objected to the new definition and rule framework on this basis. Plan Change 84 deals with specific issues that have arisen through the administration of the District Plan and deals with issues of efficiency of the administration of the Plan as well as effects on the environment. Where new *public trails* are proposed by the Council, they are inevitably progressed through either a Reserve Management Plan or a Long Term or Annual Plan process which provides an opportunity for individuals and community groups to be involved through a public consultation process. The public feedback or submissions received are then considered by Council and decisions are made about the project, including timing and funding (should the project be approved).

The *earthworks* definition is not proposed to be amended under Plan Change 84, and further, it is noted that *quarrying* is excluded from the current definition of *earthworks* because it already has its own specific definition and activity status in the District Plan.

The issue of reverse sensitivity from the establishment of *public trails* in relation to quarry activities is dealt with in Topic 2 below.

RECOMMENDATION

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

"Public Trail" means a path either on or off road for the purpose of public recreational or commuter cycle or pedestrian transport (including mobility scooters and other wheeled pedestrians), or can be a bridle trail or similar. A public trail can be for one or more of the above uses, but is not for the use of combustion-engine and similar motorised vehicles. Public trail includes activities associated with creating the path, and which includes but is not limited to, pathways, bridging, boardwalks, walkways and steps, and includes related signage and maintenance activities, but excludes public trail support infrastructure such as public toilets and carparks.

The following submissions are therefore:

Accepted

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

Accepted in Part

Submission	Point Number	Name
9	14	J Swap Contractors Ltd

Rejected

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

REASONS

Option 3 is the preferred option and is considered to be the most effective and efficient method in relation to providing a clear definition of *public trails*. It assists in providing a more enabling framework for the construction of *public trails* (walkways, cycleways, bridleways and similar) whilst ensuring that effects on ecological, landscape, heritage and natural hazard features continue to be managed appropriately. The amendments made to the notified version of the definition are to clarify the definition further.

The preferred option addresses the identified District Plan administration issue and makes it clear via the definition what a *public trail* is.

The benefits and effectiveness / efficiency reasons indicate that Option 3 is likely to achieve the best outcome for the WBOP District.

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

A submission has been received from J Swap Contractors Ltd raising industry-specific concerns around the potential for reverse sensitivity resulting from *public trails* establishing in close proximity to mineral extraction areas.

Quarry location is restricted by a number of factors including location of the aggregate rock source, topography and surrounding land use activities. J Swap Contractors Ltd have stated that, given the complex dynamics associated with finding appropriate quarry areas including future expansion areas, it is unreasonable for reverse sensitivity to adversely affect existing quarry areas.

The submitter's concern is that public recreation areas locating close to quarry areas raises the risk for the quarry operators that concerns will be raised about noise, vibration, dust, traffic disturbance and visual amenity. This can become highly restrictive and problematic for them, even when they are operating within their resource consent conditions or Regional and District Plan standards. They are concerned that this can severely compromise and complicate their opportunities for expansion.

SUBMISSION POINTS

The J Swap Contractors Ltd submission raises issues of reverse sensitivity and the desire for their quarry operations to be protected from incompatible development that may seek to establish close to mineral extraction areas and then complain about effects. This includes *public trails*.

J Swap Contractors Ltd currently operate two quarries within the Western Bay of Plenty District. These are Katikati Quarries Ltd (KQL) on Wharawhara Road and Tauranga Quarries Ltd (TQL) on Kaitemako Road.

In relation to the District Plan's policy framework, the submitter has sought the introduction of a new objective to address potential reverse sensitivity effects that may impact on the safe, effective and efficient operation of quarries. Alternatively they have sought an amendment to Objective 10.2.1.6,

which addresses reverse sensitivity in relation to infrastructure and network utilities, to include quarries.

For the KQL and TQL sites, the submitter has also suggested, as their preferred approach to avoiding reverse sensitivity effects, adopting a District Plan Quarry Effects Management Area (QEMA) mechanism to restrict *public trail* activities around their quarries.

A QEMA mechanism currently exists in the District Plan in relation to the Cameron Quarry site at Otamarakau although the existing rule framework does not restrict the establishment of recreational facilities such as *public trails*. The existing QEMA rule states that *dwellings*, *minor dwellings*, *accommodation facilities* and *education facilities* (including any additions or alterations to these) shall not be located in a QEMA. The District Plan maps identify the QEMA.

If a QEMA is not established for the KQL and TQL sites as requested, the submitter has suggested that setback buffer areas for *public trails* of at least 300m from operational and future expansion quarry areas are necessary to avoid reverse sensitivity effects. This matter of yard setbacks is considered in Topic 3 below.

Option 1 - Retain PC84 as notified (i.e. no new policy in relation to reverse sensitivity for quarry operations and no QEMA applied)

Costs	<ul style="list-style-type: none"> Not providing additional policy support for reducing the potential for reverse sensitivity effects to affect quarry operations and not applying a QEMA specifically requiring <i>public trails</i> to be separated from quarry areas introduces an additional element of risk to the TQL and KQL quarry operations which may affect this industry in an economic manner.
Benefits	<ul style="list-style-type: none"> Council has more flexibility under the notified Plan change to establish <i>public trails</i>.
Effectiveness	<ul style="list-style-type: none"> Not effective in protecting the interests of the submitter but effective in ensuring a clear and streamlined approach to providing <i>public trails</i>.
Efficiency	<ul style="list-style-type: none"> Efficient for Council in meeting their objective of freeing up the ability to establish <i>public trails</i> without unnecessary consenting processes, but not an efficient approach to protecting the interests of the submitter in relation to reverse sensitivity concerns for quarrying operations.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient information is available.

Option 2 – Introduce a new policy and rule framework and establish a QEMA around TQL and KQL to specifically manage reverse sensitivity from *public trails* in relation to quarries

Costs	<ul style="list-style-type: none"> Introducing new QEMAs for KQL and TQL into the District Plan as requested is considered to be outside the scope of the Plan change. The Plan change didn't anticipate the creation of greater restrictions on the location of <i>dwellings</i>, <i>minor dwellings</i>, <i>accommodation facilities</i> and <i>educational facilities</i> via QEMAs in the course of dealing with the reverse sensitivity effects of <i>public trails</i>. Introducing provisions that are outside the scope of the Plan change introduces the risk of judicial review and/or appeals to this Plan change process. The relief sought by the submitter in relation to new policy and new QEMAs would complicate the proposed framework which was to clarify and streamline proposals for <i>public trails</i>. Considering the introduction of a new policy and QEMA framework to address potential reverse sensitivity effects for the submitter, is inefficient in the context of the Plan change to clarify activity status for <i>public trails</i> which will allow only for temporary and transient recreational use.
Benefits	<ul style="list-style-type: none"> This option would benefit J Swap Contractors Ltd as it would remove the risk within a KQL or TQL QEMA that users of a <i>public trail</i> may make complaints about quarry operations.
Effectiveness	<ul style="list-style-type: none"> Effective in protecting the interests of the submitter but not effective in introducing a clear and streamlined approach for <i>public trails</i>.
Efficiency	<ul style="list-style-type: none"> Not efficient for Council in meeting their objective of introducing a clear and streamlined approach for <i>public trails</i>, but an efficient approach for the submitter in relation to protecting their quarrying interests from reverse sensitivity concerns.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient information is available.

DISCUSSION

General

Public trails, when established, provide access through a variety of environments as users walk/run and cycle/ride.

It is generally accepted that the majority of public walkways and cycleways are established and administered by Council, sometimes in conjunction with a local trust or community group. The Department of Conservation also establishes *public trails* within its estate.

It is acknowledged that the location of a quarrying activity is dictated by location-specific physical attributes and that the activity cannot easily move to another site if the neighbours do not like the operating effects (such as noise, vibration, dust, traffic disturbance and reduced visual amenity). It is also noted that the submitter has advised that they may be making resource consent applications for expansions to operations at both the TQL and KQL sites, and the submitter is sensitive about the potential for adjoining and nearby landowners and occupiers to submit in opposition thereby potentially compromising and complicating their expansion opportunities.

Most Council-developed *public trails* are located within esplanade reserves and strips, road (formed or unformed), or on gazetted reserves. In these contexts, it is acknowledged that the purpose of these areas is to enable public access. At times, to connect trails or to provide access between communities for example, Council may wish to negotiate with private landowners for access to land for a *public trail*. In this respect it is noted that Council too is constrained in relation to where *public trails* can easily establish.

Policy Framework – New Objective or Amendment to Objective

The submitter has requested a new District Plan objective or an amendment to Section 10 Objective 10.2.1.6 to recognise the importance of reverse sensitivity issues for the quarrying industry, and particularly J Swap Contractors Ltd.

District Plan Objective 10.2.1.6 is as follows:

“The establishment and management of land use activities, or undertaking of subdivision in a way that avoids, remedies or mitigates potential reverse sensitivity effects that may impact on the safe, effective and efficient operation of infrastructure and network utilities.”

In relation to the amendment requested to the District Plan policy framework, specifically Objective 10.2.1.6, it is noted that the definition of Infrastructure and Network Utilities which Section 10 relates to, does not include quarries or quarry activities. The requested amendment to Objective 10.2.1.6 is therefore not appropriate as part of this Plan change process.

The quarries that J Swap Contractors Ltd operate are within the Rural Zone which makes provision for quarrying as a Discretionary Activity. Section 18 - Rural Zone provisions already include significant issues, objectives and policies that support quarrying and mineral extraction and cover reverse sensitivity issues. For completeness, these are replicated as follows:

18.1 Significant Issues

7. *Quarrying and other mineral extraction activities are important to the future growth of the western Bay of Plenty sub-region.*

By their nature, hard rock and mineral deposits are found in fixed locations and consequently quarrying and/or mining of these resources is constrained by their location. Because of the potential effects generated by quarrying and mining activities such as noise, dust and traffic, development in close proximity to them and alongside access routes to these resources has the potential to create reverse sensitivity issues.

18.2.1 Objectives

3. *Appropriate provision for activities not directly based on primary production but which have a functional or other legitimate need for a rural location.*
8. *The efficient use and development of regionally important mineral resources.*

18.2.2 Policies

4. *Subdivision, use and development which has the potential to inhibit the efficient use and development of rural land for primary production or to inhibit the efficient use and development of existing mineral extraction sites (including vehicle access routes to such resources) should be avoided or minimised.*

14. *Subdivision and development of rural land should not occur in a manner which inhibits the legitimate operation of existing mineral extraction sites or in areas known to contain untapped mineral resources of regional significance.*

Rule Framework – Request for QEMA

The J Swap Contractors Ltd quarries within the Western Bay of Plenty District are located in remote rural locations. There is a low potential for *public trails* to be established on rural sites in close proximity to these quarries where the land has not already been assigned for public access.

When quarries are lawfully established and operate under conditions of resource consent and/or District Plan standards, there is scant opportunity for legitimate complaints about their operational characteristics to gain traction. Quarrying is a Discretionary Activity in the existing District Plan framework. If quarry operators wish to expand operations, resource consents are required and any submissions received through the statutory Resource Management Act process in relation to adverse effects are considered on their legitimate merits.

The establishment of new QEMAs to protect KQL and TQL quarry operations from reverse sensitivity effects of activities is considered to be outside the scope of Plan Change 84. The effect of introducing QEMAs for KQL and TQL was not addressed in the s32 analysis for this Plan change. New QEMAs as requested would generate significant restrictions on private property as the existing QEMA framework would restrict *dwelling*s, *minor dwelling*s, *accommodation facilities* and *education facilities* within the QEMA area. It is noted that the existing District Plan QEMA rule (which relates to the quarry at Otamarakau) has a buffer area of approximately 200m and does not currently restrict any type of recreation facility or trail activity.

It is considered that because users of *public trails* will be temporary and transient, and it is generally accepted that *public trails* are located in a number of differing environments not all of which are natural or pristine, that providing an exclusion area as proposed by J Swap Contractors Ltd is excessive and unnecessary.

It is suggested that if J Swap Contractors Ltd wish to investigate the introduction of QEMAs into the District Plan that a private plan change application would be appropriate. Alternatively the submitter could instigate discussions with Council with a view to Council considering whether QEMAs for KQL and TQL could be introduced during the next District Plan review.

RECOMMENDATION

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

The following submissions are therefore:

Rejected

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

REASONS

Option 1, to retain PC84 as notified (i.e. no new policy in relation to reverse sensitivity for quarry operations and no QEMA), is considered to be the most effective and efficient means of providing a better outcome for the provision of *public trails* in the WBOP District.

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

The introduction of KQL and TQL QEMAs into the District Plan is outside the scope of Plan Change 84. Persons potentially directly affected by the introduction of a QEMA will have been denied an opportunity to respond if the submitter's relief is accepted. New QEMAs would generate significant restrictions on private property, and a new QEMA framework would need to be developed as the existing QEMA framework does not currently restrict recreation facilities or *public trail* activities.

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

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

BACKGROUND

Each zone in the District Plan allows “*public works and network utilities as provided for in Section 10*” as permitted activities. To achieve the outcome anticipated under this Plan change where *public trails* can be established as Permitted Activities whilst ensuring that District Plan identified significant ecological, landscape, heritage and natural hazard features are managed appropriately, a new entry in Table 10.3 is required.

Because Identified Significant Features are a “category” in Table 10.3, clarification is required within the table to make it clear that within these features, a *public trail* activity shall have the same activity status as provided in the relevant section of the District Plan.

SUBMISSION POINTS

Heritage New Zealand Pouhere Taonga (HNZPT) has requested that an additional advice note be added to the end of Table 10.3 relating to the management of archaeology. More enabling provisions for *public trails* reduces the opportunities for engagement with HNZPT at an early stage of the project. Adding an advice note (similar to the existing advice note in District Plan Section 7 Historic Heritage) will ensure that the provisions relating to archaeology are less likely to be overlooked. The advice note requested is as follows:

4. **Note:**

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

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

Katikati Waihi Beach Residents and Ratepayers Association are concerned that Council does not carry out enough consultation or cost-benefit analysis before constructing trails and the process should not be allowed to be less transparent than it already is.

Matheson Day have also supported the retention of the current District Plan provisions (the status quo). The submitter does not want the process to establish *public trails* to be easier where there is not support from local community.

J Swap Contractors Ltd have opposed the provision for *public trails* in all zones, particularly where bringing the general public closer to quarry areas may result in reverse sensitivity effects. They suggest that the notified addition of provision (bd) *Public Trails* in Table 10.3 (Activity Table for Infrastructure and Network Utilities) be amended to refer to *public trails* “outside of a Quarry Effects Management Area”. They also request other changes to address reverse sensitivity in relation to *public trails* (dealt with in Topic 2 – Policy Framework and QEMA, and Topic 4 – Section 10.4 Activity Performance Standards for Infrastructure and Network Utilities).

Option 1 – Adopt Section 10.3 Activity Table for Infrastructure and Network Utilities as notified (i.e. add a new line identifying public trails as a Permitted Activity in all zones and excluding *public trails* as a Permitted Activity where they would be within a Significant Identified Feature) as follows:

10.3 Activity Table for Infrastructure and Network Utilities

<u>Activity</u>	<u>Surface of Water</u>	<u>Identified Significant Features</u>	<u>Residential, Future Urban, Rural Residential and Lifestyle Zone</u>	<u>Commercial Zone</u>	<u>Industrial Zone</u>	<u>Rural Zone, Post Harvest Zone</u>	<u>All Terrain Park Zone (ATP)</u>	<u>Public Reserves</u>	<u>Road Reserve</u>
<u>Miscellaneous</u>									
<u>(bd) Public trails</u>	P	-	P	P	P	P	P	P	P**
*Within Identified Significant Features, a <i>public trail</i> activity shall have the same activity status as provided in the section of the District Plan relevant to the Identified Significant Feature/s.									
**In this context Road Reserve includes formed and unformed roads.									

Costs	<ul style="list-style-type: none"> Resource consents will still be necessary where the potential for actual adverse effects on specific ecological, landscape, heritage and natural hazard features need to be assessed, adding time and financial costs. Where <i>public trails</i> become Permitted Activities, HNZPT have no ability to “piggyback” on consenting processes to suggest archaeological advice notes to reduce the potential for <i>public trails</i> to adversely affect archaeology.
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	<ul style="list-style-type: none"> Not introducing a provision requiring <i>public trails</i> to be separated from quarry areas introduces an additional element of risk to quarry operations which may adversely affect this industry.
Benefits	<ul style="list-style-type: none"> A clearer and more streamlined District Plan framework for a defined <i>public trail</i> activity meaning only <i>public trails</i> that impact specific ecological, landscape, heritage and natural hazard features will have to go through a resource consent process. Because <i>public trails</i> will generally be established and administered by Council, a multi-disciplinary approach will ensure that provisions of other legislation are considered and met (HNZPT Act, Health and Safety legislation etc.), and Council's bylaws will still be able to provide a layer of structure via signage and provisions for the use of Council administered <i>public trails</i> (around dual/multi use of the <i>public trails</i>, and dog management for example).
Effectiveness	<ul style="list-style-type: none"> Effective in removing uncertainty over activity status for <i>public trails</i> and making the process more enabling and simpler where there are no specific ecological, landscape, heritage and natural hazard features that require assessment via resource consent.
Efficiency	<ul style="list-style-type: none"> Efficient in creating a clearer and therefore more cost-effective framework within which to assess proposals for public trails over a variety of zones and within the context of a variety of environments.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient information is available.

Option 2 – Adopt 10.3 Activity Table for Infrastructure and Network Utilities as notified (Option 1) but with the addition of the words “outside of a Quarry Effects Management Area” to line (bd) as follows,

(bd) *Public trails (outside of a Quarry Effects Management Area*

Costs	<ul style="list-style-type: none"> Complicates the proposed framework which was to clarify and streamline proposals for <i>public trails</i>. Unnecessarily introduces new provisions to respond to a concern that <i>public trails</i> may unduly compromise quarry operations. As outlined in Topic 2, the introduction of KQL and TQL QEMAs into the District Plan is outside the scope of Plan Change 84 and would open Council up to the possibility of judicial review or appeals.
Benefits	<ul style="list-style-type: none"> This option would benefit the TQL and KQL quarry operators as it would possibly remove an element of risk of users of a <i>public trail</i> making complaints about their quarry operations.

Effectiveness	<ul style="list-style-type: none"> Potentially effective in protecting the interests of quarry operators but not effective in solving a resource management issue by introducing a clear and streamlined approach for <i>public trails</i>.
Efficiency	<ul style="list-style-type: none"> Not efficient in introducing a clear and streamlined approach for <i>public trails</i>.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient and certain information is available.

Option 3 – Adopt 10.3 Activity Table for Infrastructure and Network Utilities as notified (Option 1) with the inclusion of an advice note as requested by HNZPT

Costs	As for Option 1 above.
Benefits	As for Option 1 above. Will assist to ensure that HNZPT provisions relating to archaeology are less likely to be overlooked.
Effectiveness	Effective in removing uncertainty over activity status for <i>public trails</i> and making the process more enabling and simpler where no ecological, landscape, heritage and natural hazard feature overlays require a full assessment via resource consent.
Efficiency	Efficient in creating a clearer and therefore more cost-effective framework within which to assess proposals for <i>public trails</i> over a variety of zones and within the context of a variety of environments.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	Sufficient and certain information is available.

Option 4 – Status Quo - Retain current District Plan provisions which capture *public trails* (walkways, cycleways, bridleways and similar) as *places of assembly*

Costs	<ul style="list-style-type: none"> Uncertain outcome for any <i>public trail</i> proposal where resource consent is required as a Discretionary Activity. Creates additional costs (financial and time) for any <i>public trail</i> project. Resource Consent process may not provide any additional benefit to the <i>public trail</i> project in terms of a practical or environmental outcome.
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	<ul style="list-style-type: none"> Enabling positive <i>public trail</i> projects to provide for car-free transportation and recreational pursuits is more difficult.
Benefits	<ul style="list-style-type: none"> Enables a rigorous assessment of any <i>public trail</i> proposal as invariably a resource consent for a Discretionary Activity consent is required. Where resource consent is required as a Discretionary Activity a full assessment of all aspects of the project is required. Advice notes as well as consent conditions can be imposed, which allows HNZPT to suggest archaeological advice notes to reduce the potential for <i>public trails</i> to adversely affect archaeology.
Effectiveness	<ul style="list-style-type: none"> Not an efficient means of providing for <i>public trail</i> projects for the District which are invariably a positive initiative for the community.
Efficiency	<ul style="list-style-type: none"> Not an effective District Plan rule structure as the current provisions will not solve the identified issue or achieve a desirable outcome.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient and certain information is available.

DISCUSSION

The purpose of this Plan change is to provide clarity around the establishment of *public trails* and make provision where possible to enable and encourage them. Provision has been made in Section 10.3 Activity Table for Infrastructure and Network Utilities to ensure that identified significant features (ecological, landscape, heritage and natural hazard features) are protected by requiring necessary resource consents where these features are involved.

Public trails will therefore be enabled by the proposed new framework where activity performance standards are met (including the provision of setbacks as discussed in Topic 4 below) and where the land is suitable and suitably located. In some instances the land would be already identified or earmarked for this purpose (e.g. esplanade reserves and strips, on reserves and enabled under reserve management plans, within formed or unformed roads).

The amendment by addition of a further advice note at the end of Table 10.3 as requested by HNZPT will provide further clarification to applicants in relation to their obligations under the HNZPT Act.

Where new *public trails* are proposed by the Council, they are inevitably progressed through either a Reserve Management Plan or a Long Term or Annual Plan process which provides an opportunity for individuals and community groups to be involved through a public consultation process. The public feedback or submissions received are then considered by Council and decisions are made about the project, including timing and funding (should the project be approved). It is considered appropriate to make specific provision in Table 10.3 for *public trails*.

Provision of QEMAs for KQL and TQL has been determined (in Topic 2) to be outside the scope of Plan Change 84 and therefore the addition of the words “outside of a Quarry Effects Management Area” to line (bd) of Table 10.3 is not appropriate.

RECOMMENDATION

That the notified addition to the Section 10.3 Activity Table for Infrastructure and Network Utilities be adopted as notified (Option 1) with the inclusion of an additional advice note (Option 3).

Accepted

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

Rejected

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

REASONS

The purpose of this Plan change is to increase clarity around the establishment of *public trails* and amend District Plan provisions to enable them whilst ensuring that identified significant features are protected by requiring necessary resource consents where these features are involved. The notified Plan change achieves this purpose.

The addition of a non-statutory advice note to Table 10.3 as requested by HNZPT provides helpful advice and a reminder to *public trail* providers. Although District Plan Section 7 already contains the advice note suggested, it is considered that an additional advice note at the end of Table 10.3 is beneficial as a reminder of the HNZPT Act 2014 provisions when no resource consent is necessary. This would be consistent with other advice notes that remind applicants of their obligations under other legislation or standards.

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

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

BACKGROUND

Activity performance standards to support the inclusion of *public trails* in Table 10.3 have been drafted for inclusion in Section 10.4.

Public trails in the WBOP District are generally located within formed or unformed road corridors, esplanade reserve/strip or within public reserves, but at times new *public trails* may be constructed on other land. Setbacks from boundaries of adjacent title boundaries have been proposed to manage possible reverse sensitivity issues, and ensure privacy and reduction of adverse effects between properties.

SUBMISSION POINTS

J Swap Contractors Ltd have opposed the proposed new provisions for *public trails* unless they are amended to being permitted subject to being outside of a QEMA (this is addressed in Topic 2 above),

or having a setback of at least 300m from any of their quarry title boundaries or from the footprint of any quarry and future expansion area. The submitter has made suggestions for changes to Section 10.4 of the District Plan to ensure that *public trails* closer than this distance would be Restricted Discretionary Activities. They have also suggested new provisions under Rule 10.5.2 Assessment Criteria - Restricted Discretionary Activities to address reverse sensitivity in relation to their quarrying activities.

Federated Farmers of New Zealand (Inc) are supportive of the intent of the Plan change if adverse effects on neighbouring landowners is addressed, and that it is made clear that public access is only available over private property with the landowners' permission. They also want to ensure all new trails and access sites are included on regular maintenance schedules to reduce potential adverse effects on neighbouring private land. Concern has been raised that the 'usual' and lawful operation of productive rural land uses which are carried out in accordance with accepted management practices may be constrained by public trails and accesses near private rural property. They have suggested that a new provision 10.4(r)(e) is added to state that:

Any new access is provided in a way that does not constrain the lawful operation of productive rural land uses that are carried out in accordance with accepted management practices (or words to that effect).

J Swap Contractors Ltd have further submitted to the Federated Farmers of New Zealand (Inc) submission and support any new access being provided in a way that does not constrain the lawful operation of productive rural land uses, provided that reverse sensitivity does not become an issue for quarries.

Daniel Kinnoch has made various submission points on the proposed Section 10.4 provisions that relate to improvements to the drafting of the rule.

Option 1: Adopt Section 10.4 Activity Performance Standards for Infrastructure and Network Utilities (r) *Public trails* - as notified (30m setback for *public trails* from title boundaries except in stated circumstances, and the ability to locate closer with written approval of landowner/s).

Costs	<ul style="list-style-type: none"> Not increasing the setback from adjacent title boundaries for <i>public trails</i> to 300m as requested by J Swap Contractors Ltd introduces an element of risk to their quarry operations that may affect them in an economic manner.
Benefits	<ul style="list-style-type: none"> Activity performance standards as proposed will provide more certainty for <i>public trail</i> applications and for adjacent landowners. Council's usual maintenance operations and Bylaws will provide a layer of structure (via signage and other provisions) for the use of Council administered <i>public trails</i> (around dual/multi use of the public trails, and dog management for example) that will ensure the adjacent land uses are not adversely affected by <i>public trails</i>.
Effectiveness	<ul style="list-style-type: none"> Considered to be effective in providing certainty relating to the location of <i>public trails</i> relative to title boundaries, and effective in reducing the potential for cross-site effects.
Efficiency	<ul style="list-style-type: none"> Efficient in creating a clearer and therefore more cost-effective framework for <i>public trails</i>.

Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> • Sufficient information is available.
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Option 2: Amend Section 10.4(r) notified provisions to *public trails* being permitted subject to a 300m setback from quarry operations (and associated submitter-requested changes to Sections 10.4(r) and 10.5.2 relating to Restricted Discretionary Status for *public trails* closer than 300m).

Costs	<ul style="list-style-type: none"> • Complicates the proposed framework which was to clarify and streamline proposals for <i>public trails</i> by unnecessarily introducing new provisions to respond to J Swap Contractors Ltd concerns that <i>public trails</i> may compromise quarry operations. • The 300m setback from TQL and KQL quarrying activities that has been requested via submission is overly restrictive given that <i>public trails</i> use is temporary and transient.
Benefits	<ul style="list-style-type: none"> • This option would benefit the quarry operator as it would possibly remove an element of risk that users of a <i>public trail</i> would make complaints about quarry operations.
Effectiveness	<ul style="list-style-type: none"> • Effective at protecting the interests of the quarry operator, but not effective in introducing a clear and streamlined approach for <i>public trails</i>.
Efficiency	<ul style="list-style-type: none"> • Not efficient in introducing a clear and streamlined approach for <i>public trails</i>.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> • Sufficient information is available.

Option 3: Adopt Section 10.4 provisions as notified but with drafting changes as proposed in submissions to improve the application of the rule.

Costs	<ul style="list-style-type: none"> • As for Option 1.
Benefits	<ul style="list-style-type: none"> • As for Option 1.
Effectiveness	<ul style="list-style-type: none"> • Effective in providing certainty relating to the location of <i>public trails</i> in relation to title boundaries and in providing a clear rule framework.

Efficiency	<ul style="list-style-type: none"> Efficient in creating a clearer and therefore more cost-effective framework for <i>public trails</i>.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> Sufficient information is available.

DISCUSSION

It is acknowledged that *public trails* are not currently a Permitted Activity in any zone and that neighbours may have no expectation that public access across an adjoining site would be enabled by the District Plan. In this context there may be concerns about recreational activities (a *public trail* in this instance) establishing in close proximity to, and possibly causing complaints about, “normal” rural practices (this is a reverse sensitivity effect).

During development of this Plan change, consideration was given to the environments in which a *public trail* activity is likely to be established, and whether there was a need to consider how to manage potential adverse effects on landowners or occupiers who have land that may adjoin a *public trail*. Public access is only available over private property with the landowners' permission.

To respond to and manage possible reverse sensitivity effects between uses on adjacent sites, provisions that require a 30m setback for *public trails* from property boundaries were drafted. This includes the ability for the 30m setback to be reduced if the adjoining landowner/s consent is obtained (unless the *public trail* is on esplanade reserve or strip or along a formed or unformed road where public access is to be expected).

A 30m setback provision was considered to be adequate because of the transient and temporary movement of people using *public trails* through the environment in which they are located. In addition, the distance is consistent with the 30m setback required for residential buildings in the Rural Zone and the 60m separation that is therefore generated between these and other activities.

It is noted that existing *public trails* for commuter purposes or purely for recreation within the Bay of Plenty Region are located in a variety of rural, residential and industrial-type working environments which are often not pristine or remote from other development or activities. Trail users are aware of this and people using *public trails* have choice.

J Swap Contractors Ltd have requested a District Plan framework that achieves a 300m setback between their quarry operations and *public trails* to address their concerns about reverse sensitivity in relation to their existing and proposed future quarry operations. As mentioned above, the movement of people along *public trails* is transient and temporary, and there is a general acceptance by *public trail* users of the wide variety of environments in which they are located. It is considered that there is a very low risk of significant reverse sensitivity effects that would affect their quarry operations and no need to introduce additional provisions as requested.

In relation to the management of *public trails*, which it is acknowledged are mainly constructed and administered by Council, the Council becomes responsible for maintenance and upkeep of the trail and surrounding area and this includes management of pest species. Council's contracts are performance-based (with standards around weeds for example) and Council regularly audits the contract and the contractor to ensure that the intentions of the contract are met.

The submission points raised by Daniel Kinnoch relating to improvements to the drafting of the rule are generally logical and improve the clarity of the rule. Redrafting of the new activity performance standards rule has been undertaken to reflect the comments in that submission.

RECOMMENDATION

That Section 10.4 be retained as notified with amendments suggested by submitters as follows (Option 3):

(r) Public trails

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

Except that:

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

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

(c) Provided that:

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

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

Accepted

Submission	Point Number	Name
1	5	Daniel Kinnoch
1	6	Daniel Kinnoch
1	7	Daniel Kinnoch
1	8	Daniel Kinnoch
1	9	Daniel Kinnoch

Accepted in Part

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

Rejected

Submission	Point Number	Name
9	16	J Swap Contractors Ltd

REASONS

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

The specified setback distance for *public trails* from title boundaries is consistent with setbacks required for other activities in the Rural Zone.

Public trails are established in a wide variety of environments, and users of *public trails* are temporary and transient meaning that complaints of a reverse sensitivity nature are unlikely. It is considered that the Plan change does not give rise to a need to provide additional significant setbacks to avoid the potential for reverse sensitivity effects on quarrying activities.

TOPIC 5: SECTION 8 – NATURAL HAZARDS

BACKGROUND

Within District Plan natural hazard overlay areas there are some restrictions around earthworks and vegetation removal that impact the construction of *public trails* by requiring resource consent.

An assessment was carried out to consider whether there was anything in the existing rule framework that could be amended to make the process of establishing *public trails* easier whilst still achieving the intent of the District Plan natural hazard provisions.

Within floodable areas and coastal inundation areas, it was considered that a Permitted Activity rule could be drafted to cover situations where a *public trail* constructed on top of the natural ground surface only changed the surface levels by a small amount, but did not result in any adverse effect on overland flow or cause water to bank-up.

Where *public trails* are constructed on the ground surface, often with a small amount of excavation of the top humus and soil layer, the finished level is usually no more than 100 to 150mm above natural ground level (but could be up to 200mm).

It was determined that an increase in the level of the ground surface by a maximum of 200mm for *public trail* construction would not affect the drainage or overland flow functions of floodable areas or coastal inundation areas by a significant amount that would cause concern. Proposed new rule 8.3.3(c)(ii) was drafted to reflect this.

SUBMISSION POINTS

Daniel Kinnoch submitted that the changes proposed to Rule 8.3.3(c)(ii) should be made under either this Plan Change (84) or Plan Change 86 –Floodable and Coastal Inundation Areas – Maintenance of Stopbanks and Drains as there are numbering and layout conflicts in changes proposed to the same provision.

BOPRC have submitted that they support restricted discretionary activity status for *public trails* within floodable areas and coastal inundation areas.

DISCUSSION

The only proposed amendment in relation to *public trails* within floodable and coastal inundation areas is where a small change of not more than 200mm is made to the finished surface. It has been determined that an increase in the level of the ground surface by a maximum of 200mm for *public trail* construction would not affect the drainage or overland flow functions of floodable and coastal inundation areas by an amount that would cause any concern. There will be no other change to the Restricted Discretionary Activity status for *public trails* within floodable areas and coastal inundation areas.

Being mindful of the change proposed to the same provision under Plan Change 86 is sensible and results in minor editorial amendments.

The changes to the same provision have not been considered under the same Plan change as the two Plan changes consider different issues.

The amendments proposed under both Plan changes add new bullet points to Rule 8.3.3(c)(ii) rather than a change to numbering, and this can be accommodated when introducing the proposed changes under both Plan changes to the District Plan.

RECOMMENDATION

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

8.3.3 Restricted Discretionary Activities

...

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

Accepted in Part

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

REASONS

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

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

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

PLAN CHANGE 84 - RECOMMENDED CHANGES TO THE DISTRICT PLAN FIRST REVIEW

The purpose of this part of the report is to show the proposed Plan change in full including any recommended changes in response to the submissions and further submissions.

Recommended changes to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

Topic 1 – Definitions (Section 3 of the District Plan)

“Public Trail” means a path either on or off road for the purpose of public recreational or commuter cycle or pedestrian transport (including mobility scooters and other wheeled pedestrians), or can be a bridle trail or similar. A public trail can be for one or more of the above uses, but is not for the use of combustion-engine and similar motorised vehicles. Public trail includes activities associated with creating it-the path, and which includes but is not limited to, pathways, bridging, boardwalks, walkways and steps, and includes related signage and maintenance activities, but excludes public trail support infrastructure such as public toilets and carparks.

Topic 2 - Reverse Sensitivity in Relation to Quarry Operations

No changes recommended.

Topic 2 - Section 10 – Table 10.3 Activity Table for Infrastructure and Network Utilities

<u>Activity</u>	<u>Surface of Water</u>	<u>Identified Significant Features</u>	<u>Residential, Future Urban, Rural Residential and Lifestyle Zone</u>	<u>Commercial Zone</u>	<u>Industrial Zone</u>	<u>Rural Zone, Post Harvest Zone</u>	<u>All Terrain Park Zone (ATP)</u>	<u>Public Reserves</u>	<u>Road Reserve</u>
Miscellaneous									
<u>(bd) Public trails</u>									
<u>*Within Identified Significant Features, a public trail activity shall have the same activity status as provided in the section of the District Plan relevant to the Identified Significant Feature/s.</u>	P	*	P	P	P	P	P	P	P**
<u>**In this context Road Reserve includes formed and unformed roads.</u>									

4 Note:

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

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

Topic 4 - Section 10.4 Activity Performance Standards for Infrastructure and Network Utilities**10.4(r) Public trails**

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

Except that:

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

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

~~(c) Provided that:~~

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

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

Topic 5 - Section 8 Natural Hazards**8.3.3 Restricted Discretionary Activities**

(c) Floodable Areas and Coastal Inundation Areas

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

ATTACHMENTS

- 1. Section 32 Report - Plan Change 84 - Public Trails (Walkways, Cycleways, Bridleways and Similar)**



Western Bay of Plenty
District Council

Change to the District Plan - First Review

Plan Change 84

Public Trails (Walkways, Cycleways, Bridleways and Similar)

Section 32 Report



1.0 Introduction

1.1. General Introduction

The purpose of this report is to consider a Plan Change to include rules within the District Plan to provide a more enabling framework for the construction of public trails (walkways, cycleways, bridleways and similar).

1.2. Background

A review of District Plan provisions has been undertaken to reflect on whether there is scope to provide a more enabling set of provisions for the development of public trails.

Staff have assessed the relevant operative District Plan provisions, discussed the issues with Reserves and Facilities, Utilities, and Environmental Consenting staff, and have undertaken some research on other Councils' approaches to public trails and similar activities.

This report outlines the issues that have been identified and considers possibilities for changes to the District Plan to make the development of public trail projects easier, whilst continuing to ensure that actual and/or potential effects on the environment, including on scheduled significant sites and District Plan overlays continue to be managed appropriately.

2.0 Resource Management Act 1991

2.1. Section 32

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

- (1) An evaluation report required under this Act must—*
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

- (2) An assessment under subsection (1)(b)(ii) must—*

- (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced;*
 - and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*
- (3) *If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
- (a) *the provisions and objectives of the amending proposal; and*
 - (b) *the objectives of the existing proposal to the extent that those objectives—*
 - (i) *are relevant to the objectives of the amending proposal; and*
 - (ii) *would remain if the amending proposal were to take effect.*
- (4) *If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.*
- (4A) *If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in [Schedule 1](#), the evaluation report must—*
- (a) *summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of [Schedule 1](#); and*
 - (b) *summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.*

2.2. Section 74 - Iwi Management Plans

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council.

There are seven hapu management plans that have been lodged with the Council. These are:

- (a) Te Mana Taiai o Ngai Tamarawaho Hapu Management Plan (2013);
- (b) Ngai Te Ahi Hapu Management Plan (2013);
- (c) Matakana Island and Rangiwaea Islands Hapu Management Plan (2012);
- (d) Te Awaroa – Ngati Kahu Environmental Management Plan (2011);
- (e) Te Awanui Tauranga Harbour Iwi Management Plan (2008);
- (f) Pirirakau Hapu Environmental Management Plan (2004); and
- (g) Tapuika Environmental Management Plan (2014).

As relevant to this plan change, the key theme arising from a review of these management plans is the importance of protecting the values of wahi

tapu, sites of significance and cultural features and landscapes from adverse effects of activities, particularly activities involving earthworks. Some management plans include specific policy direction to require consultation with the hapu on earthworks proposals, and the need for cultural monitoring during physical works.

In relation to the changes proposed to enable public trails through this plan change, protection rules within the District Plan that relate to scheduled cultural sites of significance will remain unchanged. In addition, the provisions of the Heritage New Zealand Pouhere Taonga Act provide absolute protection to all archaeological sites, whether recorded or not, and whether scheduled in the District Plan or not. Existing protocols and partnership relationship agreements with iwi/hapu in relation to Council's projects exist and these which will not be altered by this proposed plan change.

As part of a process separate to this plan change, Council is currently reviewing the provisions of the District Plan in relation to how it provides for the management of Maori cultural values. It is anticipated that this broader review will identify whether there is a need for an additional change to the District Plan to better provide for cultural values in a manner consistent with the relationships Council seeks to maintain with iwi/hapu, and the intent of the RMA.

2.3. Clause 3 of Schedule 1 - Consultation

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

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

Information on this proposed plan change was provided to the Minister for the Environment and feedback was requested. No feedback has been received.

No other Ministers of the Crown or local authorities are considered affected by this proposed plan change.

The Bay of Plenty Regional Council has been consulted and they have identified no issues with the proposed change beyond the need to carefully consider landscape and ecological values and the need to avoid duplication between the roles of the Regional and District Councils (specifically in relation to earthworks and vegetation removal). They advised that they would be generally supportive of creating a more enabling District Plan structure for public trails to provide access to, and along, the coast and rivers, and also in terms of providing for alternative modes of transport.

No marine title groups are considered affected.

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

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

In relation to actual and/or potential effects of public trails on cultural and heritage sites, it is acknowledged that where they are scheduled in the District Plan there is statutory protection for them. In addition, protection mechanisms around historic heritage in the Historic Places Pouhere Taonga Act apply.

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019.

Direction was sought at the 25th June forum as to whether existing partnership agreements and/or protocols with Council continue to provide a level of comfort in relation to the proposed framework for public trail projects carried out under Council administration. It was recognised that public trail projects would continue to be undertaken within the context of particular consideration given to scheduled significant sites and places within the District Plan.

At the 25th June meeting no specific concerns were raised in relation to the public trails plan change project. It is acknowledged that the partnership relationship is important and where public trails are Permitted Activities, Council’s project staff will engage as they do currently with iwi/hapū.

Statutory Acknowledgement Areas that are not scheduled in the District Plan do not currently trigger a response in relation to Permitted Activities in the District Plan however, existing protocols between Council and iwi/hapū within the WBOPDC rohe provide for engagement on Council’s projects.

In addition, the Council have engaged with the public to request input prior to the writing of this report. This was done through notices in local newspapers and the Council’s ‘Have Your Say’ website. A variety of responses were received and these are summarised as follows.

Question	Responses
Do you think that making it easier for Council to establish public trails is a good idea?	73% said “yes” 27% said “no”

Why?	<p>"Yes" responses:</p> <ul style="list-style-type: none"> - substantial benefits to residents & visitors - passion for safe walking and cycling - better environmental and amenity outcome - consenting process causes unnecessary costs and delays and needs to be as streamlined and practical as possible - recreational, health and ultimately economic benefits to the District making it a high priority - positive alternative to using cars - need good access for commuting, cycle touring, walking and schools - happy that significant environmental features will continue to be assessed through resource consent <p>"No" responses:</p> <ul style="list-style-type: none"> - unintended consequences (on archaeology) - lack of consultation and financial burden of more public trails
Are there potential adverse effects of public trails projects that concern you?	<p>64% said "yes"</p> <p>46% said "no"</p>
If "yes", what are these concerns?	<p>"Yes" responses:</p> <ul style="list-style-type: none"> - concern about effects on historic heritage sites not scheduled in the District Plan and concern that the plan change would remove the opportunity for HNZPT staff to provide advice on resource consents. - costs have to be reduced as they are currently unaffordable - enabling public trail projects may result in unforeseen and unfortunate effects (that closer scrutiny via resource consent may have identified) - environmental concerns - dogs hazardous to cyclists and the environment in sensitive birdlife/wildlife areas
Other comments.	<ul style="list-style-type: none"> - trails promote good health and wellbeing for all ages - support alternative trail networks and making the District walking and cycle friendly - keep constraints and costs down, surface doesn't always need to be concreted - positive community effects and ultimate payback (e.g. Otago and Hauraki Rail Trails) - links between different environments - positive spin-offs like accommodation and services associated with trail use - a significant positive influence on the economy of our region - opportunity for Council's to work together on links - more is better and a connected network is essential - there is room to promote the economic benefit assessments done by other areas - existing trails are a credit to Council - Waihi Beach/Athenree link – is this still on the agenda? - the formation and maintenance of walkways, cycleways, bridleways and similar trails and car parking areas should not be excluded from the definition of "<i>earthworks</i>".

	<p>- Council does not carry out enough consultation or cost-benefit analysis before constructing trails and the process should not be allowed to be less transparent than it already is.</p>
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Council also engaged with the following groups and stakeholders on a range of proposed plan changes:

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

No specific issues were raised by NZKGI in relation to this proposed plan change.

Toi Te Ora Public Health staff indicated that a plan change of this nature would be supported from a public health perspective as it enables physical activity.

NZTA raised a potential concern about the interface between public trails and State Highways. This concern was in relation to how potential conflicts between vehicular traffic and users of the public trails (pedestrians, cyclists and horses) would be managed and/or avoided in close proximity with State Highways. It is noted that the development of any public trail involving a link with the State Highway network would, by necessity, involve Council working with NZTA to manage any potential effects.

3.0 Issue 1: Public Trails - Activity Status and Rule Framework

3.1. Introduction

The impetus for the review of District Plan provisions relating to public trails arose from complexities arising out of the Omokoroa to Tauranga cycleway project. The required resource consents for a number of locations within the project added significant time and cost.

In general, it was thought that the current District Plan provisions around public trails frequently adds a layer of (resource) consenting to the process, often with no resulting benefit to the environment or to the project.

3.2. The Application of Current District Plan Provisions

Within the District Plan framework there is currently no specific definition that captures public trails or similar activities. Neither is there a specifically identified activity status for these activities.

The definition of *places of assembly* (below) has been used to “capture” public trails as an activity, usually as a Discretionary Activity for which resource consent is required.

"Places of Assembly" means land, buildings, structures, or uses on the surface of water, that involve the congregation of people for such purposes as deliberation, entertainment, cultural, recreation or similar purposes and includes places of worship, marae, halls, funeral chapels, clubrooms, taverns, restaurants, art galleries, theatres, sports fields, facilities for recreation activities and tourist facilities.

The classification of public trails as *Places of Assembly*, as well as the triggering of earthworks provisions in District Plan Section 6 – Landscape, and the Floodable Areas and Coastal Inundation Areas provisions in Section 8 have, in particular, created a need for resource consenting for public trail projects that may not be necessary or useful in managing actual and/or potential adverse effects on the environment.

Within all Council's reserves, whatever the underlying zone, the District Plan allows for *activities on reserves as provided for within the Reserves Act 1977* as Permitted Activities. This means that if the relevant Reserve Management Plan provides for public trails, then they are Permitted Activities.

This Permitted Activity rule, however, does not exempt activities within reserves (including public trails) from the need to gain resource consent if the District Plan has identified that it is required for another matter (e.g. vegetation removal or earthworks relating to a significant overlay feature within Natural Environment, Landscape, Culture and Heritage, and Natural Hazards sections).

Reserve Management Plans can therefore facilitate public trail activities where they are anticipated and mandated via a Reserve Management Plan which has been through community consultation processes, however, the activity may still need resource consent to assess effects on specific matters where there is a District Plan overlay. This is a correct and generally robust approach as overlays are commonly included in the District Plan to protect sensitive areas.

It is however believed that some consideration of enabling low-impact or no-effect public trails within Floodable Areas and Coastal Inundation Areas may be useful, and this is considered below.

Section 4A.5 of the District Plan provides that all *earthworks* are permitted, except where they:

- Are listed as requiring resource consent elsewhere in the District Plan.
- Undertaken in association with an activity for which a resource consent for a Discretionary or Non-Complying Activity is required.
- Are listed as a matter of control or discretion.

The definition of *earthworks* (below) is wide and exempts certain activities, but not the formation or maintenance of public trails.

"Earthworks" means the alteration of land contours on any site including, without limitation: deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting,

filling or backfilling and recompacting of existing ground, but does not include domestic and reserve gardening, quarrying and normal agricultural and horticultural practices.

The *earthworks* definition could be altered so that the formation and maintenance of public trails would be excluded from the definition of earthworks, except that as a *place of assembly* (as is the case currently) or where there is a District Plan significant area overlay, they are captured by the listed exemptions in Section 4A.5.

A wider consideration of the District Plan provisions is therefore necessary to establish whether there is an alternative rule framework that would assist in enabling the construction and use of public trails.

3.3. Analysis and Possible Change to Provisions

A number of possible changes to the District Plan which would provide a more enabling rule framework for public trails have been explored.

Definition

The simplest and most pragmatic of these would be to provide a specific definition and activity status for public trails so that they are not classified as *places of assembly* (requiring Discretionary Activity resource consent).

Activity Status

In determining an activity status for public trails, the provisions of Section 10 – Infrastructure, Network Utilities and Designations have been considered. The explanatory statement says that *infrastructure and network utilities* are essential components for the effective and efficient functioning of the District, and that they contribute positive benefits to local communities, the wider sub-region and the nation. The explanatory statement goes on to list roading and associated linkages as a function that *infrastructure and network utilities* includes.

Further, the definition of *infrastructure and network utilities* includes:

(k) *Structures for transport on land by cycleways, rail, roads, walkways, or any other means.*

It is considered that *infrastructure and network utilities* could effortlessly embrace public trails as an activity. *Infrastructure and network utilities* are variously provided for within the District by way of Permitted Activities, through obtaining appropriate resource consents, or in regards to a network utility operator, by way of designation. Table 10.3 – Activity Table for Infrastructure and Network Utilities provides the activity status for different utilities, and, as relevant to this plan change does include cycle lanes but only as a Permitted Activity within *road reserve*.

Every zone in the District Plan contains *"works and network utilities as provided for in Section 10"* as a listed Permitted Activity. Table 10.3 outlines specific *infrastructure and network utilities* activities with an activity status

assigned for each activity for each particular zone. Unless stated otherwise, the activities contained within Table 10.3 must comply with the Performance Standards contained within Section 10.4 where they are relevant, and with the Performance Standards for the zone in which the activity is located.

This means that, rather than changing the Permitted Activity Lists in every zone in the District Plan to allow for public trails, an addition to Table 10.3 – Activity Table for Infrastructure and Network Utilities would allow public trails to be provided for as a Permitted Activity in every zone whilst still providing for consideration of relevant overlay features in Sections 5 to 8 of the District Plan (Natural Environment, Landscape, Culture and Heritage, Natural Hazards). This is important to ensure public trails proceed through a resource consent assessment process, if required, in order to protect significant features or the environment.

Effects of Public Trails on Others

Consideration has been given to the environments in which a public trail activity is likely to be established, and whether there is a need for specific consideration of actual and/or potential adverse effects on landowners or occupiers who adjoin proposed public trails, particularly where the land is not a reserve where a Reserve Management Plan has already been through a public process.

In this context, it is acknowledged that where a public trail is proposed within an esplanade reserve, access strip or similar, that the purpose of these reserve areas is to enable public access, but in other environments (such as the Rural Zone) there may be no expectation that public access immediately adjacent to a site would be enabled by the District Plan.

Where a public trail is to be constructed on land that is not a Council reserve with a Reserve Management (or similar) Plan that has gone through a public process, the actual and/or potential effects on neighbouring landowners is something Council needs to consider. A specified setback distance that could only be reduced with the written approval of the landowner/s is one way to manage this. Staff have considered how to draft this into a District Plan rule framework.

Earthworks Provisions and Definition

It is proposed through this review that provision is made in all zones for public trails as a Permitted Activity. A change to the *earthworks* definition is not required because under District Plan Rule 4A.5, *earthworks* are permitted if they don't need resource consent under another District Plan rule. *Earthworks* in association with the development of public trails will therefore be permitted, except where they require resource consent under another rule.

This will make a significant difference to the current situation where by default public trails are defined as a *Place of Assembly* and require resource consent for a Discretionary Activity.

Public Trails within Natural Hazard Overlay Areas

Within Natural Hazard overlay areas there are some restrictions around *earthworks* and *vegetation removal* that would impact the construction of *public trails* and propel them into an activity category requiring resource consent. As assessment has been carried out to consider whether these restrictions are appropriate and whether there is anything in the existing rule framework that could be amended to make the process of establishing *public trails* easier whilst still protecting the environment.

In relation to Stability (landslip) Areas the current framework is considered appropriate as this overlay area is very sensitive to earthworks or vegetation changes. This means that *public trails* within the identified landslip areas that involve vegetation removal and/or excavation and filling will continue to require resource consent as a Restricted Discretionary Activity.

Within Floodable Areas and Coastal Inundation Areas however, it is considered that a Permitted Activity rule could be drafted to cover situations where a *public trail* constructed on top of the natural ground surface changed the surface levels by a small amount, but did not result in any adverse effect on overland flow or cause water to bank up.

Council's Reserves and Facilities staff advise that where *public trails* are constructed on the ground surface, often with a small amount of excavation of the top humus and soil layer, the finished level is usually no more than 100 to 150mm above natural ground level, but could be up to 200mm.

There are many other situations where greater amounts of cut and fill are required to establish public trails, for example within most esplanade reserve/strip situations.

Discussion with Councils Utility Services staff indicated that an increase in the level of the ground surface by a maximum of 200mm for public trail construction would not affect the drainage or overland flow functions of Floodable Areas by a significant degree that would cause concern. They have however advised that if there was a change in the surface of the land by more than 200mm they would have some concerns that adverse effects relating to stormwater management could arise.

It has been suggested that raising the land surface to a higher level within floodable areas where culverts or bridges are constructed in accordance with a hydrological engineer's calculations for the specific site and the upstream catchment area would be acceptable. This would ensure that an appropriate engineer had designed the flowpath so that stormwater is allowed to flow through, and this would only be needed in an overland flow path area (i.e. in floodable areas not inundation areas).

A Permitted Activity however, cannot be subject to the fulfilment of resource-consent type conditions (such as the lodgement for approval of a hydrological engineer's assessment).

Council's Utilities staff have further advised that they have no issues in relation to raised trails (i.e. boardwalks) as water can pass underneath or

overflow the boardwalk. This is useful in relation to public trail activities as a boardwalk structure within a floodable area or coastal inundation area can be up to 1.5m in height without the need for building consent and without being defined as a *building/structure* under the District Plan definition.

Statutory Acknowledgement Areas

Finally, Statutory Acknowledgement Areas that are not scheduled in the District Plan do not currently trigger a response in relation to Permitted Activities in the District Plan. However, existing protocols between Council and iwi/hapu within the WBOPDC rohe provide for engagement on Council's projects, including for any public trails that may affect any Statutory Acknowledgement Areas.

3.4. Option 1 – Status Quo – Retain current District Plan provisions which capture public trails (walkways, cycleways, bridleways and similar) as *Places of Assembly*

Costs	<ul style="list-style-type: none"> ▪ Uncertain outcome for any public trail proposal where resource consent is required as a Discretionary Activity. ▪ Creates additional costs (financial and time) for any public trail project. ▪ Resource Consent process may not provide any additional benefit to the public trail project in terms of a practical or environmental outcome. ▪ Enabling positive public trail projects to provide for car-free transportation and recreational pursuits is more difficult.
Benefits	<ul style="list-style-type: none"> ▪ Enables a rigorous assessment of any public trail proposal as invariably a resource consent for a Discretionary Activity consent is required. ▪ Where resource consent is required as a Discretionary Activity a full assessment of all aspects of the project is required. Advice notes as well as consent conditions can be imposed, which allows HNZPT to suggest archaeological advice notes to reduce the potential for public trails to adversely affect archaeology.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not an efficient means of providing for public trail projects for the District which are invariably a positive initiative for the community. ▪ Not an effective District Plan rule structure as the current provisions will not solve the identified issue or achieve a desirable outcome.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ Sufficient and certain information is available.

3.5. Option 2 – Create a clearer and more enabling District Plan policy and rule framework for public trails (walkways, cycleways, bridleways and similar)

<p>Costs</p>	<ul style="list-style-type: none"> ▪ Resource consents will still be necessary where the potential for actual and/or potential adverse effects on significant District Plan-identified features need to be assessed, adding time and financial costs. ▪ Where resource consent is not necessary, there is no ability to impose conditions or advice notes on the project. ▪ Where public trails become Permitted Activities, HNZPT would have no ability to “piggyback” on consenting processes to suggest archaeological advice notes to reduce the potential for public trails to adversely affect archaeology.
<p>Benefits</p>	<ul style="list-style-type: none"> ▪ A clearer and more streamlined District Plan framework for a defined <i>public trail</i> activity. ▪ Only those public trails that require a thorough assessment on specific identified matters will have to go through a resource consent process. ▪ Adverse effects on District Plan-identified scheduled significant features and overlays will continue to be assessed via resource consent to ensure actual and/or potential adverse effects are avoided, remedied or mitigated. ▪ Because <i>public trails</i> will be established and administered by Council, a multi-disciplinary approach will ensure that provisions of other legislation are considered and met (HNZPT Act, Health and Safety legislation etc.). ▪ Activity performance standards will provide more certainty for <i>public trail</i> applications. ▪ Unnecessary assessments against <i>places of assembly</i> Discretionary Activity criteria will be avoided. ▪ People will know what a <i>public trail</i> is as there will be a definition. ▪ Bylaws will still be able to provide a layer of structure via signage and provisions for the use of Council administered <i>public trails</i> (around dual/multi use of the public trails, and dog management for example).
<p>Effectiveness/ Efficiency</p>	<ul style="list-style-type: none"> ▪ Effective in removing uncertainty over activity status for <i>public trails</i> and making the process more enabling and simpler where no significant features and overlays require a full assessment via resource consent. ▪ Efficient in creating a clearer and therefore more cost-effective framework within which to assess proposals for <i>public trails</i> over a variety of zones and within the context of a variety of environments.
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<ul style="list-style-type: none"> ▪ Sufficient information is available to have determined that this option seems to be the most effective and efficient means of providing a better outcome for the provision of <i>public trails</i> in the WBOP District.

3.6. Option 3 – Providing for public trails (walkways, cycleways, bridleways and similar) as Permitted Activities in all zones and contexts (irrespective of zones and significant area overlays).

<p>Costs</p>	<ul style="list-style-type: none"> ▪ Identified significant features in the District Plan, which are often sensitive environments, would not get a specific assessment as part of a resource consent application to determine whether actual and/or potential adverse environmental effects will eventuate. ▪ Adverse effects on the some environments may eventuate. ▪ Scheduled historic heritage places/sites/areas would not continue to have the protection of the District Plan overlay provisions. ▪ Advice notes and consent conditions cannot be imposed. HNZPT would have no ability to “piggyback” on consenting processes to suggest archaeological advice notes to reduce the potential for <i>public trails</i> to adversely affect archaeology.
<p>Benefits</p>	<ul style="list-style-type: none"> ▪ New <i>public trails</i> could be established with ease without the hindrance of resource consenting processes. ▪ The process for new <i>public trails</i> would be faster, easier and cheaper.
<p>Effectiveness/ Efficiency</p>	<ul style="list-style-type: none"> ▪ Not an effective means of protecting (the District Plan-identified) significant features from adverse effects of development and achieving the best environmental outcome. ▪ An efficient means of streamlining the process to establish <i>public trails</i> with the least financial cost. ▪ Not an efficient means of ensuring important, sensitive or special features are maintained and protected from the effects of development.
<p>Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter</p>	<ul style="list-style-type: none"> ▪ Sufficient information is available.

3.7. Preferred Option

The preferred option is Option 2 which creates a clearer and more enabling District Plan framework for public trails (walkways, cycleways, bridleways and similar).

To give effect to this change, various amendments to the District Plan will be required as follows (additions are shown in underlined red font).

A new definition for *public trail* is required.

"Public Trail" means a path either on or off road for the purpose of public recreational or commuter cycle or pedestrian transport (including mobility scooters and other wheeled pedestrians), or can be

a bridle trail or similar. A public trail can be for one or more of the above uses, but is not for the use of combustion-engine and similar motorised vehicles. Public trail includes activities associated with creating it, and includes but is not limited to, pathways, bridging, boardwalks, walkways and steps, and includes related signage and maintenance activities.

An addition to Table 10.3 is required.

Section 10.3 Activity Table for Infrastructure and Network Utilities

Miscellaneous

(bd) Public trails

Public trails will be provided for as a Permitted Activity (P) within every zone/column identified in Activity Table 10.3. It is further noted that even though *public trails* will be provided for as a Permitted Activity in Activity Table 10.3, the Activity Performance Standards in Section 10.4 and for each zone in which a *public trail* will be located still apply. This means that the provisions relating to Identified Significant Features in District Plan Sections 5 – 8 for example are relevant and may propel any *public trail* activity into another activity status category.

An addition to Section 10.4 Activity Performance Standards for Infrastructure and Network Utilities is required as follows.

10.4 Activity Performance Standards for Infrastructure and Network Utilities

(r) Public trails

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

(b) The above shall not apply if the public trail location is closer than 30m from a title boundary and it:
- has been confirmed via a Reserve Management Plan, Town Centre Plan, Structure Plan, or similar plan that has been through a public process; or
- is on land that is an esplanade reserve or an access strip; or
- is on land where a public trail in the position proposed is specifically provided for by another legal mechanism.

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

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

An addition to District Plan Section 8.3.3(c) is required as follows.

8.3.3 Restricted Discretionary Activities

(c) Floodable Areas and Coastal Inundation Areas

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

3.8. Reasons

Option 2 is the preferred option and is considered to be the most effective and efficient method to provide a more enabling framework for the construction of *public trails* (walkways, cycleways, bridleways and similar) whilst ensuring that the actual and/or potential effects on the environment continue to be managed appropriately.

In this regard, the preferred option addresses the identified issue and makes it clear for District Plan users what a *public trail* is (via the definition) and what its activity status is.

The benefits and effectiveness / efficiency reasons included above indicate that Option 2 is likely to achieve the best outcome for the WBOP District.