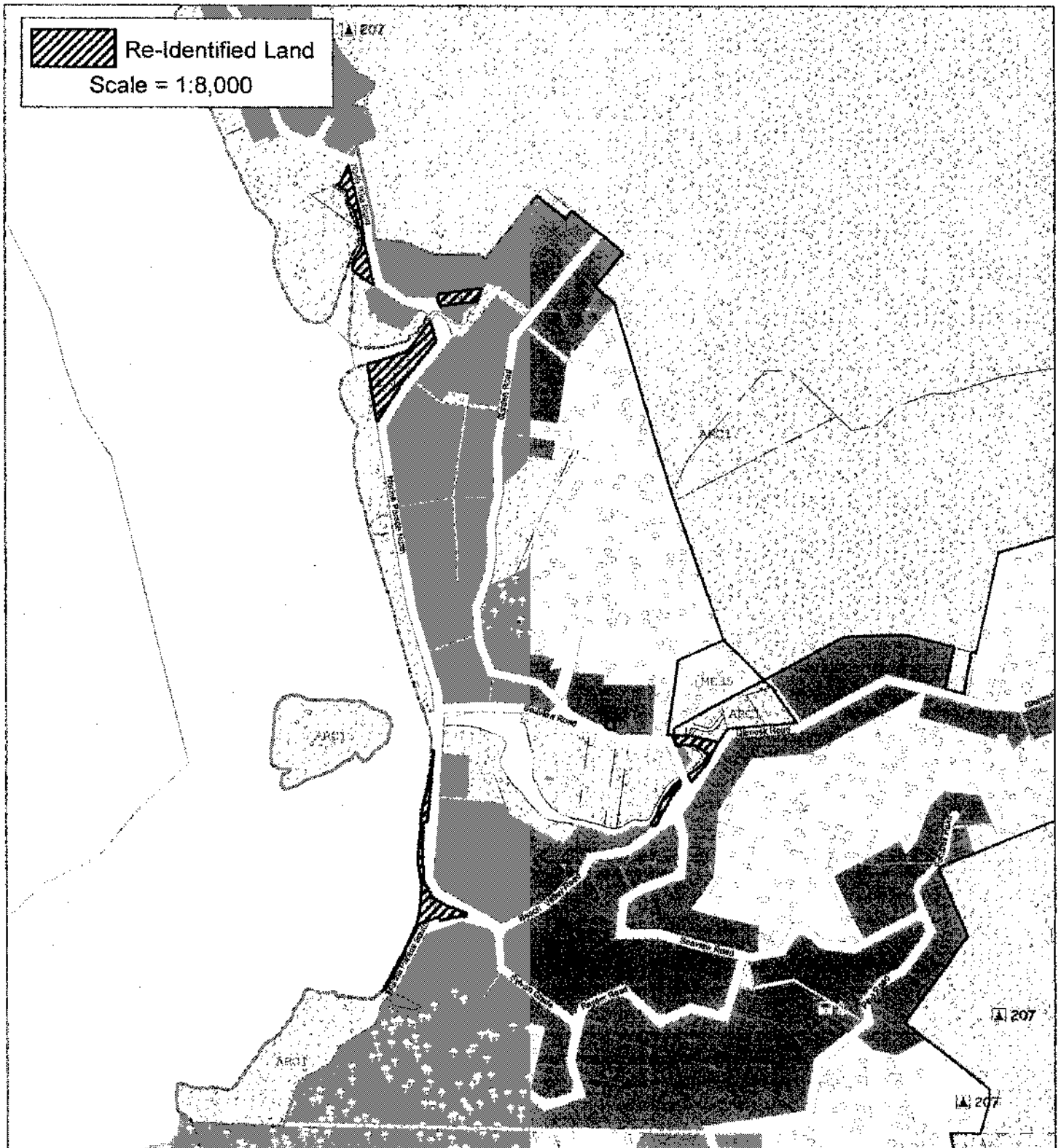


District Plan

Proposed Changes to Map 27 Piha/Parklands Human Environments (Map reprint reference F0 and H0)



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Proposed Plan Change No. 5

Changes from 'Transport Environment' to 'Open Space Environment'

Pt Lot 3 DP31269, Sec 1 SO70241,
 Sec 1 SO70155, Sec 1 & 2 SO70265

Piha

AGENDA REPORT FOR HEARING FOR PROPOSED PLAN CHANGE 5 RE-IDENTIFICATION OF FORMER STOPPED ROADS IN PIHA FROM TRANSPORT ENVIRONMENT TO OPEN SPACE ENVIRONMENT

1.0 INTRODUCTION

This report addresses the issues that relate to Plan Change 5. This Proposed Plan Change relates to several portions of legally stopped road located on North Piha Road, Marine Parade North, Marine Parade South, Beach Valley Road and on the corner of Seaview and Glenesk Roads legally described as Section 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70252 and Section 1 on Survey Office Plan 70155. The Proposed Plan Change seeks to change the existing Human Environment identification from Transport Environment to Open Space Environment. The proposed Plan Change comprises a change to the District Plan Maps as attached at page AX in the attachments supplement. The Proposed Plan Change affects Map 27-Piha/Parklands).

The report sets out the statutory process requirements and the policy framework and addresses Section 32 issues. It should be noted that no submissions were received on the Proposed Plan Change and hence no further submissions were called for.

2.0 SUMMARY

The land that is subject to the Proposed Plan Change is currently identified as Transport Environment under the District Plan, although the land has been gazetted as reserve.

The Waitakere Community Board recommended that these areas of legal road should be stopped. The Council advertised its intention to declare these areas as reserve. No objections were received and this matter was referred to the June 2001 meeting of the Waitakere Community Board. The Board resolved:

"That the areas of land shown as Sections 1 and 2 on Survey Office Plan 70265, Section 1 on Service Office Plan 70241, Sections 1 and 2 on Survey Office Plan 70252 and Section 1 on Survey Office Plan 70155 be stopped as road.

That it be recommended to council that Section 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70241 and Section 2 on Survey Office Plan 70252 be declared to be a reserve within the meaning of the Reserves Act 1977 to be held for the purposes of a local purpose-esplanade reserve.

That it be recommended to Council that Section 1 on Survey Office Plan 70252 be declared to be a reserve within the meaning of the Reserves Act 1977 to be held for the purposes of a local purpose-community buildings reserve.

That it be recommended to Council that Section 1 on Survey Office Plan 70155 be declared to be a reserve within the meaning of the Reserves Act 1977 and be held for the purposes of a scenic reserve."

1233/2001

Council approved the classification of these areas of reserve at its June meeting (1509/2001). The classification was then published in the New Zealand Gazette. A copy of this gazette notice is attached at pages AX. These documents have been registered with Land Information New Zealand and consequently the land is reserve under the Reserves Act 1977.

Given the status of the land as reserve the one remaining issue was the re-identification of land from Transport Environment to Open Space Environment. The proposed Plan Change to re-identify the subject site from Transport Environment to Open Space Environment would correct an anomaly in the District Plan and provide the correct zoning for reserve land.

The site is surrounded by residential land and provides an important resource as a local reserve. The proposed Plan Change was advertised on 21/7/03 in the New Zealand Herald. No submissions were received and therefore further submissions were not called for.

2.1 Consultation

The Council left messages for two representatives from the Piha Ratepayers and Residents Association – Ms Sandra Coney and Mr Graham Caley and advised the West Coast Plan Liaison Group through Mr Kubi Witten-Hannah about the proposed Plan Change. Correspondence was sent to these parties on 27/6/03.

Following notification of the Proposed Plan Change approximately 15 telephone enquiries were received from Piha residents and landowners. Only one submission was received that was in support of the Plan Change but this was later withdrawn by the submitter as he did not want a full hearing on the issue. As there were no submissions on the Proposed Plan Changes, further submissions were not called for.

3.0 The locality

3.1 Site Descriptions and Locality

The sites to be re-identified are located on several portions of legally stopped road located on North Piha Road, Marine Parade North, Marine Parade South, Beach Valley Road and on the corner of Seaview and Glenesk Roads. The sites are areas that the public would expect to be reserve as they are located adjacent to the Weketahi stream, beach and sand dunes.

The reserves are surrounded by sites identified as Coastal Village Environment (West Coast residential area).

4.0 Statutory Requirements

4.1 Resource Management Act 1991

Section 73 of the Resource Management Act 1991 provides for changes to District Plans. The First Schedule of the Act sets out the process that must be followed for plan changes.

The Council must have regard to Section 74 when changing its District Plan. Section 74 states as follows:

- "(1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.
- (2) In addition to the requirements of section 75(2), when preparing or changing a district plan, a territorial authority shall have regard to-
- (a) Any-
 - (i) Proposed regional policy statement; or
 - (ii) Proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part IV; and
 - (b) Any
 - (i) Management plans and strategies prepared under other Acts; and
 - (ii) Relevant planning document recognised by an iwi authority affected by the district plan; and
 - (iia) Relevant entry in the Historic Places Register; and
 - (iii) Regulations relating to ensuring sustainability, or the conservation, management or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing)-
To the extent that their content has a bearing on resource management issues of the district; and
 - (c) The extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.
- (3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition."

Section 5 of the Act sets out its purpose as follows:

- "(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 well-being 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."

In the case of Comwall Park Trust Board Inc v Auckland City Council (A058/97 2NZED360), the Environment Court held that "In considering the rezoning of land the test is whether the zoning is appropriate for the purpose of, and in terms of, the Resource Management Act."

Section 75 of the Act requires consistency with the regional policy statement. In addition, Section 32 imposes a statutory duty to evaluate the options available to achieve the Council's particular objectives or policies.

4.2 District Plan Provisions

4.3 The Human Environments in the District Plan are defined around the City's landscapes and local areas. The Human Environment Rules form the basis for managing the effects of activities on landscape, amenity values, neighbourhood character and heritage. They also form the basis for managing the effects of activities on human health and safety. The Transport Environment consists of roads, accessways and road reserve.

4.4 Existing Rules/Policies

The sites are former "stopped roads" and are classified as reserves under the Reserves Act but are incorrectly identified in the District Plan as Transport Environment. The most relevant policies concerning the Transport Environment are Policies 11.6 and 11.9.

Policy 11.6 states:

"New roads must be designed and constructed in a way that is consistent with:

- The integration with safe and efficient pedestrian and cycle routes;
- The enhancement of the surrounding streetscape;
- The provision of planting; the protection of the amenity values and neighbourhood character of the surrounding area"

Policy 11.9 is concerned with the design of structures and accessways in the Transport Environment. It states:

"Structures and accessways should be placed in such a way that they do not encroach visually on those natural landscape elements that have been identified as contributing to the amenity of an area. Particular regard should be had for the placement of structures so that intrusion above any sensitive ridgeline when viewed from a public place is voided, or where unavoidable, remedied or mitigated."

Policy 10.7 of the District Plan relating to open space states:

"New public and semi-public spaces should be designed in a way that ensures the safety of all users and, in particular, should provide for:

- Overlooking (surveillance) of public and semi-public spaces from surrounding buildings during the day and where possible at night;
- Direct and efficient movement routes through such spaces;
- Adequate signage indicating connections with other routes, and the location of space within the surrounding area for public reserves, walkways, and within Community Environments;
- Adequate lighting
- Integration of pedestrian systems with vehicle routes;
- The minimisation of any physical barrier to the reasonable movement of people within any public space."

Development in the Open Space Environment has been designed to reflect the above policies and the City's recreation strategies and Reserve Management Plans. Therefore, the development of parks facilities within the Open Space Environment in the City is generally a permitted activity when there is an Operative Reserve Management Plan.

Reserve Management Plans are required under the Reserves Act 1977 to be prepared for all reserves, and are a tool for managing the development and operation of parks, together with the rules of the Open Space Environment in the District Plan. The road closures and creation of the subject sites as reserve has evolved from the Piha reserve management plan that recommended a range of actions should be undertaken including restoration planting along the sand dunes.

5.0 Planning Framework

5.1 Auckland Regional Policy Statement

The Auckland Regional Policy Statement became operative in July 1999. Section 75(2) of the RMA 1991 provides that " a district plan must not be inconsistent with the Regional Policy Statement." This document is therefore important to consider in terms of any change to a District Plan.

The Auckland Regional Policy Statement states that:

"The extent of the coastal environment of the Auckland Region varies from place to place, depending on the natural and physical characteristics. For the purposes of the RPS, the coastal environment is considered to include three interrelated parts. These are:

- *Coastal Marine Area (CMA)*
- *Active coastal zone*
- *Landward component."*

Chapter 7 of the Auckland Regional Policy Statement contains objectives relating to the coastal environment. The four relevant objectives in part 7.3 state:

- "1. To protect outstanding natural features and landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna, and significant historic and cultural places and areas in the coastal environment.*
- 6. To maintain and enhance public access to and along the CMA and to publicly-owned land in the coastal environment.*
- 7. To enable an appropriate range of recreational opportunities to be undertaken in the coastal environment.*
- 9. 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 of the coastal environment."*

It is considered that the Proposed Plan Change is consistent with the Regional Policy Statement as it is providing for public access to the coast and by re-identifying land as Open Space, there is a clear intent by Council to provide for recreational opportunities. Lion Rock is clearly visible from many of the areas to be re-identified and this location and much of the West Coast is of significance to Te Kawerau a Maki and Ngati Whatua.

5.2 Waitakere City Council District Plan

The Waitakere District Plan has two layers, the Natural Areas and Human Environments that have equal status and regulate effects on earthworks, impermeable surfaces, vegetation clearance and bulk and location of buildings and structures. The subject land is not identified in the Regional Policy Statement Maps as being of any Significant Natural Heritage Areas and Landscape Quality, or Significant Landscape Sensitivity.

It is considered that the proposed Plan Change would not alter any Natural Area status of the reserve, but simply alter the Human Environment identification to bring it into line with other reserve land in the City that is zoned Open Space Environment.

6.0 The Proposed Plan Change

The proposed plan change will not seek to amend the following:-

- Open Space Rules, policies or objectives
- The Transport Environment rules, policies and objectives.

There will be no changes to the rules, policies and objectives of the Proposed Plan as the proposed Plan Change will only affect the Human Environment Maps relating to Titirangi/Glen Eden.

6.1 Assessment of Environmental Effects

6.2 Amenity/Landscape Effects

The use of the various sites as reserve land will not in itself alter the visual amenity of the Piha Coastal area. The subject land consists mainly of either sand dunes, kikuyu grass adjacent to the Weketahi stream with flax and young pohutukawa trees and areas that are roadside berms. The amenity of the landscape is its coastal views over the sea, sand and features such as Lion Rock.

6.2.1 Traffic/Transport

The Proposed Plan Change will not have any effect on traffic or transport in Piha.

6.2.2 Infrastructure

The sites are not serviced by stormwater or wastewater connection.

6.2.3 Noise

Any noise on Council reserves is likely to be generated by visitors and the Proposed Plan Change will not alter the level of noise associated with the reserve areas.

6.2.4 Cultural Heritage

There are no known archaeological or heritage issues associated with the land. These are not therefore a constraint to the proposed Plan Change. However, the re-identification of the subject land as Open Space may facilitate access to other coastal sites of significance.

6.2.5 Social/Economic

The subject sites provides visual amenity to the streetscape particularly for pedestrians and visitors. The sites form part of a network of local reserves in the Piha area. The coastal location provides an important social and aesthetic resource to the community.

6.3 Section 32 Considerations

Section 32 of the Resource Management Act 1991 requires a rigorous test to ensure that before any objective, policy, rule or other method is adopted. A local authority has had regard to:

- The necessity of the objective, policy or rule or other method; and
- Other means of achieving the purpose of the Resource Management Act 1991; and
- Reasons for and against adopting the proposed objective, policy or rule or other method; and
- Evaluation of the likely costs and benefits of the principal alternative means; including consideration of effectiveness and efficiency.

The Section 32 analysis circulated to all public libraries and service centres identified that the proposed rezoning was necessary and the most efficient and effective means of achieving the purpose of the Act.

It is summarised below.

6.4 The extent to which the proposed objective, policy, rules or other methods are necessary in achieving the purpose of the Act

It is considered that the existing identification of the land as Transport Environment is not appropriate for land with reserve status. Given that the subject land abuts residential land (Coastal Villages Environment), roads or coastal areas and reserves are not used for vehicular access; the Open Space identification, policies and objectives are more appropriate. Although pedestrian and vehicular access is associated with the Transport Environment, its zoning should be changed.

The proposed Plan Change to re-identify the portions of stopped road in Piha would not involve the adoption of any new objective, policy or method. The existing framework of policies and rules within the Proposed District Plan is adequate to address any adverse effects on natural and physical resources arising from land the resource use within the site being identified as Open Space. The Open Space Environment contemplates recreational use of the land that would be "low impact" in terms of the effects generated.

The Proposed Plan Change is "necessary" which has been defined as falling

Section 8 provides that in achieving the purpose of the Act, the principles of the Treaty of Waitangi (Te Tiriti O Waitangi) shall be taken into account. The proposed Plan Change is considered to be consistent with Section 8 by providing for an appropriate Human Environments identification of the land.

6.5 Other Means apart from Regulation to achieve the purpose of the RMA

Council is required to have regard to means other than regulation, which may be used in achieving the purpose of the Act. This includes non-statutory means such as education, provision of services, incentives and levying of

charges. Other means could be taking no action at all (i.e. removing all rules) or of retaining the existing rules (the status quo).

The principal alternative means to re-identifying the subject land Open Space are retaining the existing identification (the 'status quo' option), have no rules (the 'do nothing' option), scheduling the site in the District Plan or designating the site as a reserve.

6.6 Principal Alternative Means

The following alternative means have been identified as being the principal alternative means in the circumstances and are considered below:

- Retain the existing rules (the "status quo" option)
- Have no rules (the "do nothing" option)
- Schedule the site in the District Plan
- Create a Piha Special Reserve Area

6.7 Reasons for and against adopting the Proposed Plan Change and the principal alternative means.

- **Re-identifying the land from Transport Environment to Open Space Environment: the proposed Plan Change**

The proposed Plan Change is to re-identify the subject land from Transport Environment to Open Space Environment. The land has already been gazetted as reserve under the Reserves Act. However, the existing Human Environments identification is contrary to the status of the land as reserve. Changing the identification of the subject land is consistent with the policies and objectives of the District Plan and would bring the District Plan identification into line with other actions taken to date through stopping a portion of a legal road and gazetting it as reserve. The proposed Plan Change would clarify the position for the community or anyone selling or purchasing land adjacent to the subject sites. The Plan Change is consistent with the policies of the District Plan and the Auckland Regional Policy Statement in terms of enhancing recreational opportunities for the community in the coastal area.

The proposed Plan Change would contribute towards a sense of spaciousness in the urban environment and would be consistent with Waitakere City Council's Parks Strategy, which seeks:

"...quiet places, places of contemplation, places to soak in the views and vistas of the West Coast, Waitakere Ranges, wetlands, streams and the Waitemata Harbour."

The policies and objectives of the Transport Environment are not consistent with stopped road and land that has been gazetted as reserve. Sustainable management of the City's resources cannot be achieved through regulation based on inaccurate zonings and it would be inappropriate to do so. Re-

identification of the subject land would ensure that more appropriate rules would apply to the land and clarify an anomaly in the District Plan.

- **Have no rules (the “do nothing” approach)**

All land in Waitakere City has an Human Environments identification and a Natural Areas identification with effects-based rules. Therefore, a proposed Plan Change would need to contemplate that the land should not have any rules attached to it. This approach would be problematic as the subject land already has reserve status and the current Transport Environment identification is inconsistent with that status. However, virtually all other areas administered by the Auckland Regional Council, are identified as Open Space. If the subject land had no rules applying to it, any activity would be permitted. That would mean there would be no certainty for the community or Council on the range of effects that could be generated. In a broader context the Auckland Regional Policy Statement and District Plan seek to protect and enhance Natural Heritage. The “do nothing” approach would mean that the Council had not fulfilled its obligation to sustainably manage its natural and physical resources.

- **Schedule the subject land**

In this option, the Scheduled Sites Rules would replace those rules that would normally apply to the relevant Human Environment that the site is located within. This effectively allows for a spot zoning to occur with most of the activity complying with the underlying Human Environment Rules. There are additional scheduled site rules permitted specific activities or exemptions from design criteria. In this instance, if the site were to remain as Transport Environment with a “scheduled site” identification that specifically provided for recreational land use, this would still require a Plan Change. Scheduled sites normally also apply to existing activities such as service stations and dairies. It would be simpler and more transparent to re-identify the land for the intended recreational land use rather than try to achieve the same end through a scheduled activity.

- **Create a Piha Special Recreation Area**

Special Area Rules provide for activities particular to the individual site. The “Special Areas Definition” give meanings of the various activities provided for, and the rules specify the specific standards to be applied. Other standards also need to be met, which generally are those standards applying in the Human Environment nearest to the Special Area. Although creating a Piha Special Recreation Area may have an advantage in terms of making rules fit a local situation, it would create an anomaly to the extent that the Open Space Environment already has the appropriate rules, policies, and objectives to secure recreational use of the land.

It is considered more efficient to pursue the Proposed Plan Change given that the Council intends the land to be used for reserve purposes and has legally stopped the portions of road and gazetted them as reserve.

Evaluation of the likely costs and benefits of the principal alternative mans; including a consideration of effectiveness and efficiency

It would not be create a Piha Special Recreation Area as this would create an inconsistency in the District Plan between Open Space in Piha and in all other parts of the City. Scheduling the site would undermine the integrity of the district plan through using a spot-zoning tool that differentiates between Open Space in Piha and other parks/Open Space in the City. The no rules approach would create a hole in the district plan and still cost the same to process as the proposed Plan Change. It is considered that the proposed Plan Change is the most efficient and effective way to resolve the incorrect zoning of former stopped roads in Piha. Re-identifying the land from Transport Environment to Open Space Environment is consistent with the City's Open Space Strategy and an effective use of Council resources.

6.8 Analysis of submissions

No submissions were received on this proposed Plan Change. Therefore no further submissions could be called for.

7.0 Conclusions

The proposed Plan Change would re-identify the Human Environment of an existing reserve on the several pieces of stopped road in Piha from Transport Environment to Open Space Environment to provide the correct zoning for several reserves in the City. This change is important to ensure that the integrity of the District Plan is maintained and that the Plan reflects the current status of the land.

There would be no minor adverse effects arising from the Proposed Plan Change because the land provides visual amenity in a coastal environment.

8.0 RECOMMENDATION

- (1) That the information be received.
- (2) That Proposed Plan Change 5 to re-identify former stopped roads in Piha legally described Sections 1 and 2 on Survey Office Plan 70265, Section 1 on Service Office Plan 70241, Sections 1 and 2 on Survey Office Plan 70252 and Section 1 on Survey Office Plan 70155 and Section 1 and 2 on Survey Office Plan 70265, Section 1 on Survey Office Plan 70241 and Section 2 on Survey Office and Section 1 on Survey Office Plan 70252 from Transport Environment to Open Space Environment be approved.

Report prepared by: Alina Hughes, Planner: Policy Implementation
Report released by: Philip Brown Group Manager, Planning and Community Services