

# Planners Report 24

## Variation 1: Lifestyle Zones and Minden Structure Plan Area

### Lifestyle Section – Matters of Discretion (Restricted)

#### 16A.6.3 - Subdivision within the Minden Structure Plan Area

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## 1.0 Background

- 1.1 The Matters of Discretion (Restricted) in Rule 16A.6.3 apply to subdivisions within the Minden Lifestyle Zone that do not qualify as Controlled Activities, that is, in those circumstances where there is a genuine risk of instability or where that level of risk is unknown.
- 1.2 These matters to which Council has restricted its discretion apply in addition to the Matters of Control in Rule 16A.5.2 and require a higher level of geotechnical assessment for the selection of "Approved Building Sites".

## 2.0 Issues

- 2.1 A total of 13 submission points were received in response to the proposed Matters of Discretion for subdivision within the Minden Lifestyle Structure Plan area. Of these seven were in opposition, three were in support and three in support with amendments. Three further submission points were received.
- 2.2 The main issues raised by submitters can be summarised as follows:

### **Rule 16A.6.3 (a) (i) Adverse effects from earthworks**

- 2.2.1 Bay of Plenty Regional Council wants to strengthen this rule so that adverse effects are avoided on ecological values, soil health and water quality (suggested wording in Option 2).
- 2.2.2 Another submitter has suggested that it be the design of earthworks that minimises effects (suggested wording in Option 3).
- 2.2.3 Pirirakau Incorporated sought that the earthworks procedures used in Omokoroa (Stage 2) were also used in the Minden Lifestyle Zone Structure Plan and that a Pirirakau cultural monitor is present during topsoil stripping.

### **Rule 16A.6.3 (a) (ii)**

#### **Setback of building sites from terraces and steep slopes**

- 2.2.4** Two submitters thought that it was better to leave it to a category one geotechnical engineer to prescribe the setback required.
- 2.2.5** Two submitters believed that the wording provisions of this rule were too open to interpretation and that including specifications with exact dimensions was not appropriate, therefore the rule should be deleted or reworded.
- 2.2.6** Two submission points sought that each site should be treated individually and judged on its own merits and that the provision should therefore be deleted.
- 2.2.7** One submitter suggested that a 10m setback would be adequate where no significant ground water seeps into areas behind the slope, thus obviating the risk of slumping.

### **Rule 16A.6.3 (a) (iii)**

#### **Adverse effects from stormwater and wastewater systems.**

- 2.2.8** Bay of Plenty Regional Council and one other submitter seek a change to this rule so adverse effects are avoided on ecological values, soil health and water quality (suggested wording in Option 7)
- 2.2.9** Another submitter raised that stormwater systems by their very nature will often have to extend to adjacent lots to reach the gully floor and want changes made to protect adjoining lots (suggested wording in Option 8).

## **3.0 Options**

### **3.1 Option 1**

- 3.1.1** That there is NO CHANGE to Rule 16A.6.3 (a) "Subdivision within the Minden Lifestyle Structure Plan Area"

### **3.2 Option 2**

- 3.2.1** Amend Rule 16A.6.3 (a) (i) as follows;

Earthworks required in forming each building site and access roads/privateways in the subdivision will ~~have less than minor~~ avoid or mitigate any adverse effects (inclusive of stability) within the site and will have no adverse effects on the stability of adjacent land, ecological values, soil health and water quality.

### **3.3 Option 3**

#### **3.3.1** Amend Rule 16A.6.3 (a) (i) as follows;

Earthworks required in forming each building site and access roads/privateways in the subdivision will ~~have less than minor~~ be designed to minimise adverse effects within the site and will have no adverse effects on the stability of adjacent land.

### **3.4 Option 4**

#### **3.4.1** Amend Rule 16A.6.3 (a) (i) with wording that ensures earthworks conform with Tikanga Maori Earthworks Procedures for Omokoroa and a requirement that a Pirirakau cultural monitor is present during topsoil stripping.

### **3.5 Option 5**

#### **3.5.1** Delete Rule 16A.6.3 (a) (ii) in its entirety - and instead rely on a "category one" geotechnical engineer to prescribe the setback required.

### **3.6 Option 6**

#### **3.6.1** Add to Rule 16A.6.3 (a) (ii) an exemption for a 10m setback in cases where no significant ground water seeps into areas behind the slope.

### **3.7 Option 7**

#### **3.7.1** Reword Rule 16A.6.3 (a) (ii) to be less ambiguous and open to interpretation.

### **3.8 Option 8**

#### **3.8.1** That Rule 16A.6.3 (a) (iii) is amended as follows:

"Stormwater and wastewater systems can be constructed and operated within each lot with no adverse effects on the stability of the adjacent land, ecological values, soil health and water quality."

### **3.9 Option 9**

#### **3.9.1** That Rule 16A.6.3 (a) (iii) is amended as follows:

Stormwater and wastewater systems can be constructed and safely operated within each lot, and across the lot it is draining through in the case of stormwater with no adverse effects on the stability of the adjacent land.

## 4.0 Advantages and Disadvantages

<b>4.1 Option 1: That there is NO CHANGE to Rule 16A.6.3 (a) "Subdivision within the Minden Lifestyle Structure Plan Area".</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>Retains the requirement for a geotechnical report from a suitably qualified professional to approve house sites that are safe for building.</li> </ul>	<ul style="list-style-type: none"> <li>Wording changes may improve these rules.</li> </ul>

<b>4.2 Option 2: Amend Rule 16A.6.3 (a) (i) as follows;</b>	
<b>Earthworks required in forming each building site and access roads/ privateways in the subdivision will <del>have less than minor</del> <u>avoid or mitigate any</u> adverse effects <u>(inclusive of stability)</u> within the site and will have no adverse effects on the stability of adjacent land, <u>ecological values, soil health and water quality.</u></b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>The wording "avoid or mitigate" is more specific and actionable.</li> <li>Addition of the words "any" and "inclusive of stability" ensures the design of earthworks avoid and mitigate all possible effects on-site.</li> <li>Wording ensures there are no adverse effects on ecological features.</li> </ul>	<ul style="list-style-type: none"> <li>Restricting control over "any" adverse effect leaves this rule vague and non-targeted, whereas the purpose is actually to manage instability. Other effects of earthworks are dealt with in other provisions throughout the District Plan e.g. Natural Environment Section.</li> <li>It is questionable whether the control of earthworks for the purpose of avoiding adverse effects on soil health and water quality in the lifestyle area is a District Council function.</li> </ul>

<b>4.3 Option 3: Amend Rule 16A.6.3 (a) (i) as follows;</b>	
<b>Earthworks required in forming each building site and access roads/ privateways in the subdivision will <del>have less than minor</del> <u>be designed to minimise adverse</u> effects within the site and will have no adverse effects on the stability of adjacent land.</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>Provides clearer direction that adverse effects must be considered at design stage.</li> </ul>	<ul style="list-style-type: none"> <li>The emphasis on design may exclude other aspects of earthworks being reserved discretion over, such as the carrying out of earthworks.</li> </ul>

**4.4 Option 4: Amend Rule 16A.6.3 (a) (i) with wording that ensures earthworks conform with Tikanga Maori Earthworks Procedures for Omokoroa and a requirement that a Pirirakau cultural monitor is present during topsoil stripping.**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Provides certainty to Pirirakau that those identified sites of cultural significance (from background cultural report) will be protected.</li> <li>• Avoids damage to any other unrecorded archaeological sites that are of cultural significance.</li> <li>• The Minden was a main passage way for Maori and therefore a number of these sites may exist.</li> <li>• For Pirirakau, they would have the right to suggest road names to Council.</li> </ul>	<ul style="list-style-type: none"> <li>• The Omokoroa Structure Plan had these provisions specifically introduced because of the area's settlement history and based on known sites and an expected large number of unrecorded sites.</li> <li>• No information has yet been provided to show that the Minden Area requires the same level of control.</li> <li>• Requiring a cultural monitor at every subdivision or development creates costs and uncertainty for landowners.</li> <li>• There is already a process in place for the protection of unrecorded and discovered archeological sites administered by the New Zealand Historic Places Trust (NZHTP).</li> <li>• Council practice is to inform by an advice note on resource consent decisions informing applicants of the process which includes notifying NZHTP upon discovery of any archeological feature.</li> </ul>

**4.5 Option 5: Delete Rule 16A.6.3 (a) (ii) in its entirety - and instead rely on a category one geotechnical engineer to prescribe the setback required.**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Current rule considered onerous.</li> <li>• Too prescriptive for a matter of discretion as does not allow room for the selection of the best option.</li> </ul>	<ul style="list-style-type: none"> <li>• Subdivision in this instance is a Restricted Discretionary Activity; therefore deleting the rule will remove any requirement for house sites to be set back from steep slopes, because only those matters to which discretion is stated can be considered.</li> <li>• Likewise, specific wording would be needed in order to require a geotechnical engineer to prescribe a setback.</li> </ul>

**4.6 Option 6: Add to Rule 16A.6.3 (a) (ii) an exemption for a 10m setback in cases where no significant ground water seeps into areas behind the slope.**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>Less stringent than current wording.</li> </ul>	<ul style="list-style-type: none"> <li>Wording is also prescriptive.</li> <li>10m setback is arbitrary.</li> <li>Hard to determine what a "significant" amount of water seepage would be, before an exemption is allowed.</li> </ul>

**4.7 Option 7: Reword Rule 16A.6.3 (a) (ii) to be less ambiguous and open to interpretation.**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>Clearer rules are easier to administer.</li> <li>Retaining the rule allows for any apparent issues of this nature to be addressed.</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>

**4.8 Option 8: That Rule 16A.6.3 (a) (iii) is amended as follows:**

**"Stormwater and wastewater systems can be constructed and operated within each lot with no adverse effects on the stability of the adjacent land, ecological values, soil health and water quality."**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>Wording ensures there are no adverse effects on ecological features.</li> </ul>	<ul style="list-style-type: none"> <li>It is questionable whether controls for avoiding adverse effects on soil health and water quality are a District Council function.</li> </ul>

**4.9 Option 9: That Rule 16A.6.3 (a) (iii) is amended as follows:**

**Stormwater and wastewater systems can be constructed and safely operated within each lot and the lot it is draining through in the case of stormwater with no adverse effects on the stability of the adjacent land.**

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>Considers adverse effects on all lots that may have the potential to be affected.</li> </ul>	<ul style="list-style-type: none"> <li>Ensuring that these systems are "safely operated" is not a resource management issue.</li> </ul>

## 5.0 Discussion

### 5.1 Option 1 – No change

**5.1.1** Because of the known instability issues, a geotechnical report is needed to confirm that a building site will be safe for building and that any other adverse effects on stability will be avoided.

**5.1.2** The need to deal with such matters is supported by submitters on the whole; however, the exact drafting of the rules has been challenged by a number of them. In the majority, submitters have actually sought for the rules to be strengthened. These suggestions are now discussed below.

## **5.2 Options 2 and 3 – Earthworks**

### **5.2.1 Replacing the words “will have less than minor effects” with the words “avoid and mitigate”.**

**5.2.1.1** This wording is specific and would provide clearer direction to developers on what actions and expectations there are for managing effects.

### **5.2.2 Replacing the words “will have less than minor effects” with the words “will be designed to minimise adverse effects”.**

**5.2.2.1** The emphasis on design may exclude other aspects of earthworks being reserved discretion over, such as the carrying out of earthworks.

### **5.2.3 Adding the word “any” before adverse effects.**

**5.2.3.1** This change attempts to create a ‘catch-all’ rule to cover all possible adverse effects for earthworks, whereas the intention of this rule is only to deal specifically with the adverse effects of instability.

**5.2.3.2** Also, there are earthworks controls in the District Plan which already deal with various other adverse effects such as in the Natural Environment, Landscape and Heritage Sections.

**5.2.3.3** Council (as a District Council) is limited in its function and capacity with respect to managing earthworks. For the purpose of the Minden Lifestyle Zone, Council has restricted discretion over earthworks with regard to the potential effect on land instability only with other matters (dust and sediment control) left to the Regional Council.

### **5.2.4 Adding the words “ecological values”**

**5.2.4.1** “Ecological values” are mainly addressed by other sections of the District Plan, for example the Natural Environment section. The rules included in 16A.6.3 are more specific to the impact on soil stability as a result of earthworks.

## **5.2.5 Adding the words “soil health and water quality”**

**5.2.5.1** Managing earthworks to protect “soil health and water quality” is generally considered a Regional Council function.

**5.2.5.2** However, the Regional Council has asked that this wording be added, otherwise there won't be a trigger for assessing the effects of earthworks below a volume of 5000m<sup>3</sup>. This is the volume at which they require resource consent for earthworks.

**5.2.5.3** It is Council's protocol to refer subdivision consents to the Regional Council for comments, even if the earthworks are below 5000m<sup>3</sup>.

**5.2.5.4** The main benefit of adding this wording to the Lifestyle Section under this process is that it avoids unnecessary delay. The Regional Council would otherwise need to prepare a change to the Regional Policy Statement which may be some time away and would need to go through a public participatory process as well.

## **5.3 Option 4 – Tikanga Maori Earthwork Procedures**

**5.3.1** The Earthworks Procedures in Appendix 7 (Page 8) were introduced especially for the Omokoroa Structure Plan (Stage 2) under Plan Change 69.

**5.3.2** These procedures recognised the unique settlement history of Maori in Omokoroa and reflected the known archaeological features and accepted that there were a number of unrecorded archeological sites likely to arise as a result of any site works.

**5.3.3** Employing the same procedures for the Minden Lifestyle Zone would give Pirirakau that same certainty that any unrecorded sites would be identified then preserved, however at this stage no evidence has been provided that demonstrates such a level of archaeology to justify these same provisions for the Minden.

**5.3.4** Nonetheless, the NZHTP is required to be notified upon discovery of any unrecorded archeological sites. Council advises all resource consent holders by advice note of their obligations at the time of granting consent so that they are aware of the procedures they have to follow.

## **5.4 Options 5, 6 and 7 - Building setbacks from slopes and terraces**

**5.4.1** Deleting this rule (Option 5) would also remove any requirement for a geotechnical engineer to prescribe a building setback. This is because it is a restricted matter of discretion, and Council

cannot reserve its discretion on issues other than the listed assessment criteria.

**5.4.2** An exemption for a smaller setback of 10m in cases where no significant amount of ground water has seeped into the slope will be difficult to measure.

**5.4.3** The best option is to reword this rule in a more general nature so that a setback is still an option. This will still require a geotechnical engineer to evaluate the matter, however also allows room for a more relevant engineered solution.

## **5.5 Options 8 and 9 – Stormwater and Wastewater**

**5.5.1** As indicated in 5.4.2 “ecological values” are mainly addressed by other sections of the District Plan, for example the Natural Environment section. The rules included in 16A.6.3 are more specific to the impact on soil stability as a result of earthworks.

**5.5.2** Council staff are also of the opinion that the submission point to include the word “safely” operated in Rule 16A.6.3 is not a resource management issue.

## **6.0 Recommendation**

**6.1** That the Matters of Discretion in 16A.6.3 (a) are retained as notified subject to the following amendments.

**6.2** That Rule 16A.6.3 (a) (i) is amended as follows;

Earthworks required in forming each building site and access roads and/or privateways in the subdivision ~~shall will have less than minor avoid or mitigate~~ adverse effects on the stability of the land within the site and will have no adverse effects on the stability of adjacent land.”

**6.3** That Rule 16A.6.3 (a) (ii) is replaced with the following general wording (or similar);

“Each building site will be required to be set back an appropriate distance, as recommended by a geotechnical engineer, from any terraces or steep slopes to the extent that there are no adverse effects on the stability of the land or any adjacent land.

**6.4** That the following wording be added to Rule 16A.6.3 (a) (iii);

Stormwater and wastewater systems can be constructed and operated within each lot and the lot it is draining through in the case of stormwater, with no adverse effects on the stability of the adjacent land.

6.5 The following submissions are therefore:

**6.6 Accepted**

Submission	Point Number	Name
20	3	Hume, Nic
57	6	Powerco Limited
66	2	Sobyte, Deidre Gail
49	42, 43	Surveying Services
24	4, 6	Te Puna Heartlands
27	4	Walpole, Erica
40	7	Western Bay of Plenty District Council

**6.7 Accepted in Part**

Submission	Point Number	Name
6	6	Bay of Plenty Regional Council
29	18	Cobb Ray & Michelle
73	3	Hume, Cushla
FS 90	16	Milne, Aaron Keith Support 6.6
FS 89	15	NZ Transport Agency Support 6.6
24	5	Te Puna Heartlands

**6.8 Rejected**

Submission	Point Number	Name
38	19	Gravit, Jo
FS 88	12	Hatton, GW & M Supports 38.19
19	10	Pirirakau Incorporated Society

## 7.0 Reasons

**7.1 Option 1**

**7.1.1** Because of the known instability issues, a geotechnical report is needed to confirm that a building site will be safe for building and that any other adverse effects on stability will be avoided.

**7.2 Option 2**

**7.2.1** The wording "avoid or mitigate" is more specific and actionable.

**7.2.2** "Ecological values" are mainly addressed by other sections of the District Plan, for example the Natural Environment section. The rules included in 16A.6.3 are more specific to the impact on soil stability as a result of earthworks.

**7.2.3** The other suggested changes did not add to the rules effectiveness.

**7.2.4** Managing earthworks to protect “soil health and water quality” is generally considered a Regional Council function. It is Council's protocol to refer subdivision consents to the Regional Council for comments, even if the earthworks are below 5000m<sup>3</sup>.

### **7.3 Option 3**

**7.3.1** Adding the word “design” limits consideration to only the design of earthworks.

### **7.4 Option 4**

**7.4.1** The Omokoroa Structure Plan had these provisions specifically introduced because of the area's settlement history and based on known sites and expected large number of unrecorded sites.

**7.4.2** Requiring a cultural monitor at every subdivision or development creates costs and uncertainty for landowners.

**7.4.3** There is already a process in place for the protection of unrecorded and discovered archeological sites administered by the New Zealand Historic Places Trust (NZHTP).

**7.4.4** Council practice is to inform by an advice note on resource consent decisions informing applicants of the process which includes notifying NZHTP upon discovery of any archeological feature.

### **7.5 Options 5, 6 and 7**

**7.5.1** Deleting Rule 16A.6.3 (a) would not default to a requirement for a geotechnical engineer to prescribe a setback. All matters which Council need to reserve discretion over need to be stated at restricted Discretionary Activity level.

### **7.6 Option 8**

**7.6.1** “Ecological values” are mainly addressed by other sections of the District Plan, for example the Natural Environment section. The rules included in 16A.6.3 are more specific to the impact on soil stability as a result of earthworks.

**7.6.2** Managing earthworks to protect “soil health and water quality” is generally considered a Regional Council function. It is Council's protocol to refer subdivision consents to the Regional Council for comments, even if the earthworks are below 5000m<sup>3</sup>.

## **7.7 Option 9**

- 7.7.1** Council staff are also of the opinion that the submission point to include the word "safely" operated in Rule 16A.6.3 is not a resource management issue.
- 7.7.2** The proposed wording includes the lots that will be affected by stormwater run off.