

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 78 Rural Yard Rules

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider two potential changes to the rural yard rules of the District Plan to:

- a. Ensure approved building sites and consented (but not yet constructed) developments on adjacent properties are considered when applying the exemptions to the 30m setback requirement; and
- b. Ensure approved building sites (authorised through subdivision consents) that are located less than 30m from site boundaries are provided for without the need for further land use consents.

2.0 Resource Management Act 1991

2.1. Section 32

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- 1) *An evaluation report required under this Act must—*
 - (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 - (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- (2) *An assessment under subsection (1)(b)(ii) must—*
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*
- 3) *If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) *the provisions and objectives of the amending proposal; and*
 - (b) *the objectives of the existing proposal to the extent that those objectives—*
 - (i) *are relevant to the objectives of the amending proposal; and*

(ii) would remain if the amending proposal were to take effect.

- 4) *If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.*

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council.

None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this plan change.

3.0 Consultation

Due to the minor and technical nature of this proposed change, and given the change is proposed to reflect the original intent of the rules, there has been no specific consultation with the public. Internal consultation has been undertaken with the Consents Team.

4.0 Issue 1 – Exemptions to 30m yard requirements

The rural yard rules (Rule 18.4.1(c)) generally require habitable buildings to be located at least 30m from the property boundaries. This is intended to result in a separation of 60m between these buildings on adjacent properties.

The key reasons for the separation between these buildings is to assist in maintaining privacy, to avoid clustering of dwellings in close proximity, and to limit adverse effects from rural productive activities on residential activities and other sensitive land uses.

The rural yard rules provide some exemptions to the 30m setback requirement, provided certain separation distances can be met.

The parts of Rule 18.4.1(c) which are relevant to this plan change read as follows:

(c) Yards

- (i) Dwellings, minor dwellings, accommodation facilities, education facilities*

Minimum 30m.

Provided that:

A side or rear yard may be reduced to not less than 10m in one or more of the following circumstances;

- (c) For titles that have obtained subdivision consent prior to 30 January 2010 or for which a subdivision application was lodged on or before 30 January 2010 and which have an approved building site in accordance with Rule 12.4.1 (b) with a reduced yard where this infringement was assessed at the time of subdivision (this applies only to the building site*

assessed through the subdivision and new locations will require land use consent); or

...

(e) Where any new dwelling, minor dwelling, accommodation facility or education facility (including any additions or alterations to these) can meet all of the following permitted activity performance standards;

- *Shall not be located any closer than 60m to any existing dwelling, minor dwelling, accommodation facility, education facility or rural contractors depot that is located on a title separate to that of the subject site and in different ownership;*
- *Shall not be located any closer than 35m to any other existing buildings/structures that are located on a title separate to that of the subject site and in different ownership;*
- *Shall not be within 300m of any intensive farming activity that is located on a title separate to that of the subject site and in different ownership.*

It has been identified that the exemptions provided by clause (e) of Rule 18.4.1(i) only recognise separations between habitable buildings that have already been constructed. They do not, however, recognise building sites approved as part of subdivisions or buildings approved via land use consents on adjacent properties, where those structures have not yet been constructed.

The issue with this is that the District Plan rules could inadvertently allow buildings to be located closer than intended without the need for resource consent. This could result in reverse sensitivity effects, and adverse effects associated with rural amenity and character.

4.1. Option 1 – Status Quo – Retain Rule 18.4.1(c)(i)(e) without change

Costs	<ul style="list-style-type: none"> ▪ Potentially allows buildings to be located closer than intended, resulting in reverse sensitivity effects, and adverse effects on rural amenity and character (including loss of privacy and character effects associated with the clustering of buildings).
Benefits	<ul style="list-style-type: none"> ▪ No identified benefits.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not effective or efficient in addressing the identified issue or the District Plan objectives associated with the Rural Zone.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

4.2. Option 2 – Amend Rule 18.4.1(c)(i)(e) to require setbacks from consented buildings and building sites approved through resource consent processes

Costs	<ul style="list-style-type: none"> ▪ Will, in some cases, remove existing development rights for property owners, as the exemption will require consideration of buildings that have been consented, but that are not yet constructed. At present, consideration does not need to be given to developments that are not yet constructed. ▪ Requires property owners, and consent applicants to research and confirm whether there are any consented (but not yet constructed) developments on adjacent properties. This research is likely to involve property owners/consent applicants obtaining information from Council’s Duty Planner or by requesting Council property files.
Benefits	<ul style="list-style-type: none"> ▪ Ensures that the exemptions to the rural yard rule apply to all development, including that which has been consented (and legitimately forms part of the existing environment) but that has not yet constructed. ▪ Ensures that the intent of the setback requirements is accurately reflected within the rural yard rules. ▪ Provides clarification for the community, consent applicants, and Council that consented buildings and building sites approved through the subdivision process are to be taken into account when applying the rural yard rules.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Amending the rule is an effective method to address the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

4.3. Preferred Option

The preferred option is:

Option 2 – Amend Rule 18.4.1(c)(i)(e) to refer to building sites approved through subdivision consents and other consented developments on adjacent properties which are yet to be constructed, as set out below:

A side or rear yard may be reduced to not less than 10m in one or more of the following circumstances;

...

(e) Where any new dwelling, minor dwelling, accommodation facility or education facility (including any additions or alterations to these) can meet all of the following permitted activity performance standards;

- Shall not be located any closer than 60m to any existing or consented dwelling, minor dwelling, accommodation facility, education facility or rural contractors depot, or any approved building site assessed as part of a subdivision in accordance with Rule 12.4.1(b), that is located on a title separate to that of the subject site and in different ownership;
- Shall not be located any closer than 35m to any other existing or consented buildings/structures that ~~are~~ is located on a title separate to that of the subject site and in different ownership;
- Shall not be within 300m of any existing or consented intensive farming activity that is located on a title separate to that of the subject site and in different ownership.

Except that:

As provided for in (iii), (iv), (v) and (vi) below.

Explanatory Notes:

(a) – (e) above are provided for subject to submission to Council of a written statement from the applicant accepting any adverse environmental effect which may be created by the reduced yard.

The term "consented" within clause (e) above refers to activities that have been approved through a building consent and/or resource consent (if required), and where the relevant consent or consents have not lapsed.

4.4. Reasons

The preferred option is considered to be the most effective and efficient method to address the identified issue. It also reflects the intent of the rural yard rule as set out within the s.32 Report for the "Rural" section prepared for the District Plan Review.

5.0 Issue 2 – Building sites with reduced yards approved through subdivision consents

As identified in section 4.0 of this report, the rural yard rules generally require a 60m separation between habitable buildings on lots in different ownership. This is achieved by requiring a yard setback of 30m.

Rule 18.4.1(c)(i)(c) enables the yard to be reduced to 10m either where titles have been created, or a subdivision application was lodged, on or before 30 January 2010 and there is an approved building site with a reduced yard (Rule 18.4.1(c) is set out in section 4.0 of this report).

The inclusion of the date (30 January 2010) was intended to allow for buildings in locations that had been approved prior to decisions on the District Plan, without the need for further land use consents. It also provided for reduced yards where subdivision applications were lodged prior to decisions on the Plan.

However, it has been identified that subdivision consents with approved building sites and reduced yards granted after 10 January 2010 also require land use consent (due to the reduced yard). Because many subdivisions within

the Rural Zone are approved with yards of less than 30m, this results in the duplication of resource consent processes, and additional financial costs and delays for the community, consent applicants, and Council.

5.1. Option 1 – Status Quo – Retain reference to plan notification date

Costs	<ul style="list-style-type: none"> ▪ Results in the need for unnecessary resource consents given effects associated with reduced yards having already been assessed through the subdivision consent process. ▪ Results in additional financial costs and time delays for the community, consent applicants, and Council due to duplication of processes.
Benefits	<ul style="list-style-type: none"> ▪ No identified benefits.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not effective or efficient in addressing the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

5.2. Option 2 – Amend Rule 18.4.1(c)(i)(c) to remove the notification date so that the exemption applies to all subdivisions with approved building sites and reduced yards

Costs	<ul style="list-style-type: none"> ▪ No identified costs.
Benefits	<ul style="list-style-type: none"> ▪ Reduces duplication of consent processes where the effects of reduced yards have already been assessed as part of a subdivision consent process. ▪ Reduces financial costs and time delays for the community, consent applicants, and Council.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Amending the rule is an effective and efficient method to address the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

5.3. Preferred Option

The preferred option is:

Option 2 – Amend Rule 18.4.1(c)(i)(c) to remove the decisions date so that the exemption applies to all subdivisions with approved building sites and reduced yards as set out below:

A side or rear yard may be reduced to not less than 10m in one or more of the following circumstances;

...

- (c) *For titles that have obtained subdivision consent ~~prior to 30 January 2010 or for which a subdivision application was lodged on or before 30 January 2010~~ and which have an approved building site in accordance with Rule 12.4.1 (b) with a reduced yard where this infringement was assessed at the time of subdivision (this applies only to the building site assessed through the subdivision and new locations will require land use consent); or*

5.4. Reasons

The preferred option is considered to be the most effective and efficient method to address the identified issue and reflects the intent of the rural yard rule as set out within Planner's report for the "Rural" section prepared for the District Plan Review. In addition, the preferred option reduces the need to duplicate resource consent processes, and the associated financial costs and delays for the community, consent applicants, and Council.