

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 64 Floor Area Provisions

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

The purpose of this Plan Change is to rectify the incorrect and inconsistent usage of a number of similar terms in the District Plan which are used to limit buildings and activities to a certain floor area and/or to determine at what scale a building or activity must comply with other requirements.

2.0 Resource Management Act 1991

2.1. Section 32

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. 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.*

2.2. Section 74

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.

None of the iwi management plans that have been lodged with Council raised any issues which are of relevance to this Plan Change.

3.0 Consultation

Due to the minor and technical nature of this proposed change there has been no specific consultation with the public.

Council engaged with the surveying and planning community in the Western Bay of Plenty and Tauranga area via the "Surveyors Newsletter".

4.0 Issue 1 – The incorrect use of the term "gross floor area" for limiting the size of accessory buildings in the Rural and All Terrain Park Zones and coolstores/packhouses in the Rural Zone.

Section 3 (Definitions) of the District Plan defines "Gross Floor Area" as follows;

*"**Gross Floor Area**" means the sum of the area of **all floors** of a building measured either from the exterior faces of the exterior walls, or from the centre line of walls separating two tenancies, as the circumstances may require.*

There are many activities in the District Plan which are restricted in size by "Gross Floor Area". Mostly, these restrictions by "Gross Floor Area" are appropriate, however there are two particular types of activities for which the term has been applied incorrectly and imposed greater restrictions than intended. These activities are "accessory buildings" in the Rural and All Terrain Park Zones and "coolstores/packhouses" in the Rural Zone.

As an example, accessory buildings on lots 2ha or less in the Rural Zone are restricted to 200m² as a permitted activity, and if this is exceeded, they become a restricted discretionary activity. It was not the intention however to limit these buildings to a total usable floor area, but rather to limit the size and bulk of these buildings in order to retain rural character and amenity and avoid adverse visual effects on neighbours. As a result of using the term "Gross Floor Area", a two storey farm building would technically

exceed the permitted limit if it had a ground floor and upper floor of 101m² each, whereas the intention is that this should be well within such a limit.

A full list of the activities where the term "Gross Floor Area" is applied incorrectly is shown in table one below. They are labelled 1, 2 and 3 for quick reference.

Table One

<p>1</p>	<p>Rural 18.4.1 (n) (i) and (ii)</p>	<p>Activity Performance Standards Accessory Buildings</p> <p>(i) Maximum <i>gross floor area</i> of 200m² when within a <i>lot</i> of two hectares or less.</p> <p>(ii) No maximum <i>gross floor area</i> when on <i>lots</i> over two hectares.</p> <p><u>Provided that:</u> Any <i>accessory buildings</i> greater than 200m² in <i>gross floor area</i> on <i>lots</i> over two hectares shall have a <i>side yard</i> and <i>rear yard</i> of 30m.</p>
<p>2</p>	<p>All Terrain Park 23.3.1 (i) 23.3.4 (d)</p>	<p>Permitted Activities</p> <p><i>Buildings</i> (except <i>dwellings</i> and <i>buildings</i> provided for as <i>All Terrain Park activities</i>) <i>accessory</i> to the foregoing, less than 200m² <i>gross floor area</i>.</p> <p>Discretionary Activities</p> <p><i>Buildings</i> (except <i>dwellings</i>) <i>accessory</i> to the foregoing of 200m² <i>gross floor area</i> or greater.</p>
<p>3</p>	<p>Rural 18.3.4 (h) 18.3.5 (d)</p>	<p>Discretionary Activities</p> <p>Coolstores and packhouses less than 200m² <i>gross floor area</i>.</p> <p>Non-Complying Activities</p> <p>New coolstores and packhouses greater than 200m² <i>gross floor area</i>.</p>

4.1. Option 1 – Status Quo

Benefits	<ul style="list-style-type: none"> ▪ Still achieves the goal of reducing the bulk of a building to retain rural character and amenity and avoid adverse visual effects on neighbours.
Costs	<ul style="list-style-type: none"> ▪ Over-restricts the size of farm buildings. ▪ Technically requires landowners to get resource consent in cases where this was not intended. ▪ Unintended costs and time delays for landowners. ▪ Staff time is used unnecessarily.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective in that it still achieves the intended outcome, but ineffective in that it over-restricts the size of farm buildings to do so. ▪ Not efficient because it leads to unintended costs and time delays for landowners and unnecessary use of staff time.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

4.2. Option 2 – Add the following “Explanatory Note” to Rules 18.4.1 (n) (i) & (ii), 18.3.4 (h) & 18.3.5 (h) and 23.3.1 (i) & 23.3.4 (d).

“For the purpose of this rule, only the ground floor shall be included in the calculation of *Gross Floor Area*.”

Benefits	<ul style="list-style-type: none"> ▪ Achieves the goal of reducing the bulk of a building to retain rural character and amenity and avoid adverse visual effects on neighbours without over-restricting the size of farm buildings. ▪ Landowners will not need to apply for resource consent unless necessary for achieving the intended outcome. ▪ Avoids unnecessary costs and time delays for landowners. ▪ Avoids unnecessary use of staff time. ▪ Avoids the need to create a new definition for terms such as “ground floor area” or “building footprint” which incidentally are already used elsewhere in the District Plan with different meanings.
Costs	<ul style="list-style-type: none"> ▪ There is a chance that the ground floor may be smaller in area than an upper floor.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective at achieving the intended outcome. ▪ Efficient because it avoids unintended costs and time delays for landowners and unnecessary use of staff time.
Risks of Acting/ Not Acting if there is uncertain or	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

4.3. Preferred Option

The preferred option is Option 2.

Add the following "Explanatory Note" to Rules 18.4.1 (n) (i) & (ii), 18.3.4 (h) & 18.3.5 (h) and 23.3,1 (i) & 23.3.4 (d).

"For the purpose of this rule, only the ground floor shall be included in the calculation of *Gross Floor Area*."

The proposed changes are shown in context in **Attachment A**.

4.4. Reasons

Restricting the size of these buildings to a maximum ground floor area ensures that their bulk is limited in the way that was originally intended by the relevant rules. This continues to achieve the goal of retaining rural character and amenity and avoiding adverse visual effects on neighbours and does so without over-restricting the size of farm buildings. It also avoids landowners needing to apply to resource consent unnecessarily, thereby avoiding unnecessary costs and time delays. It also avoids unnecessary use of staff time.

5.0 Issue 2 – Problems determining the "cut-off" point between compliance and non-compliance with the 200m² restriction for activities in Issue 1.

For the same activities just discussed, there are further problems relating to determining the "cut-off" point between compliance and non-compliance.

The first problem is that there is a mistake in the drafting of the rules for "coolstores/packhouses" in the Rural Zone. Those "less than 200m²" are discretionary activities and those "greater than 200m²" are non-complying activities, but those which are exactly 200m² are not accounted for.

The second problem is that the "cut-off" point differs between all three activities. This is best summarised in the table below, where no combination is the same. The numbers 1, 2 and 3 are taken from the full list of activities in table one above.

Table Two

1	200m ² or less	Greater than 200m ²
2	Less than 200m ²	200m ² or greater
3	Less than 200m ²	Greater than 200m ²

It is generally understood by staff and other plan users that a 200m² building is compliant and that anything larger triggers the need for resource consent or a higher activity status. This lines up with that shown in 1.

5.1. Option 1 – Status Quo

Benefits	<ul style="list-style-type: none"> None.
Costs	<ul style="list-style-type: none"> For “coolstores/packhouses” in the Rural Zone, there is drafting error which leaves those which are exactly 200m² unaccounted for. This is of minor consequence but should be fixed. There is no consistent “cut-off” point for determining compliance and non-compliance with the 200m² restrictions. This is confusing for all plan users.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Not fully effective. Not efficient due to drafting errors and inconsistencies which cause confusion for plan users.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – sufficient information is available.

5.2. Option 2 – Re-draft the provisions so that all activities have the same “cut-off” point for compliance and non-compliance. This being ‘200m² or less’ and ‘greater than 200m²’.

Benefits	<ul style="list-style-type: none"> Ensures consistency. Removes interpretation issues.
Costs	<ul style="list-style-type: none"> None.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Effective as it corrects the errors identified. Efficient as it removes confusion for plan users.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – sufficient information is available.

5.3. Preferred Option

The preferred option is Option 2.

Re-draft the provisions so that all activities have the same “cut-off” point for compliance and non-compliance, being ‘200m² or less’ and ‘greater than 200m²’.

The proposed changes are shown in context in **Attachment A**.

5.4. Reasons

The changes ensure consistency and avoidance of interpretation issues.

6.0 Issue 3 – The inconsistent use of terms throughout the District Plan for restricting buildings and activities to a certain floor area or area.

There are a number of similar terms in the District Plan which limit buildings and activities to a certain number of square metres and/or which determine what other requirements relate to a building or activity, such as daylighting, carparking and landscape. The terms used are gross floor area, building floor area, unit floor area, and floor area.

In many cases the terms are intended to mean the same thing so can be put down as an error caused by a number of different authors writing separate rules within the Plan. There are some cases however where similar terms appear to serve slightly different purposes. Overall, this has created inconsistency, interpretation issues and the unnecessary use of many of these terms given that "Gross Floor Area" is often sufficient.

6.1. Option 1 – Status Quo

Benefits	<ul style="list-style-type: none"> ▪ The rules can still be applied but this requires interpretation and assumptions regarding intent.
Costs	<ul style="list-style-type: none"> ▪ Inconsistency. ▪ Interpretation issues. ▪ Many terms are used unnecessarily.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not fully effective. ▪ Not efficient.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

6.2. Option 2 – Remove the use of terms which are intended to mean "Gross Floor Area"

Benefits	<ul style="list-style-type: none"> ▪ Ensures consistency. ▪ Removes interpretation issues. ▪ Avoids unnecessary of terms similar terms.
Costs	<ul style="list-style-type: none"> ▪ None.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Effective at restricting buildings/activities by their size. ▪ Efficient as it does so without the problems identified with the status quo.
Risks of Acting/ Not Acting if there is uncertain or insufficient	<ul style="list-style-type: none"> ▪ N/A – sufficient information is available.

6.3. Preferred Option

The preferred option is Option 2 - Remove the use of terms which are intended to mean "Gross Floor Area".

The proposed changes are shown in context in **Attachment A**.

6.4. Reasons

The changes ensure consistency and avoidance of interpretation issues. Further reasons are included in **Attachment A**.

Section/Rule	Proposed Change
Network Utilities 10.3 (g)	<p>Activity Table for Infrastructure and Network Utilities</p> <p>Single transformers and associated switching gear conveying electricity at a voltage up to and including 110kV, not exceeding an gross floor area area of 6m² and a <i>height</i> of 2m.</p>
Medium Density 14.4.1 (g) (i)	<p>Dwelling unit <u>gross</u> floor area requirements</p> <p>Dwelling units shall not be less than the following minimum <u>gross</u> floor areas:</p> <ul style="list-style-type: none"> - 1 bedroom dwelling units – 40m² - 2 Bedroom dwelling units – 60m² - 3 Bedroom dwelling units – 80m² - 4 or more bedroom dwelling units – 95m²
Medium Density 14.4.3 (a)	<p>Standards for Home Enterprises</p> <p>Shall be conducted within a building floor area <u>gross floor area</u> not exceeding 25m². Carparks shall be excluded from the maximum area calculation of the activity.</p>
Future Urban 15.4.1 (e) (i)	<p>Standards for home enterprises</p> <p>Shall be conducted in an area that does not exceed 500m² of which a maximum of 120m² shall be available for a building floor area <u>buildings as calculated by gross floor area</u>. Carparks shall be excluded from the maximum area calculation of the activity;</p>
Rural Residential 16.4.1 (f) (i)	<p>Standards for home enterprises</p> <p>Shall be conducted in an area that does not exceed 500m² of which a maximum of 120m² shall be available for a building floor area <u>buildings as calculated by gross floor area</u>. Carparks shall be excluded from the maximum area calculation of the activity;</p>
Lifestyle 17.4.1 (e) (i)	<p>Standards for home enterprises</p> <p>(i) Shall be conducted in an area that does not exceed 500m² of which a maximum of 120m² shall be available for a building floor area <u>buildings as calculated by gross floor area</u>. Carparks shall be excluded from the maximum area calculation of the activity;</p>
Rural 18.3.1 (p)	<p>Permitted Activities</p> <p>Community facilities or <i>buildings</i> up to a cumulative maximum <u>gross</u> floor area of 200m² when associated with a Controlled Activity of five <i>dwelling</i>s on multiple owned <i>Maori land</i> accessed from an unsealed road maintained by <i>Council</i>.</p>

Rural 18.3.1 (q)	<p>Permitted Activities</p> <p>Community facilities or <i>buildings</i> up to a cumulative maximum gross floor area of 400m² when associated with a Controlled Activity of 10 <i> dwellings</i> on multiple owned <i>Maori land</i> accessed from a sealed road maintained by <i>Council</i>.</p>
Rural 18.3.2 (i)	<p>Controlled Activities</p> <p>Community facilities or buildings up to a cumulative maximum gross floor area of 800m² when associated with a Restricted Discretionary Activity of 11 to 30 <i> dwellings</i> on multiple owned <i>Maori land</i> accessed from a sealed road maintained by <i>Council</i>.</p>
Rural 18.3.4 (h)	<p>Discretionary Activities</p> <p>Coolstores and packhouses less than of 200m² gross floor area or less.</p> <p>Note: <u>For the purpose of this rule, only the ground floor shall be included in the calculation of <i>Gross Floor Area</i>.</u></p>
Rural 18.3.5 (d)	<p>Non-Complying Activities</p> <p>New coolstores and packhouses greater than 200m² <i>gross floor area</i>.</p> <p>Note: <u>For the purpose of this rule, only the ground floor shall be included in the calculation of <i>Gross Floor Area</i>.</u></p>
Rural 18.4.1 (e) (i)	<p>Standards for home enterprises</p> <p>(i) Shall be conducted in an area that does not exceed 500m² of which a maximum of 120m² shall be available for a building floor area buildings as calculated by gross floor area. Carparks shall be excluded from the maximum area calculation of the activity;</p>
Rural 18.4.1 (n) (i) and (ii)	<p>Accessory Buildings</p> <p>(i) Maximum <i>gross floor area</i> of 200m² when within a <i>lot</i> of two hectares or less.</p> <p>(ii) No maximum <i>gross floor area</i> when on <i>lots</i> over two hectares.</p> <p><u>Provided that:</u> Any <i>accessory buildings</i> greater than 200m² in <i>gross floor area</i> on <i>lots</i> over two hectares shall have a <i>side yard</i> and <i>rear yard</i> of 30m.</p> <p>Note: <u>For the purpose of this rule, only the ground floor shall be included in the calculation of <i>Gross Floor Area</i>.</u></p>

Industrial 21.3.1 (c) (i) and (ii)	<p>Permitted Activities (all areas except for the Comvita Campus Structure Plan Area (see 21.3.4) and where otherwise specified)</p> <p>Retailing which is accessory and secondary to (a) and (b) above and which has:</p> <p>(i) Rangiuru Business Park – a maximum of 250m² indoor/outdoor retail or a maximum of 25% of the <i>gross floor area</i> of the primary activity whichever is the lesser;</p> <p>(ii) All other areas – a maximum gross floor area of 100m².</p>
Industrial 21.3.1 (f)	<p>Permitted Activities (all areas except for the Comvita Campus Structure Plan Area (see 21.3.4) and where otherwise specified)</p> <p><i>Takeaway food outlets</i> with a maximum gross floor area of 100m² (excluding Te Puna Business Park).</p>
Industrial 21.3.2 (a) (ii)	<p>Additional Permitted Activities (Rangiuru Business Park only)</p> <p><i>Retailing</i> (not covered by 21.3.1(c)) and involving a maximum gross floor area of 100m²;</p>
Industrial 21.3.3 (b)	<p>Additional Permitted Activities (Te Puna Business Park only)</p> <p>Garden centres and plant nurseries, including ancillary cafés provided that the café does not exceed a maximum gross floor area of 100m².</p>
Industrial 21.3.10 (a)	<p>Discretionary Activities</p> <p>With respect to any activity in 21.3.1(c), <i>retailing</i> involving a maximum gross floor area greater than 100m² but not exceeding 25% of the <i>gross floor area</i> of the industrial activity.</p>
All Terrain Park 23.3.1 (i)	<p>Permitted Activities</p> <p><i>Buildings</i> (except <i>dwellings</i> and <i>buildings</i> provided for as <i>All Terrain Park activities</i>) <i>accessory</i> to the foregoing, less than of 200m² <i>gross floor area</i> or less.</p> <p>Note: <u>For the purpose of this rule, only the ground floor shall be included in the calculation of <i>Gross Floor Area</i>.</u></p>
All Terrain Park 23.3.4 (d)	<p>Discretionary Activities</p> <p><i>Buildings</i> (except <i>dwellings</i>) <i>accessory</i> to the foregoing of greater than 200m² <i>gross floor area</i> or greater.</p> <p>Note: <u>For the purpose of this rule, only the ground floor shall be included in the calculation of <i>Gross Floor Area</i>.</u></p>