

**BEFORE HEARINGS COMMISISONERS APPOINTED
BY THE FAR NORTH DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on the Proposed
Far North District Plan

SUBMITTER Ed and Inge Amsler

HEARING TOPIC: Hearing 14 – Urban Zones

STATEMENT OF PLANNING EVIDENCE OF ANDREW CHRISTOPHER MCPHEE

7 July 2025

INTRODUCTION

1. My name is Andrew Christopher McPhee. I am a Director / Consultant Planner at Sanson and Associates Limited and Bay of Islands Planning (2022) Limited.
2. I have been engaged by Ed and Inge Amsler (**submitter**) to provide evidence in support of their submission and further submission to the Proposed Far North District Plan (**PDP**).
3. I note that while the Environment Court Code of Conduct does not apply to a Council hearing, I am familiar with the principles of the code and have followed these in preparing this evidence.

QUALIFICATIONS AND EXPERIENCE

4. I graduated from The University of Auckland in 2007 with a Bachelor of Planning (Honours).
5. I began my planning career with Boffa Miskell, where I was a graduate planner until 2009. The same year I joined the Auckland Regional Council in the Policy Implementation Team. When the Auckland Councils amalgamated in 2010, I worked in a number of planning roles, leaving in 2015 as a Principal Planner in the Central and Island Planning Team.
6. I joined the Far North District Council (**FNDC**) in 2015 as a Senior Policy Planner working principally on the review of the district plan. I left FNDC in December 2023 and joined Sanson and Associates Limited and Bay of Islands Planning (2022) Limited with my co-director Steven Sanson.
7. I have been involved in a number of plan change and resource consent hearing processes in my time at Auckland Council, including as the planning lead for a number of topics for the Auckland Unitary Plan process. At FNDC I project managed private plan change 22 and was the portfolio lead for a number of topics for the PDP.
8. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association. In February 2024, I was certified with excellence as a commissioner under the Ministry for the Environment's Making Good Decisions programme.

SCOPE OF EVIDENCE

9. Hearing 14 addresses submission points relating to the PDP – Urban zones.
10. I note that the submitter owns property at 46-48 Marsden Rd in Paihia, which is located within the Mixed Use zone and is within the Paihia Heritage Area – Part B.

11. I have been asked by the submitter to provide expert planning evidence arising from their submission points seeking amendments to Rules MUZ-R3, MUZ-R4 and MUZ-R5¹, noting that MUZ-R5 is now recommended for deletion in the s42A Report. The submitter seeks an amendment to remove the requirement for residential activities and visitor accommodation to be located above the ground floor within the Mixed Use zone within Paihia, outside of the pedestrian frontage overlay.
12. I note that the relief sought by the submitter will require consequential amendments to the Mixed Use chapter to ensure there is an appropriate cascade through the Objectives and Policies in the chapter. As such, the submitter can rely on their submission which provides for any consequential and further or other relief which may be necessary to give effect to the changes sought in this submission.
13. In preparing this evidence, I have reviewed the s42A Report for the Urban Zones, with a particular focus on the Mixed Use zone as it relates to the township of Paihia.
14. I have adhered to the instructions of hearing Minute 1 ‘take a lead from the s42A Report in terms of content of evidence, specifically that evidence highlights areas of agreement and disagreement with the s42A Report, outlines any changes in Plan wording proposed (along with the rationale for these changes) together with an assessment pursuant to s32AA of the Resource Management Act 1991 (RMA)’.

THE MIXED USE ZONE IN RELATION TO PAIHIA

15. The Mixed Use zone through Objective MUZ-O1 clearly seeks that the Mixed Use zone provide the focal point for the districts commercial, community and civic activities, while providing for ‘compatible’ residential development that compliments these activities.
16. Objective MUZ-O1 is somewhat at odds with Objective MUZ-O5 and currently seeks a rigid outcome of providing for residential activities where they are located above commercial activities, to ensure active street frontages. While I acknowledge the intent of this policy has merit for a business zone, it is a rigid outcome sought for a zone that has been generically applied across the Far North District in place of the Commercial zone within the Operative District Plan.
17. MUZ-P1 seeks to ‘enable’ a range of commercial, community and civic activities, as well as enable residential activities where they support the function, role, sense of place and amenity of the zone while recognising the existing environment.
18. I note that while MUZ-P5 seeks to restrict activities that are ‘likely’ to have an adverse effect on the function, role, sense of place and amenity of the Mixed Use zone, specifying residential activity and visitor accommodation, a new policy is proposed in the s42A Report MUZ-PXX to clearly ‘avoid’ the establishment of residential activity and visitor accommodation on the ground floor of a building within the pedestrian frontage overlay.

¹ Submission 341

19. I agree with the direction of the s42A Report in so far that where a pedestrian frontage overlay exists that it is not appropriate for ground floor residential or visitor accommodation to be supported. Where a pedestrian frontage overlay is applied the land use is presumed to be retail/commercial/business and designed for pedestrian amenity.
20. As stated above, the Mixed Use zone has been applied generically across the Far North District and fails to consider the nuances that exist in the places/townships it has been applied. I believe that the function, role, sense of place and amenity within Paihia warrants a more nuanced approach to the Mixed Use zone, as it covers an established township that has clear differentiation of these matters within the zone.

FUNCTION, ROLE, SENSE OF PLACE AND AMENITY OF PAIHIA

21. In the absence of any spatial planning done by FNDC in Paihia, I make the following observations in relation to the function, role, sense of place and amenity of Paihia, particularly in relation to the Mixed Use zoning that is applied through the PDP.
22. Paihia is consistently described as a central tourist hub/town for the Bay of Islands. As such it is fair to conclude that the principal role and function is that of a tourism nature. Contributing to this tourism role, Paihia functions as a service and social centre for the local community, a number of whom likely support or rely in some way on the tourism function. Paihia is also a key access point for surrounding attractions, including the historic Waitangi Treaty Grounds, which is located a short walk from the town centre.
23. In my view, the Mixed Use zone applied to Paihia has two distinctive roles and functions.
 - The general area between Bayview Road to the north, School Road to the south, and Williams Road to the west is the town's primary retail and hospitality precinct. This is qualified by the existing land use, which is dominated by a continuous strip of retail shops, a high concentration of cafes, restaurants and bars, many with outdoor seating that spill onto the pavement. The PDP 'pedestrian frontage' overlay for this area underscores its intended character as a vibrant, walkable hub. For the purpose of describing this area I have labelled it the 'retail and hospitality precinct'.



Figure 1: Paihia Mixed Use 'hub' (Source: Google Earth)

- The Mixed Use zone generally north of Bayview Road and south of the School Road intersection changes in character noticeably from that in the ‘retail and hospitality precinct’. The change in activities is more characterised by motels, backpacker hostels and residential apartments, often with ground-floor uses that are less reliant on high foot traffic. While there are still a small number of retail and food outlets present, they are interspersed with a predominance of residential and visitor accommodation buildings. Motels and apartment-style accommodation are the dominant building typology. Foot traffic is visibly lighter, and the absence of the ‘Pedestrian Frontage’ overlay reflects this change in intended and actual character. Many are located on the ground floor.



Figure 2: Paihia Mixed use zone north of Bayview Road (Source: Google Earth)



Figure 3: Paihia Mixed use zone south of School Road (Source: Google Earth)

24. I believe that the lack of nuanced zoning in Paihia to reflect its function, role, sense of place and amenity requires amendments to the Mixed Use zone. It is important for those areas in Paihia that accommodate the function and role of Paihia are enabled to continue unencumbered by the PDP.
25. The areas in the Mixed Use zone within Paihia sought to be excluded from rules MUZ-R3 and MUZ-R4 play a critical role in accommodating and supporting tourism in the township. The proposed amendments reflect a targeted approach for Paihia, maintaining active commercial frontages in the ‘retail and hospitality precinct’, which is serviced by a pedestrian frontage overlay, and providing a more flexible approach in other areas of the Mixed Use zone.

THE RESOURCE MANAGEMENT ACT 1991 (RMA)

26. The overarching purpose of the RMA is to promote the sustainable management of natural and physical resources. This involves enabling people and communities to provide for their social, economic, and cultural well-being. A blanket restriction on ground-floor residential activity and visitor accommodation in an area where it is the predominant use and required to support the tourism industry in this location conflicts with the social well-being of the community and the need for Paihia to accommodate this activity.
27. Furthermore, the economic viability of ground-floor commercial spaces in the areas outside of the Mixed Use zone in Paihia controlled by the pedestrian frontage overlay is questionable. Insisting on commercial use where there may be limited demand can lead to vacant properties, which detracts from, rather than enhances, the vibrancy of Paihia. A more flexible approach that allows for residential activity and visitor accommodation in these locations ensures that buildings are more likely to be occupied and contribute positively to the role and function of Paihia as a whole.

THE NATIONAL PLANNING STANDARDS (NPS)

28. The PDP uses the Mixed Use zone, which is a standardized zone identified in the NPS. It is important to note that the NPS governs the framework and language of the PDP, not the specific substantive rules for every activity within that zone.
29. The NPS describes the zone to be a 'compatible mixture' of residential, commercial, light industrial, recreational and/or community activities. I believe the words 'compatible mixture' denotes that the range of activities supported in the zone is relative to the environs or place it is applied.
30. The NPS does not dictate whether ground-floor residential activity should be permitted or restricted within the Mixed Use zone. Therefore, because the relief sought by the submitter operates within the scope of activities anticipated within the Mixed Use zone framework and uses consistent terminology, it is in alignment with the NPS.

THE REGIONAL POLICY STATEMENT FOR NORTHLAND (RPS)

31. The RPS advocates for a compact urban form, the efficient use of infrastructure, and the creation of vibrant, safe and cohesive town centres with a range of residential and business opportunities. Context is supplied through the 'Regional Form and Development Guidelines' contained within Appendix 2.
32. In the context of Paihia, specifically its function, role, sense of place and amenity, I consider that providing residential activities and visitor accommodation on the ground floor in the Mixed Use zone outside of those areas controlled by the pedestrian frontage overlay align with the RPS, in particular:

- Objective 3.11 (Regional Form) where the sustainable built environment of Paihia integrates use and development in cognisance of its sense of place;
 - Policy 5.1.1 (Planned and coordinated development) where allowing residential activities and visitor accommodation to occur freely in an area where it is the predominant land use ensures compatible land use, which avoids the potential for reverse sensitivity. Furthermore, it maintains the sense of place and character that shapes Paihia's urban fabric.
 - Policy 5.1.2 (Development in the coastal environment) where urban development is consolidated with the existing coastal settlement of Paihia.
33. The RPS addresses 'efficient and effective planning' in section 6.1. I note that in Policy 6.1.1 it directs district plans to only contain regulation if it is the most effective and efficient way of achieving resource management objectives, considering the costs, benefits and risks. It also directs to minimise compliance costs. Enabling residential activities and visitor accommodation to be located on the ground floor in areas of Paihia where it currently exists, and has done for decades, aligns with this direction in the RPS.

SECTION 42A RECOMMENDATIONS

34. While I consider that the s42A reporting officer's recommendation to create a Restricted Discretionary pathway for ground-floor residential activity outside the pedestrian frontage overlay is a positive step away from the restrictive notified version, it does not go far enough and is still very generic in terms of its application. This approach is inefficient in the context of Paihia and fails to recognise the role that residential activity and visitor accommodation plays in the township.
35. The officer's rationale for recommending a Restricted Discretionary activity status is to allow for a case-by-case assessment of potential effects. The matters of discretion focus on building design and layout, privacy, access, and amenity effects. While these are valid considerations, they are not so unique or unpredictable in the context of Paihia as to warrant a full resource consent process for every ground-floor application for residential activities and visitor accommodation outside of the 'retail and hospitality precinct'.
36. In the context of Paihia, I therefore agree with the comment in the s42A Report which states that *"The more peripheral areas of the zone ground floor residential may be appropriate and would continue to support the vibrancy and vitality of commercial areas and uses."*²
37. A consent-based approach is an inefficient mechanism for managing these effects in the context of Paihia, which has a clear and historic urban fabric which I have discussed and illustrated earlier in my evidence. The costs and uncertainty of a consent process act as

² s42A Report Urban zones [para 493]

a significant deterrent to the development of further residential activities and visitor accommodation in a location that has a predominance of these activities.

38. The s42A Report concludes that because the recommended pathway is not permitted then no amendments are necessary to the objectives and policies, specifically MUZ-O5 and MUZ-P5. I disagree in the context of Pahia as I consider that a permitted activity status is appropriate in the Mixed Use zone for residential activities and visitor accommodation in those areas located outside of the pedestrian frontage overlay. Objective MUZ-O5 continues to state that residential activity should be located 'above commercial activities', and Policy MUZ-P5 continues to seek to 'restrict' ground-floor residential activity.
39. The s32AA analysis provided in the s42A Report is brief and justifies the restricted discretionary pathway on the basis that it allows for case-by-case consideration of appropriateness. This analysis fails to adequately weigh the costs and benefits, as required by the RMA. It significantly understates the benefits of a more enabling, permitted-activity approach, particularly in the context of Pahia.
40. The s42A Report officer's recommendation to introduce a Restricted Discretionary pathway is an acknowledgement that the notified provisions are in some way flawed. However, the recommended solution does not go far enough in acknowledging that the Mixed Use zone plays a different role in different locations across the Far North District. Pahia is unlike any other township in the district and requires a solution that is commensurate with its function, role, sense of place and amenity (MUZ-P1).
41. The current recommendation in the s42A Report is a half-measure that creates an inefficient and internally conflicted planning framework in the context of Pahia. A more appropriate and effective approach is to:
 - Make ground-floor residential activity and visitor accommodation a permitted activity in the Mixed Use zone outside the pedestrian frontage overlay in Pahia; and
 - Amend Objective MUZ-O5, Policy MUZ-P5 and new proposed Policy MUX-PXX to signal clear support for this activity in Pahia.

RECOMMENDED CHANGES

42. The amendments are shown in ~~strike through~~ and underline.

MUZ-R3	Visitor accommodation	
Mixed Use zone	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1</p> <p>The visitor accommodation is within a residential unit that is <u>either:</u></p> <ul style="list-style-type: none"> a. located above the ground floor level of a building unless the residential unit existed at 27 July 2022; <u>or</u> b. <u>located on the ground floor of a building on a site that is outside the pedestrian frontage overlay identified on the planning maps within the township of Paihia.</u> <p>PER-2</p> <p>The residential unit complies with standard: NOISE-S5 Noise insulation.</p>	<p>Activity status where compliance not achieved with PER-1: Restricted Discretionary</p> <p>Where:</p> <p>RDIS – 1</p> <p>The residential unit is located outside the pedestrian frontage overlay</p> <p>Matters of discretion are restricted to:</p> <ul style="list-style-type: none"> a. private outdoor living area that is functional and accessible b. a reasonable level of privacy and outlook c. safe and convenient pedestrian access to residential units from the street d. Building design and layout e. Effects on the safety, amenity and attractiveness of the street and public open spaces.
		<p>Activity status where compliance not achieved with PER-2: Discretionary</p> <p>Activity status where compliance not achieved with RDIS-1: Non complying</p>

MUZ-R4	Residential activity	
Mixed Use zone	<p>Activity status: Permitted</p> <p>Where:</p> <p>PER-1</p> <p>The residential activity is within a residential unit that is <u>either</u>:</p> <ul style="list-style-type: none"> a. located above the ground floor level of a building unless the residential unit existed at 27 July 2022; <u>or</u> b. <u>located on the ground floor of a building on a site that is outside the pedestrian frontage overlay identified on the planning maps within the township of Paihia.</u> <p>PER-2</p> <p>The minimum net internal floor area, excluding outdoor living space, of a residential unit shall be:</p> <ul style="list-style-type: none"> a. 1 bedroom = 45m² b. 2 bedroom = 62m² c. 3 bedroom = 82m² <p>PER-3</p>	<p>Activity status where compliance not achieved with PER-1: Restricted Discretionary</p> <p>Where:</p> <p>RDIS – 1</p> <p>The residential unit is located outside the pedestrian frontage overlay</p> <p>Matters of discretion are restricted to:</p> <ul style="list-style-type: none"> a. private outdoor living area that is functional and accessible b. a reasonable level of privacy and outlook c. safe and convenient pedestrian access to residential units from the street d. Building design and layout e. Effects on the safety, amenity and attractiveness of the street and public open spaces.
	<p>Residential units established after 27 July 2022 comply with standard:</p> <p>NOISE-S5 Noise insulation.</p>	<p>Activity status where compliance not achieved with PER-2: Discretionary</p> <p>Activity status where compliance not achieved with RDIS-1: Non complying</p>

43. Scope to address the necessary consequential amendments are covered under the original submission, where the relief sought any consequential and further or other relief which may be necessary to give effect to the changes sought in this submission. I feel

the following consequential amendments are required to address the relief sought by the submitter.

Objectives	
MUZ-O5	Residential activity in the Mixed Use zone is located above commercial activities where it is incompatible with the function, role, sense of place and amenity of the location, to ensure active street frontages where appropriate, except where the interface is with the Open Space zone.
Policies	
MUZ-P5	<p>Restrict- Manage activities that are likely to have an adverse effect on the function, role, sense of place and amenity of the Mixed Use zone by, including:</p> <ul style="list-style-type: none"> a. residential activity, Supported residential care and visitor accommodation on the ground floor of buildings; a. <u>Avoiding residential activity, visitor accommodation or supported residential care on the ground floor of a building within the pedestrian frontage overlay;</u> b. <u>Enabling residential activity and visitor accommodation on the ground floor of buildings outside of the pedestrian frontage overlay within the Paihia Township;</u> c. <u>Restricting other activities that may be incompatible with a mixed-use environment, including:</u> <ul style="list-style-type: none"> i. light industrial activity; ii. storage and warehousing; iii. large format retail activity and trade suppliers and iv. waste management activity v. Retirement villages vi. Education facility
MUZ-PXX	<p>Avoid the establishment of:</p> <ul style="list-style-type: none"> a. residential activity, visitor accommodation or supported residential care on the ground floor of a building within the pedestrian frontage overlay; b. Industrial and offensive trade activities and landfill c. primary production and rural industry

SECTION 32AA EVALUATION

Effectiveness and Efficiency

44. The current approach is ineffective as it applies a ‘one-size-fits-all’ approach that is not commensurate to the function, role, sense of place and amenity of areas within the Mixed Use zone in Paihia.

45. It is more effective and efficient to apply a targeted and nuanced approach in Paihia, applying the strictest controls only where they are most needed (the pedestrian frontage overlay). The proposed approach removes an unnecessary regulatory barrier (resource consent) for an activity that is commensurate with that existing.

Costs/Benefits

46. Potential benefits include:
- Ground floor residential outside of the pedestrian frontage overlay protects the retail character and viability of core areas in Paihia.
 - Reduction in consenting costs and uncertainty for landowners, stimulating development and investment. This allows landowners to adapt to market demands, ensuring properties are economically viable.
47. Potential costs include:
- The inefficient use of existing and future buildings that require ground floor commercial activities in the Mixed Use zone in Paihia, outside of the pedestrian frontage overlay.
 - Uncertainty for landowners seeking to develop residential on the ground floor by having to go through a resource consent application.
 - Loss of economic activity from vacant or underdeveloped sites.

Risk of Acting or not Acting

48. The risk of not acting risks entrenching a planning framework that is misaligned with the on-the-ground reality of the Mixed Use zone in Paihia. This could lead to poor economic and social outcomes, including underutilised properties in a location where the function, role, sense of place and amenity is well understood.
49. The risk of acting is low. The proposed amendments are targeted to areas outside the primary pedestrian-oriented retail core of Paihia, where active commercial frontages are less critical. The protection for the main commercial hub of Paihia is retained. The change provides for a land use that is entirely commensurate with, and beneficial to, the character of the existing environment.

CONCLUSION

50. I am of the opinion that the proposed change to permit ground-floor residential activity and visitor accommodation in the Mixed-Use zone in Paihia outside of the pedestrian frontage overlay, is a more effective and efficient method of achieving the objectives of the PDP.