

Decision Report

Plan Change 53 – Protection Lots for Esplanades

1.0 Introduction

- 1.1** This report shows the decisions made on the topics in the Planning Report and then shows the whole of the Plan Change i.e. how the full notified Plan Change and subsequent decisions on topics are proposed to change the District Plan First Review.
- 1.2** For topics, any changes to rules are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in **red**, and any changes resulting from decisions in **blue**.
- 1.3** For the whole of the Plan Change, any changes to rules are shown as follows; existing District Plan text in black, and changes (being the culmination of the notified Plan Change and subsequent decisions) in **red**.

2.0 Topic 1: Targeting of specific waterways

2.1 Decision

That Appendix 4A (targeting five specific waterways) is retained as notified.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
8	6	Bay of Plenty Regional Council

Accepted in part

Submission	Point Number	Name
22	7	D155 Limited

Rejected

Submission	Point Number	Name
15	1	Poripori Farm A Trust
6	1	Gideons Valley Trust
FS83	2	Gideons Valley Trust

2.2 Reasons

- 2.2.1** Targeting specific waterways was selected because it is likely to result in most of the esplanades on the targeted waterways being obtained. This is opposed to targeting all waterways which may result in few esplanade networks ever being established. Targeting all waterways would also result in a large number

protection lots being created which runs counter to the rural subdivision strategy. Other proposed esplanades can still be considered for protection lot subdivision as a non-complying activity.

- 2.2.2 There is no scope to remove proposed esplanade reserves and strips from the properties of Poripori Farm A Trust and Gideons Valley Trust. These already exist in the District Plan and were not introduced through this Plan Change.

3.0 Topic 2: Standards allowing landowners to combine proposed esplanades to meet the minimum feature size of 500m

3.1 Decision

That proposed rule 18.4.2 (h) (vii) be amended as follows;

(vii) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on the provision of land for esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.

- 1. Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit and minimum average feature sizes for the creation of two to five on-site Protection Lots or any number of Transferable Protection Lot credits are shown in the table below.

<u>Feature Type</u>	<u>Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit</u>	<u>Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits</u>				
		<u>Avg</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Esplanade Reserves/Strips In Appendix 4A</u>	<u>500m in length 130m in length 20m wide</u>	<u>1km 20m</u>	<u>2km 20m</u>	<u>3km 20m</u>	<u>4km 20m</u>	<u>5km 20m</u>
Note <u>The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</u>						

- ~~2. Any esplanade reserve or strip identified in Appendix 4A is able to be combined with any other esplanade reserve or strip~~

identified in Appendix 4A with the express intention of combining their lengths to meet the specified minimum feature size for a single on-site Protection Lot or Transferable Protection Lot credit.

3. ~~Where esplanade reserves or strips have been combined to meet the minimum feature size in accordance with the above, all of the esplanade reserves or strips will be protected and the single on-site Protection Lot or Transferable Protection Lot credit shall only benefit one of the contributing lots.~~
4. Within the subject existing lot or lots, where an esplanade reserve or strip exceeds the above sizes then the entire feature or features shall be protected.

That Appendix 4A is amended as follows;

Schedule of Proposed Esplanade Reserves and Strips Eligible for Protection Lots

<u>Appendix 4 Reference</u>	<u>ParcelID</u>	<u>Legal Description</u>	<u>Area (m²)</u>	<u>Length (m)</u>
<u>Uretara</u>				
<u>1(4)</u>	<u>1109/631</u>	<u>Lot 2 DPS48753</u>	<u>190,983</u>	<u>791</u>
<u>1(4)</u>	<u>1116/10</u>	<u>Lot 2 DPS80374</u>	<u>64,852</u>	<u>161</u>
<u>1(4)</u>	<u>1116/13</u>	<u>Lot 1 DP338589</u>	<u>63,525</u>	<u>714</u>
<u>1(4)</u>	<u>1116/2410</u>	<u>Lot 6 DPS33673</u>	<u>67,726</u>	<u>533</u>
<u>1(4)</u>	<u>1116/2540</u>	<u>Lot 11 DPS34349</u>	<u>1,886</u>	<u>10</u>
<u>1(4)</u>	<u>1118/1601</u>	<u>Lot 1 DPS29667</u>	<u>63,040</u>	<u>617</u>
<u>1(4)</u>	<u>1118/223</u>	<u>Lot 3 DPS67279</u>	<u>94,691</u>	<u>311</u>
<u>1(4)</u>	<u>1122/1264</u>	<u>Pt Lot 1 DPS16412</u>	<u>56,705</u>	<u>641</u>
<u>Ohourere</u>				
<u>1(11)</u>	<u>1304/148</u>	<u>Pt Lot 4 DP15898</u>	<u>152725</u>	<u>634.24</u>
<u>1(11)</u>	<u>1304/151</u>	<u>Lot 1 DPS1013</u>	<u>2672</u>	<u>203.74</u>
<u>1(11)</u>	<u>1304/4888</u>	<u>Te Irihanga 2A Block</u>	<u>22999</u>	<u>762.89</u>
<u>1(11)</u>	<u>1304/98</u>	<u>Pt Lot 3 DPS58017</u>	<u>74033</u>	<u>485.08</u>
<u>1(11)</u>	<u>1304/99</u>	<u>Pt Lot 1 DPS10175</u>	<u>3339</u>	<u>74.52</u>
<u>1(11)</u>	<u>1325/3671</u>	<u>Lot 3 DPS59030</u>	<u>345073</u>	<u>1278.59</u>
<u>Wairoa</u>				
<u>1(17)</u>	<u>1325/301</u>	<u>Pt Lot 1 DP27916</u>	<u>14744</u>	<u>153.47</u>
<u>1(17)</u>	<u>1325/3642</u>	<u>Lot 1 DPS62108</u>	<u>57608</u>	<u>361.38</u>
<u>1(17)</u>	<u>1325/3669</u>	<u>Lot 4 DPS59030</u>	<u>81920</u>	<u>418.72</u>
<u>1(17)</u>	<u>1325/461</u>	<u>Lot 2 DP27916</u>	<u>10972</u>	<u>157.55</u>
<u>3(Other)</u>	<u>1310/238</u>	<u>Pt Poripori Farm A Block</u>	<u>361300</u>	<u>4343.01</u>
<u>3(4)</u>	<u>3008/115</u>	<u>Pt Allot 144 Te Papa PSH</u>	<u>194445</u>	<u>297.95</u>
<u>3(4)</u>	<u>3008/116</u>	<u>Pt Allot 143 Te Papa PSH</u>	<u>137402</u>	<u>401.09</u>
<u>3(4)</u>	<u>3008/8624</u>	<u>Lot 3 DPS287</u>	<u>7318</u>	<u>215.28</u>

<u>3(4)</u>	<u>3008/9110</u>	<u>Lot 3 DPS374</u>	<u>4411</u>	<u>376.56</u>
<u>3(4)</u>	<u>3008/9114</u>	<u>Lot 2 DPS374</u>	<u>2698</u>	<u>138.32</u>
Waimapu				
<u>1(29)</u>	<u>1349/1058</u>	<u>Lot 4 DP22965</u>	<u>36476</u>	<u>192.19</u>
<u>1(29)</u>	<u>1349/13</u>	<u>Pt Lot 2 DP22964</u>	<u>17996</u>	<u>591.79</u>
<u>1(29)</u>	<u>1349/1774</u>	<u>Lot 1 DPS58351</u>	<u>67043</u>	<u>283.61</u>
<u>1(29)</u>	<u>1349/2060</u>	<u>Lot 2 DPS42381</u>	<u>115899</u>	<u>661.78</u>
<u>1(29)</u>	<u>1349/51</u>	<u>Lot 4 DP350004</u>	<u>45811</u>	<u>207.28</u>
<u>1(29)</u>	<u>1352/13496</u>	<u>Pt Section 25 Ohauti SETT</u>	<u>591626</u>	<u>605.53</u>
<u>1(29)</u>	<u>1352/9586</u>	<u>Lot 3 DPS47615</u>	<u>103937</u>	<u>819.94</u>
<u>1(29)</u>	<u>1481/2931</u>	<u>Lot 1 DP34157</u>	<u>25837</u>	<u>348.03</u>
<u>1(30)</u>	<u>1347/2039</u>	<u>Lot 3 DP15326</u>	<u>20249</u>	<u>254.07</u>
<u>1(30)</u>	<u>1347/2343</u>	<u>Lot 5 DP15326</u>	<u>13360</u>	<u>184.63</u>
<u>1(30)</u>	<u>1472/2591</u>	<u>Lot 3 DPS53905</u>	<u>73491</u>	<u>372.17</u>
Tauranga Harbour				
<u>2(1)</u>	<u>1045/2517</u>	<u>Pt Allot 5 Tahawai PSH</u>	<u>392816</u>	<u>1085.03</u>

The following submissions are therefore:

Accepted

Submission	Point Number	Name
22	7	D155 Limited

3.2 Reason

3.2.1 While giving protection lots for each of the proposed esplanades in Appendix 4A allows slightly more on-site protection lots to be created in the Rural Zone and rewards some landowners much less than others in terms of how much land they need provide before receiving a protection lot (when compared to the notified proposal), it is more likely to achieve the purpose of the Plan Change.

4.0 Topic 3: Advice note on compensation not being payable in accordance with s237E (2) of the RMA

4.1 Decision

4.1.1 That the advice note after Rule 18.4.2 (h) (vii) (4) be deleted.

~~**Advice Note:** Esplanade reserves and esplanade strips created through this rule will not receive compensation in accordance with section 237E(2) of the RMA.~~

4.1.2 That a new performance standard is added to Rule 18.4.2 (h) (vii) as follows;

["Landowners shall waive the right to compensation under s237E\(2\) of the RMA".](#)

The following submissions are therefore:

Accepted

Submission	Point Number	Name
8	6	Bay of Plenty Regional Council

Accepted in Part

Submission	Point Number	Name
22	6	D155 Limited

Rejected

Submission	Point Number	Name
83	1	Gideons Valley Trust

4.2 Reasons

4.2.1 The advice note is not considered to override s237E(2) because it allows landowners to undergo a voluntarily process of providing esplanade reserves or strips in exchange for subdivision opportunities they previously did not have. Any protection lot subdivision will be in agreement between Council and the registered proprietor and the use of a protection lot subdivision is a form of compensation in itself.

4.2.2 Because protection lot subdivision based on the provision of land for esplanade reserves and strips is proposed as a controlled activity, an additional performance standard is necessary to require the waiving of the right to compensation under the RMA. Without this performance standard, the purpose of the Plan Change is defeated and the activity status would either need be made more stringent or the Plan Change be withdrawn. Waiving of this right allows landowners to use the protection lot rules to benefit from the creation of an additional lot and avoids Council having to over-compensate landowners who choose to receive this benefit. In response to the hearings evidence presented by D155 Limited, the requirement to waive this right has been changed from a matter of control to a performance standard so that failure to comply does change the status of the application.

5.0 Topic 4: Activity status for other proposed esplanade reserves and strips not listed in Appendix 4A

5.1 Decision

That the activity status for "other" esplanade reserves or strips not listed in Appendix 4A remains non-complying.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
22	7	D155 Limited

5.2 Reason

5.2.1 In response to the issue of activity status for proposed esplanade reserves not listed in Appendix 4(a) which was raised at the Hearing, Council notes that it has targeted specific waterways and in particular those that are both in high demand from a community perspective and are likely to be completed through the use of this rule. Those “other” proposed esplanades which are not a priority are not provided for within the protection lot rules so that they remain a non-complying activity. This signals that such an activity is not anticipated and/or appropriate as Council does not envisage many such applications elsewhere in the district and this gives Council greater ability to decline inappropriate applications. Discretionary status on the other hand signals that such an activity is generally anticipated and/or appropriate subject to an assessment of effects. This will make it more difficult for Council to decline inappropriate applications and may result in a proliferation of protection lot subdivisions in the Rural Zone without any of these other linkages being completed.

6.0 Topic 5: Subdivision (including boundary adjustment) being used as a measure to acquire esplanades

6.1 Decision

That there are no changes made to Section 12A of the District Plan with respect to subdivision being a measure to acquire esplanades.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
83	1	D155 Limited

6.2 Reason

6.2.1 The RMA allows Council to include rules in its District Plan to acquire proposed esplanade reserves or strips when land is subdivided (including through boundary adjustment which is a form of subdivision). Council has included such rules within Section 12A of the District Plan. These rules are well established and not subject to review under this Plan Change. Instead, this Plan Change introduces new rules which allow subdivision to occur so that these existing rules can be used.

7.0 Whole of Plan Change 53 - Changes to the District Plan First Review

7.1 Add new Rule 18.4.2 (h) (vii) as follows;

4. Land for the provision of esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.

7.2 Add new standards as Rule 18.4.2(h)(vii) as follows;

(vii) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on the provision of land for esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.

1. Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit and minimum average feature sizes for the creation of two to five on-site Protection Lots or any number of Transferable Protection Lot credits are shown in the table below.

<u>Feature Type</u>	<u>Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit</u>	<u>Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits</u>				
		<u>Avg</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Esplanade Reserves/Strips In Appendix 4A</u>	<u>130m in length 20m wide</u>	<u>1km 20m</u>	<u>2km 20m</u>	<u>3km 20m</u>	<u>4km 20m</u>	<u>5km 20m</u>
<u>Note</u> <u>The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</u>						

2. Within the subject existing lot, where an esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.
3. Landowners shall waive the right to compensation under s237E(2) of the RMA.

7.3 Add “esplanade strip” to Rule 18.4.2 (ix) “Legal Protection” as follows;

“Legal protection of the feature shall be achieved by way of a condition imposed on the subdivision consent requiring a Consent Notice, Memorandum of Encumbrance or similar legal instrument such as a QEII Covenant, Heritage Covenant, Esplanade Strip, or the vesting of land into crown or territorial authority ownership. The type of instrument and the level of protection provided by it must be to the satisfaction of the Council and where relevant is to be registered on the title of the land containing the feature to be protected. All costs associated with compliance with this requirement shall be met by the applicant.”

7.4 Add a new Appendix 4A as follows;

Schedule of Proposed Esplanade Reserves and Strips Eligible for Protection Lots

Appendix 4 Reference	ParcelID	Legal Description	Area (m²)	Length (m)
<u>Uretara</u>				
<u>1(4)</u>	<u>1109/631</u>	<u>Lot 2 DPS48753</u>	<u>190,983</u>	<u>791</u>
<u>1(4)</u>	<u>1116/10</u>	<u>Lot 2 DPS80374</u>	<u>64,852</u>	<u>161</u>
<u>1(4)</u>	<u>1116/13</u>	<u>Lot 1 DP338589</u>	<u>63,525</u>	<u>714</u>
<u>1(4)</u>	<u>1116/2410</u>	<u>Lot 6 DPS33673</u>	<u>67,726</u>	<u>533</u>
<u>1(4)</u>	<u>1118/1601</u>	<u>Lot 1 DPS29667</u>	<u>63,040</u>	<u>617</u>
<u>1(4)</u>	<u>1118/223</u>	<u>Lot 3 DPS67279</u>	<u>94,691</u>	<u>311</u>
<u>1(4)</u>	<u>1122/1264</u>	<u>Pt Lot 1 DPS16412</u>	<u>56,705</u>	<u>641</u>
<u>Ohourere</u>				
<u>1(11)</u>	<u>1304/148</u>	<u>Pt Lot 4 DP15898</u>	<u>152725</u>	<u>634.24</u>
<u>1(11)</u>	<u>1304/151</u>	<u>Lot 1 DPS1013</u>	<u>2672</u>	<u>203.74</u>
<u>1(11)</u>	<u>1304/4888</u>	<u>Te Irihanga 2A Block</u>	<u>22999</u>	<u>762.89</u>
<u>1(11)</u>	<u>1304/98</u>	<u>Pt Lot 3 DPS58017</u>	<u>74033</u>	<u>485.08</u>
<u>1(11)</u>	<u>1325/3671</u>	<u>Lot 3 DPS59030</u>	<u>345073</u>	<u>1278.59</u>
<u>Wairoa</u>				
<u>1(17)</u>	<u>1325/301</u>	<u>Pt Lot 1 DP27916</u>	<u>14744</u>	<u>153.47</u>
<u>1(17)</u>	<u>1325/3642</u>	<u>Lot 1 DPS62108</u>	<u>57608</u>	<u>361.38</u>
<u>1(17)</u>	<u>1325/3669</u>	<u>Lot 4 DPS59030</u>	<u>81920</u>	<u>418.72</u>
<u>1(17)</u>	<u>1325/461</u>	<u>Lot 2 DP27916</u>	<u>10972</u>	<u>157.55</u>
<u>3(Other)</u>	<u>1310/238</u>	<u>Pt Poripori Farm A Block</u>	<u>361300</u>	<u>4343.01</u>
<u>3(4)</u>	<u>3008/115</u>	<u>Pt Allot 144 Te Papa PSH</u>	<u>194445</u>	<u>297.95</u>
<u>3(4)</u>	<u>3008/116</u>	<u>Pt Allot 143 Te Papa PSH</u>	<u>137402</u>	<u>401.09</u>
<u>3(4)</u>	<u>3008/8624</u>	<u>Lot 3 DPS287</u>	<u>7318</u>	<u>215.28</u>
<u>3(4)</u>	<u>3008/9110</u>	<u>Lot 3 DPS374</u>	<u>4411</u>	<u>376.56</u>
<u>3(4)</u>	<u>3008/9114</u>	<u>Lot 2 DPS374</u>	<u>2698</u>	<u>138.32</u>
<u>Waimapu</u>				
<u>1(29)</u>	<u>1349/1058</u>	<u>Lot 4 DP22965</u>	<u>36476</u>	<u>192.19</u>

<u>1(29)</u>	<u>1349/13</u>	<u>Pt Lot 2 DP22964</u>	<u>17996</u>	<u>591.79</u>
<u>1(29)</u>	<u>1349/1774</u>	<u>Lot 1 DPS58351</u>	<u>67043</u>	<u>283.61</u>
<u>1(29)</u>	<u>1349/2060</u>	<u>Lot 2 DPS42381</u>	<u>115899</u>	<u>661.78</u>
<u>1(29)</u>	<u>1349/51</u>	<u>Lot 4 DP350004</u>	<u>45811</u>	<u>207.28</u>
<u>1(29)</u>	<u>1352/13496</u>	<u>Pt Section 25 Ohauti SETT</u>	<u>591626</u>	<u>605.53</u>
<u>1(29)</u>	<u>1352/9586</u>	<u>Lot 3 DPS47615</u>	<u>103937</u>	<u>819.94</u>
<u>1(29)</u>	<u>1481/2931</u>	<u>Lot 1 DP34157</u>	<u>25837</u>	<u>348.03</u>
<u>1(30)</u>	<u>1347/2039</u>	<u>Lot 3 DP15326</u>	<u>20249</u>	<u>254.07</u>
<u>1(30)</u>	<u>1347/2343</u>	<u>Lot 5 DP15326</u>	<u>13360</u>	<u>184.63</u>
<u>1(30)</u>	<u>1472/2591</u>	<u>Lot 3 DPS53905</u>	<u>73491</u>	<u>372.17</u>
<u>Tauranga Harbour</u>				
<u>2(1)</u>	<u>1045/2517</u>	<u>Pt Allot 5 Tahawai PSH</u>	<u>392816</u>	<u>1085.03</u>