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**Memorandum****To: Acting Policy Manager: Paula Hansen****From: District Planner: Paul Waanders****Date: 29 July 2020****Subject: Clause 20A Correction of the District Plan in relation to Rule 12.10.18 Traffic Intensity**

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**Background:**

1. A request has been received for an investigation and possible correction to Note 4 in Rule 12.10.18 Traffic Intensity. The wording of this note was the result of a resolution of an appeal from Hancock Forest Management NZ Ltd on the Kaipara District Plan as amended by Council resolution.
2. Hancock Forest Management NZ Ltd lodged an appeal to the Environment Court on the approved Kaipara District Plan with relation to Rule 12.10.18 Traffic Intensity. They requested that the rule be deleted or an exemption for temporary or seasonal traffic movements including those from forestry activities provided. Several sec 274 parties including other forestry companies in support and the Department of Conservation opposing joined the appeal. (Attachment A and B shows the appeal)
3. During Court assisted mediation it was made clear that the appellant opposes Rule 12.10.18 on the basis that the controls on traffic intensity proposed were not appropriate for seasonal activities such as forestry. The appellant sought that temporary or seasonal traffic movements, including those from forestry activities, should be exempted from the controls on traffic intensity under Rule 12.10.18.
4. The agreement reached was that the parties agreed that the controls on traffic intensity under Rule 12.10.18 be amended to exempt existing forestry activities, including harvesting and replanting within five years, but apply to any new activities. (Attachment C).
5. The Court Consent Order was issued on 19 July 2012 and contained the following provision. (Attachment D)

## Copy of Court Consent Order with the highlighted phrases included

## 12.10.18 Traffic Intensity

Rule	Parameter	Rural Permitted Activity Performance Standard	Activity Status if the Activity does not meet the Performance Standard	Assessment Criteria
12.10.18	Traffic Intensity	<p>Any activity is permitted if the cumulative traffic generated on any <b>road</b> does not exceed 60 daily one way movements based on the Traffic Intensity Factor Guidelines in Appendix 25F. Except that single <b>dwelling</b>s, temporary military activities and construction traffic (associated with the establishment of an activity) are exempt from this standard.</p> <p><b>Note 1:</b> <i>Traffic Intensity factor</i> guidelines are included in Appendix 25F of this Plan and can be used to calculate the likely traffic generation of particular activities. The Traffic Intensity Factor is based on the average daily one way traffic movements for a particular activity (and therefore</p>	Restricted Discretionary Activity	<p>Where an activity is not permitted by this Rule, <b>Council</b> will restrict its discretion to the following matters when considering an application for Resource Consent:</p> <ul style="list-style-type: none"> <li>i) The time of day when any extra vehicle movements will occur;</li> <li>ii) The distance between the location of vehicle movements and adjacent properties;</li> <li>iii) The width and capacity of any <b>road</b> to be able to cope safely with vehicle movements;</li> </ul>
		<p>allows for seasonal variations). Applicants may be required to apply to the <b>Council</b> for a Certificate of Compliance where an activity has the potential to generate 50 or more daily one way movements.</p> <p><b>Note 2:</b> As part of an application for Certificate of Compliance or Resource Consent under this rule <b>Council</b> may request that a Traffic Impact Assessment prepared by a suitably qualified Traffic Engineer be provided.</p> <p><b>Note 3:</b> This calculation only applies when establishing a new activity on a <b>site</b>. However, the Traffic Intensity Factor for the existing uses on site (apart from those exempted below) will be taken into account when assessing new activities in order to address cumulative <b>effects</b>.</p> <p><b>Note 4:</b> For clarification, the replanting (within 5 years) and harvesting of a production forest is not considered a 'new activity' under this rule.</p>		<ul style="list-style-type: none"> <li>iv) The <b>effect</b> of traffic on the amenity and character of the surrounding area;</li> <li>v) The effect of changing capacity on the amenity and character (including natural character) of the surrounding area;</li> <li>vi) The nature of the surface (sealed or otherwise) on the adjoining road network;</li> <li>vii) The potential for dust nuisance to be generated from the <b>site</b> and its effects on adjoining properties and prevailing wind direction;</li> <li>viii) The safety and efficiency of vehicle access onto the road;</li> <li>ix) The volume and speed of traffic on the roads affected;</li> <li>x) The hierarchy of the roads</li> </ul>

However, the published Operative District Plan shows the following changes to Rule 12.10.18 Note 4: and has an added word 'not' included which nullifies the Court Consent Order by the double negative and therefore harvesting of older production forest to be excluded.

12.10.18	Traffic Intensity	<p>Any activity is permitted if the cumulative traffic generated on any <b>road</b> does not exceed 60 daily one way movements based on the Traffic Intensity Factor Guidelines in Appendix 25F. Except that single <b>dwelling</b>s, temporary military activities and construction traffic (associated with the establishment of an activity) are exempt from this standard.</p> <p><b>Note 1: Traffic Intensity factor</b> guidelines are included in Appendix 25F of this Plan and can be used to calculate the likely traffic generation of particular activities. The Traffic Intensity Factor is based on the average daily one way traffic movements for a particular activity (and therefore allows for seasonal variations). Applicants may be required to apply to the <b>Council</b> for a Certificate of Compliance where an activity has the potential to generate 50 or more daily one way movements.</p> <p><b>Note 2:</b> As part of an application for Certificate of Compliance or Resource Consent under this rule <b>Council</b> may request that a Traffic Impact Assessment prepared by a suitably qualified Traffic Engineer be provided.</p> <p><b>Note 3:</b> This calculation only applies when establishing a new activity on a <b>site</b>. However, the Traffic Intensity Factor for the existing uses on site (apart from those exempted below) will be taken into account when assessing new activities in order to address cumulative <b>effects</b>.</p> <p><b>Note 4:</b> For clarification, the replanting (within 5 years) and <u>not</u> harvesting of a production forest is not considered a 'new activity' under this rule.</p>
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6. It is not clear how and why the changes were made, but the double negative is contrary to the Consent Memorandum signed by all parties, which was then encapsulated in the Court Consent Order. In terms of section 293(1) of the Resource Management Act 1991 the Court may direct the local authority, after a hearing, to amend the District Plan as ordered. These changes are made under Clause 16 of the First Schedule to the RMA.

### Legal Position

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

In this case it is clear that the parties and the Court agreed that older plantations (including those planted within 5 year) are not considered as "new planting" and are therefore exempt from the Traffic Intensity Rule 12.10.18.

It is not clear where the double negative comes from but is clear that planning and harvesting of 5 year and older plantation forestry are exempt from the provisions of the Rule.

## Delegation

The authority to make minor amendments to correct minor errors on an Operative District Plan has been delegated to inter alia the Policy Manager subject to the condition that this decision has to be reported to the next Council meeting.

## Recommendation

That the erroneous Note 4 to Rule 12.10.18 be replaced with the provisions as agreed by all the parties in accordance with the Consent Court Order ENV-2011-ALK-000225 dated 19 July 2012

**Note 4:** For clarification the replanting (within 5 years) and harvesting of a production forest is not considered a 'new activity' under this rule."

That the parties be informed and

That the report be submitted to Council for information



Paul Waanders: District Planner

Recommendation is approved



Paula Hansen

Acting Policy Manger

Date: 30 July 2020

[Attachment A Appeal Hancock Forest Management NZ Ltd](#)

[Attachment B DOC as Sec 274 Party](#)

[Attachment C Consent Memorandum](#)

[Attachment D Court Consent Order](#)