The Impact and Effect of Industrial and/or Commercial Activities on Rural Character and Amenity in the Far North District

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### Attachments

Attachment A: Text of Part 2 Resource Management Act  
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Attachment C: Plan Alignment between NRC Plans and FNDC Plan, report by McAlley Consulting Group  
11.07.08
1. EXECUTIVE SUMMARY

1.1 The following report has been commissioned by the Far North District Council (FNDC) to investigate the issue of the impact and effect of industrial and/or commercial activities on rural character and amenity.

1.2 This report has been prepared following concerns being raised by members of the Far North District Council (elected members) and ratepayers within the Far North District with regard to the effect of the location of industrial and/or industrial activities in what are considered to be rural zones.

1.3 It is considered that there are deficiencies in the structure of the FNDC Plan with respect to the clarity of the connection between issues, objectives, policies and rules. This disconnect has manifest itself in concerns about the control of industrial and commercial activities in the Far North District, namely:

i. The FNDC Plan does not clearly state its intention as to the resource management principles to be applied to the rural environment

ii. The objectives and policies are vague and do not from a hierarchy of issues, nor do they show a clear transition from issues, to objectives, to policies to rules (cross referencing would be useful)

iii. There are objectives that are not directly supported by policies and vice versa

iv. The FNDC Plan does not specifically limit the establishment of commercial and industrial activities that are not closely related to primary production activities

v. The FNDC Plan does not clearly support primary production activities

vi. There is a lack of adequate definitions and a zone statement in order to clearly determine the character of the zones

vii. The highly permissive approach, enabling a high degree of flexibility is not necessarily adequately protecting the environment, particularly rural character and amenity values
1.4 However, the deficiencies are not considered to be fundamental and resolution would not be a substantial task (i.e. a Plan re-write is not required). Some of the required detail (to remedy the deficiencies) already exists in the Plan and the re-use of existing detail limits the level of new material that needs to be introduced, however would not negate the necessity for a plan change.

1.5 A first phase of a plan change would be the establishment of a statement of rural character and the definition of the important amenity values that make up the rural environment, overall and in its different sub-zones.

1.6 In determining the environment, the current (including neighbouring) environment and the future environment, along with the qualities that make up the environment (amenity values) must be defined and those matters that pose a threat to the maintenance and enhancement of the amenity values and the quality of the environment. With this detail in place the objectives and policies can be developed to specifically address the relevant issues, enabling defined and aligned rules to be developed.

1.7 This first phase information would be prepared from a review of the FNDC Plan and the higher order documents (the NRC Regional Policy Statement and the Regional Plans and New Zealand Coastal Policy Statement). Consultation would occur with Iwi, New Zealand Historic Places Trust and the Department of Conservation.

1.8 Targeted consultation would occur with interest groups i.e. Federated Farmers, Forest and Bird, conservation and land care groups etc and also consultation with the general public, both rural and urban dwellers, possibly by means of a random mail out in order to obtain a cross section of responses from the ‘community’.

1.9 The outcome would be ratified by the FNDC councilors prior to commencement of the revision of objectives and policies, but any revision at this stage would stop short of changes to the rules in order to first bed in the policy direction.

1.10 Later, if necessary changes to the rules would be implemented to ensure that the cascade from issues, to objectives, to policies to methods (including rules) is complete.
2. BACKGROUND

2.1 The following report has been commissioned by the Far North District Council (FNDC) to investigate the issue of the impact and effect of industrial and/or commercial activities on rural character and amenity. The report will specifically assess the impact with regard to the Rural Production and Rural Living zones as detailed in the Far North District Council Operative District Plan.

2.2 This report has been prepared following concerns being raised by members of the Far North District Council (elected members) and ratepayers within the Far North District with regard to the effect of the location of industrial and/or industrial activities in what are considered to be rural zones.

3. SCOPE OF REPORT

3.1 This report will focus on the following matters as part of the assessment process:

i. A review of the existing District Plan provisions to ascertain what matters/effects are taken into account when processing resource consent applications for industrial and commercial activity in the Rural Production and Rural Living zones.

ii. A review of the objectives and policies of the District Plan related to the Rural Production and Rural Living zones to establish what the District Plan determines as the ‘character’ of these zones.

iii. A review of the objectives and policies related to the protection of amenity values and establish whether the existing District Plan rules and/or methods are giving effect to the objectives and policies and that there are coherent and consistent objectives, policies and rules.

iv. An assessment of complaints received about industrial and/or commercial activities in the Rural Production and Rural Living zones and review of the resources consents granted for those activities that have received complaints and review industrial and/or commercial activities that have received complaints and which are permitted under the Rural Production and Rural Living zone rules.

v. Undertake a site visit for the activities detailed above and make a judgement call as to whether: the resource consents assessed has been processed in accordance with the requirements of the District Plan and/or the objectives and policies; and whether the permitted activities assessed have been processed in accordance with the requirements of the District Plan.

vi. Undertake a comparison of four other district plans that apply to areas similar to Far North District (i.e. districts with large rural areas as well as urban areas) to assess what rules are in place regarding the location of industrial and commercial activities in rural areas and what matters are promoted through the objectives and policies.

vii. Undertake a review of recent case law regarding the protection of character and amenity in the rural environment.
viii. Make recommendations as to whether the District Plan is considered to be deficient in the management of industrial and commercial activities in the rural environment; the protection of rural character and amenity in a general sense in the rural environment of the Far North District; and further recommendations (if necessary) as to amendments that could be made to the planning documents and/or the assessment of resource consents, to more effectively manage the effects of such activities.
4. **THE FNDC PLANS APPROACH TO RURAL ISSUES**

4.1 Chapter 8 of the Plan sets the context for the Rural Environment in the Far North, stating that the majority of the land in the Far North is, and will remain, rural.

4.2 Rural land in the far North “is characterised by relatively large land holdings, a relatively low intensity of built development and diverse activities”\(^1\). It is considered that there are differences in the character of various areas of the rural environment and that generally a greater sense of nature and space exists in the rural area than in the more densely settled urban areas.

4.3 It is also recognised that much of the rural environment is coastal and the Resource Management Act (RMA) places particular responsibilities on Councils through their district plans to preserve the natural character of the coastal environment. In the context of the FNDC Plan the coastal environment is differentiated from that part of the rural environment that does not have a significant coastal character.

4.4 It is considered that due to the general character of the rural area that the likelihood of adverse effects occurring from activities is less than it may be in more densely settled areas. As a result the FNDC Plan allows a wide range of activities in the rural environment. Whilst there are specific controls related to the rural environment, these controls are supported by further controls in Part 3 of the Plan – District Wide Provisions that are designed to protect the natural and physical resources of the rural environment.

4.5 The Plan recognises that the character of the rural environment is constantly changing and that these changes are largely in response to economic imperatives. Changes in farming and forestry practices and the type of productive activities that take place on the land are recognised, hence the zone name “Rural Production”.

4.6 Changes occurring also result in the expansion of rural residential living on relatively small rural lots in some areas, with the potential for conflicts to arise between land uses due to these changes, with the effects from odour, spraydrift and noise on new rural residents potentially becoming an issue. This issue is commonly referred to as ‘reverse sensitivity’, where a new use desires a higher degree of amenity than the existing uses.

4.7 The way the Plan is structured there are General Issues, Environmental Outcomes Expected, Objectives and Policies detailed for the Rural Environment and the same provided more specifically for the Rural Production and Rural Living Zones. Each of these will be considered in turn.

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\(^1\) FNDC District Plan – Section 8 Rural Environment - Context
5. THE RURAL ENVIRONMENT

5.1 Section 8.1 of the Plan listed seven ‘Issues’ with respect to the Rural Environment, being:

i. The subdivision, use and development of rural land can have adverse effects on the environment.

ii. The requirement of the Plan to be effects-based places emphasis on the need to define effects and the minimum standards to be applied to those effects.

iii. The loss of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a result of land use activities in the rural environment.

iv. The effects of activities within the rural environment and between the rural and urban environments are not always compatible. The management of the effects of the change in activities which occur within the rural environment and on the rural-urban fringe as a result of the expansion of urban areas onto rural land is an issue.

v. The requirement to sustainably manage rural resources has implications both for the use of land and for its subdivision.

vi. The effects of inappropriate subdivision, use and development on outstanding natural features and landscapes.

vii. There is a risk that adverse environmental effects can result from incompatible activities located close together.

5.2 It is considered that the issues detailed above can be distilled down to the following three matters:

i. a recognition that subdivision and land use development can have adverse effects and the necessity for the Plan to define effects and minimum standards for subdivision and development (in order to avoid effects)

ii. concerns regarding the loss of areas of significant indigenous vegetation, significant habitats of indigenous fauna and effects on outstanding natural features and landscapes and a recognition that sustainable management of rural resources has implications for both the use of land and for subdivision

iii. the potential for adverse environmental effects, particularly reverse sensitivity affect to occur at the rural/urban interface
5.3 Following the detailing of ‘Issues’ related to the Rural Environment, six Expected Environmental Outcomes (Section 8.2 of the Plan) are listed, which are:

i. A rural environment where natural and physical resources are managed sustainably.

ii. A rural environment in which a wide variety of activities is enabled, consistent with safeguarding the life supporting capacity of air, water, soil and ecosystems.

iii. A dynamic rural environment which is constantly changing to meet the social and economic needs of the District’s communities through the sustainable management of natural and physical resources.

iv. The maintenance of areas of significant indigenous vegetation and significant habitats of indigenous fauna including aquatic habitats, and an increase in such areas that are formally protected.

v. Adverse effects arising from potentially incompatible activities are avoided, remedied or mitigated.

vi. The maintenance of values associated with outstanding natural features and landscapes in the rural environment.

5.4 These Environmental Outcomes are considered to focus on the following:

i. the management of natural and physical resources in a sustainable manner that safeguards the life supporting capacity of air, water, soil and ecosystems and the maintenance of areas of significant indigenous vegetation and significant habitats of indigenous fauna including aquatic habitats and the maintenance of values associated with outstanding natural features and landscapes; while

ii. enabling a wide range of activities to locate in the rural environment, recognising the rural environment as a dynamic environment and avoiding adverse affects.

5.5 Following on from the Issues and the Environmental Outcomes, the Plan lists eight objectives and eight policies that relate to the Rural Environment. In a plan structure the policies must assist in implementing the objectives. Therefore, the objectives are listed below and underneath each objective the relevant policies that implement them:

Objective 8.3.1: To promote the sustainable management of natural and physical resources of the rural environment while enabling activities to establish in the rural environment.

Policy 8.4.1: That activities which will contribute to the sustainable management of the natural and physical resources of the rural environment are enabled to locate in that environment.

Objective 8.3.2: To ensure that the life supporting capacity of soils is not compromised by inappropriate subdivision, use or development.
Policy 8.4.2: That activities be allowed to establish within the rural environment to the extent that any adverse effects of these activities are able to be avoided, remedied or mitigated and as a result the life supporting capacity of soils and ecosystems is safeguarded.

Policy 8.4.3: That any new infrastructure for development in rural areas be designed and operated in a way that safeguards the life supporting capacity of air, water, soil and ecosystems while protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes.

Objective 8.3.3: To avoid, remedy or mitigate adverse effects of activities on the rural environment.

Policy 8.4.2: That activities be allowed to establish within the rural environment to the extent that any adverse effects of these activities are able to be avoided, remedied or mitigated and as a result the life supporting capacity of soils and ecosystems is safeguarded.

Objective 8.3.4: To protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Policy 8.4.3: That any new infrastructure for development in rural areas be designed and operated in a way that safeguards the life supporting capacity of air, water, soil and ecosystems while protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes.

Policy 8.4.4: That development which will maintain or enhance the amenity value of the rural environment and outstanding natural features and outstanding landscapes be enabled to locate in the rural environment.

Policy 8.4.6: That areas of significant indigenous vegetation and significant habitats of indigenous fauna habitat be protected as an integral part of managing the use, development and protection of the natural and physical resources of the rural environment.

Objective 8.3.5: To protect outstanding natural features and landscapes.

Policy 8.4.3: That any new infrastructure for development in rural areas be designed and operated in a way that safeguards the life supporting capacity of air, water, soil and ecosystems while protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, outstanding natural features and landscapes.

Policy 8.4.4: That development which will maintain or enhance the amenity value of the rural environment and outstanding natural features and outstanding landscapes be enabled to locate in the rural environment.

Policy 8.4.8: That, when considering subdivision, use and development in the rural environment, the Council will have particular regard to ensuring that its intensity, scale and
type is controlled to ensure that adverse effects on habitats (including freshwater habitats), outstanding natural features and landscapes on the amenity value of the rural environment, and where appropriate on natural character of the coastal environment, are avoided, remedied or mitigated.

Objective 8.3.6: To avoid actual and potential conflicts between land use activities in the rural environment.

Policy 8.4.5: That plan provisions encourage the avoidance of adverse effects from incompatible land uses, particularly new developments adversely affecting existing land-uses (including by constraining the existing land-uses on account of sensitivity by the new use to adverse affects from the existing use – i.e. reverse sensitivity).

Objective 8.3.7: To promote the amenity values of the rural environment.

Policy 8.4.2: That activities be allowed to establish within the rural environment to the extent that any adverse effects of these activities are able to be avoided, remedied or mitigated and as a result the life supporting capacity of soils and ecosystems is safeguarded.

Policy 8.4.4: That development which will maintain or enhance the amenity value of the rural environment and outstanding natural features and outstanding landscapes be enabled to locate in the rural environment.

Policy 8.4.8: That, when considering subdivision, use and development in the rural environment, the Council will have particular regard to ensuring that its intensity, scale and type is controlled to ensure that adverse effects on habitats (including freshwater habitats), outstanding natural features and landscapes on the amenity value of the rural environment, and where appropriate on natural character of the coastal environment, are avoided, remedied or mitigated.

Objective 8.3.8: To facilitate the sustainable management of natural and physical resources in an integrated way to achieve superior outcomes to more traditional forms of subdivision, use and development through management plans and integrated development.

This objective is not considered to be directly supported by a particular policy

Policy 8.4.7: That Plan provisions encourage the efficient use and development of natural and physical resources.

This policy is not considered to support a particular objective
5.6 Whilst it is recognised that the Issues, Expected Environmental Results, Objectives and Policies of the Rural Environment are very general, it is considered that they are to a large degree repetition of the matters contained in Part 2 of the Resource Management Act (RMA) (refer Attachment A). Of particular concern is Objective 8.3.8 and Policy 8.4.7 that do not appear to specifically be linked to respective policies and objectives.

5.7 The objectives and policies of a plan are a mandatory requirement and are particularly necessary to give guidance as to the more specific matters that are of resource management importance to a district. Relevant objectives and policies should assist in establishing environmental bottom lines that give guidance when processing a resource consent application. It is also noted that objectives and policies have statutory weight by virtue of section 104 (in particular Sections 104(1)(b)(v), 104(1)(c) and 104D(1)(b)(ii)) of the RMA (refer Attachment B), particularly where they must be given regard in the assessment of a non-complying resource consent application (Section 104D(1)(b)(iii)). This is why it is necessary for objectives and policies to contain a degree of specificity, because zone statements and explanations and reasons (often contained in district plans) do not carry the same statutory weight as objectives and policies.

5.8 Of particular interest are policies 8.4.1 and 8.4.4, which both relate to enabling activities in the rural environment that “contribute to the sustainable management of the natural and physical resources” (Policy 8.4.1) and where such activities “maintain or enhance the amenity value of the rural environment” (Policy 8.4.4). Therefore, the enabling nature of the environment (detailed in the Issues) must be tempered against the necessity to achieve the overall intent of the Objectives and Policies (sustainable management and maintenance and enhancement of amenity values).

5.9 Recognising that both the Rural Production Zone and the Rural Living Zone contain Issues, Expected Environmental Outcomes, Objectives and Policies that more specifically relate to these zones, these will be assessed below. However it is also recognised that the Plan content with respect to the Rural Environment must be read in conjunction with the detail provided for the more specific environments.
6. **THE RURAL PRODUCTION ZONE**

6.1 The Rural Production Zone applies to the majority of the District with a wide range of activities carried out in this Zone at present that “are generally considered to be appropriate”\(^2\).

6.2 The Zone contains environmental and amenity standards which will enable the continuation of the wide range of existing and future activities, while ensuring that the natural and physical resources of the rural area are managed sustainably. The provisions of the Rural Production Zone are complemented by the subdivision rules and the general rules relating to protection of environmental matters such as landscapes, indigenous flora and fauna and having regard to amenity values.

6.3 The Plan lists two “Issues” for the Rural Production Zone, being:

   i. **People who are dependant on the use of land in the Rural Production Zone for their livelihood can be adversely affected by controls designed to ensure sustainable management of natural and physical resources.**

   ii. **The sustainable management of natural and physical resources in the Rural Production Zone could be under threat in the absence of controls designed to avoid, remedy or mitigate the adverse effects of activities.**

6.4 The two issues above highlight to some degree the potential conflict that occurs in any rural environment. It is noted that the Zone is titled ‘Rural Production Zone’, which is considered to recognise the primary production that occurs within this Zone and its economic importance to the District. There appears to be a desire to ensure that any controls contained within the District Plan do not unnecessarily restrict those parties undertaking primary production/economic activities, but at the same time recognising that there is a fundamental requirement to avoid, remedy and/or mitigate the adverse effects of activities on the environment.

6.5 Following the detailing of ‘Issues’ related to the Rural Production Zone, two Expected Environmental Outcomes (Section 8.6.2 of the Plan) are listed, which are:

   i. **A Rural Production Zone where a wide variety of activities take place in a manner that is consistent with the sustainable management of natural and physical resources.**

   ii. **A Rural Production Zone which enables the social, economic and cultural well-being of people and communities, and their health and safety, while safeguarding the life supporting capacity of the environment and avoiding, remedying or mitigating adverse effects on it.**

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2 FNDC District Plan – Section 8.6 Rural Production Zone - Context
6.6 The two Environmental Outcomes detailed above, reflect the Issues in that there is a desire for flexibility with an enabling attitude, but overall there is an overarching requirement to avoid, remedy and/or mitigate adverse effects.

6.7 Without being prejudicial, it could be considered that this desire for flexibility, whilst managing effects is where the location of some commercial and/or industrial activities in the Rural Production Zone is considered to be out of context, or out of character with what people consider should ‘normally’ be located within a rural environment (recognising that primary production activities are commercial and to some extent industrial activities). It is recognised that this is a highly subjective matter, but is potentially the basis from which people’s reactions occur i.e. their ‘expectation’ of what should happen in the countryside.

6.8 Following on from the Issues and the Environmental Outcomes the Plan lists five objectives and six policies that relate to the Rural Production Zone. As above the objectives are listed and underneath them the relevant policies that implement them:

Objective 8.6.3.1: To promote the sustainable management of natural and physical resources in the Rural Production Zone.

Policy 8.6.4.3: That land management practices that avoid, remedy or mitigate adverse effects on natural and physical resources be encouraged.

Objective 8.6.3.2: To enable the efficient use and development of the Rural Production Zone in a way that enables people and communities to provide for their social, economic, and cultural well being and for their health and safety.

Policy 8.6.4.5: That the efficient use and development of physical and natural resources be taken into account in the implementation of the Plan.

Objective 8.6.3.3: To promote the maintenance and enhancement of the amenity values of the Rural Production Zone.

Policy 8.6.4.1: That a wide range of activities be allowed in the Rural Production Zone, subject to the need to ensure that any adverse effects, including any reverse sensitivity effects, on the environment resulting from these activities are avoided, remedied or mitigated.

Policy 8.6.4.2: That standards be imposed to ensure that the off site effects of activities in the Rural Production Zone are avoided, remedied or mitigated.

Policy 8.6.4.4: That the intensity of development allowed shall have regard to the maintenance and enhancement of the amenity values of the Rural Production Zone.

Objective 8.6.3.5: To protect the special amenity values of the frontage to Kerikeri Road between its intersection with SH10 and the urban edge of Kerikeri.
Policy 8.6.4.6: That the built form of development allowed on sites with frontage to Kerikeri Road between its intersection with SH10 and Cannon Drive be maintained as small in scale, set back from the road, relatively inconspicuous and in harmony with landscape plantings and shelter belts.

Objective 8.6.3.4: To promote the protection of significant natural values of the Rural Production Zone.

*This objective is not considered to be directly supported by a particular policy*

6.9 Overall the objectives and policies of the Rural Production Zone are considered to be very vague, particularly the objectives which are by and large a repetition of Part 2 matters (RMA).

6.10 It would be expected that given the very general nature of the objectives and policies of the Rural Environment that the objectives and policies of the Rural Production Zone would be more definitive and provide a greater level of guidance with respect to the resource management outcomes to be achieved in this Zone, but they do not.

6.11 It is considered that a greater level of detail is required to provide more specific guidance and clearly establish what the Plan considers to be ‘environmental bottom lines’ for the Rural Production Zone.
7. THE RURAL LIVING ZONE

7.1 The District Plan states that the Rural Living Zone is “an area of transition between town and country”\(^3\) with the transition expressed mainly in terms of residential intensity and lot sizes. The potential for reverse sensitivity effects between farming activities and residential zones is recognised and is considered to be reduced by the presence of the Rural Living Zone. In the Rural Living Zone both rural and residential activities are proposed to co-exist and form an area with a distinctive and separate character.

7.2 With the future in mind it is considered that parts of the Rural Living Zone will in time be rezoned for residential purposes and the zone contains specific amenity standards designed to protect the special amenity values of the frontage to Kerikeri Road between SH10 and the urban edge of Kerikeri.

7.3 The Plan lists two “Issues” for the Rural Living Zone, being:

i. Residential development on relatively small rural lots is popular in some areas of the District, but can have adverse effects for rural activities where these adjoin rural residential areas.

ii. The greater population density of the Rural Living Zone, as compared to the Rural Production Zone, has the potential to cause both physical and cultural effects on the environment that could be adverse.

7.4 These two issues are considered to relate to potential effects resulting from development within the Rural Living Zone and the potential for reverse sensitivity effects to establish between farming and residential activities on the rural/urban interface.

7.5 Following the detailing of ‘Issues’ related to the Rural Living Zone, three Expected Environmental Outcomes (Section 8.7.2 of the Plan) are listed, which are:

i. A Rural Living Zone where residential living on small rural lots is compatible with those other rural activities that have an emphasis on production rather than lifestyle.

ii. A Rural Living Zone where the controls on the activities ensure a high standard of privacy and amenity for residential activities.

iii. A Rural Living Zone where activities are self sufficient in terms of water supply, sewerage and drainage, while not causing adverse effects on the environment.

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\(^3\) FNDC District Plan – Section 8.7 Rural Living Zone - Context
7.6 The Expected Environmental Outcomes provide some guidance with respect to the type of land uses expected to occur within the Rural Living Zone, particularly residential living that is compatible with the ‘production’ activities of neighbouring farms. There is also a desire that a high degree of privacy and amenity for residential activities be provided, which will assist it in avoiding reverse sensitivity effects and a direction that development be self-sufficient in terms of infrastructure.

7.7 Following on from the Issues and the Environmental Outcomes the Plan lists three objectives and twelve policies that relate to the Rural Production Zone. As above the objectives are listed and underneath them the relevant policies that implement them:

Objective 8.7.3.1: To achieve a style of development on the urban periphery where the effects of the different types of development are compatible.

Policy 8.7.4.8: That the scale and intensity of activities other than a single residential unit be commensurate with that which could be expected of a single residential unit.

Policy 8.7.4.9: That activities with effects on amenity values greater than a single residential unit could be expected to have, be controlled so as to avoid, remedy or mitigate those adverse effects on adjacent activities.

Policy 8.7.4.10: That provision be made to ensure a reasonable level of privacy for inhabitants of buildings on adjoining sites.

Objective 8.7.3.2: To provide for low density residential development on the urban periphery, where more intense development would result in adverse effects on the rural and natural environment.

Policy 8.7.4.1: That a transition between residential and rural zones is achieved where the effects of activities in the different areas are managed to ensure compatibility.

Policy 8.7.4.2: That the Rural Living Zone be applied to areas where existing subdivision patterns have led to a semi-urban character but where more intensive subdivision would result in adverse effects on the rural and natural environment.

Policy 8.7.4.3: That residential activities have sufficient land associated with each household unit to provide for outdoor space, and where a reticulated sewerage system is not provided, sufficient land for on-site effluent disposal.

Objective 8.7.3.3: To protect the special amenity values of the frontage to Kerikeri Road between SH10 and the urban edge of Kerikeri.

Policy 8.7.4.11: That the built form of development allowed on sites with frontage to Kerikeri Road between its intersection with SH10 and Cannon Drive be maintained as small
in scale, set back from the road, relatively inconspicuous and in harmony with landscape plantings and shelter belts.

Policy 8.7.4.6: That home-based employment opportunities be allowed in the Rural Living Zone.

Policy 8.7.4.7: That provision be made for ensuring that sites, and the buildings and activities which may locate on those sites, have adequate access to sunlight and daylight.

Policy 8.7.4.12: That the Council maintains discretion over new connections to a sewerage system to ensure treatment plant discharge quality standards are not compromised (refer to Rule 13.7.3.5).

None of these policies are considered to support a particular objective

7.8 The objectives and policies of the Rural Living Zone, whilst providing more guidance and detail than those associated with the Rural Environment and the Rural Production Zone are still somewhat vague in terms of providing definitive guidance as to the environmental bottom lines to be considered when processing resource consent applications.

7.9 In particular three of the policies do not appear to support a particular objective and in some instances the policies seem to be more directly aligned to the environmental outcomes, then they do the objectives.

7.10 In this this zone it is assessed that there are deficiencies in terms of providing a clear cascade, starting with issues and as one works down the cascade being provided with more guidance as to be outcomes being sought. However, these deficiencies are not considered to be catastrophic, more there is a necessity to provide a greater level of detail, some of which can be provided by rearranging the existing information.
8. **OVERALL ASSESSMENT OF OBJECTIVES AND POLICIES**

8.1 With respect to Rural Sustainability (Section 1.1.3 of the District Plan - Significant Resource Management Issues), the Plan states:

“

Agriculture, horticulture, forestry and tourism are the major industries of the District and all are reliant upon protecting the life supporting capacity of air, water, soil and ecosystems. By directing urban growth to locations where the cumulative environmental effects of intense development can be managed, and providing for countryside living in suitable areas, a substantial part of the District will remain available to these rural industries. The integrity of the rural environment is maintained through appropriate land use and subdivision provisions. Environmental standards and thresholds have been set taking into account the provisions of the relevant regional plans thereby minimising regulatory intervention. Consequently, the outcome will be a rural environment where a diverse range of activities occurs which avoids reverse sensitivity (incompatible land uses) conflicts and where landowners are primarily responsible for environmental protection and sustainable management of resources (refer Chapters 8, 12 and 13). Reverse sensitivity (incompatible land uses) is defined as the effects of the existence of sensitive activities on other established activities in their vicinity, particularly by leading to constraints in the carrying on of those established activities.”

8.2 Considering the policy direction contained within the District Plan for the Rural Environment, the Rural Production Zone and the Rural Living Zone the following is considered to be the general policy direction:

i. a desire to enable flexibility in land use, particularly within the Rural Production Zone

ii. that existing rural production activities not be negatively impacted upon by resource management issues, particularly agriculture, horticulture and forestry

iii. the need to achieve the outcomes sought by Part 2 of the RMA

iv. the avoidance of reverse sensitivity effects

v. that activities within the Rural Living Zone should not generate effects greater than those associated with a single household unit
8.3 Therefore, it can be considered that the objectives of the policies of the District Plan (taking into consideration the Issues and Environmental Outcomes Expected for each Zone) provide a resource management framework aligned with the Significant Resource Management Issues detailed in the Plan, but that framework is not necessarily robust in terms of ensuring that discretionary and non-complying activities meet the overall resource management direction contained in the Plan.

8.4 However, overall it is considered that the content of the Plan does not give the Plan user a clear indication of the expectations for each Zone. It is recognised that the Plan is designed to be very permissive and takes very much an effects-based approach⁴, whereby to a large degree ‘land uses’ per se are not controlled, rather the effects of those uses are controlled. But the significant deficiency is that the objectives and policies do not add a greater level of detail with respect to how the Plan will deal with the Significant Resource Management Issues and at times are not much more than a repetition of the Issues.

8.5 As previously stated, the objectives and policies are somewhat vague and therefore it becomes difficult to clearly understand what the Plan proposes as minimums and maximums (beyond the rules) in an attempt to sustainably manage the natural and physical resources of the District.

8.6 There is no clear statement with regard to what rural character is considered to be in the Far North District and what amenity values are particularly to be maintained and enhanced (section 7(c) RMA). The plan contains all of the Part 2 matters within the issues, objectives and policies but without specifically detailing what these matters mean in the Far North District and in each of the Zones assessed, the statements are too vague and general to be of particular use when testing the impact of a proposal.

⁴ FNDC District Plan – Section 1.2.6 – Statements of Principle
9. **ASSESSING EFFECTS/RULES**

9.1 Following on from the Issues, Environmental Outcomes Expected, Objectives and Policies are the Zone Rules. These rules are designed to enable land use and built development to occur within each zone, to a level considered suitable in terms of achieving the policy direction of the Plan.

9.2 The FNDC District Plan is split effectively into three parts:

i. Part 1 – General Provisions
ii. Part 2 – Environment Provisions; and

9.3 In terms of the rules and the matters/effects taken into account when processing resource consent applications for industrial and commercial activity in the Rural Production and Rural Living zones, these are contained in the Specific Environment Provisions and the more wide ranging District Wide Provisions.

9.4 Both the Rural Production and Rural Living Zones are contained within the Rural Environment and therefore most specifically controlled by the provisions of Chapter 8 of the Plan.

9.5 With regard to the Rural Production Zone the following matters are related to the assessment of industrial and/or commercial activities:

i. Residential intensity (limiting the number of residential units on a site)
ii. Bulk and location controls, including: building setbacks from boundaries, sunlight access (height to boundary), building height, and the extent of impermeable surfaces on a site
iii. Traffic Intensity (vehicle movements)
iv. The keeping of animals
v. Controls on noise
vi. Controls regarding helicopter landing
vii. Controls on Papakaianga Housing (controlled activity)
viii. Particular restrictions on noise from temporary military training (controlled activity)
ix. Controls on Integrated Development (only relates to Maori freehold land and Maori customary land and Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993)) (discretionary activity)

9.6 With regard to the Rural Living Zone the following matters are related to the assessment of industrial and/or commercial activities:

i. Residential intensity (limiting the number of residential units on a site)
ii. Scale of activities (limiting the number of people involved in an activity on a site)
iii. Bulk and location controls, including: building setbacks from boundaries, sunlight access (height to boundary), building height, and the extent of impermeable surfaces on a site
iv. Traffic Intensity (vehicle movements)
v. Screening from neighbours of non-residential activities
vi. Controls on hours of operation for non-residential activities
vii. The keeping of animals
viii. Controls on noise
ix. Controls regarding helicopter landing
x. Controls on Papakaianga Housing
xi. Controls on Integrated Development (only relates to Maori freehold land and Maori customary land and Crown land reserved for Maori (as defined in Te Ture Whenua Act 1993))

9.7 Therefore the matters/effects taken into account when processing resource consent applications for industrial and commercial activity in the Rural Production and Rural Living zones are largely similar, however it is recognised that the controls have different elements within each of them with regard to the scale and intensity of what is enabled.

9.8 The more wide ranging District Wide Provisions contained in Part 3 of the Plan apply to all activities in all zones and the application of the District Wide Provisions can be dependent on whether a particular site is defined as being within a particular Resource Area on the planning maps or whether a designation or other notation applies to the site, therefore further information contained within the Appendices of the District Plan may apply.

9.9 In general terms the District Wide Provisions cover the following matters:

i. Natural and Physical Resources; being
   a. Landscape & Natural Features
   b. Indigenous Flora & Fauna
   c. Soils & Minerals
   d. Natural Hazards
   e. Heritage
   f. Heritage Precincts
   g. Air
   h. Lakes, rivers, wetlands and the Coastline; and
   i. Hazardous Substances

ii. Subdivision

iii. Financial Contributions

iv. Transportation; including
   a. Traffic, Parking and Access; and
   b. Airports

v. Signs and Lighting

vi. Designations and Utility Services

vii. Special Areas
9.10 The rules that relate to land use and development in the Rural Production and Rural Living Zones cover a number of matters and a range of potential effects. These rules are quite detailed and cross-referencing ensures that other matters are not overlooked when an assessment is being undertaken.

9.11 However, the rules to a large degree do not control the use of land. There are no restrictions on the siting of commercial and/or industrial land uses within these zones, except through the control on the effects of such land uses. This approach is considered to be in-tune with ‘effects-based planning’, where the use is not the matter of contention, rather the effects generated by that use. Nonetheless, by leaving the control of land uses open and only controlling effects leaves the door open to uses locating in an area that whilst they may meet with all the rules, the use itself may be considered to be out of character.

9.12 Such an approach can result in development occurring that members of the public do not consider to be ‘in character’ with the surrounding environment and may negatively impact on amenity values and peoples enjoyment of a locality.

9.13 As previously assessed the Objectives and Policies of the Rural Environment, Rural Production and Rural Living Zones do not create a strong picture of the ‘character’ of the rural environment/zones, and this deficiency filters through to the rules.

9.14 It is noted that commercial and/or industrial activity is not defined in the District Plan, however the Plan does rely on the definition contained in Section 2 of the RMA for industrial or trade premises:

- (a) Any premises used for any industrial or trade purposes; or
- (b) Any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or
- (c) Any other premises from which a contaminant is discharged in connection with any industrial or trade process—

... but does not include any production land:

— and includes any factory farm; but industrial or trade process includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of the raw material, partly processed matter, or product:
9.15 Section 2 of the RMA goes on to define production land as being:

(a) Means any land and auxiliary buildings used for the production (but not processing) of primary products (including agricultural, pastoral, horticultural, and forestry products):

(b) Does not include land or auxiliary buildings used or associated with prospecting, exploration, or mining for minerals… —

and production has a corresponding meaning:

9.16 The District Plan however does define ‘normal rural practices’ as:

means the maintenance of rural tracks, maintenance of dams, digging offal holes, establishment and maintenance of fences and fencelines, land cultivation, clearing of drains and obtaining roading material for farming or forestry use on or servicing the same farm or forest production unit in which the extraction is located. Unless specifically provided for in Rule 12.3.6.1.2 normal rural practices are generally exempt from the rules applying to excavation and filling.

But the use of this definition is more to enable an exemption for such activities with respect to controls applied for excavation and filling, rather than as a means of defining land use.
As previously assessed residential activities are used as a guide (‘baseline’) with regard to the level of effects that are considered to be allowable, particularly in the Rural Living Zone. Of concern is the fact that ‘residential activity’ or ‘household’ are not defined terms in the District Plan, however ‘residential unit’ is, being:

A building, a room or a group of rooms, used, designed or intended to be used exclusively by one or more persons as a single, independent and separate household.

Whilst it is recognised that the interpretation of definitions contained within the RMA and the District Plan can at times be subjective, the addition of such definitions is of assistance in understanding what is expected in terms of the application of rules, objectives and policies.

The addition of definitions would be useful in detailing the types of uses to be enabled and would clearly define those that aren’t. Building on existing definitions contained in the RMA and the District Plan should enable such definitions to be readily developed and be incorporated into objectives, policies and rules.

The District Plan seeks to allow flexibility in the location of land uses, but then references particular land uses as the means by which to assess (by comparison) the impact of proposed uses. It is therefore considered that the gap created through the lack of particular definitions impacts upon the ability to interpret the District Plan and to properly manage the location of land uses, particularly when such terms such as ‘residential use’, ‘commercial use’ and ‘industrial use’ are used within the objectives and policies of the Plan, but are not defined.

The flexibility built into the Plan with respect to the location of land uses is also of concern with regard to the establishment and maintenance of a specific hierarchy of zones, where traditionally environmental effects, particularly reverse sensitivity effects are controlled by locating like land uses together. Fragmentation of land use patterns can impact on the cost of servicing, where significant infrastructure expenditure is made (i.e. in commercial zones) and then not used because land uses can locate ‘out-of-zone’ and also where there is across the board (or District) growth, with high traffic generators or the like not located within established urban areas, then demand over time can be created for costly extensions to services (including electricity, waste water, stormwater, telecommunications etc).
10. THE RULES IN ACTION
10.1 Below is a review undertaken of a selection of resource consent applications granted whereby industrial and/or commercial uses have been applied for within the Rural Production and Rural Living Zones. The purpose of this assessment is to make a judgement call as to whether the uses proposed are in keeping with the ‘intent’ of these two zones.

10.2 The first consent assessed was for an early childhood learning facility within the Rural Production Zone. The planner processing the application recommended it be declined on grounds that: the proposal is not compatible with the existing activities in the area and would adversely affect the existing amenity values; the new development is unable to avoid adverse effects in terms of potential reverse sensitivity on an existing (neighbouring) kiwifruit orchard; and the proposal is considered to be contrary to the objectives and policies of the District Plan.

10.3 A hearing commissioner recommended that the application be granted following the presentation of evidence at the hearing. Matters in favour of enabling the application to be granted were the high level of traffic movements enabled as a restricted discretionary activity (200 one way movements per day), that planting was proposed to screen the building from view and that the issues of reverse sensitivity were dealt with by way of a no complaints covenant in favour of the neighbouring kiwifruit orchard.

10.4 Issues of amenity and character were not specifically addressed in the decision, as it was considered that evidence provided and the imposition of conditions would ensure that the “effects were no more than minor”. Of particular concern is the issue of reverse sensitivity. As stated this was dealt with by way of a ‘no complaints covenant’. It is recognised that no complaints covenants are an accepted (albeit private) means of dealing with reverse sensitivity matters, but in this instance the reverse sensitivity issue came by way of a concern related to health effects from spray drift and whilst it appears that the evidence surrounding this matter is inconclusive, it is noted that reverse sensitivity is a particular issue included in the objectives and policies of the Rural Environment and the Rural Production zone.

10.5 Whilst it is accepted that the assessment of effects and the conclusion that those effects would be no more than minor (following further evidence) enabled the application to be granted, there is no relationship between this proposed use and any primary production use and it is considered that the issue of reverse sensitivity should potentially be signalled within the Plan as a matter requiring more of a precautionary approach, particularly where there is a sensitive use proposed (a child-care centre) as well as potential health issues resulting from and activity (e.g. spray drift).

10.6 The second consent assessed was for a storage facility, associated with an existing commercial operation in the Rural Production Zone. Consent was required for access, impermeable surfaces and storage. Due to the limited nature of the matters that consent was required for, issues of amenity and rural character were not required to be taken into account. The assessment of the application concluded that the effects were no more than minor and the consent was granted.
10.7 Due to the Plan not specifically limiting commercial or industrial operations, the consent was assessed on technical matters related to access and stormwater control (related to impermeable surfaces). As the required information was provided there were effectively no grounds on which to potentially consider that the application was not in keeping with the amenity values or rural character of the area.

10.8 The third consent was similar to the second, where consent was sought for a farm supply outlet store in the Rural Production Zone. This consent was for a commercial activity and required consent for traffic intensity, parking and signing infringements and was assessed as a restricted discretionary activity.

10.9 Supporting technical information was provided and the effects of the proposal were assessed to be no more than minor. Matters related to amenity values and potential effects on the rural character of the area were not considered as part of the application, due to the limited technical nature of the infringements. Whilst the proposal is a commercial activity providing supplies to the rural sector, there is no particular need for such an activity to locate within a rural environment.

10.10 The fourth consent to be assessed was for a place of assembly in the Rural Production Zone where the proposal required consent for issues related to traffic movements and site access. Issues of rural amenity and effects on rural character were taken into account in the assessment of this proposal.

10.11 The proposed intensity of the development was considered to generate adverse environmental effects that were no more than minor, including effects on rural character and the rural environment. The proposal was assessed against the relevant objectives and policies of the District Plan and it was concluded that the proposal was consistent with the overall planning framework and is supported by a number of specific objectives and policies which seek to provide for an environment in which a wide variety of activities can take place.

10.12 In terms of Part 2 of the RMA the proposal was considered to be consistent with the overall purpose and the principles in that the effects of the proposal on the environment can be appropriately avoided, remedied or mitigated and the proposal does maintain or enhance amenity values. To reach this conclusion technical information was provided with the application and concerns of submitters were dealt with, negating the requirement for a hearing. The proposed mitigation measures were considered sufficient to adequately ensure that the potential adverse effects of the proposal will be no more than minor.

10.13 Consent was granted, subject to conditions and as with the other proposals there is no relationship between this application and the rural environment, as the use does not support a primary production/rural use.

10.14 The final application assessed was for a multi-use commercial development within the Rural Production Zone. This was a publicly notified application, with submissions received on the application and the application went to hearing.
10.15 The planner processing the application considered that “both individually and collectively, the actual and potential effects would be more than minor. The proposed scale and intensity of the development is considered to generate more than minor adverse environmental effects with regard to rural character and amenity, landscape and visual matters, the sustainable use of the land resource, reverse sensitivity and access and traffic matters”.

10.16 The proposal was assessed against the relevant objectives and policies of the District Plan and it was concluded that the development, both individually and collectively, is inconsistent with the overall planning framework and is contrary to some of the key objectives and policies. It was considered that the proposal had not demonstrated sufficient special or unusual circumstances to prevent it establishing as a precedent for other similar large scale commercial activities and non complying subdivisions in the Rural Production zone.

10.17 In terms of Part 2 of the RMA it was considered that the proposal would not be consistent with the overall purpose and the principles of the RMA in that the proposal does not assist in meeting the reasonably foreseeable needs of future generations, does not represent the efficient use and development of natural and physical resources and does not appropriately avoid, remedy or mitigate the adverse effects of the proposed development on the environment.

10.18 The proposal was recommended to be declined by independent commissioners (at the time of writing the appeal period had not finished), where they concluded that the proposed scale and intensity of the development is more than can reasonably be expected on the site and in the locality and it will have significant adverse effects on the local environment.

10.19 Furthermore the commissioners assessed that the adverse effects of the activity on the environment will be more than minor, particularly in respect of visual and landscape effects, rural character effects and reverse sensitivity effects. The activity is assessed to be contrary to the relevant objectives and policies of the District Plan, particularly as those provisions relate to considerations of rural production, reverse sensitivity and rural amenity and in the circumstances the proposal is not consistent with the purpose and principles of the RMA.

10.20 In all instances the consents granted were for uses that are not related to rural uses or primary production and could be accommodated in other existing zones of the Plan. In general terms the small scale uses can gain consent because the effects (when tested against the requirements of the District Planning) are no more than minor.

10.21 However, the proliferation of uses within that the Rural Zones that are not rural related can be considered to overtime to alter the character of an area. Also the location of industrial and commercial activities outside of urban areas has the potential to (over time) erode the established hierarchy of leaned uses and urban centres.
10.22 The issue of precedent does not appear to have been significantly considered, except in the final consent reviewed, because the other proposals were effectively of a minor nature and fitted within the effects envelope and the objectives and policies of the Plan. But it is questionable as to whether the Plan considered such a proliferation of an industrial and commercial uses outside the urban areas when the rules were developed. It may be that when the door were opened to enabling land uses to establish (through a permissive approach), that the results have been more than what was envisaged. However, without clear and definite zone statements, objectives, policies, character and amenity statements it is not possible to determine if the pattern of development occurring is what was envisaged or not.
11. OTHER APPROACHES
11.1 It is considered useful as part of this assessment to look at how these matters are dealt with in other districts with similarities to the Far North District. As a comparison four other districts were chosen, particularly those with a mix of rural and urban land, being: Rodney District; Rotorua District; Western Bay of Plenty District; and Whangarei District.

11.2 The General Rural and Countryside Living Rural Zones are considered to be the most relevant Zones of the Rodney District Plan (Rodney DP) when comparing the Rural Production and Rural Living Zones (respectively) of the Far North Plan.

11.3 The Rodney DP contains with (regard to the Rural Zone) overall resource management issues and lengthy descriptions of those issues with regard to particular matters (i.e. rural character, amenity values, land modification and earthworks, contaminated sites etc). The Rodney DP details a large number of objectives and cross-referenced policies, including explanations with respect to those resource management issues, again at a general level. Following from this the Rodney DP contains a strategy which “sets out the overall approach to managing the natural and physical resources in order to promote sustainable management. The strategy derives from the issues, objectives and policies for rural areas”\(^5\) and is followed by implementation methods and anticipated environmental results.

11.4 The Rodney DP contains objectives and cross-referenced policies with particular regard to the General Rural Zone and a description for that Zone and also contains general objectives and cross-referenced policies for the Countryside Living Zones. Specific objectives and cross-referenced policies as well as a zone description for the Countryside Living Rural Zone is then provided.

11.5 The Rodney DP contains a considerable amount of detail with respect to these zones and the objectives and policies are very specific and detailed as to the outcomes sought, giving clear policy direction for the rules that follow.

11.6 With regard to the establishment and location of land uses within the General Rural and Countryside Living Rural Zones the Rodney DP contains in rule 7.9.2 an extensive table detailing a number of land uses and their associated consent categories. The controls of the Rodney DP are very prescriptive and generally do not allow commercial and/or industrial activities to locate in either zone except where they are of a rural nature or a very small scale. Similar to the FNDC Plan any proposed land use is also subject to controls on earthworks and vegetation clearance, traffic generation, bulk and location controls etc.

11.7 In general terms the Rodney DP is considered to be very detailed as to what can and can't locate within the General Rural and Countryside Living Rural Zones and provides a significant level of guidance with respect to expectations as to the makeup of these zones.

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\(^5\) RDC District Plan – Section 7.5
11.8 The Rodney DP provides a clear cascade of issues, to objectives, to policies, to rules. The activities allowed are only those detailed and those considered to be compatible. The Rodney DP therefore specifically controls the land use as well as the effects of the land use.

11.9 The Rural A (General) and Rural B (Rural Residential) Zones are considered to be the most relevant Zones of the **Rotorua District Plan** (Rotorua DP) when comparing the Rural Production and Rural Living Zones (respectively) of the Far North Plan.

11.10 The Rotorua DP contains a commentary of significant resource management issues and from that details a specific issue. As a useful addition the Rotorua DP contains a matrix where the significant resource management issues are listed on one axis and the various chapters of the district plan are listed on the other, providing the ability to cross-reference from the significant issues to the other parts of the plan to see where they are considered relevant.

11.11 The rural chapter of the Rotorua DP contains an introduction and then specific resource management issues. Each resource management issue is followed by an issue statement, related objective and associated policies designed to implement the objective, including a commentary/introduction to the policies. This layout provides a clear and definite cascade from the issue through to the objectives and policies.

11.12 Prior to the rules, specific methods of implementation are described, as well as a brief description of the different rural zones and an outline of what the plan considers to be ‘rural character’. The rules related to land use and development are contained within a table listing various uses and associated consent categories, with specific land uses limited as to their ability to locate as a permitted, controlled, restricted discretionary or discretionary activity.

11.13 In most instances those permitted activities are specifically related to primary production and most of the commercial and/or industrial activities listed are discretionary activities including ‘industrial or trade processes’.

11.14 The Rotorua DP is less lengthy and detailed than the Rodney DP, however still contains a clear cascade from issues, to objectives, to policies to rules, with the rules related to built development (bulk and location controls) following the table that controls land use.

11.15 As assessed, land uses are clearly limited to those considered to support primary production activities, with a clear emphasis against general commercial and/or industrial activities located in the rural zones, no matter at how minor at the degree of effects.

11.16 The Rural and Lifestyle Zones are considered to be the most relevant Zones of the **Western Bay of Plenty District Plan** (WBoP DP) when comparing the Rural Production and Rural Living Zones (respectively) of the Far North Plan.
11.17 The WBoP DP Rural chapter commences with an ‘explanatory statement’ which outlines in general terms the rural environment and provides context statements with regard to the growth that has occurred in the area and its relationship to the horticultural industry and the city of Tauranga. Subsequent to the explanatory statement, thirteen significant issues are listed, in some instances stretching to paragraphs.

11.18 Following from the significant issues is a list of nine objectives and twenty policies. These objectives are not cross-referenced in any way, unlike the Rodney or Rotorua plans and no explanations are provided. However, both the objectives and policies are quite detailed and provide a reasonable level of guidance with respect to the assessment of consent applications.

11.19 The rules of both the Rural and Lifestyle Zones make allowances for primary production activities, including horticulture and very limited commercial activity related to primary production activities. Specifically neither zone makes any allowance for industrial activities within these zones. The land use rules are followed by rules related to building and bulk and location controls.

11.20 The WBoP DP would be on par with the Rotorua DP with regard to the level of detail provided as far as a zone statement outlining the character and development expectation of the zones, however does not contain the helpful cross-referencing of the Rotorua DP. It is clear though from the WBoP DP that the rural zones have a focus on the provision for and protection of primary production and residential activities, with any other uses controlled in a very restrictive manner.

11.21 The level of detail provided with respect to the significant issues very adequately sets the scene for the overall management of land use and development and focuses on enabling key industries (e.g. horticulture) to locate and operate and protection of key industries, rather than an overall permissive approach.

11.22 The Whangarei District Plan (Whangarei DP) contains the Countryside Environment, which is very similar to the Rural Production Zone of the Far North District Plan, however the Whangarei DP does not really contain an Environment similar to the Rural Living Zone, except for the recently notified Urban Transition Environment, which is designed to act as a transition between the rural and urban areas, but is not designed as an area for future urban residential development.

11.23 The Whangarei DP is significantly different to the other plans assessed, with the objectives and policies organised into topics i.e. amenity, transport, landscape etc rather than being particularly related to individual zones/environments. However, the Whangarei DP does contain an overview of each environment within the Amenity policies chapter, which effectively acts as a zone statement as it defines the ‘character’ of each Environment.
11.24 Because of the structure of the Whangarei DP all the significant issues, objectives, policies and anticipated environmental results effectively relate to all activities. As part of the assessment process the objectives and policies must be considered as to whether they are relevant. The objectives and policies are not cross-referenced and whilst they contain a reasonable level of detail they are certainly not as detailed as the objectives and policies of the Rodney DP and not as specifically aligned as the Rotorua and Western Bay of Plenty District Plans.

11.25 However, the Urban Transition Environment has been prepared in a different manner to the existing parts of the Whangarei DP. The Urban Transition Environment contains a clear description and expectations of what will happen in this Environment, with specific and detailed objectives and policies as well as land use and subdivision rules that relate specifically to this Environment.

11.26 The rules of the Whangarei DP control certain uses (i.e. factory farming, wool scouring, rendering, motor vehicle manufacturing or dismantling, rubbish disposal or landfills, sewage collection or disposal, or septic tank sludge disposal) and activities that are classified as an offensive trade under the Health Act 1956; in general being uses that are considered to be noxious, or offensive with the ability to negatively impact upon amenity values.

11.27 In addition the rules related to the location of land uses in the Countryside Environment specifically control the location of commercial and industrial activities, their floor area and their location in proximity to residential activities. The new controls of the Urban Transition Environment propose to manage commercial and industrial activities by placing limits on floor size, traffic movements and signage (similar to the FNDC Plan) but this new Environment does not specifically control commercial and industrial activities per se. It is proposed that within the Urban Transition Environment that the limits proposed will result in any commercial or industrial activities being compatible with the predominantly residential use proposed in the Environment and any proposal that does not comply is a discretionary activity.

11.28 Overall the Whangarei DP would be somewhere between the Far North DP (possibly the most permissive with regard to the location of commercial and industrial activities in rural zones) and the other plans assessed. But the change signalled through the notification of the Urban Transition Environment and other plan changes being prepared by Whangarei District Council is that the Whangarei DP will move to some extent more toward the style of plan similar to that of Rodney District Council with detailed objectives and policies that relate specifically to particular zones/environments.

11.29 In general terms all of the plans assessed place some limits on the location of particular land uses in their rural and rural residential zones, in particular a limitation on the establishment of commercial and industrial activities that are not closely related to primary production activities.

11.30 The other plans have a clear cascade from issues, to objectives, to policies, to rules and have more detailed zone statements and details of expectations for development.
11.31 The detail and content of the objectives and policies of the other plans assessed is considered to provide a greater level of detail than those contained within that FNDC Plan and this is considered to support the overall structure of enabling activities within these rural and rural residential zones that are either residential in nature or related to primary production activities.

12.1 With regard to proposing possible changes to the Far North DP it is worthwhile considering those matters that the RMA contains and the issues that the Environment Court has placed emphasis on in terms of plan structure, amenity values and character.

12.2 The purpose of a district plan is detailed in section 72 of the RMA:

*The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act* (emphasis added)

12.3 The functions of the territorial authority are defined in section 31 RMA

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

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

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

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

(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and

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

(iii) the maintenance of indigenous biological diversity:

....

(d) The control of the emission of noise and the mitigation of the effects of noise:

(e) The control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:

(f) Any other functions specified in this Act.

(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision. (emphasis added)
12.4 Of note is that Section 31 (1) defines the functions that the territorial authority will undertake in “giving effect to this Act in its district”.

12.5 Therefore the overarching purpose of a district plan is to achieve the purpose of the Act (section 5 RMA) “to promote the sustainable management of natural and physical resources”, where “sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while ... sustaining the potential of natural and physical resources ... to meet the reasonably foreseeable needs of future generations ... safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and ... avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

12.6 Following on from section 5 of the Act, sections 6 and 7 require that “in achieving the purpose of this Act, all persons exercising functions and powers under it” “shall recognise and provide for” (section 6 RMA) and “shall have particular regard to” (section 7 RMA):

   i. The protection of outstanding natural features and landscapes (§6(b))
   ii. The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (§6(c))
   iii. The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (§6(e))
   iv. The protection of historic heritage from inappropriate subdivision, use, and development (§6(f))
   v. The efficient use and development of natural and physical resources (§7(b))
   vi. The maintenance and enhancement of amenity values (§7(c))
   vii. Maintenance and enhancement of the quality of the environment (§7(f))

12.7 Section 75 of the RMA details the content of district plans.

   (1) A district plan must state—

   (a) the objectives for the district; and
   (b) the policies to implement the objectives; and
   (c) the rules (if any) to implement the policies.

   (2) A district plan may state—

   (a) the significant resource management issues for the district; and

   (3) A district plan must give effect to—

   (a) any national policy statement; and
(b) any New Zealand coastal policy statement; and

(c) any regional policy statement.

(4) A district plan must not be inconsistent with—

(a) a water conservation order; or

(b) a regional plan for any matter specified in section 30(1).

... (emphasis added)

12.8 There is clearly a hierarchical nature established within the Act with respect to the matters that must be considered, in all cases relating back to Part 2 of the RMA, the Purpose and Principles contained in sections 5, 6, 7 and 8 (for full text refer to Attachment A).

12.9 However, a key concern in the development of a district plan is the extent to which a territorial authority is required to extend itself in terms of achieving the purpose of the Act. It is considered that key matters to consider are that that the preparation, implementation and administration of a district plan is to assist the territorial authority to carry out their functions in order to achieve the purpose of this Act (Section 72 RMA) and that a district plan must give effect to any national policy statement, any New Zealand coastal policy statement and any regional policy statement and must not be inconsistent with a water conservation order, or a regional plan for any matter specified in section 30(1) (Section 75 RMA).

12.10 Therefore, the Act provides limits, or boundaries as to those matters that must be considered. In regard to the FNDC Plans alignment with the Regional Policy Statement and the Regional Plans, an earlier paper by myself (Attachment C) has considered this matter and found that there is general alignment with these higher order documents.

12.11 In terms of case law relating specifically to plan structure a comprehensive summary of the mandatory requirements for the assessment of plan changes is contained within the case of Long Bay – Okura Great Park Society Incorporated (and others) v North Shore City Council A 078/2008. This summary acts as a guide/checklist to plan (change) development and is summarised below:

1. A district plan (change) should be designed to accord with and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act

2. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement

3. When preparing its district plan (change) the territorial authority shall, have regard to any proposed regional policy statement and give effect to the operative regional policy statement

4. In relation to regional plans, the district plan (change) must not be inconsistent with an operative regional plan for any matters specified in section 30 (1), and must have regard to any proposed regional plan on any matter of regional significance
5. When preparing its district plan (change) the territorial authority must also have regard to any relevant management plans and strategies under other Acts, including any relevant entry in the Historic Places Register and various fisheries regulations and to consistency with plans and proposed plans of adjacent territorial authorities; take into account any relevant planning document recognised by an iwi authority; and not have regard to trade competition

6. The district plan (change) must be prepared in accordance with any regulation

7. The formal requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters

8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.

9. The policies are to implement the objectives and the rules (if any) are to implement the policies

10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account the benefits and costs of the proposed policies and methods (including rules), and the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods

11. In making a rule the territorial authority must have regard to the actual or potential effects of activities on the environment

12. Finally territorial authorities may be required to comply with other statutes.
12.12 Of additional note is the direction provided in paragraph 39 of the above decision, that:

"when none of the settled objectives and policies are proposed to be amended by the plan change. In that case they may not properly be proposed to be changed in a submission. Where there are higher level settled objectives then we agree with Suburban Estates Limited v Christchurch City Council C 217/2001 that Part 2 RMA considerations are largely subsumed in those settled objectives and policies of the district plan”.

12.13 In practice what the above direction means is that where a plan change to a district plan is designed to ensure that it gives effect to an operative regional policy statement and is not inconsistent with any operative regional plans, or objectives and policies of an operative district plan (that are not proposed to be changed as part of any plan change), then it is not possible through the submission process for a submitter to seek changes to those parts of the plan or plans that are already operative and not proposed to be changed. In short, this means that if a submitter does not like part of the district plan that is not the subject of the plan change, they cannot somehow enforce change to that part of the plan through any plan change process. This therefore limits the risk to the district council of undertaking a plan change and supports the ‘rolling review’ methodology included in the 2009 amendments to the RMA.

12.14 In terms of considering any changes to the district plan it is necessary to understand the ‘environment’ that any change will relate to. Section 2 of the RMA defines the environment to include:

(a) Ecosystems and their constituent parts, including people and communities; and

(b) All natural and physical resources; and

(c) Amenity values; and

(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

12.15 Where natural and physical resources includes “land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures” (Section 2 RMA)

12.16 In terms of the Courts (both the Environment Court and the High Court) consideration of environment, there have been three distinct decisions highlighting what matters are to be considered in terms of “the environment”

1. “Environment refers to the existing environment … A consideration of the effect on the environment of the activity for which consent is sought requires an assessment to be made of the effects of the proposal on the environment as it exists … not just those aspects of a development which have had the effect of requiring a discretionary [or non complying] activity consent” Aley v North Shore CC [1999] NZLR 365, (1998) 4 ELRNZ 227, [1998] NZRMA 361.
2. “The High Court held that the Environment Court had failed to consider the potential development of a neighbouring property. The principal ground of appeal which was upheld was that the Environment Court was materially affected by an error of law by refusing to consider the potential of a neighbouring property to have dwellings erected on it on the grounds that it should consider only the receiving environment as it then existed.” Wilson v Selwyn DC [2005] NZRMA 76.

3. The Court of Appeal stated that the definition of “environment” embraces the future state of the environment as it might be modified by permitted activities and by resource consents which have been granted where it appears likely that those consents will be implemented Queenstown Lakes DC v Hawthorn Estate Ltd (2006) 12 ELRNZ 299, [2006] NZRMA 424.
12.17 Therefore in attempting to establish what the character and/or amenity values that are applicable to a particular area or environment, it is necessary to consider: the existing environment; the neighbouring environment; and those changes that could occur to the environment in terms of permitted activities and the implementation of granted, but unimplemented resource consents. The future state of the environment is a particular consideration where subdivision consents have been granted but not yet implemented.

12.18 In terms of economic conditions and the definition of environment, the potential economic impact caused by the closure of a mine was an effect which the Court took into account in considering an application for an extension to a mine which would increase its economic life (refer Waihi Gold Co v Waikato RC A146/98). Therefore, the potential for unnecessarily restrictive controls that would have the potential to adversely affect the ability to undertake primary production activities in a rural environment are a worthy consideration.

12.19 With regard to social and cultural conditions and the definition of environment, the Court considered in terms of an application for a nudist camp the fact that some adjoining residents found a proposed nudist camp embarrassing, objectionable or unacceptable did not necessarily amount to an effect on the social and cultural conditions which affect the community, nor did it amount to an effect on amenity values (see McQueen v Waikato DC A045/94). Therefore this decision places some limits in terms of effects and reverse sensitivity effects and has relevance with regard to the protection of primary production activities, that whilst some people may find certain activities objectionable i.e. the spreading of silage, this is not significant enough to be considered an effect.

12.20 The court also considered that the definition of “environment” does not extend to protection of the domains of taniwha or other mythical, spiritual, symbolic or metaphysical beings (Beadle v Minister of Corrections A074/02). So while there is a requirement under section 6(e) of the Act to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, there is a limitation as to the extent of the matters that will be recognised.

12.21 In terms of ‘amenity values’ section 2 of the RMA defines these to be “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”. In the case of Phantom Outdoor Advertising Ltd v Christchurch CC C090/01 the Court considered that in terms of the definition of amenity values the words “pleasantness, aesthetic coherence and cultural and recreational attributes” are not some form of combined absolute value which members of the public appreciate to a greater or lesser extent. The definition embraces a wide range of elements and experience and the appreciation of amenity values may change, depending on the audience and the experience of the audience may be different in each case.
The case above introduces an element of flexibility in terms of what constitutes ‘amenity values’, recognising that different people value different things and that an assessment of such matters should be made on balance. This reinforces the desire of the FNDC Plan that the rural environment be considered ‘dynamic’, with scope for change.

In the consideration of a plan change with regard to rural areas, it would first be necessary to define the rural ‘environment’ and then to define those amenity values that contribute to people's appreciation of the rural environment, particularly natural and physical qualities and characteristics that contribute to appreciation of its pleasantness, aesthetic coherence and cultural and recreational attributes. These amenity values and people’s views on such would be derived through public consultation and further assessment (i.e. landscape), with a wide enough cross-section of the public and interested parties consulted to ascertain the general feelings of ‘the community’.

Consultation is necessary as there is no definition of rural environment or rural amenity values detailed in the RMA or case law. There is the requirement to have particular regard to the maintenance and enhancement of amenity values (section 7(c) RMA) and the maintenance and enhancement of the quality of environment (section 7(f) RMA), but what constitutes the particular amenity values of an environment needs to be derived from further work that defines these values in respect to the Far North District.

The relationship of amenity value and “character” is considered in BP Oil NZ Ltd v Manukau CC A141/98, concluding that character has some affinity with the expression “amenity values” as defined in the Act. The Court considered that when assessing residential character, account must be taken of the sort of activities generally associated with pure residential uses. It also encompasses things normally found in and which add to the general character of a residential area. Therefore, in this instance, when assessing rural character account must be taken of the sort of activities generally associated with pure rural uses. This stance can be seen to be adhered to in the other district plans assessed, where rural/primary production activities are enabled and protected in rural zones.

However, the Court also recognises that a district plan seeking to ensure that development was “sensitive to” the character and amenity values of the old Beachlands settlement did not require an attempt to replicate a settlement which had undergone such a process of change as not to have any discernible remaining character (Spinnaker Bay Ltd v Manukau CC A004/09). Therefore, the court recognises that the character of an area can change over time and that land uses can be different, while still being ‘sensitive’ to each other. It is considered that this finding is particularly relevant where interfaces occur, such as at a rural/urban boundary.

Overall, in line with the statutory direction contained within the Act (particularly Section 75) and the relevant case law, there are a number of general principles that can also be adopted:

i. In terms of making amendments to the Plan it is considered that the purpose of the RMA is better addressed by describing effects on the environment that are to be controlled, than
by prescribing general categories, such as industrial activities, that are to be controlled\(^6\). Therefore the scale of an activity, or the ability to view it from public places could be proposed, rather than making all industrial activities a discretionary activity.

ii. Furthermore, the Court has held that a plan should be prepared having regard to effects of activities, rather than with the objective of providing rigid guidelines intended to direct which activities can take place on land with no regard being paid to the practicalities of using a particular piece of land for the activities so directed.\(^7\)

iii. While the concept of spot zones is generally undesirable, small transition zones are appropriate in resource management terms\(^8\). They enable protection of amenities and reasonable use of properties, which supports the Rural Living Zone of the FNDC Plan with respect to providing a transition from rural to urban and with respect to the Plans desire that productive uses in the rural zones not be unnecessarily restricted.

iv. The Court considers that zones based on landscape may be appropriate in some localities, but the Court noted that in working landscapes, zoning based on more practical conservation directed purposes might be more useful\(^9\).

12.28 So if changes are proposed to the Plan, it is considered critical that firstly the rural environment must be defined, along with the character of the rural environment and the same for the subsets of the rural environment (i.e. the Rural Production Zone and the Rural Living Zone etc)

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\(^6\) Tranz Rail Ltd v Wellington CC W098/97
\(^7\) Clulee v Kapiti Coast DC W015/99
\(^8\) Horrocks v Auckland CC A140/99
\(^9\) Wilkinson v Hurunui DC C050/00
13. CONCLUSION

13.1 Overall there is considered to be deficiencies in the structure of the FNDC Plan with respect to the clarity of the connection between issues, objectives, policies and rules. This disconnect has manifest itself in concerns about the control of industrial and commercial activities in the Far North District, namely:

viii. The FNDC Plan does not clearly state its intention as to the resource management principles to be applied to the rural environment
ix. The objectives and policies are vague and do not from a hierarchy of issues, nor do they show a clear transition from issues, to objectives, to policies to rules (cross referencing would be useful)
x. There are objectives that are not directly supported by policies and vice versa
xi. The FNDC Plan does not specifically limit the establishment of commercial and industrial activities that are not closely related to primary production activities
xii. The FNDC Plan does not clearly support primary production activities
xiii. There is a lack of adequate definitions and a zone statement in order to clearly determine the character of the zones
xiv. The highly permissive approach, enabling a high degree of flexibility is not necessarily adequately protecting the environment, particularly rural character and amenity values
13.2 However, in saying the above, the deficiencies are not fundamental and resolution would not be a substantial task (i.e. a Plan re-write is not required). As previously stated, some of the required detail already exists in the Plan and the re-use of existing detail limits the level of new material that needs to be introduced, however would not negate the necessity for a plan change.

13.3 As a means of moving forward, I consider that the first phase of a plan change would be the establishment of a statement of rural character and the definition of the important amenity values that make up the rural environment, overall and in its different sub-zones.

13.4 In determining the environment, the current (including neighbouring) environment and the future environment, along with the qualities that make up the environment (amenity values) must be defined and those matters that pose a threat to the maintenance and enhancement of the amenity values and the quality of the environment. With this detail in place the objectives and policies can be developed to specifically address the relevant issues, enabling defined and aligned rules to be developed.

13.5 This first phase information would be prepared from a review of the FNDC Plan and the higher order documents (the NRC Regional Policy Statement and the Regional Plans and New Zealand Coastal Policy Statement). Consultation would occur with Iwi, New Zealand Historic Places Trust and the Department of Conservation.

13.6 Targeted consultation would occur with interest groups i.e. Federated Farmers, Forest and Bird, conservation and land care groups etc and also consultation with the general public, both rural and urban dwellers, possibly by means of a random mail out in order to obtain a cross section of responses from the ‘community’.

13.7 The outcome would be ratified by the FNDC councilors prior to commencement of the revision of objectives and policies, but any revision at this stage would stop short of changes to the rules in order to first bed in the policy direction.

13.8 Later, if necessary changes to the rules would be implemented to ensure that the cascade from issues, to objectives, to policies to methods (including rules) is complete.

If you have any questions or require further information, please do not hesitate to contact the undersigned.

Ian McAlley
Director
McAlley Consulting Group
ATTACHMENT A

Part 2 Resource Management Act – Purpose and Principles

Section 5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding,remedying,or mitigating any adverse effects of activities on the environment.

Section 6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

(f) The protection of historic heritage from inappropriate subdivision, use, and development.

(g) The protection of recognised customary activities.
Section 7 Other Matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

(b) The efficient use and development of natural and physical resources:

(ba) The efficiency of the end use of energy:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) Repealed.

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

(h) The protection of the habitat of trout and salmon:

(i) The effects of climate change:

(j) The benefits to be derived from the use and development of renewable energy.

Section 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
Section 104 Resource Management Act - Consideration of Applications

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—

(a) any actual and potential effects on the environment of allowing the activity; and
(b) any relevant provisions of—
   (i) a national environmental standard:
   (ii) other regulations:
   (iii) a national policy statement:
   (iv) a New Zealand coastal policy statement:
   (v) a regional policy statement or proposed regional policy statement:
   (vi) a plan or proposed plan; and
(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

(2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

(2A) When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.

(3) A consent authority must not, —

(a) when considering an application, have regard to—
   (i) trade competition or the effects of trade competition; or
   (ii) any effect on a person who has given written approval to the application:

(b) Repealed.

(c) grant a resource consent contrary to—
   (i) section 107, 107A, 107E, or 217;
   (ii) an Order in Council in force under section 152:
(iii) any regulations:

(iv) a Gazette notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:

(d) grant a resource consent if the application should have been ... notified and was not.

(4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

(5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

(6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.

(7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

Section 104A Resource Management Act - Determination of applications for controlled activities

After considering an application for a resource consent for a controlled activity, a consent authority—

(a) must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and

(b) may impose conditions on the consent under section 108 only for those matters—

(i) over which control is reserved in national environmental standards or other regulations; or

(ii) over which it has reserved its control in its plan or proposed plan.

Section 104B Resource Management Act - Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

(a) may grant or refuse the application; and

(b) if it grants the application, may impose conditions under section 108.
Section 104C Resource Management Act - Determination of applications for restricted discretionary activities

(1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—

   (a) a discretion is restricted in national environmental standards or other regulations:

   (b) it has restricted the exercise of its discretion in its plan or proposed plan.

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

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

   (a) a discretion is restricted in national environmental standards or other regulations:

   (b) it has restricted the exercise of its discretion in its plan or proposed plan.

Section 104D Resource Management Act - Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

   (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

   (b) the application is for an activity that will not be contrary to the objectives and policies of—

      (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

      (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

      (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.
ATTACHMENT C

Plan Alignment between NRC Plans and FNDC Plan, report by McAlley Consulting Group 11.07.08
Report to the Far North District Council

Plan Alignment between NRC Plans and FNDC Plan

1.0 Background

1.1 Following a presentation by the Northland Regional Council Chairman Mr. Mark Farnsworth to the Far North District Council, “A Move to a Consolidated Planning Framework for Northland through Plan Alignment” a request was made that a report be prepared assessing whether the Far North District Council’s (FNDC) Partly Operative District Plan is in alignment with the Northland Regional Councils Resource Management Act (RMA) plans.

1.2 The issue of alignment has come from a change to the RMA, where previously a district plan only had to show consistency with (or not be inconsistent with) the Regional Policy Statement; now a district plan must give effect to:

- Any national policy statement; and
- Any New Zealand coastal policy statement; and
- Any regional policy statement

1.3 To “give effect to” rather than “not be inconsistent with” is therefore a far higher hurdle to clear. Therefore, in assessing this matter it has been proposed that a pragmatic, top down approach be applied, where initially an assessment be undertaken as to the overlaps, gaps or inconsistencies between the alignment of the Far North Partly Operative District Plan and the Northland Regional Council RMA plans, namely the:

- Northland Regional Council Policy Statement
- Water and Soil Plan
- Coastal Plan
- Air Quality Plan
- Pest Management Strategy

1.4 In addition an assessment will be undertaken of any jurisdictional overlaps, gaps or inconsistencies between the RMA Plans of the Regional Council and the responsibilities of the Far North District Council and the Northland Regional Council.
1.5 It is recognised that the assessment proposed above could be very time consuming, lengthy and costly, therefore at this point in time the analysis is restricted to a comparison between the objectives and policies of the aforementioned planning documents.

2.0 The RMA

2.1 Before undertaking the proposed assessment, it is necessary to look at the legislative framework that a district plan sits in, as the comparison proposed cannot be undertaken without cognisance of the statutory requirements of the Resource Management Act (the “Act”) and the minimums that must be provided for in the preparation and implementation of any plan.

2.2 The Purpose of the Act

2.2.1 In all instances all activities and actions undertaken with respect to the implementation of the RMA must lead toward the achievement of the purpose of the Act (section 5), where:

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while---

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

2.2.2 The Act goes on in Sections 5, 6 and 7 to detail Matters of National Importance, Other Matters and Treaty of Waitangi issues to be taken into account, along with the Section 5 matters above.

2.3 Functions of Regional Councils and Territorial Authorities

2.3.1 The Resource Management Act deals with a number of matters related to regional councils and territorial authorities (city and district councils). In achieving the Purpose of the Act, Sections 30 and 31 of the RMA outline the functions of Regional Councils and the functions of Territorial Authorities respectively under the RMA.
Section 30. Functions of regional councils under this Act---

1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

(b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(c) the control of the use of land for the purpose of---

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

(iii) the maintenance of the quantity of water in water bodies and coastal water:

(iii) the maintenance and enhancement of ecosystems in water bodies and coastal water:

(iv) the avoidance or mitigation of natural hazards:

(v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(ca) the investigation of land for the purposes of identifying and monitoring contaminated land:

(d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of---

(i) land and associated natural and physical resources:

(ii) the occupation of space on land of the Crown or land vested in the regional council, that is foreshore or seabed, and the extraction of sand, shingle, shell, or other natural material from that land:

(iii) the taking, use, damming, and diversion of water:
(iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:

(iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:

(v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(vi) the emission of noise and the mitigation of the effects of noise:

(vii) activities in relation to the surface of water:

(e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

(i) the setting of any maximum or minimum levels or flows of water:

(ii) the control of the range, or rate of change, of levels or flows of water:

(iii) the control of the taking or use of geothermal energy:

(f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:

(i) the taking or use of water (other than open coastal water):

(ii) the taking or use of heat or energy from water (other than open coastal water):

(iii) the taking or use of heat or energy from the material surrounding geothermal water:

(iv) the capacity of air or water to assimilate a discharge of a contaminant:

(fb) if appropriate, and in conjunction with the Minister of Conservation,---

(i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
(ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:

(g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of---

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in that water body:

(iii) the maintenance of the quantity of water in that water body:

(iv) the avoidance or mitigation of natural hazards:

(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:

(h) any other functions specified in this Act.

(2) A regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate---

(a) the effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities:

(b) the effects on fishing and fisheries resources of aquaculture activities.

(3) However, a regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), or (vii) to control the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.

(4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:

(a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and

(b) nothing in paragraph (a) affects section 68(7); and
(c) the rule may allocate the resource in anticipation of the expiry of existing consents; and

(d) in allocating the resource in anticipation of the expiry of existing consents, the rule may---

(i) allocate all of the resource used for an activity to the same type of activity; or

(ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and

(e) the rule may allocate the resource among competing types of activities; and

(f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).

Section 31. Functions of territorial authorities under this Act---

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

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

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

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

(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and

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

(iii) the maintenance of indigenous biological diversity:

(d) the control of the emission of noise and the mitigation of the effects of noise:

(e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
(f) any other functions specified in this Act.

(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

2.3.2 The Act therefore defines that in general terms regional councils are concerned with the integrated management of natural and physical resources, with issues of use, development and protection limited to land which is of regional significance. Whereas, territorial authorities are concerned with effects of the use of land on natural and physical resources.

2.3.3 However, there are areas where the functions of regional councils and the functions of territorial authorities appear to overlap and in the main these are related to:

- natural hazards
- hazardous substances
- issues related to noise control; and
- the management and control of potential effects on water bodies

2.3.4 In order to enable the efficient management of these potential overlaps and functions, Section 33 of the Act enables a local authority to transfer any one or more of its functions, powers or duties under the Act to another public authority, where a public authority includes any local authority, iwi authority, government department, statutory authority or a joint committee set up for the purposes of combining plans.

2.4 The Hierarchy of Planning Documents

2.4.1 The Act sets out a hierarchy of documents, which through their use are proposed to assist in the achievement of the Purpose of the Act. In short this hierarchy of documents as set out at three levels;

- National;
- Regional; and
- Territorial (local – District/City)

2.4.2 Documents at a national level include:

- National Environmental Standards,
- National Policy Statements; and specifically
- The New Zealand Coastal Policy Statement

2.4.3 Documents at a regional level include:

- Regional Policy Statements
2.4.4 Documents at territorial level include:

- Regional Plans

2.4.5 In applying this hierarchy there is a requirement (RMA s43B (3)) that “a rule or resource consent may not be more lenient than a national environmental standard” and “a regional policy statement ... must give effect to a national policy statement or New Zealand coastal policy statement” (RMA s 62(3)).

2.4.6 At a territorial level (RMA s 75 (3) and (4)) a district plan must give effect to:

a) any national policy statement; and
b) any New Zealand coastal policy statement; and
c) any regional policy statement

A district plan must not be inconsistent with:

a) a water conservation order; or
b) a regional plan for any other matter specified in section 30(1)

2.4.7 Of note is that a regional plan (RMA s 67 (3)) must give effect to:

a) any national policy statement; and
b) any New Zealand coastal policy statement; and
c) any regional policy statement

and must not be inconsistent with (RMA s 67 (4)):

a) ...
b) any other regional plan for the region; or
c) ...

2.4.8 Therefore from a territorial authority perspective, there is three tests that must be passed for their district (or city) plan.

1. They must give effect to any regional policy statement
2. They must not be inconsistent with a water conservation order or a regional plan
3. They must not contain a rule that is more lenient than a national environmental standard

2.4.9 With regard to a district plan giving effect to any national policy statement and any New Zealand Coastal Policy Statement, as it is a requirement for a regional policy statement to give effect to
such documents and assuming that the regional policy statement has been prepared correctly, then it can be assumed that so long as the district plan gives effect to any regional policy statement that it will also give effect to any national policy statement and/or New Zealand Coastal Policy Statement.

2.4.10 In North Shore CC v Auckland RC A070/94, the Environment Court commented that “the regional policy statement is the heart of resource management in a region”, therefore clearly defining in the Courts view the position of the regional policy statement in the hierarchy of planning documents. In another North Shore CC\(^1\) case, the Court stated that “regional policy statement provisions cannot be rules that prohibit, regulate or allow activities. This is a function for territorial authorities through district plans. However, a regional policy statement can contain policies and methods directed toward a specific outcome. Such policies and methods would then be implemented through the district plan, which shall not be inconsistent with the regional policy statement”.\(^2\)

3.0 Testing the Documents

3.1 With the hierarchy of the documents established the next phase would be to ‘test’ whether the FNDC Plan gives effect to the Regional Policy Statement (RPS) and whether the FNDC Plan is not inconsistent with the Regional Plans. This task would be a huge undertaking and in the time and resource constraints in place, not possible to do.

3.1.1 However, what has been undertaken is a high level review of the relevant documents, to assist in assessing whether further work and resources are necessary to undertake further assessments. Making a full assessment of the relevant documents would require each to be tested against each other, not only in the content of the documents, but also in their application. It should also be noted that plan changes currently underway to be NRC planning documents had not been taken into account in the assessments undertaken.

3.2 The Regional Policy Statement

3.2.1 The FNDC Plan must “give effect to” the Regional Policy Statement and as such there should be a clear upward relationship between the two documents. As the RPS covers the whole region, the philosophy of the FNDC Plan giving effect to the RPS enables a broad based policy document to have its one size fits all philosophy broken down and applied at a local context.

\(^1\) (Re an application) A087/94

\(^2\) Note: these comments from the Court were made prior to the change to the Act requiring that a District Plan give effect to a Regional Policy Statement, rather than not be inconsistent with, however, they do serve the purpose of assisting in showing the Courts view of the level of direction that can be applied to a District Plan where it must give effect to a Regional Plan
3.2.2 The Regional Policy Statement is intended to serve as a vehicle for identifying and dealing with the key resource management issues in the region. These issues relate to the management of the use, development and protection of the natural and physical resources, particularly air, land, water, and the coastal marine area for which the Northland Regional Council and the three District Councils in the region have specific functional responsibilities. The responsibilities of the respective Councils are prescribed in Sections 30 and 31 of the RMA with Section 62 of the RMA requiring the Regional Policy Statement to identify:

- The significant resource management issues of the region;
- Matters of resource management significance to iwi authorities;
- The objectives sought to be achieved by the statement;
- The policies in regard to those significant issues and objectives, and an explanation of those policies;
- The methods used or to be used to implement the policies;
- The principal reasons for adopting the objectives, policies and methods of implementation set out in the statement;
- The environmental results anticipated from implementation of those policies and methods;
- The processes to be used to deal with issues which cross local authority boundaries, and issues between territorial authorities or between regions;
- The procedures to be used to review the matters set out above, and to
- Monitor the effectiveness of the statement as a means of achieving its objectives and policies.

3.2.3 A means of establishing whether there are any glaring gaps between the RPS and the FNDC Plan is to look at the content of the two documents and see if there are any noticeable gaps.

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<th>RPS Contents</th>
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<td>Monitoring and Review</td>
<td>Monitoring and Review</td>
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</table>

| Water Quantity and Flows                                                      | Recreation/Conservation Environment   |
|                                                                              | Coastal Environment                   |
|                                                                              | Landscape and Natural Features        |
|                                                                              | Indigenous Flora and Fauna            |
|                                                                              | Soils and Minerals                    |
|                                                                              | Natural Hazards                       |
|                                                                              | Heritage                              |
|                                                                              | Urban Environment                     |
|                                                                              | Rural Environment                     |
|                                                                              | Subdivision                           |

| Outstanding Natural Features and Outstanding Landscapes                       | Recreation/Conservation Environment   |
|                                                                              | Coastal Environment                   |
|                                                                              | Landscape and Natural Features        |
|                                                                              | Indigenous Flora and Fauna            |
|                                                                              | Soils and Minerals                    |
|                                                                              | Natural Hazards                       |
|                                                                              | Heritage                              |
|                                                                              | Urban Environment                     |
|                                                                              | Rural Environment                     |
|                                                                              | Subdivision                           |

| Soil Conservation and Land Management                                         | Recreation/Conservation Environment   |
|                                                                              | Coastal Environment                   |
|                                                                              | Indigenous Flora and Fauna            |
|                                                                              | Soils and Minerals                    |
|                                                                              | Natural Hazards                       |
|                                                                              | Urban Environment                     |
|                                                                              | Rural Environment                     |
|                                                                              | Subdivision                           |

| Natural Hazards                                                              | Coastal Environment                   |
|                                                                              | Soils and Minerals                    |
|                                                                              | Natural Hazards                       |
|                                                                              | Urban Environment                     |
|                                                                              | Rural Environment                     |
|                                                                              | Subdivision                           |

| Coastal Management                                                           | Recreation/Conservation Environment   |
|                                                                              | Coastal Environment                   |
|                                                                              | Indigenous Flora and Fauna            |
|                                                                              | Soils and Minerals                    |
|                                                                              | Natural Hazards                       |
|                                                                              | Urban Environment                     |
|                                                                              | Rural Environment                     |

| Ecosystems and Biodiversity                                                  | Recreation/Conservation Environment   |
|                                                                              | Coastal Environment                   |
|                                                                              | Indigenous Flora and Fauna            |
|                                                                              | Soils and Minerals                    |
|                                                                              | Urban Environment                     |
3.2.4 From the above it is apparent that the FNDC Plan contains content similar to that of the RPS, however there are three areas:

- Water Quantity and Flows
- Waste Management; and
- Energy

that appear to not be clearly provided for in the FNDC Plan. As has been stated earlier this assessment has not involved going through every objective, policy and method of the RPS and assessing whether a relevant objective, policy, rule or method of the FNDC Plan gives effect to the content of the RPS, however it would appear in three areas at face value that the FNDC Plan may require amendment to ensure it gives effect to the RPS.

3.3 The NRC Plans

3.3.1 It is also proposed that an assessment be made of the alignment between the FNDC Plan and the NRC Plans that sit below the RPS. The NRC Plans that require assessment are:

- Water and Soil Plan
- Coastal Plan
- Air Quality Plan
- Pest Management Strategy
3.3.2 In accordance with the RMA it is requirement that the FNDC Plan must not be inconsistent with any of the NRC Plans. This therefore is a lesser test than ‘giving effect to’ and it is proposed that the same ‘test’ will be used as above, where the contents of the respective documents will be assessed against each other to see what commonalities there are.

3.3.3 In the case Canterbury RC v Waimakariri DC C005/02 and C009/02 ‘consistency’ was discussed, with the Court making the following two comments\(^3\):

- not everything which “fails to promote” is “inconsistent” with provisions requiring consistency with a regional policy statement/regional plan, even if “consistent” is understood in the sense of “to conform”. A district plan will only fail to promote the things in question if it does nothing at all to bring them about.
- If the rules and methods (e.g. zoning) achieve and implement the district plan, they must, by definition, not be inconsistent with the regional policy statement. That is because it is the rules that achieve and implement the policies and objectives, which in turn are accepted as not being inconsistent with the regional policy statement.

Therefore a district plan cannot be silent on a matter that is contained within a regional plan. A district plan must show some linkage upwards to the relevant regional plan and whilst a district plan may be written in such a way as to not promote the content of a regional plan, a district plan must show that it has taken into account the content of a regional plan and that the district plan contains some form of response at a district level that will work toward or not be inconsistent with the direction of the regional plan.

3.4 Water and Soil Plan

3.4.1 As with the RPS, the contents of the FNDC District Plan will be tested against the NRC Water and Soil Plan to see whether there are any noticeable gaps in content.

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<td>Lakes, Rivers, Wetlands and the Coastline Soils and Minerals</td>
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<tr>
<td>Discharges</td>
<td>Air Jurisdictional Issues and Cross Boundary Management Process</td>
</tr>
</tbody>
</table>

\(^3\) Note: these comments from the court were made prior to the change to the Act requiring that a District Plan give effect to a Regional Policy Statement, rather than not be inconsistent with, however, they do serve the purpose of assisting in defining the level of scrutiny that should be applied when assessing if a provision in a District Plan is not inconsistent with a Regional Plan.
3.4.2 It would appear having undertaken a high-level review of the contents of the FNDC District Plan that it is consistent with the contents of the NRC Water and Soil Plan. However, as the NRC Water and Soil Plan contains rules and methods of implementation, to properly assess whether the FNDC District Plan is not inconsistent with the Water and Soil Plan would require a full assessment of the objectives, policies, rules and methods of implementation of both plans, which would be an exercise the scope of which is greater than what had been requested at this point in time.

3.4.3 However, as mentioned there do not appear to be any glaring omissions on the part of the FNDC District Plan with regard to be NRC Water and Soil Plan.

3.5 Coastal Plan

3.5.1 In accordance with Section 64 of the Act “there shall at all times be, for all the coastal marine area of a region, one or more regional coastal plans ...” As with other regional plans there is a requirement that a district plan cannot be inconsistent with a regional plan.

3.5.2 The purpose of the Regional Coastal Plan is to assist the Northland Regional Council, in conjunction with the Minister of Conservation, to promote the sustainable management of the natural and physical resources in relation to the coastal marine area.

3.5.3 As with the RPS and the Water and Soil Plan, the contents of the FNDC District Plan will be tested against the NRC Coastal Plan to see whether there are any noticeable gaps in content.
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<tr>
<td>Recognition of and Provision for Maori and Their Culture and Traditions</td>
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<td>Marine 5 (Port Facilities) Management Area</td>
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<td>Management of Environmental Effects of Fishing Activity</td>
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<tr>
<td>Marine Protected Areas</td>
<td>Coastal Environment Recreation/Conservation Environment</td>
</tr>
</tbody>
</table>
3.5.4 Like the RPS it appears from the brief assessment undertaken that there are elements of the coastal plan that are not apparently supported by the FNDC Plan, namely:

- Reclamation and Impoundment
- Taking, Use, Damming and Diversion of Coastal Water
- Dredging and Dredging Spoil Disposal
- Marine 1 (Protection) Management Area
- Marine 2 (Conservation) Management Area
- Marine 3 (Marine Farming) Management Area
- Marine 4 (Moorings) Management Area
- Marine 5 (Port Facilities) Management Area
- Marine 6 (Wharves) Management Area; and
- Management of Environmental Effects of Fishing Activity

3.5.5 Looking at the NRC Coastal Plan as a document, it is very detailed, particularly with regard to activities and their control in the Marine (1-6) Management Areas. It is certainly not uncommon for district plans to not have a direct relationship with such elements of a (regional) coastal plan, due to the jurisdictional boundary that exists at mean high water springs.

3.5.6 However the requirement for the two documents to not be inconsistent with each other is necessary in examples such as coastal structures adjoining the land and crossing mean high water springs; where such structures are proposed to be developed, at times the two planning documents that manage these matters, being a coastal plan and a district plan, can almost be at odds with each other as to how such structures are dealt with.

3.5.7 It is suggested that within Northland, with the coastline being such an iconic feature, the development of which is under increasing pressure, that there is a necessity that any district plan within the Northland Region needs to demonstrate a strong correlation to the NRC Coastal Plan.

3.6 Air Quality Plan

3.6.1 With the enactment of the Resource Management Act, the responsibility for regulating air emissions moved from central government and territorial local authorities to regional councils. The purpose of the Regional Air Quality Plan is to assist the Northland Regional Council, together with the resource users of Northland, to promote the sustainable management of the Region's air resources.
3.6.2 As with the RPS, the Water and Soil Plan and the Regional Coastal Plan, the contents of the FNDC District Plan will be tested against the NRC Air Quality Plan to see whether there are any noticeable gaps in content.

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<thead>
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<tr>
<td>Bonds and Financial Contributions</td>
<td>Financial Contributions</td>
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</table>

3.6.3 It appears from the brief assessment undertaken that there is a strong correlation between the contents of the FNDC District Plan and the NRC Air Quality Plan.

3.7 Pest Management Strategy

3.7.1 Under the Biosecurity Act, regional councils are the agencies responsible for processing and approving Regional Pest Management Strategies (RPMS), however, regional councils have no statutory obligation to undertake pest management, although most have significant roles in this field.

3.7.2 With regard to the relationship of regional policy statements and issues related to pest management the Environment Court has stated that “regional policy statements may contain issues, policies and methods in respect to pest management, but regard should be had to consistency between such statements in any pest management strategies prepared under the Biosecurity Act 1993”.

3.7.3 In addition to the above, Regional Councils can also:

i) Prepare a proposal for an RPMS (under section 71); and/or

ii) Be a management agency appointed to implement an RPMS. The requirements of pest management agencies are set out in section 84, which include preparing operational plans. Sections 72(1)(a), (b) and (ba) state that a Regional Council shall notify a proposal for a Regional Pest Management Strategy only if it is of the opinion that:

a) The benefits of having a Regional Pest Management Strategy in relation to each organism to which the Strategy would apply outweigh the costs, after taking account of the likely consequences of inaction or alternative courses of action; and

b) The net benefits of Regional intervention exceed the net benefits of an individual’s intervention; and

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4 Royal Forest and Bird Protection Society v Northland RC A033/98
ba) Where funding proposals for the Strategy require persons to meet directly the costs of implementing the Strategy:

i) The benefits that will accrue to those persons as a group will outweigh the costs; or

ii) Those persons contribute to the creation, continuance, or exacerbation of the problems proposed to be resolved by the Strategy; “ section 72(a), (b) and (ba) require Regional Councils to assess whether public action is appropriate and necessary, whilst considering whether an RPMS is appropriate. Furthermore, section 72(c) of the Biosecurity Act 1993 directs that prior to proposing a Regional Pest Management Strategy, a Regional Council must demonstrate that:

b) Each organism in respect of which the Strategy is under consideration is capable of causing at some time a serious adverse and unintended effect in relation to the Region on one or more of the following:

i) Economic wellbeing; or

ii) the viability of threatened species of organisms, the survival and distribution of indigenous plants or animals, or the sustainability of natural and developed ecosystems, ecological processes, and biological diversity; or

iii) soil resources or water quality; or

iv) human health or enjoyment of the recreational value of the natural environment; or

v) the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, and taonga.

3.7.4 Pest management is an individual landowner or occupiers responsibility in the first instance, because generally the occupier is the exacerbator and in turn benefits from control of the pest, however, there is no differentiation of responsibilities based on differing forms of private land ownership.

3.7.5 With the three territorial local authorities in the Northland Region:

- Far North District Council
- Kaipara District Council
- Whangarei District Council

it is considered that these territorial local authorities are both beneficiaries and exacerbaters, and therefore each authority is required to control pests on land that it occupies (including roadside verges for which that authority is responsible).
3.7.6 As there appears to be no mandatory requirement for a territorial authority to undertake pest management (except on the territorial authorities own land), no assessment has been undertaken of the NRC Pest Management Strategy and the FNDC District Plan, as there is no requirement for the FNDC District Plan to not be inconsistent with, or give effect to the Pest Management Strategy. However, it is suggested that a linkage should be provided in the FNDC Plan to the NRC Pest Management Strategy to enable pest management matters to be taken into account when assessing any resource consent application and if necessary impose conditions related to pest management, but that the linkage should go no further, unless the territorial authority specifically wants to expand its function to include those of pest management.

4.0 NRC Regional Policy Statement Review

4.1 The regional policy statement was made operative in March 1999 with further amendments made operative in July 2002. It is a statutory requirement under the RMA that any plans or policy statements are reviewed every 10 years. In its Annual Plan the NRC has committed to undertaking a full review of the Regional Policy Statement commencing in 2009 (10 years after the Regional Policy Statement became operative) with the review process commencing no later than 30 January 2009.

4.1.1 The NRC has also detailed in its Annual Plan that in anticipation of all (Northlands) Council’s agreeing to work together, the Northland Regional Council will undertake an investigation into the feasibility of integrating regional and district plans into a single resource management planning document for Northland. It is proposed that such integration will result in a simpler, streamlined process for the public, whilst retaining each Council’s individual planning requirements.

4.1.2 In speaking to NRC Planning staff there is yet to be discussion between NRC Senior Management and the Chairman as to how the integration feasibility investigation process will occur, but it is understood that some funding has been provided in the current financial year to undertake this process.

4.1.3 In addition, NRC plans to build on work already undertaken to develop a Regional Growth Strategy for Northland, with the Strategy proposed to provide a clear vision and strategic direction for sustainably managing the Region’s future growth prospects. To this end, expenditure of $250,000 is budgeted by NRC for the review and development of the Regional Growth Strategy.

4.1.4 It is understood that NRC are keen to complete the Regional Growth Strategy prior to undertaking the review of the RPS, so that outcomes of the Regional Growth Strategy can be fed into the RPS review.
5.0 Other Legislation

5.1 If a review of the FNDC Plan were proposed, it would be prudent to also consider the following:

- The relationship of the RMA/District Plan and the Hazardous Substances and New Organisms Act (HSNO) and the responsibilities of the Environmental Risk Management Authority (ERMA), in particular regard to the management of hazardous substances.
- The relationship of the RMA and the Local Government Act (LGA), in particular with regard to the Community Outcomes contained in the Long Term Council Community Plan (LTCCP) and the issues contained in the FNDC District Plan.
- The implementation of Financial Contributions under the RMA and contained in the District Plan and the use of Development Contributions under the LGA and contained in the LTCCP.
- The implications of the review of the New Zealand Coastal Policy Statement (NZCPS), the submissions of which are still to be heard by the Board of Inquiry, remembering that a District Plan “must give effect to” the New Zealand Coastal Policy Statement.

6.0 Conclusion and Recommendation

6.1 The assessment undertaken has considered (at a very high level) the potential overlaps, gaps or inconsistencies between the alignment of the Far North Partly Operative District Plan and the Northland Regional Council RMA plans, namely the:

- Northland Regional Council Policy Statement
- Water and Soil Plan
- Coastal Plan
- Air Quality Plan
- Pest Management Strategy

6.1.1 In addition the assessment looked at jurisdictional overlaps, gaps or inconsistencies between the RMA Plans of the Regional Council and the responsibilities of the Far North District Council and the Northland Regional Council.

6.1.2 The assessment has concluded the following:

i. The FNDC District Plan must give effect to any regional policy statement
ii. The FNDC District Plan must not be inconsistent with a water conservation order or a regional plan
iii. The FNDC District Plan must not contain a rule that is more lenient than a national environmental standard
iv. There appears to be gaps in the content of the FNDC District Plan and the NRC Regional Policy Statement and the Coastal Plan
v. There appears to be alignment between the FNDC District Plan and the NRC Water and Soil Plan and the Air Quality Plan
vi. The Regional Pest Management Strategy is not a Regional Plan and therefore little regard should be had to it unless FNDC wants to expand its role in this area.

6.1.3 Looking at any potential review of the FNDC District Plan, the following should be taken into account:

i. The New Zealand Coastal Policy Statement is currently under review and this must be given effect to.
ii. The NRC Regional Policy Statement is under review and this must be given effect to.
iii. NRC are commencing a Regional Growth Strategy and are proposing that this be completed prior to real work starting on the Regional Policy Statement review.
iv. NRC have stated that they will (assuming all of Northland Council’s agree to work together) undertake an investigation into the feasibility of integrating regional and district plans into a single resource management planning document for Northland.

6.1.4 Looking at any potential review of the FNDC District Plan, it may also be prudent that the following be taken into account:

i. The relationship of the RMA/District Plan and the Hazardous Substances and New Organisms Act (HSNO) and the responsibilities of the Environmental Risk Management Authority (ERMA), in particular regard to the management of hazardous substances.
ii. The relationship of the RMA and the Local Government Act (LGA), in particular with regard to the Community Outcomes contained in the Long Term Council Community Plan (LTCCP) and the issues contained in the FNDC District Plan.
iii. The implementation of Financial Contributions under the RMA and contained in the District Plan and the use of Development Contributions under the LGA and contained in the LTCCP.
iv. A review of the allocation of functions between FNDC and NRC should be undertaken and if necessary a transfer of powers should occur as allowed for under Section 33 RMA.

6.2 Any review of the FNDC District Plan will potentially be a time-consuming and resource hungry process and with the requirements of the RMA to give effect to higher order planning documents it is proposed that until such time as the current reviews of the New Zealand Coastal Policy Statement and the Northland Regional Council Regional Policy Statement have been completed, that reviewing the FNDC District Plan and its alignment with such documents would not be a good use of time and resources.

6.2.1 It is proposed that as the NRC have announced that they will commence with the process to look at the feasibility of integrating regional and district plans into a single resource management planning document for Northland that this would be the most appropriate area into which FNDC
should commit its resources. The creation of a single planning document for the Northland region would in itself be a considerable undertaking and would need to be undertaken in conjunction with NRC and the other District Councils (Kaipara and Whangarei).

6.2.2 The establishment of comprehensive and aligned planning documents is a challenging task, however with cornerstone documents such as the New Zealand Coastal Policy Statement and the Regional Policy Statement soon to be reviewed, the ability to build off these documents in the second round review of the FNDC District Plan is critical to avoiding lengthy battles through the submission, hearing and appeal process, where effort could better be spent on ensuring that local matters are adequately addressed.