



*Western Bay of Plenty
District Council*

Change to the District Plan - First Review

Plan Change 83

Accommodation Facility Permitted Limit

Section 32 Report



1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a plan change to review the District Plan Activity Performance Standards for *Accommodation Facilities* to provide for a combined maximum of five persons in most zones.

This will provide some increased consistency between the District Plan and the Building Act 1991.

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 1991 ('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 that has been lodged with Council.

None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this Plan Change.

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 identified no issues with the proposed change.

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.*

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019. No specific feedback was provided in relation to this proposed plan change.

In addition, the Council 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 feedback was received, generally unrelated to this issue, being mainly in relation to larger *accommodation facilities* beyond the proposed Permitted Activity limit of five persons.

For larger *accommodation facilities* the matters that Have Your Say respondents were concerned about were overcrowding, dwelling maintenance and appearance deteriorating over time, parking of vehicles/unregistered vehicles, noise, rubbish dumping, noise, run-off from services, and rubbish. The general consensus was that an acceptable accommodation facility in a Residential Zone would be between four and eight people.

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 ('the Agency');
- c. Toi Te Ora Public Health.

No specific issues were raised by the kiwifruit industry in relation to this proposed change beyond being supportive of any proposal that increased the ability of people to provide accommodation for horticultural workers, particularly during times of peak season demand.

Staff consulted with representatives of the New Zealand Transport Agency (NZTA) via a series of e-mails and a face-to-face meeting on 11th June 2019. NZTA had no concerns about this issue.

Toi Te Ora Public Health were consulted and identified no particular public health issues with the proposed change. They indicated that there could potentially be public health implications around any large increase in numbers to be accommodated and have flagged their interest in this area for future plan changes.

3.0 Issue 1: Increase the Accommodation Facility Permitted Activity Limit

3.1. Introduction

Currently *accommodation facilities* for a combined maximum of four persons are a Permitted Activity in most zones. This provision enables people to provide rental/boarding/commercial accommodation for non-members of their household on a small scale that would be compatible with and complimentary to the “usual” residential use of a property, or to establish an *accommodation facility* as a stand-alone business.

Any facility not meeting the Activity Performance Standards for an *accommodation facility* is currently a Discretionary Activity (and resource consent is required including a comprehensive assessment of the proposal including an assessment of environmental effects).

Discretionary Activity consent status covers all *accommodation facilities* that would fall outside of the stated Activity Performance Standards for that use.

3.2. Current District Plan Provisions

The District Plan definition of *accommodation facility* is as follows.

“Accommodation Facility” means any form of residential accommodation that is accessory to a primary dwelling, forms part of a primary dwelling, or is a stand alone facility, that does not comply with the definition of dwelling, minor dwelling, or accessory building. Included within this definition is; home-stays, farm-stays, bed and breakfast, boarding houses, hotels, motels, hostels and camping grounds. Excluded from this definition are Retirement Villages and Rest Homes. Occupancy is based on one person per single bed and two per double bed.

The Activity Performance Standards for *Accommodation facilities* are:

- (i) *Have a maximum occupancy of four persons at any one time (excluding staff);*
- (ii) *The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;*
- (iii) *Must not contain a kitchen or otherwise be self contained;*
- (iv) *For Discretionary Accommodation Facilities, information is to be provided in accordance with 4A.6.2.*

In relation to accommodation facilities in different zones, the following table provides a summary of current District Plan Standards for *Accommodation Facilities*.

Zone	Accommodation Facilities
Residential Zones	Yes <i>Limited to Activity Performance Standards as listed above.</i>
Medium Density	Yes <i>Limited to Activity Performance Standards as listed above.</i>

Future Urban	Yes <i>Limited to Activity Performance Standards as listed above.</i>
Rural Residential Lifestyle	Yes <i>Limited to Activity Performance Standards as listed above.</i>
Rural	Yes <i>Limited to Activity Performance Standards as listed above.</i>
Commercial	Yes – <i>provided as a Permitted Activity, although no Activity Performance Standards restricting numbers apply, and activity becomes a Controlled Activity as accommodation facilities are high water users.</i>
Commercial Transition	Yes – <i>provided as a Permitted Activity, although no Activity Performance Standards restricting numbers apply.</i>
Industrial	<i>Provided as a Discretionary Activity where ancillary to an industrial activity. No Activity Performance Standards restricting numbers apply.</i>
Post Harvest	<i>No provision.</i>
All Terrain Park	<i>Provided as a Discretionary Activity not undertaken as an All Terrain Park activity. No Activity Performance Standards restricting numbers apply.</i>

The District Plan Commercial Zone provisions allow for *accommodation facilities* via resource consent rather than as a Permitted Activity because accommodation in these zones is listed as a high water user (water supply and wastewater) and require a specific assessment to determine what financial contributions are payable towards providing these services. There is however no specified limit on building size or the number of guests or staff, which allows for hotels, motels, hostels and larger boarding establishments.

Within the Industrial Zone a dwelling accessory to a Permitted Activity is a Restricted Discretionary Activity, while *accommodation facilities* ancillary to an industrial activity are Discretionary Activities.

3.3. Analysis

Increasing the *accommodation facilities* Permitted Activity limit to a combined maximum of five persons (excluding staff), would provide some increased consistency between the Building Act and the District Plan.

The NZ Building Code under the Building Act states that the term detached dwelling applies to a building or use where a group of people live as a single household or family and includes a boarding house accommodating fewer than six people.

An *accommodation facility* activity allowing a maximum of five persons would still be considered residential in nature, and would provide a small increase in accommodation over the District.

The *accommodation facility* definition and associated policy and rule structure anticipates the situation where a *dwelling* accommodating a household of people exists, and an *accommodation facility* is permitted in addition to this.

Allowing for more than five in an *accommodation facility* over and above a household unit would be likely to have effects greater than those anticipated by most “usual” residential activities. These effects are best assessed and managed via a resource consent application for a Discretionary Activity as is currently the case. An assessment of compliance with the Building Act and a *change of use* assessment would also be required for a facility in this category. A change to the *accommodation facility* maximum limit, if made, would be required across a number of different zones.

3.4. Option 1 - Status Quo (combined maximum of 4 persons in an accommodation facility)

Costs	<ul style="list-style-type: none"> ▪ Is inconsistent with the Building Act provisions. ▪ Does not provide a large number of beds that would be useful to fulfil the worker accommodation needs of the horticultural industry. ▪ Requires a Discretionary Activity application for any more than 4 persons in an <i>accommodation facility</i>.
Benefits	<ul style="list-style-type: none"> ▪ Minimises actual and/or potential effects of larger numbers of people being accommodated on a site.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective in maintaining a low level of activity around <i>accommodation facilities</i> operated in a commercial manner on a site.
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.

3.5. Option 2 – Increase the accommodation facility combined Permitted Activity maximum limit to five persons

Costs	<ul style="list-style-type: none"> ▪ Does not provide a large number of beds that would be useful to fulfil the worker accommodation needs of the horticultural industry. ▪ Creates the need (and attendant costs and time) for a resource consent for a Discretionary Activity for any facility larger than 5 person capacity-.
Benefits	<ul style="list-style-type: none"> ▪ Creates a small increase in Permitted Activity accommodation which would be available for any persons requiring accommodation. ▪ <i>Accommodation facilities</i> beyond five persons would be a Discretionary Activity with a full assessment against objectives and policies and of effects on the environment. ▪ Creates consistency between the District Plan and the Building Act. ▪ Allows for full resource consent application consideration of effects on the environment of <i>accommodation facilities</i> over and above a five-person facility, or one which does not comply with the Activity Performance Standards.
Effectiveness/	<ul style="list-style-type: none"> ▪ Effective in creating a small increase in accommodation

Efficiency	<p>without resource consenting requirements, and allows a full consideration of actual and/or potential effects on the environment for larger facilities.</p> <ul style="list-style-type: none"> ▪ Effective in providing a little additional permitted capacity for property owners/occupiers who wish to use spare space in their dwelling or ancillary building/s for a small number of people (could be seasonal workers, other boarders, bed and breakfast establishments etc.) to supplement their income. ▪ Efficient and effective as it provides consistency between the Building Act and the District Plan.
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.

3.6. Option 3 – Increase the *accommodation facility* combined maximum limit to 10 persons as a Permitted Activity

Costs	<ul style="list-style-type: none"> ▪ Where the occupiers are not a cohesive group that could be defined as a “residential household” this model does not meet the intent of the current District Plan rule structure. ▪ This places considerable pressure on Council-provided services, and could also generate complaints about effects on residential amenity. ▪ This option could have the effect of removing large numbers of dwellings from the rental pool for the use of temporary seasonal workers in the horticultural industry. ▪ Inconsistent with Building Act provisions which creates confusion and monitoring difficulties. ▪ A larger number of persons on-site means that the activity is more commercial than residential in nature. ▪ Activity Performance Standards would probably need to be reviewed as 60m² would not be adequate space for 10 persons, and 10 persons in addition to a dwelling on a site as a Permitted Activity could have the ability to generate significant adverse effect on amenity.
Benefits	<ul style="list-style-type: none"> ▪ Increasing the permitted number of occupants for an <i>accommodation facility</i> from four to 10 would match the capacity of van or mini bus and the suggestion has been made by the horticultural industry that this would be a practical number to have as a Permitted Activity. ▪ There is anecdotal evidence that landlords can get a better return on renting to seasonal workers where a large number are accommodated in a house and outbuildings, paying per bed.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not effective or efficient in managing effects on the environment. ▪ The <i>accommodation facility</i> definition and associated rule structure anticipates the situation where a dwelling accommodating a household of people exists, and an

	<p><i>accommodation facility</i> is permitted in addition to this. Allowing for more than five in an <i>accommodation facility</i> over and above a household unit would be likely to have effects greater than those anticipated by a “usual” residential activity. These effects are best assessed and managed via a resource consent application for a Discretionary Activity as is currently the case. An assessment of compliance with the Building Act would also be required for a facility in this category.</p>
<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 determine that an <i>accommodation facility</i> for 10 persons as a Permitted Activity does not accord with the intent or expectations of either the Residential or Rural Zones.

3.7. Option 4 – Provide for an *accommodation facility* combined maximum limit of five as a Permitted Activity and between 6 and 10 persons as a Restricted Discretionary Activity (RDA)

<p>Costs</p>	<ul style="list-style-type: none"> ▪ Providing for a 10 person <i>accommodation facility</i> as an RDA could continue to place considerable pressure on the residential dwelling rental stock which is already in short supply, put pressure on Council-provided services, and generate complaints about the effects on residential or rural amenity. ▪ Inconsistency with Building Act provisions could create confusion and monitoring difficulties. An assessment of compliance with the Building Act provisions would be required for a facility over 5 person capacity. ▪ A larger number of persons on-site in an <i>accommodation facility</i> which could be established in addition to a <i>dwelling</i> on the same site means that the activity is more commercial than residential in nature. ▪ Up to 10 persons in an <i>accommodation facility</i> over and above a household unit on the same site could create effects significantly greater than those anticipated by a “usual” residential activity. ▪ The residential environment is sensitive to non-residential activities due to dwellings generally being closely located, and therefore may not be able to easily absorb and mitigate the effects of larger numbers of people being accommodated on a site. ▪ The Residential Zone can be a sensitive environment in which to have larger numbers of people on one site so a site-by-site assessment would be required to assess effects, including effects on residential amenity. ▪ <i>Accommodation facilities</i> would need to be self sufficient in terms of water and wastewater servicing in rural areas, and would connect to Council’s infrastructure services where these were available. The issue of financial contributions towards Council-provided services would need to be addressed. Assessment of effects on Council-
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	provided services may be difficult.
Benefits	<ul style="list-style-type: none"> ▪ Smaller-scale accommodation facilities (up to 10 persons) that have been evaluated through a resource consent application as an RDA may be appropriate subject to assessment against specified activity performance standards and specific matters of discretion. ▪ Compliance with Building Act requirements would be mandatory, and inconsistency with Building Act provisions would be able to be highlighted during a resource consent process for more than five persons. ▪ Council could consider the imposition of financial contributions for additional impact on Council-provided services for <i>accommodation facilities</i> over five persons. ▪ Increasing the number of occupants for an <i>accommodation facility</i> to 10 would match the capacity of van or mini bus per dwelling and may result in no additional effect on traffic movement from a site. ▪ Landlords could get a better return where a larger number are accommodated in a facility where people pay per bed. ▪ For <i>accommodation facilities</i> over 10 persons and where standards are not met, Discretionary Activity status would enable the actual and/or potential effects of the activity to be managed appropriately. ▪ The Residential Zone is convenient for <i>accommodation facilities</i> as water/wastewater etc. services are available and social considerations and pastoral care functions may be able to be more easily met.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Perhaps effective in providing some additional accommodation capacity. Not effective in managing larger <i>accommodation facilities</i> which need a full assessment via Discretionary Activity status. ▪ Possibly efficient in managing actual and/or potential effects on the environment if a number of satisfactory and suitable assessment criteria were developed. Likely to create an environment which is not residential in nature and intent.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ Insufficient information is available. There is a need for a more detailed assessment of the acceptable activity limit for <i>accommodation facilities</i> for more than five persons as a Permitted Activity or a Restricted Discretionary Activity, and consideration of the effects this may have on the provision and funding of infrastructure.

3.8. Preferred Option

The preferred option is Option 2 which increases the *accommodation facility* combined Permitted Activity maximum limit to five persons.

To give effect to Option 2, a change in the Activity Performance Standards for *accommodation facilities* would need to be made from four to five persons as the combined maximum across a number of zones.

The changes required are as follows (changes are shown in red underlined font).

Section 13 – Residential

13.3 Activity Lists

13.3.1 Permitted Activities

(c) ~~Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).

(h) Accommodation facilities for a combined maximum of five persons (excluding staff).

13.4 Activity Performance Standards

13.4.1 General

(f) Standards for Accommodation Facilities

(i) Have a maximum occupancy of ~~four~~ five persons at any one time (excluding staff);

(ii) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;

(iii) Must not contain a kitchen facility or otherwise be self contained;

(iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

Section 14 – Medium Density

14.3 Activity Lists

14.3.1 Permitted Activities

(c) ~~Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).

(g) Accommodation facilities for a combined maximum of five persons (excluding staff).

14.4 Activity Performance Standards

14.4.2 Standards for Accommodation Facilities

In the event of any conflict or inconsistency between these rules and those set out in 14.4.1 above, the content of these rules shall prevail.

- (a) Have a maximum occupancy of ~~four~~ **five** persons at any one time (excluding staff);
- (b) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;
- (c) Must not contain a kitchen facility or otherwise be self contained;
- (d) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

Section 15 - Future Urban

15.3 Activity Lists

15.3.1 Permitted Activities

- (f) ~~Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).
- (i) ~~Accommodation facilities for a combined maximum of five persons (excluding staff).~~

15.4 Activity Performance Standards

15.4.1 General

- (d) **Standards for accommodation facilities**
 - (i) Have a maximum occupancy of ~~four~~ **five** persons at any one time (excluding staff);
 - (ii) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;
 - (iii) Must not contain a kitchen facility or otherwise be self contained;
 - (iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

Section 16 – Rural-Residential

16.3 Activity Lists

16.3.1 Permitted Activities

- (d) ~~Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).

(j) Accommodation facilities for a combined maximum of five persons (excluding staff).

16.4 Activity Performance Standards

16.4.1 General

(e) Standards for Accommodation Facilities

- (i) Have a maximum occupancy of ~~four~~ **five** persons at any one time (excluding staff);
- (ii) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;
- (iii) Must not contain a kitchen facility or otherwise be self contained;
- (iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

Section 17 – Lifestyle

17.3 Activity Lists

17.3.1 Permitted Activities

~~(e) Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).

(m) Accommodation facilities for a combined maximum of five persons (excluding staff).

17.4 Activity Performance Standards

17.4.1 General

(d) Standards for Accommodation Facilities

- (i) Have a maximum occupancy of ~~four~~ **five** persons at any one time (excluding staff);
- (ii) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;
- (iii) Must not contain a kitchen facility or otherwise be self contained;
- (iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

Section 18 – Rural

18.3 Activity Lists

18.3.1 Permitted Activities

(h) ~~Accommodation or e~~Education facilities for a combined maximum of four persons (excluding staff).

(t) Accommodation facilities for a combined maximum of five persons (excluding staff).

18.4 Activity Performance Standards

18.4.1 General

(e) Standards for accommodation facilities

(i) Have a maximum occupancy of ~~four~~ five persons at any one time (excluding staff);

(ii) The total area available for exclusive use for the occupiers be no greater than 60m² gross floor area;

(iii) Must not contain a kitchen facility or otherwise be self contained;

(iv) For Discretionary accommodation facilities, information is to be provided in accordance with 4A.6.2.

3.9. Reasons

Increasing the accommodation facilities Permitted Activity limit to a combined maximum of five persons (excluding staff) as provided for by Option 2 is the preferred option.

This option provides some increased consistency between the Building Act 1991 and the District Plan. It is the most effective and efficient method to address the inconsistency between the District Plan and the Building Act provisions, and will achieve the best outcome for the District.