

BEFORE THE ENVIRONMENT COURT

Decision No. [2015] NZEnvC 100

IN THE MATTER of appeals under Clause 14 of the First
schedule to the Resource Management
Act 1991 (**the Act**).

BETWEEN TKC HOLDINGS LTD and
MATAKANA ISLAND INVESTMENT
GROUPS LTD
(ENV-2010-AKL-000072)
(ENV-2014-AKL-000075)

AND

BLAKELY PACIFIC LIMITED
(ENV-2010-AKL-000076)
(ENV-2014-AKL-000081)

AND CARRUS CORPORATION LIMITED
(ENV-2010-AKL-000090)
(ENV-2014-AKL-000079)

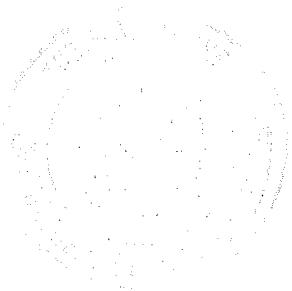
Appellants

AND WESTERN BAY OF PLENTY
DISTRICT COUNCIL

Respondent

Hearing at: Mount Maunganui 4th – 7th November 2014
23rd - 26th March 2015
Plus site visits

Court: Environment Judge JA Smith
Environment Commissioner JA Hodges
Environment Commissioner SK Prime



Appearances: PH Cooney and SE Wooler for Western Bay of Plenty District Council (**the District Council**)
MH Hill for Bay of Plenty Regional Council (**the Regional Council**)
RE Bartlett QC for TKC Holdings and Matakana Investment (**TKC**)
VJ Hamm and B Bailey for Carrus Corp Limited (**Carrus**)
K E Krumdeick for Heritage New Zealand (**Heritage NZ**)
JP Koning and JN Gear for Tawhao Ngaire Trust, Rangiwaea Marae Trust, and Taingahue Family Trust (**the Residents**)
TR Fisher for Blakely Pacific Ltd (**Blakely**)

Date of Decision: 27 May 2015

DECISION OF THE ENVIRONMENT COURT

- A. For the reasons we have described, we modify the Council's Plan Change 46 set out in this Decision and confirm Appendix A subject to the alterations endorsed in this Decision.
- B. We direct the Council to forward to the other parties within 10 working days a final copy of the document to be incorporated within the District Plan. Any comments are to be forwarded to the Court, together with the final plan and the District Council's comments within the 10 working days for confirmation by the Court.
- C. Costs applications are to be filed within 20 working days, any responses within a further 10 working days thereafter and a further reply (if any) within 5 working days after that.

REASONS FOR DECISION

Introduction

[1] These appeals relate to appropriate provisions to be inserted in the now operative Western Bay of Plenty District Plan in relation to Matakana and Rangiwaea Islands.

[2] Matakana Island (**the Island**) consists of two parts, distinct both geographically, geologically and by usage. The eastern part consists of a large Holocene period sand barrier (**the Barrier**) between Bowentown and Maunganui, with the Pacific Ocean to the east and Tauranga Harbour to the west. This barrier is covered in production forestry. There is a small former mill settlement to the South that has a few houses. Attached by a thin peninsula, possibly man made, is a large block of volcanic-sedimentary land on which most islanders live and farm (**the Farmland**). Some Islanders work in forestry on the Barrier. Access from the mainland to the Barrier can be by barge either via farmland (from Omokoroa) or at the southern end of the Barrier at Panepane, (from the Port of Tauranga).

[3] The appeals concern the provisions appropriate for residential development on the Barrier. With the exception of the Matakana Island portion of the Plan the Western Bay of Plenty District Plan is now operative. Plan Change 46 (**PC46**), intends to subsume appeals relating to the provisions in the proposed Western Bay of Plenty District Plan relating to Matakana Island that have not been withdrawn.

Background

[4] The role of this Court in respect of PC46 is to reach a decision as to which provisions better accord with the purpose of the Act and the operative Regional and District documents. In this context the framework is contained generally within a number of different National and Regional policy documents and other Regional documents, including the Regional Coastal Environment Plan in particular.

[5] The Western Bay of Plenty District Plan also sets a general framework for the District against which these provisions need to be considered. Having said that, it was immediately recognised by all witnesses that Matakana Island, and particularly the Barrier, constituted a different environment to the balance of the Western Bay of Plenty District.

[6] To avoid confusion we have clearly identified the area of interest, in particular, in this case as being the Barrier which is the Holocene period sand barrier between Maunganui and Bowentown. PC46 also includes the Matakana Farmland. The Farmland also includes Rangiwaea Island, separated from the Farmland and the Barrier by water.

Blakely Pacific decision

[7] The decision of the Court in *Blakely Pacific Limited*¹ is relevant and of assistance to the Court in setting the scene for the island and the issues which arise in respect of it. Although Mr Bartlett suggested that this decision was not relevant to this appeal, it does contain a number of statements that explain the context of the PC46 provisions. We note in particular paragraph [30] of the Blakely decision:

In "practical terms" therefore we have concluded that little turns on whether or not the matter proceeds through the WOIP process or the applicants proposed a standdown period of three years after the consent is granted. The essence of this application proceeding is rather to establish a base line from which further concessions can be argued in the WOIP. Not unnaturally the balance of the appellants object to this course on the basis that it pre determines the outcome of the WOIP and does not allow other possibilities to be considered, such as clustering residences in one particular area of the island (perhaps on the barrier island for example near the existing buildings close to the mill) or only on the western farming part of the island. We will come back to revisit this matter later under matters on our overall discretionary assessment.

[8] Similarly paragraph [32] of the decision stated

In terms of effects identified and dealt with in some length by witnesses were

- (a) Ecology
- (b) Visual amenity and natural character
- (c) Archaeology
- (d) Natural hazards
- (e) Social well being
- (f) Cultural matters (including Maori burial places, Taonga, cultural use and associations with the land, cultural access, customs and traditions)

[9] At paragraph [33]

... We acknowledge there is a degree of interconnection between these elements that to some extent have some degree of overlap. Whilst Blakely Pacific counsel submitted their expert evidence showed that there were no significant adverse effects, it was very clear to us from all the evidence that there are a series of adverse effects identified which were to be addressed in terms of the Plan by a series of complex conditions and

¹ [2011] NZEnvC 354

management plans. How some of the outcomes recommended by the experts would be achieved was not explained by the end of the hearing.

[10] We make it clear that these comments do not predetermine the outcome of this hearing. However, in the balance of the *Blakely Pacific* decision the Court set out in some extensive detail the type of issues which arise in respect of the Barrier. The same range of issues was identified in evidence at this hearing. There was no evidence to suggest to us that the issues addressed by the Court in *Blakely Pacific* are not still relevant at the current time.

[11] We acknowledge that various other plans have been amended or changed since that time. But there is nothing in that information which indicates that any issues have abated or are not relevant to a determination of the planning provisions for the Barrier and in particular the process adopted by the District Council.

[12] Given proposed changes to Regional documents (in particular the Proposed Regional Coastal Environment Plan) these issues come to be more important.

The process in relation to these Appeals

[13] Subsequent to the *Blakely Pacific* decision, the District Council adopted an iterative process, working initially with the parties to seek to develop a new set of preliminary provisions which were then circulated, finalised and notified. The discussion document was delayed for a number of reasons including background reports required in a whole range of areas such as ecological features, cultural values and in particular a hapu management plan in October 2012.

[14] The various documents, information and analysis was brought together in a **Whole of Island Plan (the Matakana Plan)** which sets out a planning framework for the Island. We note the Matakana Plan² is a non-statutory document that has no legal power in its own right.

[15] The discussion document for the Matakana Plan was circulated in February 2013 and the Matakana Plan issued in May 2013 was followed by PC46. Section 32 analysis for PC46 was completed in September 2013, with PC46 decisions by the Council in April 2014; these appeals then followed.

[16] The appeals affect only the Barrier and deal with two significant issues

² Matakana Island Plan, May 2013, Section 1.2

- (a) Carrus and TKC seek to liberalise the development potential for residential housing on the Barrier.
- (b) Blakely, although originally seeking wider liberalisation in respect of development has now reduced its appeal to essentially support the District Council's position, but seek clarification and protection for the continuation of production forestry on the Barrier and to ensure no predetermination of the geographical location of future residential development.

The issues pursued on appeal

[17] It is important to note the parameters of the Court's consideration in this case. Although several parties strongly opposed any development on the Barrier, no appeals were filed seeking more stringent controls than those proposed through the District Council decision process.

[18] All parties are agreed that, as a matter of law, the Court is constrained on this appeal to a position between that of the District Council decision on PC46 and the more liberal provisions sought by the appellants: Blakely, TKC and Carrus. Even then, it is only the grounds of appeal that have not been abandoned in respect of the original District Council decision on the proposed plan and PC46. We note that grounds of appeal were reduced or abandoned by the appellants even in closing submissions.

[19] In its opening Blakely clarified its position in respect of its appeals as follows:

(Blakely Pacific) supports **PC 46**, (variation 2) to the extent that:

- a) It does not materially affect BPL's existing rotational forestry practices on the island;
- b) It provides a regime for the transfer of development rights on the barrier arm of the island;
- c) There are no spatial preferences for the development of any particular land holding – that is, with a common policy in rule the framework requires an "effects based" assessment which applies equally to all land holdings.

[20] As we understood Blakely's position, they sought to clarify the existing rotational production forestry practices on the Barrier. In particular, to ensure the provisions are properly interpreted (and subject to clarification) would allow the continuation of the existing forestry practices. Their suggestions, therefore, were in relation to production forestry to clarify some ambivalent provisions within PC46

itself. In that regard, Blakely sought a provision for a consenting process relating to the clearance and replanting of trees to maintain the sheltering and erosion control functions of the buffer area, particularly in identified areas of the coastal margin. We discuss this further in our decision.

[21] Carrus' concerns related solely to the question of development on the Barrier, particularly for residential purposes. It supports the Matakana Plan process, but in particular it seeks a higher development cap. In particular, Carrus Corporation has an interest in only 150 hectares on the Barrier, and the application of the current rules would allow it to build perhaps only one residence, unless it obtains transferable development rights (TDR's), because of the preference for clusters of ten or more buildings. Carrus, therefore, sought to remove the 1 to 40 hectare development intensity rule. Development over that level is a prohibited activity under PC46 unless TDRs are obtained.

[22] Carrus sought a change to the transferable development rights regime and its planning witness supported a special preference for development in the south (as did TKC's planning witness). Blakely's position was that there was nothing about the Carrus or TKC land which made it inherently more or less suitable for the development than the Blakely land. Blakely continued to support the Matakana Plan outcomes, which might involve development being concentrated to the south if it meets the needs of the Blakely, Tangata Whenua and other land owners on the Barrier. Carrus accepts the plan change objectives and policies subject to the amendments agreed through the planning caucusing (which we will address shortly) and accepts for the most part the rule framework of the plan, subject to the following principal exceptions:

- (a) The effective cap of 102 dwellings on the sand barrier through the development intensity in excess of one to 40 hectares being prohibited. They seek the removal of the cap.
- (b) The status for subdivision and development is liberalised. Carrus seeks those provisions be replaced with provisions contemplating non notified, restricted discretionary or discretionary activity subdivision development to a status cap of 200, with non-complying status beyond that.

[23] By the conclusion of the case, the position for TKC had moved; in fact it no longer supported a southern policy area overlay. It sought to amend the plan objective

and policies by the inclusion of the word 'economic' as agreed by the joint statement planning experts in respect of Rule 18.3.4. It also sought to provide:

- (a) An amended rule for group development accepting the maximum one hectare lot size;
- (b) New provisions providing for common lots and balance lots (there must be provision for dwellings on the balance lots);
- (c) Amend the matters of discretion in 18.5.8 as agreed in the joint statement of planning experts;
- (d) Amend the non-notification clause to limit the parties to be consulted to those who have been involved in these PC 46 proceedings;
- (e) Amend the non-complying activities and Rules 5.4 and 6.5.1 to discretionary activity rules, which link to the new discretionary activity rules in part 18 of the plan, along with links to the assessment criteria discussed above.

[24] We have stated the outcomes sought by the parties based upon their final submissions to the Court because they are very different to those in the appeal documents and the evidence of the witnesses.

Context of Barrier Development

[25] Ms Hamm in her opening for Carrus noted:

- (a) Matakana Island is unique.
- (b) Land use options on the sand barrier of the island are limited; and
- (c) The scale of the whole island and sand barrier are generous at 5800 hectares and 4800 hectares respectively.

[26] In essence, her submission for Carrus was that the driving objectives of the WOIP and development can be achieved, by the broad policies and provisions of the plan, to govern any potential development intensity. Accordingly more permissive status activity rules can be adopted.

[27] We have already cited the position sought by TKC, which is somewhat more focused, but in broad terms we understood would allow the consideration of different forms of development to that envisaged in PC46, provided they could also achieve the

environmental outcomes of the objectives and policies set out in PC46 and the Matakana Plan.

[28] Some of the concerns of both Carrus and TKC have been addressed by the expert conferencing. In broad terms the District Council, supported by the Regional Council, agreed to the majority of the conferencing outcomes, with the exception of a change to whether the cluster requirement should be standard, a breach of which would lead to a full discretionary activity, or its inclusion as a criteria that would leave the consideration as a restricted discretionary activity (provided other standards were achieved).

[29] As we understand it, the Regional and District Councils agree to a wording change for Production Forestry with Blakely, which was a broad consensus position reached in negotiations. We address this shortly.

[30] Finally, we should state that the Court pressed on the parties that a comprehensive development approach for the Barrier may be the best outcome for all parties, including Tangata Whenua.

[31] In the adjournment between November 2014 and March 2015 some considerable effort was put into this issue, particularly by TKC in an attempt to generate a solution that might be acceptable to Tangata Whenua. It is important to note that some of the shareholding of TKC is held by individual Islanders, and a proposition agreed to by the shareholders was put to Tangata Whenua. That proposition was roundly dismissed by Tangata Whenua by a decisive margin. Carrus also noted that it had not been a party to that proposal, but given that the matter was not acceptable to the Tangata Whenua, further negotiations did not take place.

[32] Many of the parties to this case, and the Court, have a general view that the best outcome for the Barrier would be one that dealt with all of the development potential in a comprehensive way. That option is not before the Court, and we must establish the provisions on the basis of the evidence before us and the decisions version of the PC46.

Changes that have been agreed

[33] In order to focus the issues remaining in dispute, it is helpful for the Court to annex now the proposed changes to PC46. These are annexed hereto as **A**, and the

proposed changes to the planning maps are annexed hereto as **B1** to **B4**. Firstly, **B1** to **B4** record the agreed positions and changes agreed between the parties as to various lines, particularly S25, and the removal of certain features such as MI/3 in the positions shown. Those matters were agreed by the ecologists, and given the level of consensus the Court approves those changes.

[34] Some changes were made by the District Council decision; these are included and marked in red in **A**. These include a statement added to the opening and changes to Chapter 5; 5.4.2, 5.4.3, and 5.4.4 and Criteria 5.6.2. There are changes in Chapters 6; 6.4.1, 6.4.3, 6.4.3. 6.4.4, 6.4.5, 6.6 and 6.6.2, all of which we do not understand to be in dispute.

[35] Changes to the District Plan were made by the District Council following the hearing of PC46. Further changes were made as a result of planners' expert conferencing. Both sets of changes are included in Annexure **A**, presented by counsel for the District Council towards the end of the hearing. We note that the deletion of 18.4.1(d)(iv) was not accepted by the Council, and we will discuss this further.

[36] In Chapter 5 and 6 we understand there to be disputes around the status of subdivision and development as well as matters of notification and status of non-complying rather than prohibited for intensity over the cap.

[37] In respect of Chapter 18, the disputes are more extensive, although they tend to relate to the question of transferable development rights, status of activities and the relevant criteria, either by way of standards or assessment criteria. The major changes that have been agreed between the experts relate to 18.5.8. As we understand it, this wording is preferred by the District Council supported by the Regional Council.

[38] In addition to this, we understand that the District Council, with the agreement of the Regional Council, is also in agreement with the insertion of a new 5.4.3(c). Submissions on behalf of Blakely Pacific Limited, paragraph [30] which provides on Matakana Island:

The clearance and replanting of production forestry in existence as at the 17 of April 2014 for the purpose of maintaining the form and function of the existing forest and buffer area, that is certified by a suitably qualified ecologist as meeting the following:

- i. Preservation of the ecological functions and values of the activity site;

- ii. A plan for replanting following clearance so as to preserve the buffer functions of the area;
- iii. Where i. cannot be met, the works are carried out subject to a management plan that is the best practicable option for preserving the ecological functions and values and minimising adverse effects on those values.

[39] A consequential change to 5.4.5 prohibited activities would read: *(c) production forestry not covered in 5.4.2 and 5.4.3(c)*. This would then mean that any application would be a full discretionary application, which is a compromise position from Blakely's point of view and the District Council's point of view. As we understand it, those changes would satisfy Blakely's concerns in its appeal, provided the appeal did not affect its interests in development.

[40] The next major change is related to clustering. This arises in two ways:

- (a) Status issues arise given the wording of 18.3.4(s) which provides for discretionary activities:
Subdivision dwellings and development associated with the clustering of dwellings on the Matakana Island forested sand barrier that fails to comply with the activity performance standards listed in 18.4, provided that in respect of rule 18.3.6 an overall density of one dwelling per 40 ha is not exceeded.
- (b) Clustering is also provided as a development standard for restricted discretionary dwellings and associated subdivision 18.4.1(d) and 18.4.2(i)

18.4.1(d) relates to clustering of dwellings on the Barrier; 18.4.2(i) relates to clustering of lots on the Barrier.

[41] In relation to 18.3.4(s) the District Council acknowledges this is not intended to preclude non-cluster or linear development and make them non-complying. A simple solution suggested was to amend 18.3.4(s) by removing the reference to clustering. All parties accepted that this was within the appeal scope. Accordingly, we have determined that the word *clustering* may properly be removed from 18.3.4(s), and a distinction still properly drawn between various forms of development should the cap be removed.

[42] The cap of 102 dwellings is a calculation based upon allowing development at one house per 40 hectares less the existing housing (approximately). It is intended to use a control mechanism to allow development by basing this upon the principle of one transferable right per 40 hectares i.e. a minimum of 40 hectares is required for one

house, another 40 hectares for a TDR which is required for each subsequent house. This is a mechanism utilised to achieve density of development.

[43] Carrus complained that this is unfair on them as a small landowner with the potential only to develop three houses on their available land without purchasing TDRs. This may still require non-complying consent, as it was a cluster of less than 10 houses. Without a cap, of course, it would be possible for any landowner to apply to develop housing at the minimum lot size, and all of the available capacity might be absorbed by one or two smaller landowners, and the larger landowners then being left with no development potential.

[44] The issue about whether clustering should be a standard or criteria is a core issue for this decision which we will address later.

Overview

[45] It was clear to us that, from all of the issues raised in evidence in this case (and gone through in some detail in the *Blakely Pacific* decision), the range of environmental, ecological, cultural and archaeological matters militate towards a conservative approach to development on the Barrier.

[46] To create an environment where owners can apply with no mechanism for allocation such as TDR's would simply lead to a *gold rush* mentality seeking to maximise development, particularly for smaller landowners. For example Mr Boffa was of the view that the Barrier could only tolerate something in the order of 60 to 65³ houses. Others had a view that this may depend where housing was placed, whether in linear fashion, cluster fashion, centrally to the Barrier, or upon its edges.

[47] Removal of the TDR provisions was strongly opposed by Blakely. They perceive such a proposal as depriving them of development potential of their land, given their commitment at the current time to productive forestry.

[48] Fundamentally, we conclude there is no benefit or justification – (cost or otherwise) – to incentivising small developers to develop their land over larger landowners. We agree entirely with Blakely that there was no evidence given that satisfies us that there is any locational preference between the lands owned by the various landowners as to where housing should be situated. We agree entirely that the

³ EIC, Frank Boffa, paragraph 51.

matter should be determined on the design, placement and relevant conditions to satisfy the District Council, or the Environment Court on appeal, that the development was appropriate.

[49] There are a significant number of issues to be overcome including the relationship with production forestry, fire risk, roading, impact on ecological zones and water. We agree with Mr Bartlett that these matters are not directly relevant to the settling of the plan provisions, but they do show the need for a cautious approach to development on the Barrier, undertaken in an ordered fashion.

[50] Whether the Carrus proposition of the removal of the cap would affect TDRs is a moot point, given it is not clear how development would then be considered if it was not on the basis of lot size. We also understand that in closing, no party was pursuing the southern area on the island in preference for development, and accordingly it is no longer within the scope of our hearing.

[51] We conclude that there is no proper basis given to us to suggest that the removal of the cap and the TDR arrangement would be a better arrangement for development of the Barrier; it would simply incentivise smaller landowners and lead to pressure from larger landowners to have equivalent rights.

[52] When we come to examine questions of what arrangements are better, we look at impacts not only on the economic costs of the developer, but also to the other values which could be compromised. In this case those values are commonly accepted by all parties and are set out in terms of the PC46.

Limited notification

[53] The proposition that applications for consent should be limited notification in such circumstances is frankly surprising to this Court, and was without any proper basis, evidential or otherwise. The suggestion that all the issues had been canvassed in the Matakana Plan and PC46 is patently not correct. Although a number of issues were addressed in the *Blakely Pacific* Decision, the Court was not satisfied that, in that case, these issues had been adequately addressed in the evidence of the parties, and considered that much greater attention to detail would need to be given to have a proposition that would have a prospect of success.

[54] Even though an application might be a restricted discretionary or full discretionary activity under PC46, the same type of issues will arise. Given there is no roading access on the Barrier for example, access continues to require close attention. Fire risk from vehicles and fire risk generally from housing, as well as tree fall areas and the like all become directly relevant to consent applications.

[55] In respect of the northern area, cultural issues and significant archaeological issues came to the fore in the *Blakely Pacific* decision as various sites were examined. It is inevitable in consideration of any development in the southern part of the Barrier that archaeological enquiry will yield further discoveries. Though fewer archaeological sites are shown in the southern area, it has not been surveyed to the same extent. Nevertheless we are satisfied from our visit to the area, that there are likely to be numerous archaeological and other sites of cultural importance within the southern part of the island which will need be addressed and have input from Tangata Whenua.

[56] We note, also, that the Southern part of the island has been subject to different erosional forces over the years. Geological mapping shows different formations both in terms of the dunes and in terms of ground height. Moreover the exact extent of habitat of flora and fauna in this area and the connectivity between various areas has also not been the subject of extensive study.

[57] In the circumstances, we would consider that the removal of the **notification consideration** by the District Council to be a significant derogation of public rights. It would suggest that the only parties that should be notified are those that were parties to these proceedings. With respect, that seems to be a significant proposition. Many parties would have been satisfied with the District Council's approach to subdivision, and satisfied that particular impacts of an application would be considered by the District Council at the time an application was made. We do not see any connection between the PC46 process undertaken and the subsequent notification of applications for consent.

Matters of National Importance

[58] To understand the context in which this hearing was taking place we need to refer to the various overlays for coastal environment, natural landscape, natural character and ecological areas. There was a significant dispute as to whether or not

the whole of the Barrier is an outstanding natural landscape or an outstanding natural feature.

[59] For current purposes, the Council area of shoreline largely co-extensive with S25 is identified in various Regional documents and in the District Council documents as having special values relating to outstanding natural character and natural features and natural landscape. The Significant Ecological Feature (SEF) Matakana 1 partly overlays S25, with values relating to matters such as ecological functioning, habitat, and connectivity issues, and extends further inland in a number of places. The Barrier is the largest Holocene created sand barrier in the southern hemisphere and, some suggested, the only one that was undeveloped. Of course, the production forestry companies see development as having occurred with the planting of radiata pine. This led to considerable debate as to the effect of exotic forestry upon the Barrier landscape or natural values, given its creation in the Holocene period and the relative rarity of a feature of this size.

[60] The Operative Regional Coastal Environment Plan identifies the Barrier as a regionally but not nationally significant natural feature and landscape. The Proposed Regional Coastal Environment Plan (**Proposed Coastal Plan**) has identified the Barrier as an outstanding natural landscape. That is a matter which is currently the subject of submissions to the Regional Council, and submissions have yet to be considered. In respect of the Proposed Coastal Plan, by the end of the hearing the parties had agreed that this issue should not be addressed by the Decision of the Court, given it may need to determine the substantive issue as part of the Proposed Coastal Plan process. We conclude that, in the event, it is not necessary for us to consider that issue because:

- a) some level of development is permitted on the Barrier, outside the currently identified s25 and Matakana 1 features (and as it is variously recognised in the Regional Policy Statement and the Operative Coastal Plan);
- b) appropriate development may not conflict with any outstanding values recognised subsequently; and
- c) if necessary, the District Council can introduce a Plan Change to fulfil its obligations to achieve and be consistent with the Regional Policy Statement and any new Operative Coastal Plan.

Development in overlay areas

[61] As the case developed, it became clearer that the intent of TKC in seeking to include lots within the S25 landscape and Matakana 1 SEF was not to build in the S25 feature, but to manage the feature as part of the development. As the case progressed, it became clearer that the ecological objectives of managing these highly sensitive areas might be addressed better on a wider basis. However it is clear from the Indicative Development Plan dated 13 March 2015 presented at the hearing that TKC was proposing to build within the Matakana 1 SEF.

[62] Accordingly, mechanisms for the creation of a large lot without any buildings in the coastal margin could achieve the same outcome without the difficulty of allowing subdivision within the highly sensitive natural areas immediately alongside the coast. Given the provisions of the New Zealand Coastal Policy Statement and the Regional Policy Statement, and Operative and Proposed Regional Plans, including S25 or Regional overlays within development lots as a restricted/discretionary activity was not pursued in the final submissions for TKC or Carrus. TKC's position on buildings within Matakana 1 SEF was not so clear.

[63] For the sake of clarity, we have concluded that the evidence is overwhelming. Subdivisions should not be permitted, generally, within highly valued areas including both S25 and Matakana 1, or areas included in the various Regional Policy and Plan documents as well. All parties recognised that a non-complying subdivision might be justifiable if it was for the purpose of maintaining and enhancing areas with high values, and on this basis we consider that a cautionary approach to building within them is essential. We have concluded that the PC46 non-complying activity status is appropriate for these sensitive areas.

[64] Given the RMA provisions relating to esplanade reserves, it may be that such areas may be taken as esplanade reserves on subdivision in any event. The District Council did not seem to reject out of hand the potential for conservation lots; essentially to be created in respect of these areas (provided they were not part of residential development). In saying that, this does not mean that they could not have common ownership, or the owners of residential lots might not be shareholders within such landholding. Under PC46 such an activity would be non-complying.

Baseline

[65] The next issue, which we wish to deal with briefly, is whether or not the removal of trees within these overlays is a permitted activity and thus forms a baseline consideration for the District Plan provisions. In distinction to resource consent, the Court is not obligated to consider any particular baseline, and a plan can intend to change existing uses. Clearly, Section 6 matters of national importance are key considerations under the Act, and any changes to maintain and to enhance these areas would have to be seen as positive.

[66] Our overall view is that the appropriateness of residential development and subdivision within the coastal buffer does not need to be determined in this Decision for the purposes of deciding on the provisions in relation to development. The reason that we have reached this conclusion is that no party seeks the development provisions include lands within S25 areas. It is not necessary to determine that issue in order to resolve these appeals. Suffice to say that the changes sought by Blakely seek to clarify production forestry in these areas for the sake of both parties in the future.

[67] By the end of the hearing no party was seeking to build within the buffer area generally coextensive with S25. However, it is unclear whether parties were seeking to build within Matakana 1 Significant Ecological Feature. This area deviates substantially inland in places. We have concluded that we must assume that TKC, at least, is seeking provision for dwellings within Matakana 1 SEF as discretionary activities.

Clusters versus Linear development

[68] A great deal of evidence was addressed, by TKC witnesses in particular, towards the proposition that cluster development was not as desirable as linear development, and that better outcomes could be achieved by allowing development along the coast. Witnesses such as Mr Scott and Mr Boffa gave evidence on this subject. We accept that, with careful thought and extensive conditions, it might be possible to develop a project that would have better environmental outcomes than those which might achieve consent under the cluster (restricted discretionary) provisions of the plan. The question, then, is what status would such provisions on alternative approach have?

[69] It seems to us that it must follow that there would need to be a greater environmental outcome to compensate for more of the coastline being utilised. There are issues of visibility from both Bowentown and Maunganui, together with potential impacts on the coastal environment, including potential erosion and/or effects on the contiguous habitats of flora and fauna, and access issues. Overall, we conclude that linear development, although possible, would require very close consideration of multiple issues. We have concluded that there is clear basis for the Council's decision to prefer clustering as a restricted discretionary activity.

[70] We have concluded on wording changes to 18.3.4(s) that would mean linear development would have full discretionary status. We put aside for the moment the question of limited notification, also sought by Carrus and TKC. This would mean that development that complied with the activity performance rules, but was not clustered, would then have to consider the full range of discretionary issues, whereas that which was clustered would be considered as a restricted discretionary activity.

[71] We conclude the evidence on this issue was decisive, including from the experts called for the Appellants. Particular consideration needs to be given to impact on the coastal environment and outstanding values in areas of overlay in any application. As a matter of fact, we conclude that there must be greater exposure to coastal values by linear development along the coast, rather than clustering. This raises a range of issues that need to be specifically and comprehensively addressed. In this regard, we accept the evidence of Mr Boffa and Mr Scott. Accordingly full discretionary status is clearly preferable to restricted discretionary status.

[72] We do not say that these matters are insurmountable, but they will require particular consideration. Much of the commentary about whether better outcomes might be achieved from linear development seem to turn on a view that the Dune Land values, although recognised as outstanding- both in ecological terms and natural character terms – nevertheless are not as high as indigenous vegetation values. We conclude the Dune Land values are recognised in terms of the various plans. These are the values that must be protected. The Act does not provide for, or suggest, that parties are able to substitute a new set of outstanding values and protect those instead.

[73] We conclude that any linear development is better considered as a full discretionary activity. Thus we would continue to include clustering as a performance standard, the breach of which makes the development fully discretionary.

The current constraints and alternatives

[74] In summary, the District Plan's overall approach is to use planning controls as necessary on a step by step basis as follows:

- (a) Development of residential lots above 102 is a prohibited activity and thus would require a plan change before any further liberalisation could be considered. Blakely and TKC do not address this category and are not seeking for it to be amended. Carrus seeks that the cap be increased to 200 as a discretionary activity and over 200 as a non-complying activity.
- (b) In relation to development within the cap, the District Council has operated upon the basis of TDRs at the rate of 1 to 40 hectares. Again, Blakely and TKC do not dispute that approach, whereas Carrus seeks to have no particular linkage to TDRs. We remain confounded as to what alternative mechanism they propose, other than first come first served.
- (c) As to development rights themselves, the Council adopts a stepped approach, with restricted discretionary activity status for those activities meeting the standards. Importantly, this includes a standard for clustering. Although, originally, the planners had agreed to the cluster provision being moved to the criteria, Mr Cooney, in closing, continues to support clustering as a performance standard for restricted discretionary developments. We have already concluded that clustering should remain a performance standard.

[75] Any application not meeting the performance standards would be a full discretionary activity, and non-complying within areas of overlay particularly the S25 and Matakana 1 overlays. This would consequently make non clustered development, otherwise meeting the performance standards as a full discretionary activity, provided that it is outside the overlay (S25 and Matakana 1) areas. Although TKC originally sought that activity within the S25 overlay would have a restricted or discretionary status, that position was dropped in final closing. TKC seems to now seek discretionary status of dwellings or development that are outside S25 but within the Matakana 1 SEF.

[76] We conclude that such a position is unsustainable. It depends upon the view that certain parts of Matakana 1 SEF, particularly the dunelands, are of lesser ecological value. Given that the overlay Matakana 1 SEF is not in dispute, we

conclude 6(c) militates to PROTECTION of this identified area. We conclude that discretionary consents are not appropriate for development within the Matakana 1 SEF overlay any more than it is within S25.

[77] Both Carrus and TKC seek that activities that are restricted discretionary or discretionary would be on a *limited notification* basis. We rejected this proposition earlier. Carrus originally sought that activities within the increased cap of 200 would be a controlled activity, but by the end of the hearing there seemed to be an acceptance that this should remain at least discretionary on a limited notification basis. We understand that residential development or subdivision within the overlay areas would remain non-complying. However Carrus sought development over the cap be non-complying too.

[78] We have already discussed in general terms the values on the Barrier, without reiterating the contents of the *Blakely* case in extensive detail. The Court is loath to use the word *unique* but this Barrier Island is of considerable importance. This is not only because of its geological formation but because of the relative lack of any development upon it and the ecological values, and archaeological and cultural values we have identified. These matters are recognised, not only in the Regional Policy Statement and relevant Plans, but in the District plan generally.

[79] The question for this Court is what is the most appropriate way to achieve the purpose of the Act and to ensure that the District plan is not inconsistent with any regional or national document? The provisions we are now talking about represent possible positions within the spectrum available, and the question we have to address is what is the most appropriate method under Section 32(1)(b)(i)? The practical options in this case relate to the question of prohibited, non complying, discretionary and restricted discretionary status, and the contents of the criteria and standards that might apply for development.

[80] Having considered all of the evidence we have concluded that the position adopted by the District Council is one properly open to it in terms of all the superior documents and Section 32 of the Act. The conclusion of this Court is that the provisions are relatively liberal given that the actual possibility of developing lots at the rate of one to 40 hectares on this island is questionable (see *Blakely Pacific* decision), particularly because of the lack of a public roading system. Nevertheless, the Council has sought to address the development potential by retaining restricted

discretion and consider applications to ensure that archaeological, cultural, ecological and other environmental constraints in respect of the island are addressed.

[81] We did not understand any expert witness to essentially dispute that proposition in broad terms. The questions therefore are:

- (a) Can the island accommodate greater intensity, keeping in mind the potential to impose environmental benefits by way of offset and look towards overall environmental gains?
- (b) Should a more liberal status be adopted for consideration of applications to encourage parties to such an outcome?

S32 Analysis

[82] Section 32(1)(b) requires the Court to examine the efficiency and effectiveness of the provisions in achieving the Objectives of the Plan. In respect of the TDR cap mechanism, we are unable to find any efficient or effective alternative that would ensure that development only occurred to an acceptable level, or on an equitable basis. The proposition of encouraging a gold rush for consents is not an appropriate outcome for the District Plan or under Part 2 of the Act. We see significant efficiency and effectiveness in the TDR cap methodology for the following reasons:

- (a) It is likely that the two major landholders will look towards some form of comprehensive use of their TDRs, and this militates towards a more complete and thorough investigation of the full range of issues which would arise. In comparison, smaller developments have more difficulty addressing some of the more significant issues on the island such as vehicle access, fire risk, ecological enhancement and the like.
- (b) The TDRs create a rational basis for the allocation of development rights. Given Mr Boffa's view that the island would accommodate 65 to 70 lots, it might be seen as overly generous. Nevertheless, there is no compulsion for the major landholders to utilise all of their development rights, and it is more likely in those circumstances that an acceptable environmental outcome can be achieved by balancing the development rights in relation to a particular proposal.

(c) In terms of broad fairness, smaller landholders cannot generally expect greater development rights than larger landholders, all things being equal. We do not accept the proposition that the Carrus land has some inherent advantage over that of Blakely or TKC, and accordingly it appears to us that the TDR is a fair method of allocation based upon a mechanism long recognised throughout the Western Bay of Plenty District Council area generally, of one house per 40 hectares. Its applicability to Matakana may have been questionable, but it is not the subject of an appeal. Any argument has sought a more conservative provision rather than a more liberal mechanism.

[83] We have therefore concluded that a cap of 102 by use of a 40 hectares TDR mechanism is the appropriate method for use on this island.

[84] When we look at the question of benefits and costs, it is our view that the costs in terms of ecological, visual, cultural, archaeological and other matters are clearly in favour of a conservative position for development on the Barrier. Although there may be some benefit to land owners from the ability to diversify their land use, long term costs of that are reflected in the introduction of residential development into an area which has previously been production forestry.

[85] In our view the coastal and ecological overlays (including S25 and Matakana 1 SEF) are entirely appropriate to identify particular constraints on the Barrier. We conclude that a status of non-complying for any subdivision or development incorporating such an overlay is appropriately non-complying. Any consent including these areas will need to carefully consider the matters under S6 of the Act in particular to ensure that the relevant values are fully addressed. This justifies non-complying status.

[86] We can see no compelling argument that there are economic, social and cultural benefits of more intensive development that outweigh the significant costs identified by all parties. To that end we conclude the question of economic growth and employment are marginal at best, and short term compared to the continuing utilisation of production forestry.

[87] Section 32(2)(c) requires us to assess the risk of acting or not acting. We must keep in mind that we are dealing here with development within a relatively constrained scope. However given the significant values at play, it is clear the Court should adopt a cautious approach to ensure that any development which occurs is

appropriate and maintains or enhances the environmental, cultural, social and archaeological values of the island. We conclude that this precludes controlled activity status. It is likely that a restricted activity status would address most of these issues. Sections 32(2) and (4) do not add any particular issues arising in respect of this Plan Change.

[88] In the end, we have frequently framed the overall test under Section 32 as to which provisions better meet the purpose of the Act.

[89] We have already discussed a change that would allow restricted discretionary activities where they involved clustering and discretionary activities for those outside the standards (which would include a linear application). We conclude that such a provision will enable all relevant issues to be addressed in an appropriate way to the extent to which this Court has jurisdiction to make a decision. Where applications for development or subdivision involve ecological, natural character or landscape values, such as within the S25 or Matakana 1 SEF areas, the activity would remain non-complying. We conclude that is entirely appropriate to emphasise the cautionary approach which should be adopted in considering any S6 issues. Where an application within the S25 or Matakana 1 SEF areas was simply to maintain or enhance the area, i.e. by predator proofing, weed and pest control etc then such consent is likely to be granted. However, it would clearly mark a preference for any subdivision or development to avoid areas of particular value.

[90] We have already addressed limited notification and dismissed this as inappropriate. Similarly we discussed the possibility of non-complying status or discretionary status beyond the development cap. In terms of s32 we conclude the prohibition avoids parties' in incurring costs and time in applying for development. Moreover, it reinforces the pattern of increasing complexity given by the changing status of residential development.

Conclusion

[91] Our role is to select provisions that better meet the purpose of the Act in this case. We conclude that the provisions that better address the purposes of Part 2 and s32 of the RMA, and the objectives and policies of the National, Regional and District Plan(s) are those adopted by the District Council with the amendments we have made.

[92] In that regard, we conclude that the values of the Barrier need to be protected and addressed in applications for consent. The terms of PC46 do not suggest that these values are in any sense absolute or sacrosanct, but need to be considered on a case by case basis as to whether the consent is appropriate. That process involves the District Council making a decision as to notification on a case by case basis to ensure that the relevant interests are properly addressed as required.

[93] We see no basis on which limited notification should occur or that the District Council should be further constrained in the range of matters that it addresses with the clarification of 8.3.4(s) to remove the word *clustering*. We consider that this gives a graduated response by the Council to applications for consent. We agree that there are likely to be benefits from clustering in terms of impacts on features and values, roading, clearance and the like. Nevertheless, we accept that if an application is able to demonstrate that it can achieve the objectives and policies of the District and Regional Plans, it may be considered by the Councillors as full discretionary outside overlay areas. Within the overlays areas a non-complying status is justified.

[94] We agree entirely with the District Council, that prohibition beyond the 1 to 40ha TDR is an appropriate and even necessary methodology in this particular case. It serves a particular purpose of limiting the potential impact upon the values of the Barrier, and preventing unreasonable expectation or doubt having particular regard to the cultural and other issues which would arise with higher number of houses.

[95] We conclude, in this case, that the District Council has given adequate reasons as to why they have adopted this approach, and we agree entirely that the circumstances of this case warrant that approach. We note that the cap itself is not part of the document; it is simply a consequence upon the development rights that arise in terms of the 1 to 40 hectare rule and the TDR's. Whilst we recognise that smaller land owners have less ability to develop their property, this is in accordance with the balance of the Western Bay of Plenty District Plan.

Outcome

[96] For the reasons we have described, we modify the Council's Plan Change 46 as set out in this Decision, and confirm Appendix A subject to the alterations endorsed in this Decision.

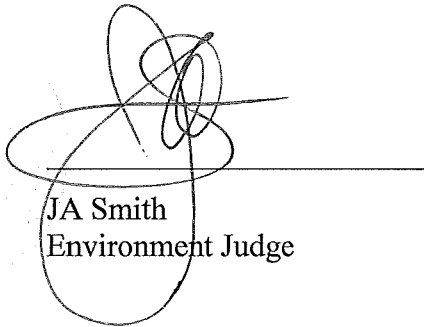
[97] We direct the Council to forward to the other parties within **10** working days a final copy of the document to be incorporated within the District Plan. Any comments are to be forwarded to the Court, together with the final plan and the District Council's comments within the **10** working days for confirmation by the Court.

Costs

[98] Costs applications are to be filed within **20** working days, any responses within a further **10** working days thereafter and a further reply (if any) within **5** working days after that.

SIGNED at AUCKLAND this..^{27th}..... day of^{May}.....2015

For the Court



JA Smith
Environment Judge

Annexure "A"

Proposed Changes to: Section 3 - Definitions

"Production Forestry" means the management of land for commercial wood production including the extraction of timber therefrom and the replanting of trees but does not include the milling or processing of timber.



Section 5 – Natural Environment: Contents

Natural Environment.....	7
5. Natural Environment	7
Explanatory Statement	7
5.1 Significant Issues	8
5.2 Objectives and Policies	10
5.3 Applicability	11
5.4 Activity Lists	11
5.5 Information Requirements.....	11
5.6 Matters of Discretion.....	13
5.7 Other Methods.....	14



This document shows the proposed changes to Section 5 – Natural Environment as a result of:

- a) Western Bay of Plenty District Council decisions on District Plan Variation 2/Plan Change 46 – Matakana Island (shown in red underline for inserts and ~~red strikethrough~~ for deletions).
- b) Agreed changes as included in the Joint Expert Caucusing Statements (shown in green underline for inserts and ~~green strikethrough~~ for deletions).

Natural Environment

5. Natural Environment

Explanatory Statement

The primary objective of the Natural Environment Section is to promote the sustainable management of the remaining natural environmental resources of the *District* (plants, animals, habitats and ecosystems).

The *Council* has a responsibility under the *RMA* to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance s6(c). *Council* also has a wider responsibility to maintain and enhance ecological values within the *District* using a mix of regulatory and non regulatory methods.

The Natural Environment Section relates to the areas marked on the *District* Planning Maps and listed in Appendix 1 as Significant Ecological Features but can be used as a guide for assessing other ecological sites through the resource consent process. Any activity assessed under the Natural Environment Section also needs to be assessed under the relevant rules that apply to the underlying zone.

The majority of the features that have been identified are from the original District Plan and were subject to an Environment Court decision. The sites were assessed in terms of both fauna (animal life) and flora (plant life).

The Significant Ecological Features have been classified into four major habitat types being native forest, *wetlands*, stream/river margins (riparian), and the coast. However, there are exceptions to this general classification where a significant native habitat worthy of protection falls within other areas.

The emphasis on habitats and ecosystems rather than protection of individual species arises out of the land use related responsibilities of *Council*. While *Council* has to focus on the land based component; the protection of habitats and ecosystems indirectly achieves the objective of species protection.

An assessment of the actual and potential effects on the Significant Ecological Feature is required for any activity or *development* carried out within or adjacent to a Significant Ecological Feature.

~~Existing use rights may apply in relation to the management of stock by landowners. The rules in the District Plan do not compulsorily require fencing by landowners.~~

Existing use rights apply. These include farm management and the management of other land currently used for production forestry, woodlots, and quarries.



Council aims to work with both landowners and other agencies including the *Regional Council* and the Department of Conservation to protect and enhance ecological areas within the *District*.

Council utilises a number of methods outside of the District Plan to achieve this. The *Regional Council* environmental management plans are one of these methods, whereby funding is available for environmental protection and restoration projects in the *District*. This enables work to be carried out to restore areas of ecological significance resulting in benefits for the wider community.

The District Plan also provides additional subdivision opportunities where Significant Ecological Features are legally protected and managed in perpetuity.

Other formal protection instruments may also be involved with the protection of the natural environment. These include the Regional Council Environmental Programmes, Tasman Accords, QEII and other covenants. Activities associated with these protective measures are allowed as of right.

The matter of the natural character of the coastal environment, *wetlands*, rivers and lakes and their margins is a combination of variables that are separately addressed in the District Plan. In particular, issues relating to natural character are addressed in this Section (Natural Environment), Section 6 (Landscape), Section 8 (Natural Hazards) and Section 12A (Esplanades) and should be referenced accordingly.

As well as those Ecological Significant Features listed in the District Plan, there are other ecological features in the *District* that are not listed because they have been given a lower ecological ranking. This lower ranking however, does not mean that such features are not environmentally important nor worthy of protection by other than regulatory methods.

Significant Ecological Features may be located on multiple owned *Maori land*. In these instances *Council* recognises the contribution of iwi management plans.

5.1 Significant Issues

1. Significant remaining indigenous native forest, *wetlands*, riparian, and coastal habitats are under threat from human-induced activities including animal and plant pests.
2. There are areas outside those listed as significant in the District Plan that may also be important in terms of ecological value and may be a habitat for native species. These areas are also under threat from a range of activities.
3. The natural environment provides us with a range of ecosystem services on which we are dependent. These include the provision of freshwater, air, fertile soils, riparian protection and flood control.



These processes and values can be taken for granted and should be considered when assessing the value of such natural resources.

4. The extent of indigenous habitats is diminishing and there is inadequate protection of the remaining areas. Lowland and coastal habitats tend to be under the greatest threat.
5. Inappropriate land management practices often occur on or adjacent to important habitats. Examples include pollution from stormwater runoff, rubbish disposal and inappropriate stock grazing.
6. Tourist and recreational activities can impact on the resource. In particular over-use can cause degradation of the quality of the environmental resource itself.
7. Frequently there is a lack of knowledge of the resource (ecological values, threats and interactions), resulting in inappropriate management practices.
8. Ecological protection is managed by a number of agencies including Department of Conservation and the *Regional Council*. This can cause confusion in the local community as to which agency is the relevant one to approach dependent on the type of ecological protection or information they are seeking.
9. Native forest habitat: bush clearance may be undertaken for milling, firewood, mining, house sites, access roads and agricultural activities resulting in loss of the resource.
10. Riparian habitat: inappropriate management of *riparian areas* including vegetation clearance and stock management, resulting in the loss of ecological values, bank erosion and pollution of water with sediment and nutrients.
11. *Wetland* habitat: loss of *wetlands* and damage caused by drainage and infilling. *Wetlands* are stated in the *RMA* as a matter of national importance, yet they have a low public profile and there is a lack of knowledge within the community about their value, sensitivity and rarity.
12. Coastal habitat: estuarine areas, dunes and pohutukawa are sensitive, as are shorebird and estuarine bird roost and nesting sites, particularly to development pressures and the impact of projected sea level rises.
13. Equity: the distribution of the costs and benefits of ecological protection and management between individual landowners and the community can be inequitable.



5.2 Objectives and Policies

5.2.1 Objectives

1. Protection of all significant native plant and animal habitats within the Western Bay of Plenty District.
2. Support and encourage the protection and enhancement of ecosystems of importance for both the natural processes they offer and any ecological benefits in terms of connectivity, buffering or the provision of habitat for threatened species.
3. Preservation of the natural character of the *District's* coastal environment (including the coastal marine area), rivers, lakes, and their margins.
4. Preservation of *wetland* and *riparian areas* and where practicable the enhancement or restoration of the values and function of degraded *wetland* and *riparian areas*.
5. Greater public awareness, support and involvement in the protection and restoration of areas of ecological significance, particularly those in lowland and coastal areas.

5.2.2 Policies

1. Ecological sites that have been scientifically identified as significant should be protected.
2. Support and encourage the protection and enhancement of ecological corridors, networks and connections between significant native habitats and ecosystems.
3. Protective measures should account for the dynamics of water related effects on *wetlands*.
4. Importance should be placed on the off site contributions of *riparian areas* to the health of adjoining habitats (*wetlands*, rivers, the sea, estuaries and other associated land/water interfaces).
5. Likely changes in sea level should be provided for in ways that allow for the natural inland migration of the coast and associated identified native habitats and ecosystems.
6. Protection measures should take into account natural seasonal fluctuations in habitat character and sensitivity.



7. An approach which is precautionary but responsive to increased knowledge should be adopted where the management of the environment is hindered by lack of understanding about processes and the effects of activities.
8. Activities should not adversely affect any identified significant native plant and animal habitats and ecosystems.
9. The adverse effects of inappropriate subdivision, use and *development* on the natural character of the coastal environment, *wetlands*, rivers, lakes, and their margins should be avoided. Where avoidance is not practicable, such effects should be appropriately remedied or mitigated.
10. The farming of species which may threaten natural ecosystems should be controlled through appropriate fencing standards.
11. To protect and maintain *wetlands* and *riparian areas* and enhance and restore *wetlands* and *riparian areas* in appropriate locations.
12. Activities should not result in the release of animal or plant pests that are likely to cause harm to native vegetation, habitats and native fauna.
13. Any new activities should be managed in a way that avoids damage to undergrowth and the removal of forest floor material which would result in the native ecosystem being adversely affected in identified significant areas.
14. Encourage the ongoing protection and management of ecological areas using the protection lot rule.

5.3 Applicability

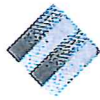
These rules apply to features of ecological significance. Refer to the Planning Maps for location and Appendix 1 for further details.

5.4 Activity Lists

5.4.1 Permitted Activities

- (a) Activities in areas subject to and in accordance with specific covenants or other legal agreements entered into with the District Council, *Regional Council*, Department of Conservation, or QEII Trust.





- (b) Clearance of exotic species subject to no native trees greater than 6m in height being felled for access.
- (c) Planting and management of indigenous vegetation, restoration, perimeter fencing, and any plant or animal pest control measures.
- (d) Activities on reserves as provided for in the Reserves Act 1977 and the Conservation Act 1987.
- (e) Trimming or pruning of any native tree, bush or plant if it becomes a hazard or infringes onto an area used for primary production so long as it will not result in the death, destruction or irreparable damage of the tree, bush or plant.
- (f) *Maintenance* of existing tracks, walkways and fences.
- (g) All activities that would otherwise be permitted by the District Plan shall be permitted where evidence is provided to the satisfaction of *Council* that demonstrates that an area (or part of an area) identified on the District Planning Maps as an ecological feature does not contain any ecological values and has not contained the ecological values since 1994.

5.4.2 Restricted Discretionary Activities **(excluding Matakana Island)**

- (a) Native vegetation removal, destruction or clearance (including logging and burning).
- (b) *Earthworks*.
- (c) Infilling (including dumping), drainage or piping of *wetlands*.
- (d) Planting of exotic species.
- (e) Visitor and outdoor recreational facilities and activities.
- (f) *Educational facilities*.
- (g) *Accommodation facilities* associated with (e) or (f) above.
- (h) *Dwellings* and *accessory buildings* including *minor dwellings* and accessory dwellings.
- (i) *Home enterprises*.
- (j) Subdivision.
- (k) Minerals exploration, mining and *quarrying*.
- (l) Works and *network utilities* as provided for in Section 10.



5.4.3 Discretionary Activities

- (a) Visitor and outdoor recreational facilities and activities on Matakana Island that meet the performance standards in 18.4.1(g).
- (b) Accommodation facilities and educational facilities associated with (a) above on Matakana Island that meet the performance standards in 18.4.1(f).

5.4.4 Non-Complying Activities

- (a) Subdivision (only where additional lots are created within Natural Features and Landscapes and not within the balance area) and development on Matakana Island.

5.4.5 Prohibited Activities

- (a) *Places of assembly* not covered in 5.4.2.
- (b) *Accommodation facilities* not covered in 5.4.2.
- (c) *Production forestry* not covered in 5.4.2.
- (d) *Rural contractors depots.*
- (e) *Kennels, catteries.*
- (f) *Intensive farming.*
- (g) *Rural selling places.*
- (h) *Animal saleyards.*
- (i) Coolstores/packhouses.
- (j) Dumping of rubbish or garden waste.
- (k) Planting or introduction of pest plant and animal species.



5.5

Information Requirements

Any application must be accompanied by an Assessment of Environmental Effects (AEE). The degree of detail of the AEE should reflect the nature and effect of the proposal on the Identified Significant Ecological Feature. The AEE

of proposed activities must take account of the values of the feature and its vulnerability. The AEE shall contain the following information:

- (a) A plan of the property subject of the application indicating the location and dimensions of areas to be affected by the proposed works (must include the extent of any excavation, fill, water flow, water table and vegetation clearance impacts where relevant).
- (b) The location of existing and proposed *buildings* and activities in relation to the ecological feature and how the development proposal will serve to protect and enhance the feature.
- (c) An assessment of the impact of the proposal on natural habitats and ecological values of the locality and how they will be avoided, remedied or mitigated and managed for protection (including *wetland* and riparian impacts). Depending on the effects of the proposal, assessment may be required from a suitably qualified person.
- (d) Details of an appropriate rehabilitation programme or other mitigation measures for the area to be subject to the proposed activities. Again this may need to be from a suitably qualified person depending on the nature of the effect and mitigation required.

Explanatory Note (not a rule)

There is a requirement under Part III of the Forests Act 1949 to consult with the Indigenous Forest Unit of the Ministry for Primary Industries before felling any indigenous forest on private land.

- (e) The location and extent of any archaeological, cultural and historic sites within any allotment subject to the application and how they will be affected by the proposal.
- (f) The likely impact of the proposal on natural landforms in terms of potential for subsidence or erosion (including stream banks).
- (g) The time period over which the work will take place.
- (h) The likely impact of noise generated from *construction* activity, the facilities and/or activities on natural habitats and ecosystems (including noise generated from modes of transport and/or recreation equipment, and including levels, times, and durations).



5.6 Matters of Discretion

5.6.1 Assessment criteria for Restricted Discretionary Activities

In considering an application for a Restricted Discretionary Activity *Council* is restricted to the following assessment criteria. These criteria can be used as a guide for Discretionary and Non Complying Activities.

- (a) The scale and intensity of the activity shall be tailored to ensure the sustainability of natural habitats and ecosystems associated with the site.
- (b) All existing native vegetation shall be retained except where removal is unavoidable for the following reasons:
 - (i) to create a *building* platform;
 - (ii) for access and parking;
 - (iii) for the purposes of the proposed activity.

In this case mitigation should be provided to compensate for the loss of this vegetation where deemed appropriate.

- (c) Any native vegetation removal must not adversely affect the functioning and sustainability of natural habitats and ecosystems.
- (d) All *earthworks* necessary for building platforms, access or the activity shall be such that they create minimal disturbance to natural habitats and ecosystems.
- (e) Any effects on the Significant Ecological Feature as a result of the location of house sites and the associated threat from any animal predators, or any garden plants entering the feature.
- (f) The noise, light or glare impact generated from *construction* activity, the facility or the activity, must not adversely affect the sustainability of natural habitats and ecosystems.
- (g) *Development* proposals shall ensure that any run-off or stormwater resulting from the establishment of the activity does not lead to siltation, sedimentation or a reduction of water quality in natural watercourses, *wetlands* and groundwater that leads to adverse effects on identified natural habitats and ecosystems.
- (h) For works and *network utilities* the proposal must demonstrate the necessity to locate within or adjacent to the Significant Ecological Feature concerned.





- (i) The nature, duration, form and extent of the proposed *development*, activity, alteration or change and its effects on the Significant Ecological Feature.
- (j) The degree of modification or damage that will be caused to the Significant Ecological Feature.
- (k) Whether there is reasonable alternative location on the site for the proposed *development* or activity that will result in a nil or lesser impact on the proposed natural area.
- (l) The objectives and policies in the District Plan relating to the protection of Significant Ecological Feature.
- (m) The potential effects of the proposed *development* on the ecological relationships between features (e.g. connectivity and buffering).
- (n) Consideration of relevant iwi management plans.
- (o) Ways in which an effect can be avoided, remedied or mitigated.

5.6.2 Discretionary and Non-Complying Activities – Matters of Discretion and Assessment Criteria

In considering an application for a Discretionary Activity or a Non-Complying Activity, Council shall consider:

- (a) Relevant objectives and policies of the District Plan.
- (b) The matters listed in 5.6.1, 18.5.8.

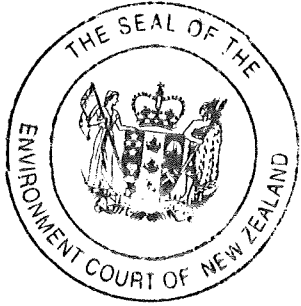
5.7 Other Methods

5.7.1 The Bay of Plenty Regional Water and Land Plan. This Plan, administered by the *Regional Council* seeks to promote the sustainable and integrated management of land and water resources. It includes a number of regulatory and non-regulatory methods to manage the impacts of activities on natural habitats/ecosystems. These activities include, but are not limited to, *earthworks*, forest harvesting, vegetation clearance by burning, wetland modification as well as the disturbance of land and soil resulting from vegetation clearance.

Financial incentives to landowners for environmental protection shall be by way of grants for fencing. The District *Council* in applying these grants will work in consultation with the *Regional Council* and the application of their environmental management plans.



- 5.7.3 Advisory function performed by the Department of Conservation and the *Regional Council* on management aspects of areas with ecological and/or soil and water conservation values.
- 5.7.4 Inclusion of all the *District's* identified ecological areas on *Council's* Geographical Information system (GIS) mapping system. This information forms part of the Land Information Memorandum and draws the landowner's attention to the ecological values contained within the identified sites.
- 5.7.5 Queen Elizabeth II and other grants, for example the Natural Heritage Fund and Nga Whenua Rahui, for fencing in exchange for covenanting features.
- 5.7.6 Application fees shall be waived for resource consents for activities within Significant Ecological Features that would otherwise be a Permitted Activity.



Section Contents

Landscape	2
6. Landscape	2
Explanatory Statement	2
6.1 Significant Issues	3
6.2 Objective and Policies	3
6.3 Applicability	3
6.4 Activity Lists	3
6.5 Information Requirements for Restricted Discretionary and Discretionary Activities ...	8
6.6 Matters of Discretion	10
6.7 Other Methods	13

Matakana Island

Aspects of this Section of the District Plan that relate specifically to Matakana Island remain subject to appeal by reason of the following appeals:

- Bay of Plenty Regional Council (ENV-2010-AKL-000096)
- Blakely Pacific Limited (ENV-2010-AKL-000076)
- TKC Holdings Limited and Matakana Investment Group Limited (ENV-2010-AKL-000072)

As such the provisions in this Section of the District Plan that relate to the above have been annotated to indicate existing appeals. This has been done by providing a line in the right hand margin beside the part of the District Plan that has been appealed. Beside these lines is a number which is the *Council* reference to the respective appeals as follows:

- Bay of Plenty Regional Council - 1
- Blakely Pacific Limited - 3
- TKC Holdings Limited and Matakana Investment Group Limited - 35

Accordingly, in regard to provisions relating specifically to Matakana Island, the 2002 Operative District Plan and the 30 January 2010 Decisions Version of the Proposed District Plan remain applicable. In all other cases the 2012 District Plan as operative applies to Matakana Island.



Landscape

6. Landscape

Explanatory Statement

The Western Bay of Plenty District Council has a number of natural features and landscapes that are appreciated by residents and visitors alike for their outstanding visual character and appeal. These features have been formally identified in a landscape assessment and mainly comprise of dominant landform features such as peaks, ridgelines and sharp transitions between landform types such as between land and water. A number of important *viewshafts* from State Highways and public lookouts have also been identified.

These landscape features and views are sensitive to change and their visual quality can be compromised by the individual or cumulative effects of land use and *development* activities which are not in harmony with the natural appearance of the landscape. Over the next ten year planning period, it is anticipated that there will be additional pressure put on these landscapes from subdivision and *development*. To ensure these landscape features are protected and maintained for current and future generations it is appropriate to implement planning controls to ensure potential impacts of *development* are avoided or mitigated.

The rules in this Section apply to the Outstanding Landscape Features identified in Appendix 2 and on the Planning Maps. Specific Landscape Management Areas and rules have been adopted for both the Wairoa River Valley and Tauranga Harbour Margin. The new setbacks which define the extent of these management areas are significantly larger than in the previous District Plan, however they provide a more accurate reflection of the particular vulnerability of these landscapes to inappropriate subdivision and *development*. A set of Permitted Activity standards has been provided to allow *development* to still occur as of right in situations where the effects are deemed to be acceptable.

The Outstanding Landscape Features identified in Appendix 2 are in most cases located on private property. The overall intention of the rules in this section is to not unreasonably prevent *development* within landscape features but rather to ensure that *development* is undertaken in a manner which mitigates its visual impact against the surrounding natural environment.

Lot boundaries provide the overall pattern of landscape that in time determines landscape character. Where possible they should be aligned to reinforce the natural pattern of the landscape.

Existing use rights apply. These include farm management and the management of other land currently used for *production forestry*, woodlots, and quarries.



6.1 Significant Issues

1. The *District* has a number of outstanding natural features and landscapes, the visual quality of which can be adversely affected by inappropriate subdivision, use and *development*.
2. Important *viewshafts* from public locations such as State Highways and public lookouts can be compromised by inappropriate land use and *development* activities.

6.2 Objective and Policies

6.2.1 Objective

The unique visual quality and character of the *District's* outstanding natural features, landscapes and *viewshafts* are protected from inappropriate subdivision, use and *development*.

6.2.2 Policies

1. Within areas identified as being outstanding natural features and landscapes, landscape character should be protected and enhanced by managing the adverse effects of inappropriate land use and *development* activities.
2. Identified outstanding *viewshafts* throughout the *District* should be maintained through the avoidance of inappropriate *development*.

6.3 Applicability

The rules within the Landscape Section apply only within identified natural features and landscapes and identified *viewshafts*. Refer to Planning Maps for general location and Appendix 2 (Schedule of Identified Outstanding Landscape Features) for detailed descriptions. For the purpose of interpretation, the description provided in Appendix 2 shall take priority over the maps with regard to location.

6.4 Activity Lists

6.4.1 Permitted Activities

In addition to those activities listed as Permitted in the respective zone (or in Rule 10.3) but excluding those listed as Restricted Discretionary in 6.4.3 below, the following are Permitted Activities:



6.4.1.1 Within Identified Natural Features and Landscapes

35.15

~~(a) Production forestry in landscape feature S9 and S25 - Matakana Island.~~

35.17

~~(a) Production forestry in landscape feature S9 - Matakana Island.~~

(b) Native forest logging under the Forest Amendment Act 1993.

6.4.1.2 Within 50m inland from MHWS in the Tauranga Harbour Landscape Management Area (S8) and within 50m from the river bank in the Wairoa River Landscape Management Area (S7), and within ~~40m~~ 50m from MHWS in the Matakana Island Landscape Management Area (S9) landscape-feature

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(a) Where ancillary to a permitted activity in the Rural Zone – *earthworks* (cut or fill) not exceeding a maximum cumulative volume of 200m³ per *lot* or resulting in a maximum cumulative vertical face of greater than 1.5m. Provided that any face shall be grassed or mass planted.

6.4.1.3 Between 50m and 300m inland from MHWS in the Tauranga Harbour Landscape Management Area (S8) and between 50m and 300m from the river bank in the Wairoa River Landscape Management Area (S7) and between ~~40m~~ 50m and 300m inland from MHWS in the Matakana Island Landscape Management Area (S9) landscape-feature

(a) Where ancillary to a permitted activity in the Rural Zone or associated with a *building* – *earthworks* (cut or fill) not exceeding a maximum cumulative volume of 500m³ per *lot* or resulting in a maximum cumulative vertical face of greater than 1.5m. Provided that any face shall be grassed or mass planted.

(b) *Buildings* subject to compliance with all of the following Permitted Activity performance standards;

(i) *Height* 6m (restriction applies only between 50m and 150m inland from *MHWS* and from the river bank);

Note:

Rural Zone *height* of 9m applies between 150m and 300m inland from *MHWS* and from the river bank.

(ii) All external surfaces of *buildings* (excluding glazing) shall comply with the following reflectivity standards:

Walls = no greater than 35%;

Roofs = no greater than 25%;

Explanatory Note:

The above shall be in accordance with British Standard BS5252 Reflectance Value.



- (iii) No mirrored glass shall be used;
- (iv) No native vegetation greater than 3m in *height* shall be removed as a result of any new *building* and/or access way.

Explanatory Note:

For the purpose of this rule '*buildings*' shall include additions and alterations to existing *buildings* lawfully established prior to 1 January 2010 or granted building consent (and resource consent if required) for which relevant applications were lodged prior to 1 January 2010, which increase the *gross floor area* of that existing *building* by 50% or more.

Except that:

Additions and alterations which do not increase the *gross floor area* of an existing *building* (as described above) by 50% or more shall be exempt from compliance with any rules contained within the Landscape Section of the District Plan.

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6.4.1.4 Within Identified Viewshafts

- (a) Removal or trimming of vegetation.
- (b) Native forest logging under the Forest Amendment Act 1993.

6.4.2 Controlled Activities

Those activities listed as Controlled Activities in the respective zone, but excluding those listed as Restricted Discretionary in 6.4.3 following.

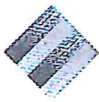
6.4.3 Restricted Discretionary Activities

6.4.3.1 Within Identified Natural Features and Landscapes (except those addressed by specific activity lists in 6.4.3.2 and 6.4.3.3 following):

- (a) Subdivision (only where additional *lots* are created within Natural Features and Landscapes and not within the balance area), excluding the Matakana Island Open Coast (S25).
- (b) *Buildings* excluding the Matakana Island Open Coast (S25).
- (c) *Earthworks* (cut or fill) resulting in a maximum cumulative vertical face of greater than 1.5m.
- (d) Native vegetation clearance excluding the Matakana Island Open Coast (S25).
- (e) *Production forestry.*

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- (f) Works and *network utilities* classified as Discretionary Activities by Rule 10.3.

6.4.3.2 Within 50m inland from MHWS in the Tauranga Harbour Landscape Management Area (S8) and within 50m from the river bank in the Wairoa River Landscape Management Area (S7) and within 40m 50m from MHWS in the Matakana Island Landscape Management Area (S9) landscape-feature

- (a) Subdivision (only where additional *lots* are created within Natural Features and Landscapes and not within the balance area) excluding the Matakana Island Landscape Management Area (S9).
- (b) Buildings excluding the Matakana Island Landscape Management Area (S9).
- (c) Where ancillary to a permitted activity in the Rural Zone – *earthworks* (cut or fill) exceeding a maximum cumulative volume of 200m³ per *lot* and/or resulting in a maximum cumulative vertical face of greater than 1.5m.
- (d) Native vegetation clearance.
- (e) *Production forestry.*
- (f) Works and *network utilities* classified as discretionary activities by Rule 10.3.

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6.4.3.3 Between 50m and 300m inland from MHWS in the Tauranga Harbour Landscape Management Area (S8) and between 50m and 300m from the river bank in the Wairoa River Landscape Management Area (S7) and between 40m 50m and 300m inland from MHWS in the Matakana Island Landscape Management Area (S9) landscape-feature.

- (a) *Buildings* that do not meet all of the Permitted Activity performance standards provided in 6.4.1.3(b) above excluding the Matakana Island Landscape Management Area (S9).
- (b) All *earthworks* (cut and fill) including those ancillary to permitted activities in the Rural Zone exceeding a maximum cumulative volume of 500m³ per *lot* and/or resulting in an maximum cumulative vertical face of greater than 1.5m.
- (c) Removal of native vegetation over 3m in *height*, as a result of any new *buildings* and/or access way excluding the Matakana Island Landscape Management Area (S9).
- (d) The assessment criteria set out in Rule 6.6.1 are applicable only to the extent that they relate to any actual or potential adverse



environment effects directly attributable to the particular matter of non-compliance.

6.4.3.4 Within Identified Viewshafts

(a) High Restriction Area

Any of the following activities which exceed 1.2m in *height* above *ground level*.

- (i) *Buildings/Structures*
- (ii) *Fences/Walls* (except a post and wire fence)
- (iii) *Signs* (except *Official Signs*)
- (iv) *Artificial Crop Protection*
- (v) Works and Utilities classified under Rule 10.3, excluding those not above *ground level* and street lighting
- (vi) *Earthworks* (fill)
- (vii) Planting of vegetation that will exceed the *height* limit referred to under (a) above (at maturity)
- (viii) *Production Forestry*
- (ix) *Conservation Forestry*

(b) Medium Restriction Area

Any of the following activities which exceed 5m in *height* above *ground level*.

- (i) *Buildings/Structures*
- (ii) *Signs* (except *Official Signs*)
- (iii) *Artificial Crop Protection*
- (iv) Works and Utilities classified under Rule 10.3, excluding those not above *ground level* and streetlighting
- (v) *Earthworks* (fill)
- (vi) Planting of vegetation that will exceed the *height* limit referred to under (b) above (at maturity)
- (vii) *Production Forestry*
- (viii) *Conservation Forestry*

(c) Low Restriction Area

- (i) *Production Forestry*
- (ii) *Conservation Forestry*

6.4.4 Discretionary Activities

6.4.4.1 Within 50m from MHWS in the Matakana Island Landscape Management Area (S9).

- (a) A solid fence exceeding 1.2m in height.

6.4.4.2 Between 50m and 300m inland from MHWS in the Matakana Island Landscape Management Area (S9).





(a) A solid fence exceeding 1.2m in height.

6.4.4.3 Any activity not listed as a Permitted, Controlled or Restricted Discretionary or Non-Complying Activity.

6.4.5 Non-Complying Activities

6.4.5.1 Within 50m from MHWS in the Matakana Island Landscape Management Area (S9a) and Matakana Island Open Coast (S25)

(a) Buildings

(b) Subdivision (only where additional lots are created within Natural Features and Landscapes and not within the balance area).

(c) Dwellings

6.5 6 Information Requirements for Restricted Discretionary and Discretionary Activities

A landscape and visual assessment is to be provided with the application by a suitably qualified person. This assessment shall establish the landscape context taking into account the proposed activity and the affected landscape elements applicable to the *development* site and the immediate surrounding area.

The landscape assessment shall:

(a) Identify and describe the landscape characteristics of the site and any features of special significance to the surrounding environment.



- (b) Include a site plan that shall identify *lot* boundaries, contours (reduced levels i.e. levels related to a known datum point), landscape types, native vegetation, and other trees over 6.0m in height, waterways, significant adjacent off-site natural features, the location of *buildings* and *structures* (and RL's for roofs), proposed access, fencelines, and the finished landform and levels in relation to the proposed subdivision or proposed works, to clearly demonstrate the protection of the natural landscape character.
- (c) Recommend conditions necessary to mitigate adverse effects or provide positive effects on the landscape including:
- (i) Controls on the siting, bulk, location and design of *buildings*, *earthworks* and vegetation removal;
 - (ii) Location and design of roading and associated services;
 - (iii) Planting of vegetation and/or landscaping on public and private lands;
 - (iv) Protection of features of landscape significance or historic heritage;
 - (v) Location and design of fencing.

The level of detail provided with any application shall be related to the scale of the activity and the nature of any effects.

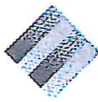
For ease of analysis and consistent administration, the landscape elements as they relate to the Tauranga Harbour (S8) and Wairoa River (S7) Landscape Management Areas and Matakana Island (S9) have been broadly defined into four landscape types as follows:

Harbour plains/river flats: This landscape type is found mostly within the bays, along the harbour margin but also along the margins of the Wairoa River. Generally the estuarine margin is densely vegetated or a sandy beach is found. The depth of the harbour and river plains varies eventually meeting a rolling slopes landscape. The slope for this landscape element ranges between 0-4°.

Rolling hills/slopes: This landscape comprises rolling landscape and can vary from gentle rolling to strong rolling hillsides with deep valleys and dominant ridgelines. In some cases the rolling slopes drop to meet the harbour margin directly with some estuarine margin abutting the edge. Slopes range between 4 - 21°.

Scarps/cliffs: This landscape is found mostly along the varying headlands within the Tauranga Harbour and along the edge of the Wairoa River and its plains. Both scarps and cliffs are steep slopes ranging between 21-90°.





Plateau: This landscape type is found along the varying headlands within the Tauranga Harbour and above steep river cliffs. The plateau in many cases supports a variety of land uses, including horticulture, agriculture and residential housing. The plateau landform ranges between of 0-4°slope.

6.6 Matters of Discretion

6.6.1 Assessment criteria for Restricted Discretionary Activities

6.6.1.1 The assessment criteria in 6.6.1.3 and 6.6.1.4 below apply to:

- (a) Activities within natural features and landscapes where such activities are visible from State Highways or the public lookouts identified within the descriptions of *viewshafts* 5, 6 and 7.
- (b) Activities within Orokawa Bay Unit (S1), the Wairoa River (S7) and Tauranga Harbour (S8) Matakana Island Landscape Management Areas (S9), ~~Landscape Management Areas, Matakana Island (S9)~~, Motuhua Island (S14), Rangiwaea Island (S15) Motungaio Island (S16); Maketu Estuary (S19), Okurei Point and Headland (S20), Waihi Estuary (S21) and Pukehina Spit End (S22) where such activities will be visible from the adjoining waterbody.
- (c) Activities within the Open Coastal Landward Edge Protection Yard (S24) where such activities will be visible from both the adjoining waterbody and the beach.
- (d) Activities within identified *viewshafts* where such activities could compromise the quality of the view or cause or contribute to the obstruction of the view.

Explanatory Note

The Tauranga Harbour (S8) and Wairoa River (S7) Landscape Management Areas and Matakana Island Landscape Management Areas (S9) ~~Matakana Island (S9)~~ are included as natural features and landscapes within Appendix 2 and extend 300m inland from *MHWS* (S8 and S9) and the river bank (S7) on Rural Zoned land only.

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6.6.1.2 In considering an application for a Restricted Discretionary Activity Council is restricted to the following assessment criteria. These criteria can be used as a guide for Discretionary and Non Complying Activities.

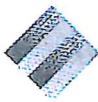
6.6.1.3 Within Identified Natural Features and Landscapes

- (a) The extent to which the *development* will maintain, enhance, or avoid adverse effects on, the integrity of the landform and skyline profile. Factors that will be considered include:



- (i) Reflectivity standards relating to the colour and finish of *buildings* (see British Standard BS 5252);
 - (ii) The *height* of *buildings* taking into account the surrounding landscape;
 - (iii) Whether building form or works positively respond to the natural landform contour;
 - (iv) The extent of landform modification and whether the finished landform appears natural;
 - (v) The ability to mitigate effects through landscape planting using native plant species within a timeframe not exceeding five years;
 - (vi) The Design Response Guidelines identified on Page 28 of the Western Bay of Plenty District Council Landscape Review – Assessment of Landscape Management Requirements for the Tauranga Harbour Margins and Wairoa River Valley by Boffa Miskell (October 2008).
- (b) The extent to which native vegetation removal can be avoided having regard to the nature and scale of the proposed activity. For subdivision and *buildings* native vegetation should not be removed except where there is no alternative for building location or access. Subdivision should locate house sites and access outside existing stands of native vegetation.
 - (c) The extent and location of *earthworks* having regard to the nature and scale of the proposed activity. For subdivision and *buildings*, *earthworks* shall generally not exceed that required for the *building(s)*, vehicle access and turning, and outdoor living court(s).
 - (d) The ability to retain a natural appearance following site *earthworks* and vegetation removal. All disturbed ground should be contoured to be sympathetic to the natural landform and revegetated with species appropriate to the context and use of the site.
 - (e) The extent of proposed planting on re-contoured slopes steeper than 1 in 4.
 - (f) The extent of visual effects of any works and *network utilities*.
 - (g) The extent to which Significant Ecological Features within the visual landscape are avoided, maintained or enhanced (See Section 5).
 - (h) The extent to which the location and design of access tracks and roads follow the natural contours, minimise any cut at ridgelines, and mitigate any impact by regrassing/planting. Work should take account of weather and planting times.





- (i) The extent to which new *lot* boundaries and fencing follows natural ground contours. Fences should not be located on the top of ridgelines and where practical should be incorporated into the landform feature within the *lot*. Water courses, areas of native bush and *wetlands* should not be dissected by subdivision or *development*.
- (j) The extent to which *production forestry* is in general accordance with any applicable industry code of practice. Particular regard shall be given to the following matters:
 - (i) Avoiding geometric and unnatural shapes and unnatural orderliness;
 - (ii) Attention to the shape and line of the production forest to blend into the landscape;
 - (iii) Avoiding disruption to the skyline;
 - (iv) Avoiding vertical lines that divide a landscape;
 - (v) Oversowing clear-felled areas with grasses or replanting as soon as possible after felling;
 - (vi) Avoiding areas of high visual profile, particularly around the Tauranga Harbour margin (excluding Matakana Island) and the Wairoa River valley.

6.6.1.4 Within Identified Viewshafts

- (a) The location of activities shall not compromise the quality of the view or cause or contribute to the obstruction of the view.

6.6.2 Discretionary and Non-Complying Activities – Matters of Discretion and Assessment Criteria

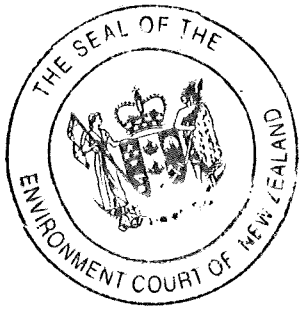
In considering an application for a Discretionary Activity or a Non-Complying Activity, Council shall consider:

- (a) All the assessment criteria included in 6.6.1.3.
- (b) Relevant objectives and policies of the District Plan.
- (c) With regard to Matakana Island, the vision, principles and implementation strategies included in the adopted Matakana Island Plan.



6.7 Other Methods

- 6.7.1 Bay of Plenty Regional Water and Land Plan with regard to *earthworks*.
- 6.7.2 Negotiation of joint management plans with affected landowners to maintain/enhance the significant *viewshafts* that are threatened by existing vegetation.
- 6.7.3 *District Council* incentives which may be payable for protection covenants
- 6.7.4 Application fees shall be waived for resource consents for activities within Identified Outstanding Landscape Features that would otherwise be a Permitted Activity.



Attachment F

Proposed Changes to Appendix 2

Schedule of Identified Outstanding Landscape Features

Natural Features and Landscapes

S9 - Matakana Island Landscape Management Area

The area identified as visually significant includes all Rural Zoned land between *MHWS* and 300m above *MHWS* adjoining the Tauranga Harbour. This landscape feature is divided into two distinct areas. The area within 50m of *MHWS* (shown as S9a on the Planning Maps) is deemed to be more significant and thus greater restrictions apply.

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S25 – Matakana Island Open Coast

Matakana Island is the largest sand barrier island in New Zealand. The open coastline extends 23km between the northern and southern entrances to the Tauranga Harbour. This part of the feature follows the landform's natural dune systems and native vegetation cover. A dynamic dune system extends inland partway into the edge of the plantation forestry with varying areas of native under storey. The area displays a high level of natural character and is part of the coastal environment where coastal processes are dominant. The sand spits that extend at either end of the Island are included for their display of the dynamic coastal processes of the Harbour and open coast. These areas also include habitat for threatened bird species including New Zealand Dotterel.

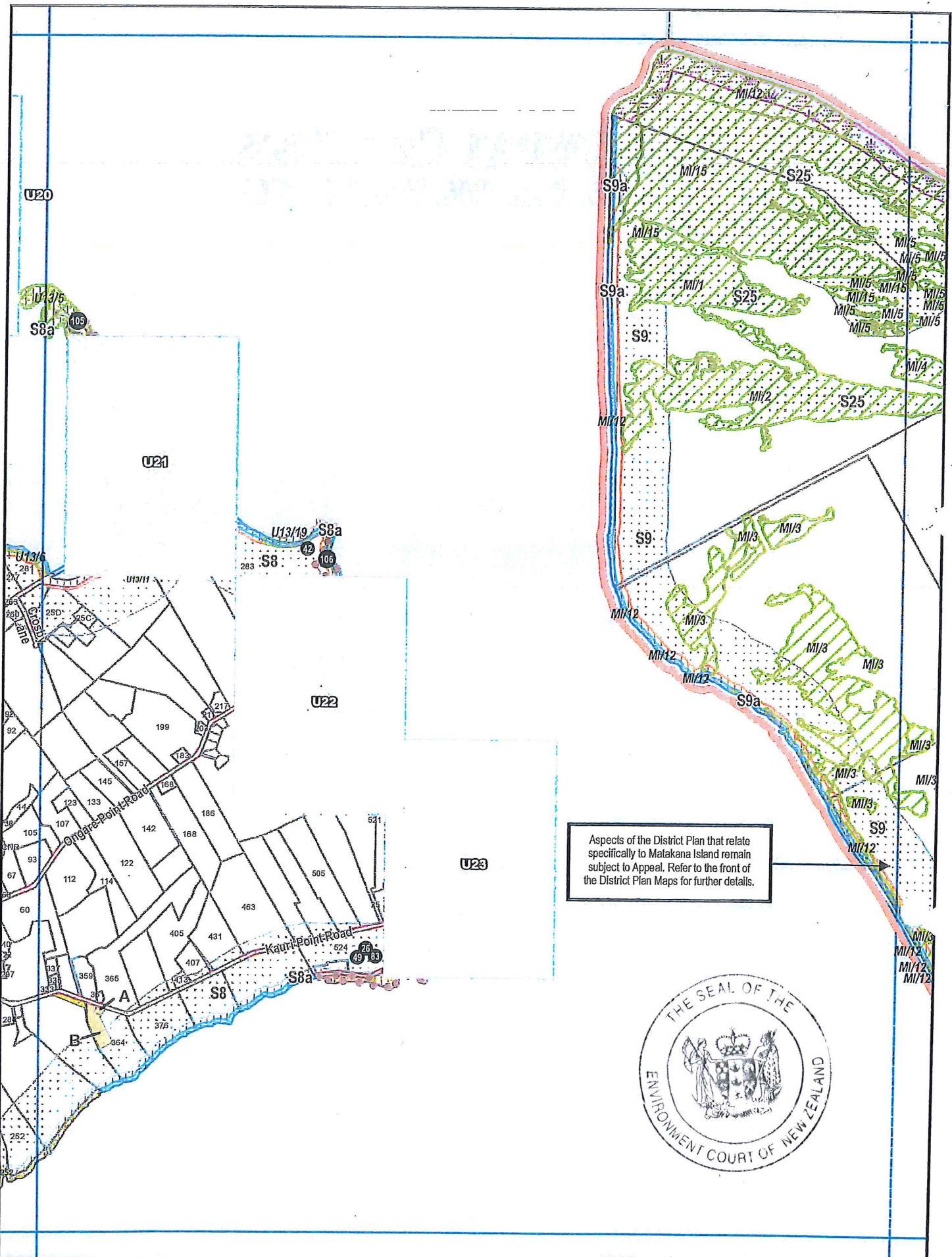


New District Plan Maps

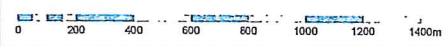
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C04 Rural Series



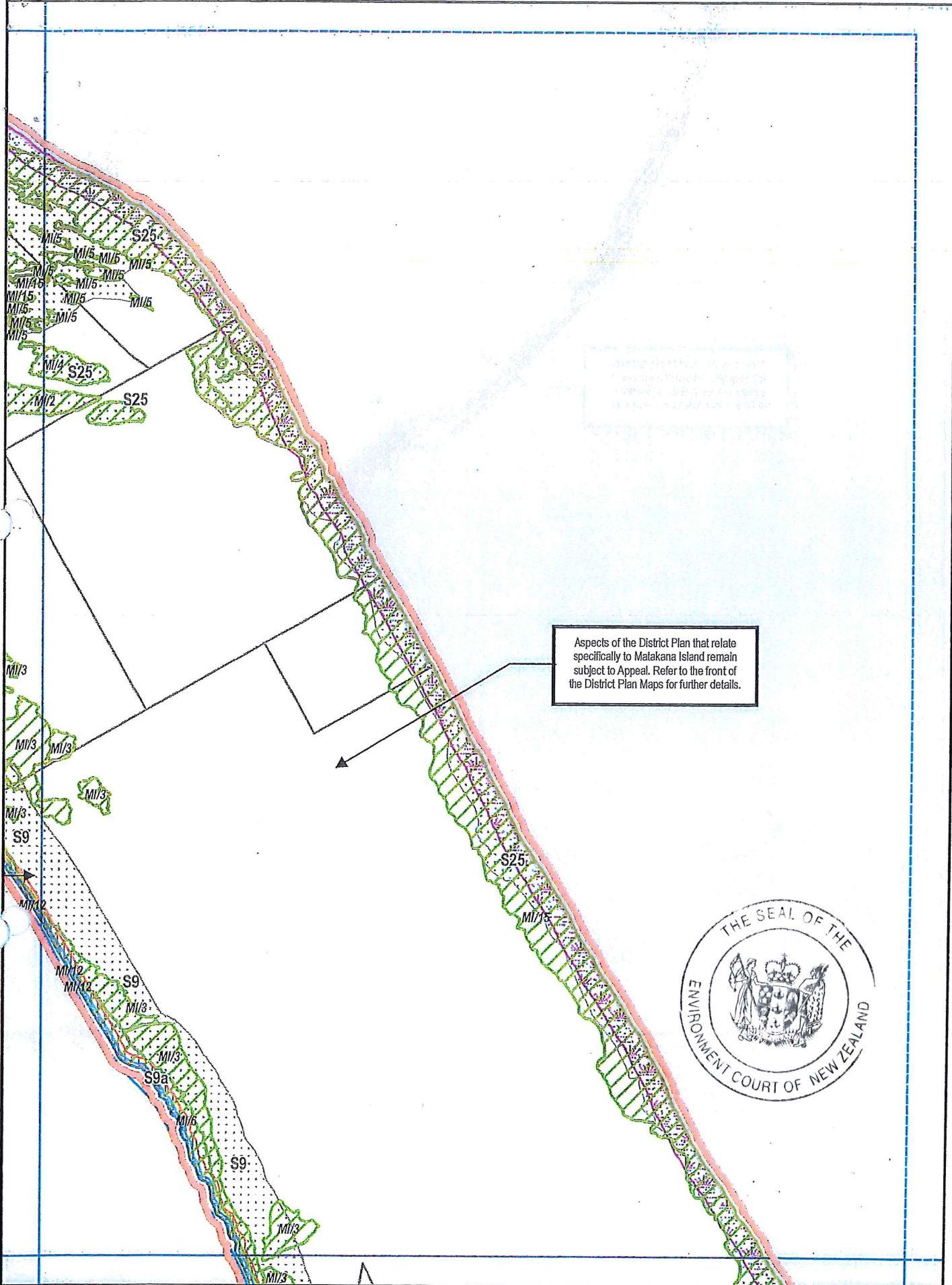
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B03	B04
C03	C04
D03	D05



Revision Date: 7 March 2014

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C05 Rural Series



Scale 1:25000 (A4)

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Western Bay of Plenty District Council

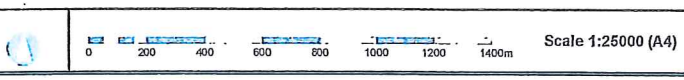
Revision Date: 7 March 2014

Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.

Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.



D05 Rural Series

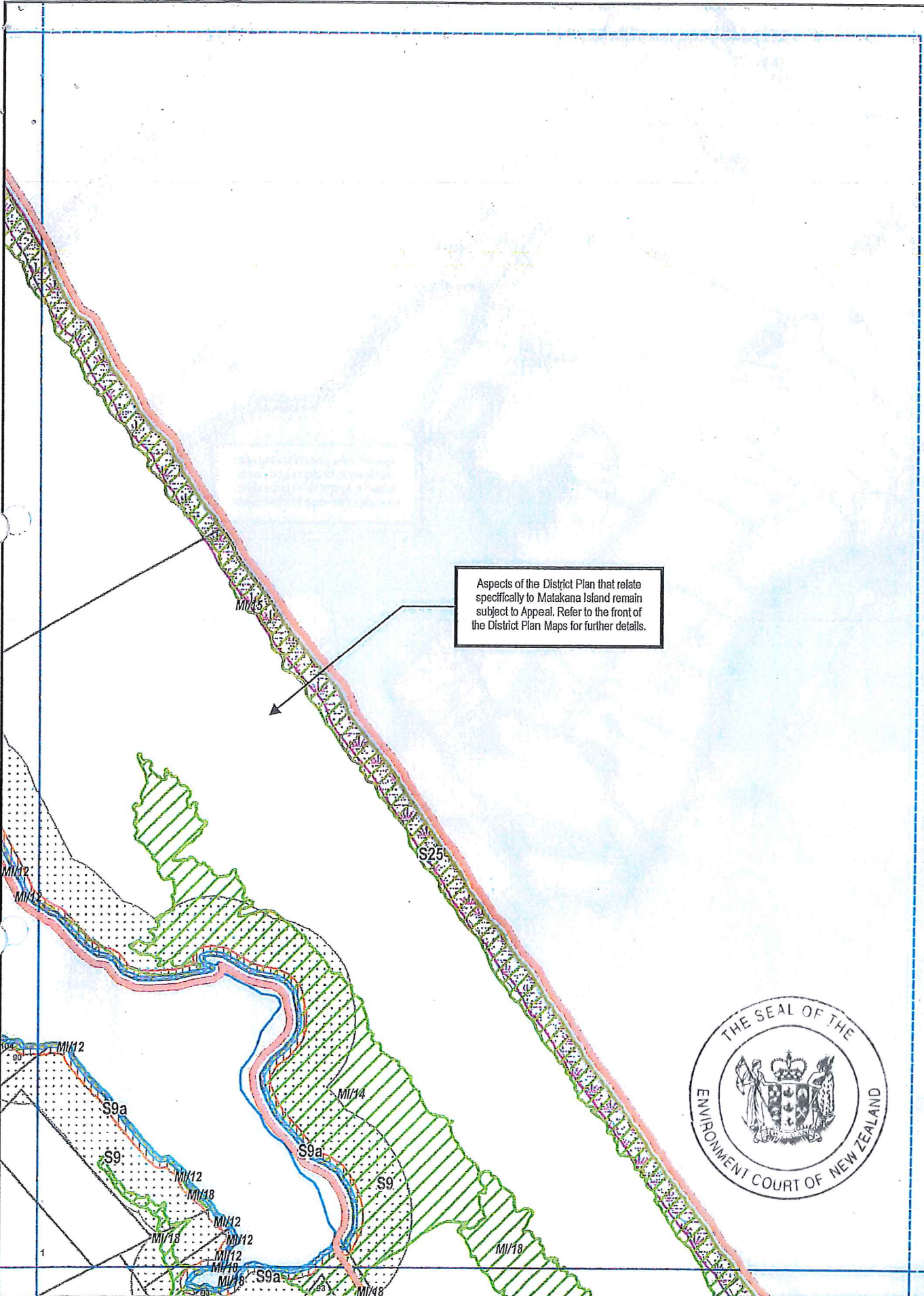


C04	C05
D04	D05
E04	E06



Revision Date: 7 March 2014

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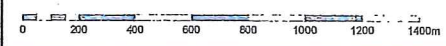
Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.



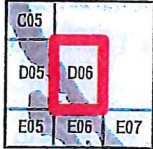
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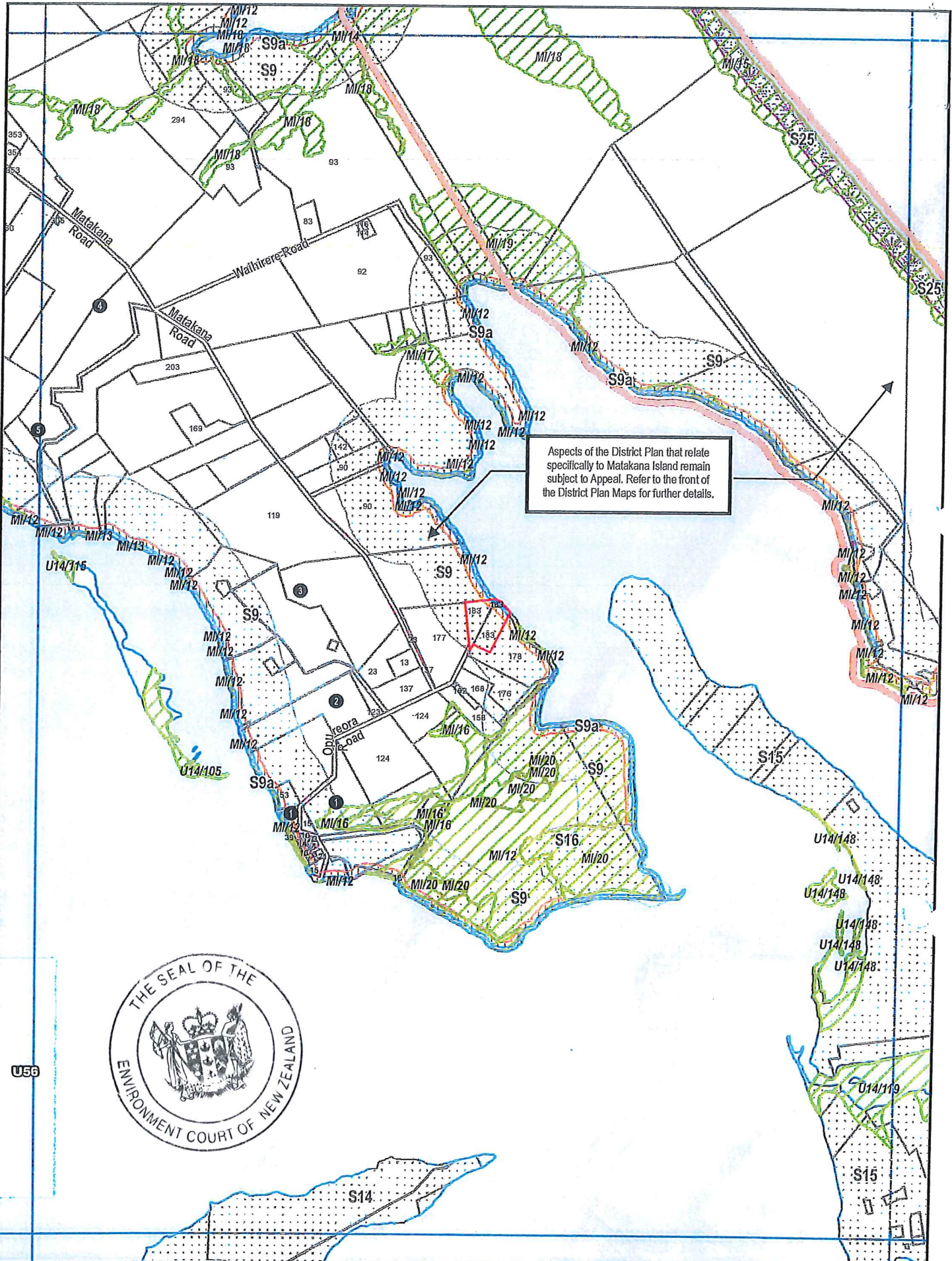
D06 Rural Series



Scale 1:25000 (A4)



Revision Date: 7 March 2014

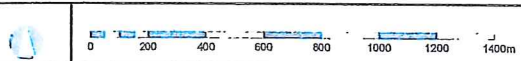


Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.



U56

E06 Rural Series



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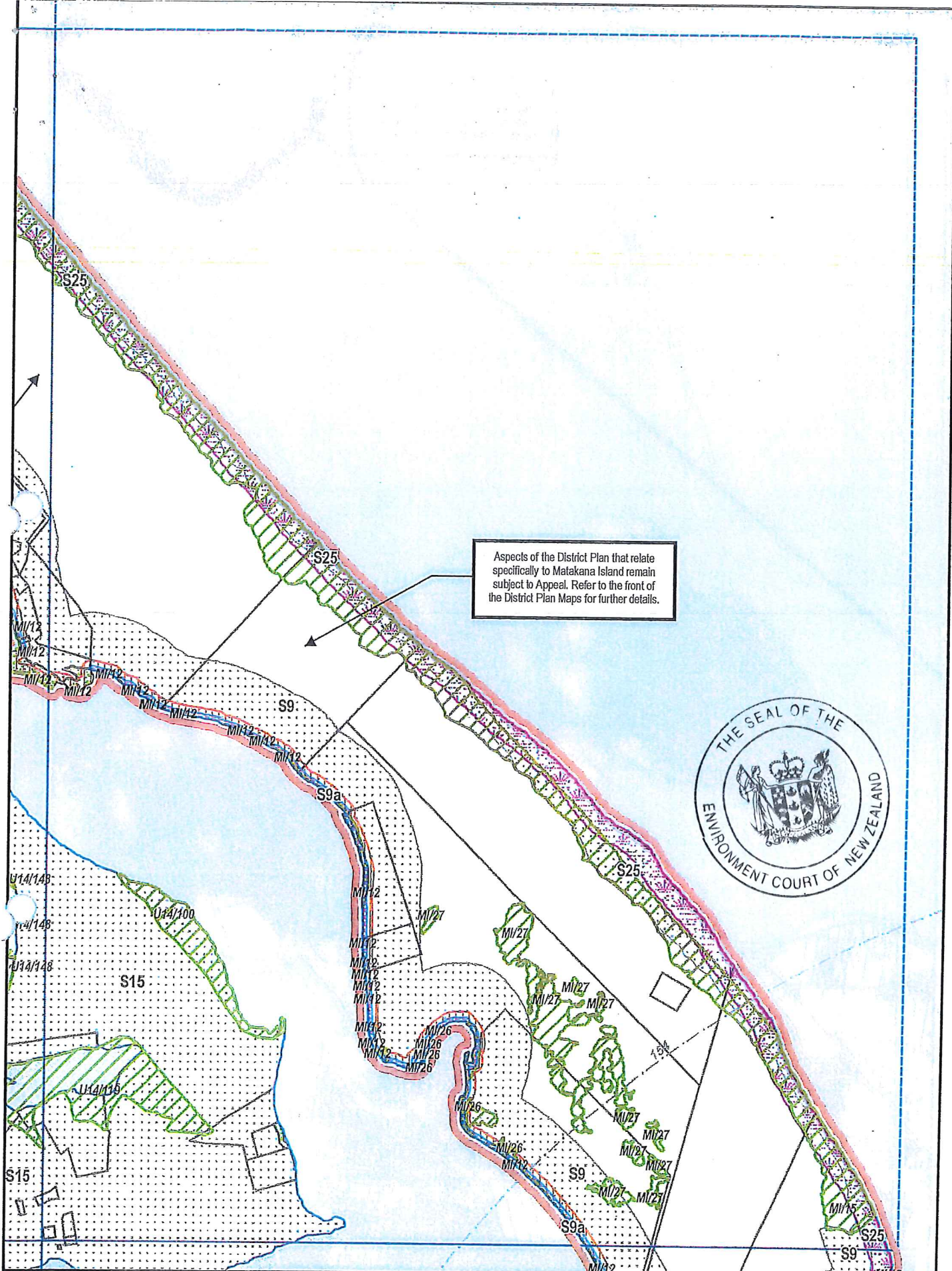
D05	D06
E05	E06
F05	F07

Western Bay of Plenty District Council

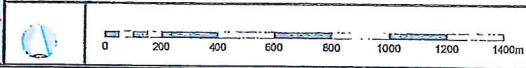
Revision Date: 7 March 2014

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Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.

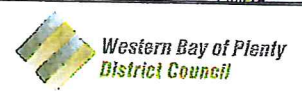


E07 Rural Series

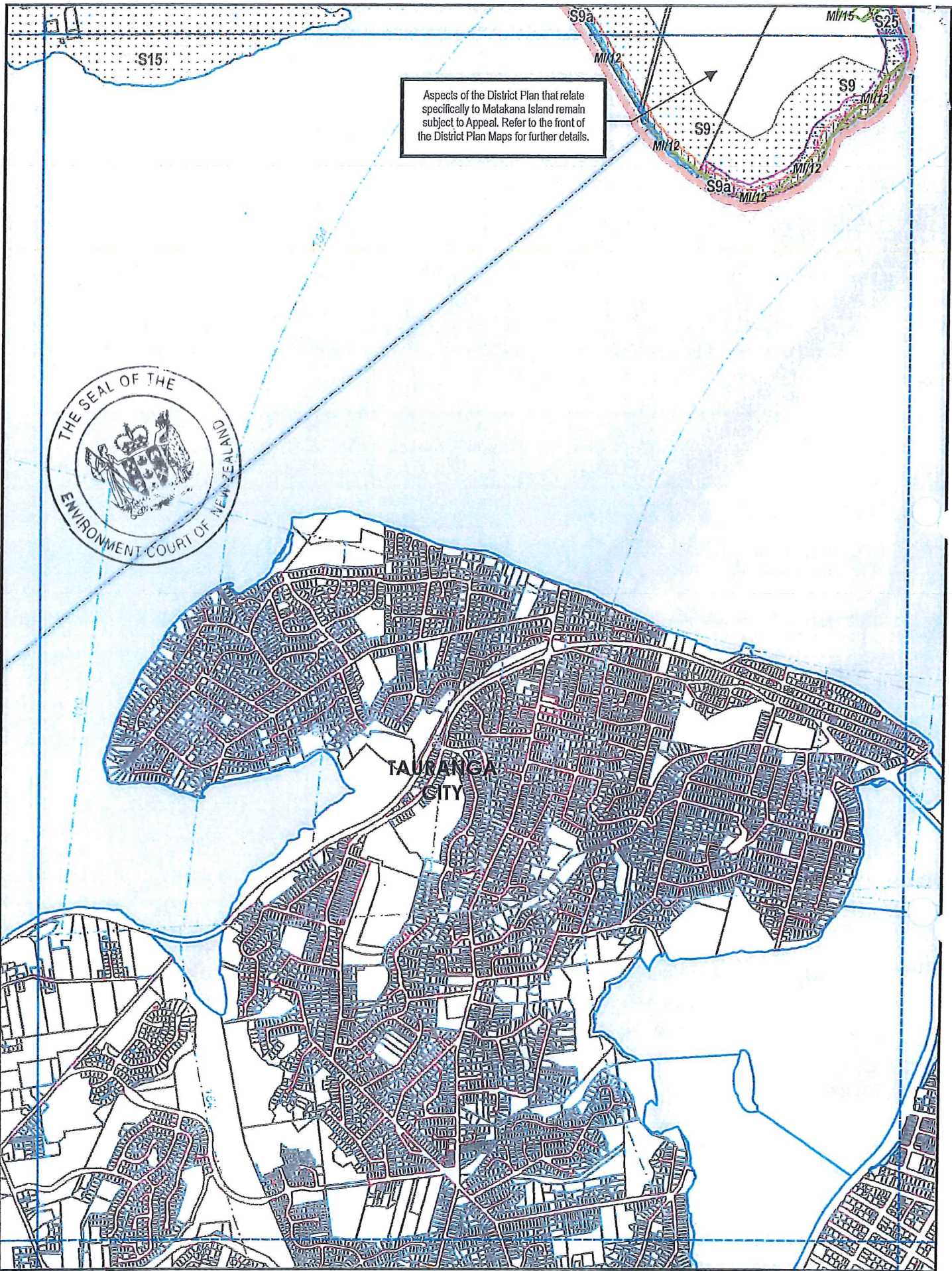


Scale 1:25000 (A4)

D06
E06
E07
F06
F07



Revision Date: 7 March 2014

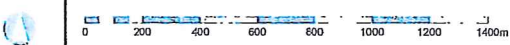


Aspects of the District Plan that relate specifically to Matakana Island remain subject to Appeal. Refer to the front of the District Plan Maps for further details.



TAURANGA CITY

F07 Rural Series



Scale 1:25000 (A4)

E06	E07
F06	F07
G06	G08

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Section 18 – Rural: Contents

Rural	2
18. Rural	2
Explanatory Statement	2
18.1 Significant Issues	4
18.2 Objectives and Policies	8
18.3 Activity Lists.....	12
18.4 Activity Performance Standards.....	17
18.5 Matters of Discretion	45

Matakana Island

Aspects of this Section of the District Plan that relate specifically to Matakana Island remain subject to appeal by reason of the following appeals:

- Bay of Plenty Regional Council (ENV-2010-AKL-000096)
- Blakely Pacific Limited (ENV-2010-AKL-000076)
- TKC Holdings Limited and Matakana Investment Group Limited (ENV-2010-AKL-000072)

As such the provisions in this Section of the District Plan that relate to the above have been annotated to indicate existing appeals. This has been done by providing a line in the right hand margin beside the part of the District Plan that has been appealed. Beside these lines is a number which is the *Council* reference to the respective appeals as follows:

- Bay of Plenty Regional Council - 1
- Blakely Pacific Limited - 3
- TKC Holdings Limited and Matakana Investment Group Limited - 35

Accordingly, in regard to provisions relating specifically to Matakana Island, the 2002 Operative District Plan and the 30 January 2010 Decisions Version of the Proposed District Plan remain applicable. In all other cases the 2012 District Plan as operative applies to Matakana Island.

This document shows the proposed changes to Section 18 – Rural as a result of:

- Western Bay of Plenty District Council decisions on District Plan Variation 2/Plan Change 46 – Matakana Island (shown in red underline for inserts and ~~red strikethrough~~ for deletions)
- Agreed changes as included in the Joint Expert Caucusing Statements (shown in green underline for inserts and ~~green strikethrough~~ for deletions)
- Proposed Consent Order by Blakely Pacific (shown in blue underline for inserts and ~~blue strikethrough~~ for deletions)



Rural

18. Rural

Explanatory Statement

The Western Bay of Plenty District is predominantly a rural area with a number of small towns spread throughout. Rural production is the primary economic driver and the *District* is reliant on the efficient use of the rural land resource to sustain this production.

The rural area is made up of a number of physically discrete landforms. To the north west lies the Kaimai Range which is characterised by steep elevated ridges and valleys, is mostly bush clad and is in large part a Forest Park. The foothills to these ranges are steeply sloping to rolling hill country dissected by rivers and streams. These foothills have many remnant bush areas and large parts are used for pastoral farming. The lowland around Tauranga Harbour contains both *versatile land* and *productive land* and has a number of other physical attributes which enables this land to be used for horticulture or more intensive farming. To the east of the *District* around Te Puke the land is characterised by large flat elevated plateaus with incised gullies and broken terrain. Land use varies from horticulture on the lower plateaus to pastoral farming. A coastal plain in the east comprised of fertile lowland peat and sandy silt soils extends from the edge of the plateau area to the coast and is largely flat land used for pastoral farming and slightly elevated rolling land with horticulture.

The rural area contains the majority of the *sub-region's* remaining indigenous flora and fauna. These areas of high ecological significance include harbours, wetlands, freshwater streams and rivers, areas of indigenous vegetation and protected areas. Protection and enhancement of these areas is desirable to maintain the *District's* biodiversity.

One of the key attributes of the *District* is that it encircles the City of Tauranga. Both Tauranga City and the *District* have experienced considerable growth since 1990 and this growth is forecast to continue. Over half of the people who have moved to the *District* have chosen to live in the rural area because of the rural lifestyle opportunities that it provides. Many of these people also work within Tauranga City. The opportunities for lifestyle living have been created by the subdivision of rural land under the previous subdivision rules. This has resulted in a wide distribution of lifestyle blocks throughout the *District*. Existing rural communities have often benefited from the increase in population resulting from lifestyle *development* which has added diversity and provided support for rural services and facilities.

In the last two decades the widespread subdivision of rural land for lifestyle and other purposes has resulted in significant fragmentation of the rural land resource.

