

Memorandum

To: Manager Planning and Policy: Katherin Overwater
From: District Planner: Paul Waanders
Date: 26 February 2025
Subject: Clause 20A Correction of the District Plan in relation to Various typos and errors

Background Context

- The heading of Rule 13.13 presently is Discretionary "Rural" Subdivision whilst Chapter 13 actually deals with "Residential". This was an error right from the start of the Operative District Plan 2013 but was never corrected. As of late this has become a legality issue and needs to be corrected by referring to "Discretionary **Residential** Subdivision."
- Rule 13.10.7 presently reads as follows with the exemption,
 "Provided that an accessory building may be erected in any side or rear yard where: ..."
 which is not clearly referenced due to its indentation.
 It is suggested that the indentation be removed in order to make it clear which element are accessory buildings and are referenced.

13.10.7	Setbacks	1. Residential Zone Any building is a Permitted Activity if it is located outside the following setback distances (yards): a. Front yard - 5m; b. Side yards — one of 1.5m and one of 3m (Residential Zone), two of 3m in Overlay Areas; c. Rear yards - 3m except on rear sites where one yard of 1.5m may be provided; d. Coast - 30m from the Coastal Marine Area; and e. Lake / River - 30m from the banks of: any dune lake; any other lake whose bed has an area of 8ha or more; any river including a perennial stream whose bed has an average width of 3m or more; f. Any building is setback 30m from a railway line	Restricted Discretionary Activity
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where there is an intersection of road and rail (level crossing controlled by giveaway signage) within 300m; and

- g. Any building is set back 300m from the intersection of the State Highway and any local road (measured from the centreline of the local road).

Provided that an accessory building may be erected in any side or rear yard where:

- h. Vehicle access is retained to the rear of the site; and
i. It is located at least 3m from any habitable room on an adjoining site; and
j. It does not exceed 10m in length or 25% of the length of the side or rear yard, whichever is less.

In addition to the above Performance Standards:

2. Mangawhai Harbour and Kai Iwi Lakes Overlays

Any building is a Permitted Activity if it is located outside the following setback distances (yards):

- a. River — 6m from the banks of any river with an average bed width of between 1 to 3m.

Note: For clarification, if the average bed width is less than 1m this rule does not apply and if the average is greater than 3m the Rule 13.10.7(1)(e) above applies.

3. Awakino Precinct

Any building is a Permitted Activity if it is located outside the following setback distances

(yards):

- a. Front yard - 3m;
b. Side yards — 5m;
c. Rear yards -5m;
d. Wetlands and Rivers— 10m setback from any natural wetland, and river;
e. Rural Zone — 3m.

Provided that an accessory building may be erected in any side or rear yard where:

- f. Vehicle access is retained to the rear of the site; and
g. It is located at least 3m from any habitable room on an adjoining site; and
h. It does not exceed 10m in length or 25% of the length of the side or rear yard, whichever is less.

4. Cove Road North Precinct

Any building is a Permitted Activity if it is located outside the following setback distances (yards):

- a. Front yard - 3m; with garage doors that face the street set back 4.5m.
i. Provided that an accessory building (including garage) must be setback 5m from any front or side yard. Where any accessory building (including garage) is located within the side yard, it shall be all be provided with a window(s) which have an area no less than 10% of the facade.
b. Side yards - 1.5m;
c. Rear yards - 1.5m;
d. Cove Road and Mangawhai Heads Road legal boundary - 5m;

	<p>e. Rural Zone — 3m.</p> <p>Provided that an accessory building may be erected in any side or rear yard where:</p> <p>f. It is located at least 3m from any habitable room on an adjoining site; and</p> <p>g. It does not exceed 10m in length or 25% of the length of the side or rear yard, whichever is less.</p> <p>Note 1: The Regional Water and Soil Plan for Northland also requires setbacks from waterways and the coast for excavation activities. Applicants should contact the Northland Regional Council to confirm whether or not Resource Consent is required.</p> <p>Note 2: The 300m radius referred to in relation to State Highways shall be measured from the position where the centreline of the road joins the State Highway.</p> <p>Note 3: Any changes in land use on sites that have access onto Limited Access Road's require approval from the NZ Transport Agency under the Government Rooding Powers Act 1989.</p>	
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It is recommended that the exempted provision be reformatted by removing the indentation in all cases, so it reads as follows.

Provided that an accessory building may be erected in any side or rear yard where:

- h. Vehicle access is retained to the rear of the site; and
- i. It is located at least 3m from any habitable room on an adjoining site; and
- j. It does not exceed 10m in length or 25% of the length of the side or rear yard, whichever is less

3. Rule 13.10.1a Excavation and Fill in provision 1 Excavation and fill is a permitted Activity if:

- a.
- b. Where the site is outside of an Overlay area the volume is less than 200m² within a site in any 12 month period and where Overlays apply, the Volume is less than 100m² within a site in any 12 month period; and
- c.

Being a reference to volume the amount needs to be cubic meters and therefor the m² should be m³ and it is recommended that this error be corrected.

4. The definition of **Site** has created an issue and needs some punctuation and indentation correction to make it clear what is intended.

The definition in the District Plan reads as follows

Site

- a) An area of land which is:
- Composed of one allotment in one certificate of title or two or more contiguous allotments held together in one or more certificates of title in such a way that the allotments cannot be dealt with separately without the prior consent of the Council; or
 - Contained in a single allotment on an approved Survey Plan of subdivision for which approvals under the Resource Management Act 1991 have been obtained and for which a separate certificate of title could be issued without further consent of the Council.
- b) Except that in the case of:
- Land subdivided as a unit title or stratum subdivision, "site" shall be deemed to be the whole of the land subject to the unit development or stratum subdivision; and
 - Land subdivided under the cross lease or company lease systems (other than strata titles), "site" shall be defined as an area of land containing:
 - any building, accessory buildings, plus any land exclusively restricted to the users of those buildings; or
 - a remaining share or shares in the fee simple creating a vacant part of the whole for future cross lease or company lease purposes.
- c) In the case of Maori land within the meaning of Te Ture Whenua Maori Act 1993:
- Includes a parcel of land created by a partition under Section 289.

Recommended amended wording for the definition of Site,

Site

- a) An area of land which is:
- Composed of one allotment in one certificate of title or two or more contiguous allotments held together in one or more certificates of title in such a way that the allotments cannot be dealt with separately without the prior consent of the Council; or
 - Contained in a single allotment on an approved Survey Plan of subdivision for which approvals under the Resource Management Act 1991 have been obtained and for which a separate certificate of title could be issued without further consent of the Council.
- b) Except that in the case of:
- Land subdivided as a unit title or stratum subdivision, "site" shall be deemed to be the whole of the land subject to the unit development or stratum subdivision; and
 - Land subdivided under the cross lease or company lease systems (other than strata titles), "site" shall be defined as an area of land containing:
 - any building, accessory buildings, plus any land exclusively restricted to the users of those buildings; or
 - a remaining share or shares in the fee simple creating a vacant part of the whole for future cross lease or company lease purposes.
- c) In the case of Māori land within the meaning of Te Ture Whenua Māori Act 1993:
- Includes a parcel of land created by a partition under Section 289.

5. Awakino Precinct Plan Noise Provisions

Plan Change PPC82 for Awakino Precinct provides for Noise attenuation measures in Rule 13.13A.8 but erroneously the conditions in Rule 13.10.8.A cross references Rule 13.13A.26 which does not exist.

13.10.8A	Noise Sensitive Activities in Awakino Precinct	<p>1. Any Noise Sensitive Activity is permitted if:</p> <ul style="list-style-type: none"> a. Designation D34 Dargaville Landfill has been removed from the plan; or b. A noise barrier has been established in accordance with rule 13.13A.26 and the noise sensitive activity is located outside of Noise Area A as identified on the Awakino Noise Plan; or c. No noise barrier has been established in accordance with rule 13.13A.8 and the noise sensitive activity is outside of Noise Areas B and C as identified on the Awakino Noise Plan. <p>2. Any Noise Sensitive Activity is a restricted discretionary activity where:</p> <ul style="list-style-type: none"> a. A noise barrier has been established in accordance with rule 13.13A.26 and the noise sensitive activity is located in Noise Area A as identified on the Awakino Noise Plan; or b. No noise barrier has been established in accordance with rule 13.13A.26 and the noise sensitive activity is in Noise Area B as identified on the Awakino Noise Plan. <p>3. Any Noise Sensitive Activity is a non-complying activity where no noise barrier has been established in accordance with rule 13.13A.8 and the noise sensitive activity is in Noise Area C as identified on the Awakino Noise Plan.</p> <p>4. Information Requirement, every application under rules 13.10.8A(2) shall be supported by an acoustic report prepared by a suitably qualified acoustic engineer which recommends appropriate mitigation measures including but not limited to:</p> <ul style="list-style-type: none"> a. Façade attenuation measures proposed to achieve an appropriate level of internal noise within habitable rooms. The report shall use NZS2107:2016 unless an alternative criteria is justified. b. Attenuation measures to limit the level of noise within outdoor living areas. c. Cooling and ventilation methods to ensure that internal temperature of habitable rooms will be maintained with windows and doors closed.
13.13A.8	Noise and Odour Rules	<p>1. Any subdivision within the Awakino Precinct where the site boundary adjoins the Designation D34 Dargaville Landfill shall establish and provide for on-going maintenance of a noise barrier where:</p> <ul style="list-style-type: none"> a. The noise barrier is located in accordance with the Awakino Precinct Noise Plan. b. The noise barrier is a total of 2.5 metres finished height above ground level at the adjacent boundary. c. The noise barrier is comprised of either: <ul style="list-style-type: none"> i. An earth bund; or ii. An acoustic fence; or iii. A combination of a base earth bund and acoustic fence. d. The design and construction of the noise barrier shall: <ul style="list-style-type: none"> i. Be certified by a suitably qualified engineer to confirm that the noise barrier finished height of the bund complies with the relevant rules following settlement; and ii. Be certified by a suitably qualified acoustic engineer to confirm that the acoustic fence has an overall surface density of at least 10kg/m² with less than 1% leakage between fence palings and between the bund and the bottom of the fence. <p>Note: For the purpose of this rule an acoustic fence shall not constitute a building and shall not require approval under rules 13.10.6 and 13.10.7.</p>

Recommended that the reference to Rule 13.13A.26 in Rule 13.10.8A be corrected to read 13.13A.8

6. References to Stormwater and wastewater provisions in relation to non-residential (Commercial and Industrial Buildings) in the residential zone as highlighted below are problematic as those cross references (13.13.5 and 13.13.6), do not exist in the Plan.

Stormwater in the Residential zone is covered under 13.14.5 while Wastewater is dealt with under 13.14.6

13.10.4	Commercial and Industrial Buildings	<p>1. For Commercial or Industrial Activities in a Residential Zone any building is a Permitted Activity if:</p> <ul style="list-style-type: none"> a. The building is able to comply with the relevant Performance Standards of Rule 13.10; b. Where no Council reticulated wastewater system is available the on-site treatment and disposal systems shall be designed and constructed in accordance with AS/NZS 1547:2008 "Onsite Wastewater Management Standards"; c. Where a Council reticulated wastewater system is available the development complies with the requirements of Rule 13.13.6(1)(a)-(d) inclusive; d. Where no Council wastewater system is available the development shall comply with the requirements of Rule 13.13.6(c)-(d) inclusive; e. Where a Council reticulated stormwater disposal system is available the development shall comply with Rule 13.13.5(1)(a) and 13.13.1(3)(a)-(i) inclusive; and f. Where no Council reticulated stormwater disposal system is available the development shall comply with Rule 13.13.5(2)(a) and Rule 13.13.5(3)(a)-(i) inclusive. <p>Note 1: Any discharge into land, air or waterbodies may require a Resource Consent from the Northland Regional Council. The Regional Water and Soil Plan for Northland contains minimum standards for wastewater and stormwater treatment drainage and disposal and the Regional Coastal Plan controls buildings and structures in the Coastal Marine Area. Applicants should contact the Northland Regional Council to confirm whether or not a Resource Consent is required.</p> <p>Note 2: For sites within an Outstanding Natural Landscape, Rule 13.10.3c shall also apply.</p>
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It is recommended that the erroneous reference to 13.13.6(1)(a) -(d) be amended to 13.14.6(1), and 13.13.6(c) -(d) be replaced with 13.14.6(3) referring to wastewater. It is recommended that the erroneous reference to 13.13.5(1)(a) be amended to 13.14.5(1)(a) and delete the reference to 13.13.1(3)(a)-(i). Replace 13.13.5(2)(a) with 13.14.5(2) and delete 13.13.5(3)(a)-(i) where it refers to stormwater.

13.10.4 Commercial and Industrial Buildings will then read as follows,

1. For Commercial or Industrial Activities in a Residential Zone any building is a Permitted Activity if:

- a. The building is able to comply with the relevant Performance Standards of Rule 13.10;
- b. Where no Council reticulated wastewater system is available the on-site treatment and disposal systems shall be designed and

constructed in accordance with AS/NZS 1547:2008 "Onsite Wastewater Management Standards";

- c. Where a Council reticulated wastewater system is available the development complies with the requirements of Rule 13.14.6(1);
- d. Where no Council wastewater system is available the development shall comply with the requirements of Rule 13.14.6(3) ;
- e. Where a Council reticulated stormwater disposal system is available the development shall comply with Rule 13.14.5(1)(a); and
- f. Where no Council reticulated stormwater disposal system is available the development shall comply with Rule 13.14.5(2).

Legal Position

Clause 20A enables a Council to amend its operative plan to correct any minor errors without the using the First Schedule of the RMA. Case law has determined what constitutes an 'error' and what a 'minor' error will be. An error can contain a clerical mistake of error from an accidental slip or omission, but the use of the slip rule is only applicable when it is used to correct the slip in the "expression" of the statement and not the "content."

The final version was checked by the staff planners and should be corrected immediately rather than waiting for the Proposed District Plan to be finalised which could still take years to finalise through its statutory processes.

Delegation

The authority to make minor amendments to correct minor errors on an Operative District Plan has been delegated to inter alia the Manager Planning and Policy.

Recommendation

That the proposed changes as indicated in paragraphs 1-6 above be approved



Paul Waanders: District Planner

Date 26 February 2025

Recommendation is approved.



Katherine Overwater

Manager: Planning and Policy

Date 30/07/2025